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# State Borders in Urban Spaces: Legal and Political Contention over Refugee Reception Offices (RROs) in Post-Apartheid South African Cities

A dissertation submitted in partial satisfaction of the requirements for the degree Doctor of Philosophy of in Sociology

by

James Gordon Johnson III

2020

ABSTRACT OF THE DISSERTATION

State Borders in Urban Spaces: Legal and Political Contention over Refugee Reception Offices (RROs) in Post-Apartheid South African Cities

by

James Gordon Johnson III

Doctor of Philosophy in Sociology

University of California, Los Angeles, 2020

Professor Roger Waldinger, Chair

State borders are generally defined as territorial boundaries in combination with differentiated legal status (cf. Fassin 2011). But what happens when state borders are located within cities with their own set of physical, social, and spatial boundaries? There has been increasing attention to various bordering institutions and spaces within countries in addition to national territorial borders (cf. Mbembe 2000; Mezzadra and Neilson 2013; Agier 2016; Yuval-Davis, Wemyss, Cassidy 2019). While conceptual models of internal bordering have often focused on the functions differentiating institutions and subjective experiences of individuals, there is further opportunity for analyzing the local politics around the location and operations of these institutions, especially in Global South cities where the majority of refugees and asylum seekers currently reside (UNHCR 2019). Therefore, this dissertation addresses important gaps in the

understanding of the underlying political and legal contention over the physical location and operations of bordering offices within particular buildings, neighborhoods, and cities. The dissertation is based on a case study of Refugee Reception Offices (RROs) in post-apartheid South Africa from the 1990s to 2020. RROs are administrative offices exclusively run by the Department of Home Affairs (DHA) to process and determine legal status of asylum seekers and refugees and have primarily been located in urban areas. However, just as the country was registering the highest numbers of asylum seekers in the world, the government was closing down RROs in major cities. Through an analysis of legal case records, stakeholder interviews, field observations, and additional archival research, I construct an analytical narrative around the underlying political and legal contention concerning the various relocations and closures of RROs in South African cities. I argue that legal definitions, bureaucratic labels, and the location and operations of RROs are directly connected to the politics of specific cities and neighborhoods. The intersection of state institutions and urban borders therefore leads to various ambiguous and contradictory administrative practices and policy initiatives. This dissertation contributes to conceptual models of law, politics, and borders by highlighting the importance of urban actors, spaces, and institutions, often overlooked in perspectives that focus on national politics and international institutions.

The dissertation of James Gordon Johnson III is approved.

E. Tendayi Achiume

Victor Agadjanian

Edward T. Walker

Roger Waldinger, Committee Chair

University of California, Los Angeles

2020

For my father

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James (Jay) G. Johnson III
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# CHAPTER ONE

## BORDERS, CITIES, AND ASYLUM

State borders are generally defined as territorial boundaries in combination with differentiated legal status (cf. Fassin 2011). But what happens when state borders are located within cities with their own set of physical, social, and spatial boundaries? There has been increasing attention to "internal borders" (Mezzadra and Neilson 2013) and "bordering" institutions (Yuval-Davis, Wemyss, Cassidy 2019) facilitating and enforcing systems of differentiation and separation within countries and cities. Such socially constructed and politically contested systems of differentiation and exclusion have proliferated across various social institutions, geographic scales, and categories of individuals (Agier 2016). However, while conceptual models of internal bordering have often focused on the functions of differentiating institutions and subjective experiences of individuals, there is further opportunity for analyzing the local politics around the location and operations of these institutions. Therefore, the actual location of bordering institutions in relation to local spaces, politics, and actors are as important and contested as the functions of these institutions. Additionally, while there has been a significant focus on the externalization and privatization of bordering institutions outside Global North countries (cf. Gammeltoft-Hansen 2011), there has been less emphasis on the politics around the actual physical location of internal bordering institutions, especially in Global South cities where the majority of refugees and asylum seekers reside (UNHCR 2019). This study addresses gaps in understanding in the underlying political and legal contention of internal borders through a case study on Refugee Reception Offices (RROs) in post-apartheid South Africa. Over the past two decades, the country has consistently registered some of the highest number of asylum seekers in the world, making South Africa, and urban

RROs in particular, a central case in understanding the intersection of state institutions, internal borders, and urban spaces.

Internal borders and bordering institutions highlight several important dynamics in the management and administration of asylum seekers and refugees. First, they highlight the ongoing salience of state institutions, not only around national border control, but also in determining legal status and other forms of membership, rights, and belonging within countries and cities. Inherent contradictions in legal institutions and state bureaucracies may facilitate seemingly arbitrary and partial management of asylum seekers and refugees by the state. Second, internal borders – in terms of territory and operations – highlight the constructed nature of borders, dependent on specific temporal, spatial, and social conditions (cf. Mbembe 2000; Agier 2016). The decentering and proliferation of border institutions and locations highlight the interactional process of constructing and contesting borders and the importance of specific locations and buildings. Third, internal borders account for the possibility of the largely contingent role of local actors, spaces, and institutions in constructing and challenging official state bordering institutions. For example, neighboring residents and businesses, municipal ordinances, private property regulations, and building structures may influence the location and operations of state bordering institutions. Fourth, internal borders highlight the ambivalence and endogeneity among legal institutions, social actors, and specific territories in defining and contesting borders (cf. Edelman, Leachman, and McAdam 2010). Legal institutions may resist restrictive state bordering practices or facilitate their proliferation and operations in relation to specific territories and places (cf. Dauvergne 2008).

RROs in South African cities present an important case in contributing to the literature on internal borders and bordering processes. I argue that RROs represent state borders as

administrative offices exclusively run by the Department of Home Affairs (DHA) to process and determine legal status of asylum seekers and refugees. However, these offices also represent urban borders situated within particular urban buildings, neighbourhoods, and municipalities with their own interests, institutions, and actors. RROs therefore represent *state-urban* borders that highlight the intersection of state institutions and contested urban spaces and buildings and have led to political and legal contention by various actors in defining and contesting borders within urban spaces (Johnson 2020). Over the past two decades, RROs have been relocated, closed down, and reopened in major cities as a result of political and legal contention brought on by civil society and legal organizations and local businesses, in addition to various policy shifts in favor of proposed offices at national border crossings. Therefore, RROs present an ideal and understudied case of internal borders that complicates binaries between national and local territories, state and urban institutions, and public and private actors (cf. McNevin 2010).

In the following sections, I discuss these points further in calling attention to the relevance of the location and infrastructure of internal borders and bordering institutions concerning asylum seekers and refugees in cities. I further highlight how post-apartheid South Africa and specifically RROs present an ideal case for studying the ambivalent and contingent relations among state institutions, internal borders, and urban spaces. Subsequently, I discuss data collection and analysis based on a combination of legal case records, interviews, fieldwork, and further archival research. Finally, I review the main conclusions of the dissertation chapters, highlighting the importance and contradictions in location, policy, and law in understanding the politics and experiences around internal borders and bordering institutions.

## STATE INSTITUTIONS, INTERNAL BORDERS, AND URBAN SPACES

### *Internal Borders and Bordering Processes*

By internal borders and bordering processes, I refer to the political mechanisms of legal differentiation and spatial segregation within countries and cities. *Bordering* "constitutes a principal organising mechanism in constructing, maintaining, and controlling social and political order" (Yuval-Davis, Wemyss, and Cassidy (2019:5). *Internal borders* specifically highlight the "complex patterns of spatial segregation that work to manage and rule populations marked by poverty, destitution, and often racial discrimination" (Mezzadra and Neilson 2013:151), that are not limited to national territorial borders. While national territorial borders are clearly fundamental to bordering mechanisms of legal differentiation and spatial segregation (cf. Bosniak 1994; Joppke 1998a; Zolberg 1999; Hollifield 2004; Waldinger and Fitzgerald 2004; Walsh 2008; Waldinger 2015), there is increasing attention to bordering mechanisms, institutions, and spaces within countries and cities. While decentered borders are not necessarily defined in relation to the state or cities (cf. Agier 2016), my own understanding of internal borders focuses on the overtly political nature of borders with the state at the center of bordering processes. An emphasis on the political aspect of state borders – whether territorial or legal – differentiates the discussion from broader and interrelated concepts of social boundaries (cf. Lamont and Molnár 2002; Bail 2008; Wimmer 2008; Fassin 2011). I am particularly interested in the underlying political and legal contention over state institutions within particular urban spaces, considering specific buildings, streets, neighborhoods, and cities as potential border spaces (cf. McNevin 2010).

*Internal Borders and Legal Status*

To focus on the politics underlying the location of state institutions within cities is not to argue that nation-state borders are necessarily losing ground against forces of globalization, urbanization, or human rights (cf. Sassen 1996). On the contrary, conceptualizing state borders

within cities highlights the proliferation of state institutions and bordering mechanisms not limited to national territorial borders. Regarding international migration, national territorial borders are fundamental in spatial segregation and legal differentiation in determining who is sanctioned to enter a particular country and under what conditions. However, the presence of international migrants, whether legally sanctioned or not, has coincided with a variety of internal bordering institutions and mechanisms. Therefore, if the state can be considered a political community based on territorial control and a monopoly of violence (Weber 1978), then internal borders highlight the various mechanisms of violence and control that are exerted among different categories of persons and various internal territories (Mezzadra and Neilson 2013).

While physical state borders are most often associated with national territorial borders, legal status has widely been recognized as the most salient form of internal state borders, above all between citizens and foreign nationals (Waldinger and Fitzgerald 2004; Fassin 2011). The fundamental division between legal citizens and foreign nationals and state control over international migration has been most notably institutionalized through the passport system (Torpey 2000). Additionally, there are a proliferation of long-term and short-term legal statuses constructed by states to differentiate and distribute membership and rights to various categories of migrants in the country. Menjivar (2006) highlights the inherently precarious and uncertain categories of legal status that can change under certain policy shifts and temporal periods leading to previously protected persons becoming undocumented. In relation to asylum seekers and refugee status, there has been a proliferation of legal statuses for temporary protection that do not include the various rights and protections that international and national law often provide (cf. Fitzpatrick 2000; Joly 2002; McAdam 2007). Therefore, various legal statuses, on an ever-changing spectrum from undocumented to citizen, correspond to various forms of identification

and implications for rights and membership. In contrast to Walzer's (1983) call for states to eventually provide full membership to international migrants permitted within their territories, the proliferation of internal borders has increasingly limited options for even partial membership, let alone full citizenship, in many countries.

*Internal Borders and Territory*

In addition to legal status and national territorial borders, there is increasing attention the location and spaces of internal borders and bordering processes within countries and cities (Mbembe 2000; Balibar 2009; Agier 2016). By focusing on the specific location and operations of internal bordering institutions, there is an emphasis on the mechanisms and locations that states utilize to limit the rights and entry of refugees and asylum seekers. Rather than trying to explain the relative influence of national politics in contrast to international law, which suffers from difficulties of endogeneity and causality over time, there is an emphasis on the concrete spaces and institutions for bordering. For example, there is increasing attention to the externalization of border institutions and refugee administration utilized by countries with the resources to do so in the Global North (cf. Gammeltoft-Hansen 2011). Furthermore, the containment of potential asylum seekers and refugees in the Global South has been a long-term and ongoing international policy objective (cf. Chimni 1998). In combination with further restrictions on legal migration, especially for low-skilled and racialized categories of migrants, the externalization of refugee and asylum seeker processing has increasingly made it difficult to acquire legal status in wealthier countries and led to greater numbers of asylum seekers and refugees "waiting" in the Global South (cf. Hyndman and Giles 2011. The hardening of external borders for potential international migrants, has led to increase pressure to approach countries

without legal papers and risk trying to file asylum at national borders or within host countries (cf. Fitzgerald 2020).

Bordering processes and internal borders have often focused on the functions of institutions such as status determination offices, detention centers, municipalities, and even schools and health care facilities in excluding, segmenting, and racializing various categories of persons (Mezzadra and Neilson 2013; Yuval-Davis, Wemyss, Cassidy 2019). Internal borders in the Global South have taken various forms such as refugee camps (Fabós and Kibreab 2007), informal settlements (Sanyal 2017), local curfews (Janmyr 2016), municipal distribution of public services (Baban, Ilcan, and Rygield 2017), and specific urban neighborhoods along with detention centers outside of the cities (Yacobi 2011). Additionally, studies have looked at the interaction of certain institutions, such as urban accommodation centers, and the subjective experiences of exclusion and precarious inclusion of asylum seekers and refugees (Fontanari 2015; Casati 2018; Mayer 2018; El-Kayed and Hamman 2018). Therefore, the general structure and location of these types of institutions continues to play a significant role in bordering mechanisms for international migrants, though there remains a general lack of attention to the politics underlying the specific location of these institutions.

Territorial location and legal status not only exclude various categories of international migrants, they also influence the partial and managed inclusion of these populations. Restrictions on legal status and physical detention in camps or holding centers are not solely exclusionary tactics, but also mechanisms to delay and weaken certain categories of persons in relation to internal labor markets and state institutions (Mezzadra and Neilson 2013). While certain social and legal categories of persons and technologies of borders are designed to speed up entry into labor markets and economies, other legal and social categories and border

technologies are designed to slow down entry into labor markets. Borders therefore are violent spaces of exclusion but also mechanisms of varying temporal inclusion (Mezzadra and Neilson 2013). In the case of international migrants – above all, refugees, asylum seekers, and undocumented migrants – borders constantly threaten illegality and deportability, which further weakens their position within the country vis-à-vis state institutions, labor markets, and local communities. Therefore, the apparent porousness of national territorial or refugee camp borders, ineffectiveness of border walls and technologies, and presence of asylum seekers and refugees within countries and cities do not symbolize a lack of control, but rather result from inherent mechanisms of borders.

*Internal Borders and Bureaucratic Practices*

The differentiation of membership and rights not only affects international migrants, but rather "affects all members of society, although in different ways, according to their situated positionings as well as according to the racialised imaginary and normative social order" (Yuval-Davis, Wemyss, and Cassidy (2019:5). Bordering processes and internal borders highlight the intersectionality, fragmentation, and segmentation of various categories of persons, including but not limited to international migrants, vis-à-vis political, economic, and social institutions. Bordering is a function of the provision of rights, entitlements, and duties among various categories of citizens and international migrants, as much as policing and violence. As states increasingly provided rights and concessions to citizens (cf. Tilly 1985) these rights and concessions have continued to vary across different categories of citizens and international migrants. For example, welfare and social service regimes are often political projects to maintain and reproduce social orders based on various privileges and benefits across different segments of the population (cf. Esping Anderson 1989). The segmentation and incorporation of

international migrants are often based on the institutional histories and political philosophies of countries regarding citizens (Favell 2001). Consequently, while nationalism has been recognized as a process of homogenized and horizontal communities organized around a universal sense of time and delimited territory (cf. Anderson 1991), the state has remained very much involved in policing and maintaining social hierarchies and divisions. National rhetoric recognizing citizens, with associated rights, privileges, and citizenship status, vis-à-vis international migrants or minority populations, therefore, often complements institutional and social processes of bordering, rather than replacing them. Therefore, internal borders and bordering institutions faced by refugees and asylum seekers can be analyzed in relation to existing borders and divisions confronted across all local and national residents.

An emphasis on internal borders not only highlights the persistence and proliferation of internal divisions, but also underlines the arbitrary enforcement and blurring of these borders. Refugees and asylum seekers with international and national legal protections have increasingly been criminalized with rising suspicions of overwhelming numbers of fraudulent asylum applications (cf. Hamlin 2014). The criminalization of refugees and asylum seekers has progressed along with the securitization of refugee and asylum seeker management focused on containing migration and limiting integration, as opposed to realizing rights and protections as set out in international and national law. Therefore, the line between undocumented migrant and asylum seeker has become particularly tenuous, allowing states and other actors to justify actions that potentially harm asylum seekers (Dauvergne 2008). As the experiences of international migrants become more complex, immigration policies become more restrictive, and political and public opinion become openly hostile to refugees and asylum seekers, administrative practices and documentation become seemingly more arbitrary and unpredictable (cf. Cabot 2012). The

arbitrariness of state borders and internal bordering is not necessarily a sign of state weakness or strength, but rather an inherent part of governing and managing marginalized populations (Fassin 2011). To the degree that arbitrary policing and enforcement of borders of asylum seekers and refugees permeates other categories of persons and society as a whole (cf. Arendt 1968), the governance of these populations is central in understanding state power and administration.

*Internal Borders and Urban Politics*

One approach to explaining the discrepancy between administrative practices of bordering and legal protections for international migrants, above all refugees and asylum seekers, are tensions between international law and national policies. International law and institutions have been attributed to providing social and economic rights to economic migrants (Soysal 1994), and protections against forced return - *non-refoulment* – of asylum seekers and refugees to countries of origin (Goodwin-Gill and McAdam 2007). International norms and institutions therefore influence the structure of domestic legal and administrative institutions, which break down once confronted with specific national politics (Meyer et al. 1997; Finnemore and Sikkink 1998; Meyer 2010; Betts and Orchard 2014). "Decoupling" between international norms and domestic institutions therefore explains contradictory violations of international norms by state institutions in spite of their ratification into national law (Meyer et al. 1997; Meyer 2010). For example, while countries may have ratified international and regional conventions on refugee protection in national legislation, bureaucratic and political interests within specific countries have often limited the actual implementation of these protections (Kneebone 1999; Betts 2013).

The unidirectional influence from international to national institutions may underestimate the endogeneity between national institutions and international law. Various legal protections for international migrants may have developed within existing national rights frameworks and

political contexts (Joppke 1998a; Joppke 1998b; Guiraudon 1998; Favell 2001; Tichenor 2002). International law may be a constant background factor, but not necessarily a causal factor in differentiating how states regulate refugees and asylum seekers (cf. Hamlin 2014). Considering that nation-states are confronted with responding to citizens first and foremost, political pressure among various actors and interest groups, and uncertainty in predicting the costs and benefits of admitting refugees and asylum seekers, state institutions are increasingly pressured to limit access and rights for refugees (Gibney 2004:196-197). International refugee rights regimes are further restricted by the interests of states, for example, by denying the formal right to asylum in a host country and the importance of state sovereignty in international law (Gammeltoft-Hansen 2011). International institutions such as the UNHCR are dependent on cooperation of states, while states continue to seek legislative, policy, and administrative options to work around principles of *non-refoulment* and corresponding rights to asylum seekers and refugees.[1] In the absence of political rights for refugees and asylum seekers, and non-citizen residents in general, states may be less responsive and accountable to the rights and interests of these populations.

The presence of asylum seekers and refugees in cities presents additional legal and administrative challenges for states, the UNHCR, municipalities, and non-governmental organisations (Campbell 2006; Grabska 2006; Jacobsen 2006; UNHCR 2009; Sanyal 2012; Ward 2014; Kihato and Landau 2016). However, 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. 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

[1] UNHCR – United Nations High Commissioner for Refugees

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; cf. Simone 2004, 2009). Additionally, national politics and policies around exclusion based on nationality and citizenship often coincide with a proliferation of local borders and various claims of local belonging based on a variety of ethnic and national identities, length of time in a specific place, and contested ownership of local spaces and properties (cf. Malkki 1992; Mbembe 2000; Geschiere 2009; Adida 2011).

*Internal Borders and Legal Contention*

The types of local contention against internal borders may take various forms depending on resources, political opportunities, and collective frames available for various actors and relevant institutions and spaces of authority (cf. Piven and Cloward 1979; Tarrow 1994; Walker, Martin, and McCarthy 2008). While national state institutions have several means and sources of authority at their disposal including legislation and policies, administrative practices, and various means of violence and consent, other actors also have important means of bordering. For example, municipalities and property owners may utilize a variety of zoning codes, municipal by-laws, physical walls and other structures, and private property regulations to create internal borders affecting targeted categories of persons (cf. Varsanyi 2008; Ramakrishnan and Wong 2010; Steil and Ridgely 2011). Other local residents and actors without the means, authority,

and resources for legal and administrative action may organize in other formats such as neighborhood associations and business forums to enforce local borders. Furthermore, various acts of protest and mobilization, including violence targeted at certain categories of persons or specific contested territories, are other means to define, enforce, and contest internal territorial and social boundaries (cf. Landau ed. 2011).

In face of restrictive policies and internal borders, class action litigation by civil society organizations has been an important, though relatively understudied, strategy in resisting and shaping various policies concerning refugees and asylum seekers (cf. Coutin 1998). Social movement and legal scholars have increasingly argued for a more constitutive perspective of law in social movements, in which legislation and legal reforms interact with broader social changes, shifts in social norms, and other broader social movement goals (Edelman et al. 2010). Inherent in this discussion is the endogeneity of law and legal action in which legal rhetoric, actors, and institutions are at least partially influenced by the broader social norms, meanings, and institutions that they seek to regulate (cf. Edelman et al. 2010). While court orders may provide relief to specific individuals or class of litigants, court judgments are also informed by the competing rhetoric, beliefs, and objectives of various power holders, interest groups, and insurgent actors (cf. Cummings 2018). Litigation has often been recognized as a potentially limited tactic for achieving social movement goals and broader social change (Brown-Nagin 2005; cf. Cummings 2018). The specific and unique expectations and norms of the legal field may not always be compatible with goals and norms of broader social movements (cf. Brown-Nagin 2005). In reference to refugees and asylum seekers, court orders and legal institutions may be highly ambivalent at times challenging state policies, while also facilitating further restrictive legal frameworks (Dauvergne 2008). An emphasis on formal rights and litigation may

further lead to bifurcation of professional, civil society organizations working through formal legal institutions and the majority of "political society" living outside these official institutions (cf. Chatterjee 2004).

## CONTRIBUTIONS OF THE DISSERTATION

This dissertation contributes to understandings of borders and state institutions in four main ways. First, the dissertation moves away from debates over the relative salience of international law and institutions vis-à-vis national institutions and politics when discussing the inherent ambivalence within bordering practices around refugees and asylum seekers. Rather, I focus on the underlying political and legal contention behind the ambivalent and seemingly arbitrary location and operation of internal borders and bordering institutions. In particular, I argue that legal definitions – international, regional, or national – do not necessarily correspond with bureaucratic labels (cf. Zetter 1991: Zetter 2007; Bakewell 2008; Polzer 2008a; Crawley and Skeparis 2018) concerning refugees and asylum seekers. Therefore, inconsistency within these internal borders influences the ambivalent and arbitrary administrative practices in regulating and managing the legal status and official documentation of refugees and asylum seekers. The discrepancy among internal borders is heightened within cities in which the presence of refugees and asylum seekers in urban spaces exacerbates shortcomings in refugee and asylum seeker law, policy, and administrative practice. Therefore, I look at how legal definitions and bureaucratic labels are viewed and contested within legal and political perspectives on relative importance of urban spaces and cities.

The second contribution of the dissertation is to focus on the specific location of internal borders in relation to broader urban spaces. Internal borders and bordering processes have often focused on the functions of institutions such as status determination offices, detention centers,

municipalities, and even schools and health care facilities in excluding, segmenting, and racializing various categories of persons (Mezzadra and Neilson 2013; Janmyr 2016; Baban, Ilcan, and Rygield 2017; Yuval-Davis, Wemyss, Cassidy 2019). Internal borders have looked at the types of spaces such as various forms of refugee camps and informal settlements (Fabós and Kibreab 2007; Fassin 2012; Sanyal 2017; Agier et al. 2018) or specific urban neighborhoods (Yacobi 2011). Additionally, studies have looked at the interaction of certain institutions, such as urban accommodation centers, and the subjective experiences of exclusion and precarious inclusion of asylum seekers and refugees (Fontanari 2015; Casati 2018; Mayer 2018; El-Kayed and Hamman 2018). Missing from these studies, has been a concentrated analysis on the underlying politics around the specific locations of these institutions and buildings within cities, especially institutions regarding issuing documentation and refugee status determination. Therefore, I focus on policy decisions and political contention around the location of buildings and physical structures related to these administrative tasks on specific streets in certain neighborhoods, in addition to urban spaces in general.

Relatedly, a third contribution is incorporating local actors and institutions that are often left out of models on immigration politics that focus on interest groups, political opportunities, and politics at the national level (cf. Freeman and Tendler 2012). By focusing on state institutions in urban spaces, I incorporate various actors and institutions that are largely contingent and extraneous from policymaking and administrative practices of refugees and asylum seekers (cf. Landau and Amit 2014). Such actors and institutions include local businesses and residents with no prior interest in migration politics, existing municipal by-laws and property regulations, and building codes and private leases. Therefore, the analysis focuses on the use of existing local resources and institutions against the presence of state institutions for

refugees and asylum seekers. This analysis differs from discussions of actors and municipalities actively creating and enforcing municipal by-laws that specifically target undocumented migrants (cf. Varsanyi 2008; Ramakrishnan and Wong 2010; Steil and Ridgely 2011). The analysis further varies from the literature on urban politics and sanctuary cities in the Global North in light of the relative absence of municipal actors and lack of supporting social movements, popular mobilization, and political allies across South African cities (cf. Coutin 1998; Garbaye 2000; Wells 2004; Varsanyi 2005; Chinchilla, Hamilton, and Loucky 2009; Uitermark and Nicholls 2014; Darling 2017). Therefore, this dissertation contributes to discussions on urban politics around refugees and asylum seekers by focusing on how local actors and institutions other than municipal officials target the presence of specific institutions run by the national state.

Finally, this dissertation chapter contributes to broader discussions around the role of litigation, organizations, and borders. While litigation has increasingly become an important tactic by civil society organizations in challenging restrictive refugee and asylum seeker policies, there has been relatively less attention on legal action as compared to popular mobilization. In light of the relative absence of popular mobilization on behalf of refugees and asylum seekers (cf. Amisi and Ballard 2006; Polzer and Segatti 2011), and international migrants in general, and established migrant rights and legal organizations in South Africa (cf. Segatti 2011), litigation is a central arena in which internal borders and bordering processes are defined and contested. Building on conceptual frameworks that view law as endogenous to broader social dynamics and movements (Edelman et al. 2010), I argue that litigation over the rights for asylum seekers and refugees brought on by formal organizations is interconnected with the perceived meaning and value of cities and urban spaces for these populations. Therefore, national rights are redefined in

reference to the relative value of specific cities, for example, in providing economic opportunities, social networks, and public institutions. Consequently, court orders on behalf of civil society organizations and non-compliance with court orders by state institutions are related to specific urban contexts and contested internal borders. National rights are therefore considered in relation to local spaces, challenging the equality of rights not only for various categories of persons, but also various localities within a country.

## REFUGEE RECEPTION OFFICES (RROS) IN SOUTH AFRICA

The significant increase in the numbers of asylum seekers and refugees either attempting to enter or entering Western countries over the past several years has marked a turning point in the management of asylum seekers and refugees. Countries across the Global North have looked both outwards in further externalizing asylum seeker and refugee processing and management, while also looking inwards in managing the increasing numbers of asylum seekers and refugees now present and waiting within their territories. Images of refugees and asylum seekers waiting in public spaces and train stations, camping along major city sidewalks, building de facto camps along national borders, or residing in makeshift accommodation centers have become common across Europe and North America. Whether or not these individuals were considered refugees or asylum seekers has largely been due to administrative and bordering practices by various countries: in the case of South Africa, asylum seekers are those who may have accessed the refugee status determination process but are waiting decisions on their asylum claims, while refugees are the few who are granted formal refugee status within the country. There are also gray areas, for example, rejected asylum seekers who are considered non-deportable or who refuse to return to countries of origin and who remain within cities and countries without a clear legal status or presence within these countries.

The proliferation of asylum seekers and refugees have claimed the world's imagination with countries such as Germany, the U.S., and Turkey having some of the largest numbers of asylum seekers and refugees in the world. However, preceding this shift in global migration, it was South Africa which consistently had the highest number of asylum seekers in the world in the early 2000s. While the high numbers of asylum seekers were largely an administrative product – the country has not had similarly high numbers of refugees or total numbers of forced migrants – the country had experienced an exponential growth in the number of asylum claims.[2] Asylum claims peaked at over 200,000 claims per year in 2008 and 2009, by far more than any other country in the world at that time.[3] The high number of asylum claims were largely attributed to undocumented Zimbabwean migrants with several hundred thousand Zimbabweans applying for asylum in an effort to regularize their stay.[4] Other asylum seekers often came from regional and other countries in Africa and to a lesser extent from South Asia.[5]

Importantly, the registration and adjudication of asylum seekers and refugees in post-apartheid South Africa has primarily occurred at Refugee Reception Offices (RROs). These offices are run exclusively by the Department of Home Affairs (DHA). Initially, after the implementation in April 2000 of the 1998 Refugees Act, RROs were officially located in five major cities: Johannesburg, Pretoria, Cape Town, Durban, and Port Elizabeth. There were no RROs located near border locations and there were no refugee camps in the country at the time. Rather asylum seekers were expected to go to RROs regularly in order to apply for asylum,

[2] According to the UNHCR Statistical Yearbook 2012, the country had more than 816,000 asylum seekers between 2006-2011, which was the highest in the world during this time period.
[3] Department of Home Affairs Annual Report 2018.
[4] The African Centre for Migration and Society (ACMS) estimated there to be around 1.5 Zimbabweans in the country at this time. According to DHA statistics over 400,000 Zimbabweans had applied for asylum between 2008-2010 (cf. Amit 2011b).
[5] See 2015 Asylum Seeker Statistics: Analysis and Trends for the Period January to December, Presentation to the Portfolio Committee to Home Affairs, 8 March 2016, accessed through the Parliamentary Monitoring Group (PMG): https://pmg.org.za/committee-meeting/22163/.

receive and renew asylum seeker and refugee documents, and file and attend appeals hearing cases. In the meantime, South African law protected the freedom of movement for asylum seekers and refugees to live, work, and study in major cities. In turn, South African law did not provide for any social assistance or institutions specific to asylum seekers or refugees, making RROs the one institution that dealt exclusively with asylum seeker and refugee management. As a result of the location of urban RROs, South Africa therefore not only had the highest numbers of asylum seekers in general, but also the highest number of urban asylum seekers in the world.

However, just as asylum applications were peaking, some of the busiest RROs in the country were being closed down. 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. RRO closures, combined with persisting backlogs and waiting times, high rejection rates of over 90 percent, extensive corruption, and various administrative and policy reforms, have made it increasingly difficult to access asylum permits and refugee status (Amit 2011a; 2012, 215). According to DHA statistics, the department only registered 24,174 new asylum applications in 2017, while 2018 UNHCR statistics listed over 180,000 total registered asylum seekers in the country.[6] Securitized policies and human rights abuses by the DHA and police have resulted in various legal challenges and adversarial relations between the department and civil society and legal organizations in the country (Segatti 2011).[7]

[6] Respectively, Department of Home Affairs Annual Report 2018; UNHCR Population Statistics 2018.
[7] The total number of legal cases brought against the DHA by asylum seekers and refugees in South Africa was 7,726 from 2013-2018; see Parliamentary Question NW1769 to Minister of Home Affairs, 27 June 2018, accessed at https://pmg.org.za/committee-question/9298. In 2018-2019, Immigration Services of the DHA spent 31,705,547.57 South African Rand (ZAR) as compared to only 3,697,484.45 ZAR by Civic Services; see Parliamentary Question NW1292 to Minister of Home Affairs, 22 November 2019, accessed at https://pmg.org.za/committee-question/12750/.

Legal contention and political and policy pressures have led to numerous relocations and closures of RROs over the past few decades in South Africa. Since the early 2000s, legal organizations on behalf of asylum seekers and refugees pressured RROs to relocate to facilities that could better accommodate the increase in applicant numbers. In contrast, 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 has co-opted court orders against urban RROs to remove or limit operations in Johannesburg, Cape Town, and Port Elizabeth in support of proposed policies to move asylum management to land borders. Litigation by civil society and legal organizations has challenged these closures and called for the re-opening of RROs in cities where they have been fully or partially 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.

Consequently, South African RROs are an important and foundational case in the management of urban asylum seekers and the definition and contestation of internal borders for asylum seekers and refugees. Building on calls to develop theoretical contributions grounded in the experiences of Global South cities (Robinson 2006; Roy 2009), RROs in South Africa are an important case in understanding the contradictions and tensions concerning internal borders and urban politics. As noted by Fassin (2011), discussions on bordering institutions for international migrants in general have remained focused on the Global North, despite that the majority of forced migrants residing in Global South cities and the key interconnections across regions. In

South Africa, the relative protections under an independent judiciary and rights-based legislation, in combination with a largely non-compliant and unaccountable state bureaucracy and violent anti-foreigner politics, has created an ambivalent and precarious situation for asylum seekers and refugees in cities that have only been accessible to the majority of the citizens since the end of apartheid (Fassin, Wilhelm-Solomon, and Segatti 2017). Therefore, RROs in South Africa present an ideal case looking at the intersection of legal rights, urban spaces, and litigation, which has not been fully explored with the broader conceptual framework of internal borders, especially in Global South cities.

## DATA AND METHODS

Reflecting the centrality of litigation in challenging the operations and location of RROs and internal borders concerning refugees and asylum seekers in South Africa, legal case records were the primary source of data for this dissertation. I collected full legal case records for all cases directly concerning the relocations, closures, and re-openings of RROs in South Africa. Full case records for individual cases ranged from several hundreds to nearly two thousand pages of documents. These publicly accessible documents included affidavits, heads of argument, supporting documentation and records, and legal judgments. I collected legal materials from online databases such as SAFLII and in-person at provincial courts, legal and civil society organizations, and legal professionals in South Africa during fieldwork from July 2017 – March 2018.[8] Legal records were often incomplete from one source and had to be verified through a wide range of data collection and confirmation of the case materials. I further collected public case records – either full case records or legal judgments – of legal cases related to the operations of RROs with a particular focus on public interest and class action litigation, but also including

[8] SAFLII – Southern African Legal Information Institute, www.saflii.org/.

individual cases around refugee status determination. These documents provided further information around bordering processes within litigation and court orders that influenced and complemented litigation concerning RRO relocations, closures, and re-openings. Legal case records spanned primarily from the early 2000s to 2019.[9]

While legal case records provided the majority of the research materials, I conducted fieldwork outside of all former and current RRO locations. Fieldwork consisted primarily of conducting observations from public spaces outside these buildings to get a better sense of the location and context of specific RRO buildings as well as operations and logistics conducted outside current RRO locations. In light of ethical considerations and my own positionality as a white, American researcher, I limited my fieldwork to generalized observations and did not conduct interviews with persons outside these offices. Fieldwork was conducted primarily in Cape Town, though I conducted shorter visits to all open and closed RRO locations across the country. I also attended public court hearings related to RRO closures at the Western Cape High Court (WCHC) in Cape Town and the Supreme Court of Appeal (SCA) in Bloemfontein, specifically concerning litigation around the re-opening of the Cape Town RRO and the DHA's family joining practices that prevented refugees and asylum seekers to retroactively add family members to the same asylum seeker and refugee permit. I also attended certain Home Affairs parliamentary Portfolio Committee meetings in Cape Town and reviewed archival portfolio meeting minutes and documents published online by the Parliamentary Monitoring Group (PMG). I reviewed additional material from DHA press releases and social media, civil society organization reports and records, legislation and legal amendments and policy regulations, and media coverage concerning issues at RROs from the 1990s through 2020.

[9] Please note that all excerpts from the legal documents are quoted verbatim including any apparent typos or misspellings.

Finally, I conducted full-length interviews (n=30) and additional conversations with representatives from international, civil society, and refugee organizations and legal professionals, as well as local business, former RRO management, and local government representatives. I also built on previous interview material conducted on the limitations of local government and migrant rights organizations in townships and settlements outside of Cape Town and Johannesburg from 2011 – 2013. While civil society and legal professionals involved in RRO legal cases were generally available, interviews were limited in accessing local business representatives and current RRO management, and the fact that many interviewees often deferred to the legal records in attempting to recollect events from a decade in the past. While I contacted and visited neighboring businesses around RROs as part of the fieldwork, local businesses often declined full interviews or showed little interest or claimed a lack of knowledge in discussing RROs. Despite these limitations, interviews supplemented the legal material while providing further insight into current legal issues around current and former RRO locations.

Data collection and analysis was based on a qualitative approach on a particular institution, Refugee Reception Offices (RROs) in South African cities. Rather than sampling on a random selection of court orders, I focused on gathering full records of a population of cases connected to RRO relocations, closures, and re-openings. I constructed an archive of legal cases on RROs focusing on the partially and fully closed down RROs in Cape Town, Johannesburg, and Port Elizabeth, which had not been previously compiled and analyzed in its entirety. Building from this core archive of legal cases, I sought out full legal records and judgments of highly referenced precedent cases related to RROs and DHA asylum and refugee management to trace the complete legal narrative around RRO relocations and closures. Full case records were collected to gain insight into the various actors involved in the litigation and provided access to

documents and information that would otherwise have not been possible to obtain. The primary actors in the legal proceedings were civil society organizations on behalf of asylum seekers and refugees; legal organizations and professionals representing asylum seekers and refugee directly or advocacy civil society organizations; local businesses who either leased properties to the DHA or were contesting the location of a particular RRO; and representatives from the DHA and RRO management.

Analysis of the legal data supplemented by interviews, fieldwork, and further archival research, was twofold. First, I compiled the data to create an analytical narrative of the partial rise and fall of RROs in South African cities. Beginning with the drafting of the 1998 Refugees Act and the official establishment of RROs after the law's implementation in 2000, I trace key events, policy changes, local contingencies, and legal cases in shaping the largely ambivalent and fairly dysfunctional administration of RROs in cities (cf. Bennett and Elman 2006). The narrative focuses on early legal challenges to the limited operations and capacity of initial RRO locations that led to the relocation of these offices roughly prior to 2008. It continues to discuss a spate of litigation from local businesses against RRO locations from 2008-2012. Finally, the narrative focuses on the closure of RROs in several cities and civil society organizations' efforts to have them re-opened in the same cities, which has continued through 2019. Through a review of the recent historical data, I identify path dependent processes that help explain the persistence of urban RROs in spite of the DHA's general hostility towards these offices; critical junctures in facilitating their partial closures; and key turning points in broader administration and distribution of these offices (cf. Abbott: 1983; Sewell 1996; Haydu 1998; Mahoney 2000).

Secondly, an analysis of legal case records and other materials provided broader insights into the relationship among the DHA, judicial institutions, civil society and legal organizations,

and local businesses and urban spaces, and more indirectly, local municipalities, international organizations, other governmental departments, and asylum seekers and refugees themselves. Previous studies based on reviews of individual legal case decisions and interviews with asylum seekers and refugees have focused on the lived experiences of asylum seekers and refugees (Fassin et al. 2017), illegitimate refugee status determination decisions (Amit 2012), and violations of individual protections and rights (Landau and Amit 2014). Therefore, while the effects of DHA administration on the experiences of individual refugees and asylum seekers have been well-covered in the South African literature, there has been less research on the underlying political and legal contention of various competing institutions explaining the arbitrary administration and location of RROs in the first place (cf. Hoag 2010). The analysis in this study contributes to these discussions by tracing the underlying mechanisms of ambivalence and partiality through an institutional study of these key actors, working primarily through legal action and litigation. Rather than focusing directly on the consequences of RRO operations and closures for asylum seekers and refugees, which has been well documented (cf. Amit 2011a; Amit 2012; Polzer Ngwato 2013), I analyze the underlying political and legal contention among various institutional actors resulting in the partial, contradictory, and contested administration and location of these offices. By doing so, the analysis not only reviews the legal history of RRO relocations and closures, but also explores the opportunities and limits of litigation and broader implications on participation and influence, or lack thereof, of a variety of actors and institutions in the evolution of policy and administration around asylum seekers and refugees. Furthermore, the analysis draws broader conclusions around the relationship among state institutions and urban spaces building on empirical research from cities in the Global South but with broader implications for urban politics and internal state borders across the world.

## OVERVIEW OF DISSERTATION CHAPTERS

Chapter 2 provides a broader political, legal, and social context in understanding the emergence and evolution of post-apartheid asylum seeker and refugee politics, law, and policymaking. I review historical patterns of internal borders around legal citizenship and urban spaces that were fundamental to spatial and social divisions in colonial and apartheid South Africa and have persisted during the post-apartheid period. I further review the drafting and implementation of key legislation around refugees and asylum seekers leading the establishment and contested operations of urban RROs. Additionally, I review broader issues of urban politics, in particular xenophobic violence, in cities as important bordering processes in relation to official policies and legislation. The chapter provides an explanation for the partial and contradictory administration and politics around urban RROs that is the focus of the following chapters.

Chapter 3 looks at earlier litigation around internal borders for asylum seekers and refugees in South Africa. I argue that legal definitions strongly diverge from bureaucratic labels of refugees and asylum seekers, heavily influencing limitations and contradictions in DHA management and RRO operations in cities. While the chapter provides an overview of the role of RROs in the asylum management process and early legal cases influencing conceptions of asylum seekers and refugees, the second half of the chapter highlights the increasing connection between specific cities and urban spaces and the development of competing definitions and labels for refugees and asylum seekers. There are competing narratives of attributing cities as providing the necessary opportunities and institutions for the rights for asylum seekers and refugees, and blaming cities for facilitating corruption and abuse of the asylum seeker by economic migrants without any authentic asylum claims. Therefore, these narratives are not limited to distinct and formal policy categories or legal definitions, but are rather intertwined

with meanings and values attributed to cities and urban spaces in South Africa. These narratives, and related court orders, have had important implications for the early relocations and reforms for RROs, when the DHA made a seemingly genuine effort in improving the capacity and operations of these offices, though without addressing broader issues of political will and bureaucratic suspicions of asylum abuse.

Chapter 4 takes up the topic of local business litigation seeking to close down and relocate specific RRO buildings in their vicinities. After the consolidation of RRO operations, often in large warehouse buildings in industrial or commercial areas, certain local businesses protested the presence and operations of these offices in their vicinities. From 2008 – 2012, the DHA faced litigation and court orders to have specific RRO buildings close down in light of zoning and public nuisance violations caused by these offices. Litigation was brought on by heads of businesses in Cape Town, Johannesburg, and Port Elizabeth resulting in court orders for the DHA to either take measures to address zoning and nuisance violations, or close down their operations at specific locations. I argue that RRO closures represent a more contingent and local form of politics against these offices, and asylum seekers and refugees more broadly, that is not accounted for in political models focused on national politics and international law. The chapter also highlights that the closure and removal of RROs was not limited to removing asylum seekers and refugees in these areas, but also in upholding spatial, racial, and social borders in these urban neighborhoods more broadly.

Chapter 5 reviews civil society organizations' efforts to have RROs re-opened in these cities. While the Johannesburg RRO has remained closed down, organizations won court orders to have the Port Elizabeth and Cape Town RROs reopened. However, while the court order in Port Elizabeth was issued in 2015, a new RRO was only opened in 2018. Additionally, while

there was a court order in late 2017 to open a new RRO in Cape Town, the DHA has yet to open a new office in the city. Therefore, while organizations have had success in winning court orders, the DHA has shown significant willingness to delay and evade court orders. Additionally, I highlight that court orders and DHA resistance often highlight the location or RROs in these cities as both an important reason to keep these offices open from the perspective of civil society and legal organizations, and to keep these offices closed down from the perspective of the DHA. Therefore, this chapter further analyzes the specific qualities and meanings assigned to certain cities in relation to the rights and livelihoods of asylum seekers and refugees and residents more broadly.

In the concluding chapter, I discuss the case of urban RROs in South Africa within the broader conceptual discussion of internal borders and bordering processes and in an international comparative perspective. I first review the path dependent narrative in explaining the persistence of urban RROs in face of internal and external pressures to remove these offices form cities. I further discuss the significance and contribution of this particular institution in relation to other examples of internal borders and institutions for refugees and asylum seekers across countries in the Global South and North. In particular, I highlight the importance of specific urban spaces, actors, and institutions in constructing and contesting borders and rights for asylum seekers and refugees, often overlooked in political models on refugee and asylum seeker policy. I further discuss the potential opportunities and limitations of litigation in contesting state policies and internal borders, especially in relation to broader legacies and patterns of political opportunities and mobilization. In conclusion, I argue that the historical contention and uncertain future of urban RROs has broader implications for understanding and challenging contemporary practices and policies of urban administration and politics around refugees and asylum seekers around the

world today. By looking at the inherent contradictions in RRO management and politics, I conclude the dissertation with remarks on the broader implications for analyzing the relationship among state and civil society institutions and urban spaces and internal borders.

## CHAPTER TWO

## INTERNAL BORDERS AND URBAN ASYLUM SEEKERS IN SOUTH AFRICA

The migration of native-born residents and foreign nationals to major South African cities has resulted in contentious urban politics over claims of rights in cities. A major question in the history of South African cities has been around who determines the criteria of inclusion and exclusion for residence and rights within cities. Lawful claims of residence in cities have historically been connected to political rights and legal status, which led to the political disenfranchisement of the non-white persons and their official exclusion from urban spaces. With the end of apartheid, cities have undergone various processes of economic and political liberalization, along with persisting social, spatial, and racial divisions and inequalities. The establishment of RROs in major cities, therefore, situated these offices within these historical legacies and post-apartheid politics of contested urban spaces and claims to rights within cities. This chapter looks at the interlocking trajectory of urban migration and borders in relation to refugees and asylum seekers culminating in the establishment of RROs in Johannesburg, Cape Town, Port Elizabeth, Durban, and Pretoria by the early 2000s.

To discuss the recent history of asylum policies and practices in South Africa is therefore to discuss a series of interconnected institutional transformations in relation to persistent apartheid legacies. The emergence of a formal asylum processing regime in South Africa beginning in the 1990s took place within the broader institutional and societal transformation from the apartheid government to the post-apartheid context. The drafting of the 1998 Refugees Act marked a significant change in the policy process, legal principles, and administrative apparatus concerning asylum in the country, which has been in conflict with broader legislation

and regulations around immigration and policing urban borders in general.[10] Legal and political issues around asylum have not only had ambivalent and contested consequences for refugees and asylum seekers, but also for emerging state institutions, constitutional law, civil society, and urban residents. While principles and procedures around asylum have been codified within specific national legislation, the interpretation and implementation of asylum policies are embedded within national and urban institutional, social, and historical frameworks and conditions.

Previous attention has been given to the drafting and implementation processes of the 1998 Refugees Act, and the contested and ambivalent role of cities for the rights of asylum seekers and refugees in South Africa (Handmaker, de la Hunt, and Klaaren 2008; Fassin et al. 2017). However, there has been less attention on the importance of cities for the administration of RROs and how contested urban borders have influenced the actions of key institutions – e.g., DHA, judicial institutions, civil society and legal organizations, municipal governments – in relation to asylum seekers and refugees. This chapter looks at the broader conditions structuring the underlying political and legal contention around the eventual relocations and closures of RROs. By doing so, I analyze the emergence of official refugee and asylum seeker policies in South Africa starting in the 1990s in relation to contested urban spaces. In particular, I argue that the operations of urban RROs established in the 2000s have been influenced by historical legacies of policing and regulating urban spaces and borders for disenfranchised and racialized populations, in addition to post-apartheid legal principles around the freedom of movement, human rights, and access to cities.

[10] Refugees Act 130 of 1998, 2 December 1998.

This chapter outlines the broader historical, social, and institutional background of urban-based Refugee Reception Offices (RROs) in South African cities. The chapter is based on a review of the secondary literature and South African legislation related to freedom of movement, rights and citizenship, and internal and international migration. It begins with a review of the legal, bureaucratic, and institutional frameworks during the transitions from colonial rule through apartheid up until the post-apartheid transition and the development of the 1998 Refugees Act and related 2000 Regulations.[11] I further review the preceding years of refugee and asylum seeker migration and management in South Africa from the early 1990s to the implementation of the Refugees Act in 2000 and the 2002 Immigration Act and subsequent amendments.[12] After a review of the relevant institutional frameworks and recent history of forced migration in the country, I discuss broader socio-economic, political, and spatial conditions concerning migration and cities in South Africa. These broader contextual factors are reviewed in relation to the establishment of RROs in major cities. To conclude, I finish with a discussion on xenophobic politics and violence in South Africa as a central issue in contested rights and policies for refugees and asylum seekers in cities, and the relevance of anti-foreigner politics to contention around urban RROs.

## COLONIAL AND APARTHEID BORDERS

The control and management of "internal" and "international" borders have been fundamental to the governance of persons in South Africa since the colonial period. Various pass laws regulating and limiting black, male residents access to labor markets, urban areas, and freedom of movement had been in place in the British colonial territories and Afrikaner republics starting in the late 18th century (Klaaren 2017). The four administrative territories – Cape, Natal,

[11] Regulations to the 1998 Refugees Act, 6 April 2000, which set out the implementation of the 1998 Refugees Act.
[12] Immigration Act 13 of 2002, 31 May 2002.

Transvaal, and Orange Free State, which would eventually come together as the Union of South Africa in 1910, had all issued various legislation to regulate migration and residence within and across these territories. All territories enacted legislation to register and limit immigration and citizenship of Asian immigrants, predominantly from India, and China in the case of the Cape Colony (Klotz 2013; Klaaren 2017). For example, in 1897, the Natal province, where the largest Indian population was established in Durban, infamously instituted the first English-language entry test for immigration in the British colonies (cf. Klotz 2013).[13] Influenced by previous provincial legislation, in 1913, the South African government sought to limit the entrance of southern Europeans and Jewish immigrants, while trying to promote immigration among Protestant Europeans (Klotz 2013).[14] Subsequent legislation in 1937 introduced quotas for persons from countries associated with Jewish refugees during the interwar period, especially in light of popular association between the Jewish population in South African cities and communist politics (Klotz 2013).[15] Associated with limitations on entry, were restrictions on the right to vote and acquire citizenship once inside the country.

Importantly, various immigration legislative acts and policies based on race and religion were not a unique feature of South African immigration and bordering policies, which were commonplace across settler-colonial countries such as the United States, Canada, and Australia. As noted by, Segatti (2011:34), what made South Africa unique compared to these countries was not discriminatory immigration laws, but rather the dual processes of "denationalizing" the local population within the country and the various reincorporation processes and shifting boundaries between citizen and non-citizen in the country. The emphasis on protecting and managing

[13] Immigration Restriction Act, Natal, No. 14, 1897.
[14] Immigrants Regulation Act, Union of South Africa, 1913.
[15] Aliens Act, Union of South Africa, 1937.

internal borders, above all cities viewed as exclusively white spaces, was a main priority of South African governance. As stated in the influential 1921 Transvaal "Stallard" Commission report, "the Native should only be allowed to enter urban areas, which are essentially the white man's creation, when he is willing to enter and minister to the needs of the white man, and should depart therefrom when he ceases so to minister."[16] With rapid industrialization in the early 20th century and a growing urban population of black South African in major cities, there was increasing concern among white workers and politicians in limiting access and rights in cities and employment opportunities (cf. Marx 1998).[17] Among other legislative reforms, starting in 1923, the Native (Urban Areas) Act enacted a series of measures to separate black locations from white neighborhoods in urban areas.[18] Subsequent amendments to the Native (Urban Areas) Act over the next several decades increasingly restricted legal access for black Africans in South African cities (Davenport 1969; Evans 1997).[19] In all, segregationist and apartheid legislation and policies were increasingly focused on the reconfiguration and hardening of internal borders, disenfranchisement of non-white residents, and forced removals and evictions in urban areas.

The intensification and corresponding legal and bureaucratic apparatus to support "influx control" of South African cities diverged from the management of migration in other African cities where influx control was viewed as increasingly unfeasible and problematic (Davenport 1969). While pass laws and travel permits for black African men were implemented across Africa during colonial rule, South Africa intensified regulations and control over time, especially

[16] Report of the Transvaal Local Government Commission, TP 1/1922, para. 42.
[17] Marx (1998) highlights how, similarly to the US, legal exclusions against black Africans was a political strategy to unify ethnic and class divisions among white populations in South Africa.
[18] Native (Urban Areas) Act, Union of South Africa, 1923.
[19] The Native (Urban Areas) was amended several times between 1930 and 1964 with increasing restrictions on accessing cities for black populations (cf. Davenport 1969).

in the second half of the 20th century at the height of apartheid. However, as Vigneswaran states, (2011:157), "apartheid was a theory of *total* separation, but apartheid practice was a system of *partial* separation." Similar to other structures of temporary labor as in Mexican labor to the U.S., the objective was never to completely remove or eliminate black laborers – whether from South Africa or neighboring regions – from white areas, who were necessary for industrial, domestic, farming, and mining labor (Burawoy 1976; cf. Zolberg 1999). Influx control policies focused on cities, in which policies and regulations were caught between the desire of complete segregation and removal of black Africans from white cities and the need for available industrial and domestic labor (Posel 1991; cf. Burawoy 1976). Therefore, in practice, apartheid resulted in the division black urban residents who were officially permitted to reside in cities, though increasingly without rights and on precarious terms, and illegitimate black laborers who were not authorized to be in cities (cf. Nieftagodien 2011).

The increasing control over entry and residence in cities was accompanied by the urbanization and expansion of the Native Affairs Department (NAD) (Posel 1991; Evans 1997). While initially a colonial institution focused on paternalistic management of black populations in rural areas, the NAD took on an increasing role over influx control, labor allocation, and immigration enforcement (Evans 1997). Early influx control practices focused on removing unemployed black Africans – whether from South African or other territories – out of cities to work in less desirable rural farms (Posel 1991; Klaaren 2017). While early influx control was largely left to municipal governments and private employers, the NAD increasingly developed a bureaucratic apparatus over internal mobility and urban employment with further limitations on urban residence for black populations (Evans 1997). The culmination of these measures by the 1950s and 1960s was the disenfranchisement, forced removals, and lack of citizenship of black

and non-white nationals in South Africa. The presence of black urban communities within major cities was increasingly less tolerated and forced removals and demolition of entire neighborhoods became commonplace in South African cities. While forced removals were initially justified through euphemisms of health and sanitation (cf. Parnell 1991), the Group Areas Act of 1950 and social engineering projects of the 1960s firmly grounded evictions and demolished neighborhoods within the language of apartheid (cf. Western 1996).

At the height of apartheid, the various reserve lands for black South Africans were consolidated into "Bantustans" or homelands. These territories were designated by the apartheid government as semi-autonomous territories for black South Africans, further delegitimizing their presence in cities and white-designated areas in addition to the country more broadly. As stated by Mbembe (2000:266):

> By defining urban spaces specifically reserved for nonwhites, the system of apartheid deprived the latter of any rights in white zones. The result of this excision was to put on the black populations themselves the financial burden of reproducing themselves and to circumscribe the phenomenon of poverty with racially associated enclaves. Apartheid's stamp is also visible on the landscape and on the organization of rural space. The most characteristic marks of apartheid are the differentiation of systems of property (individual property in commercial zones and mixed systems in communal zones), the racial appropriation and ethnic distribution of the natural resources most favorable to agricultural, and migratory movements resulting in a multilocalization of black families.

As a result of this policy, there were fourteen distinct territories within South Africa, with various rights and privileges organized by race, ethnicity, and territory (Mbembe 2000). Cities were reconfigured and carved up with distinct divisions across the different racial categories with various rights and privileges associated with each category and territory. Therefore, rights and privileges – and lack thereof – were completely associated with racial and ethnic identification and residential territories with the privileging of white private property to the complete political and economic disenfranchisement of black rural areas.

However, within these broader racial categories, more localized categories and claims of belonging played an important role in defending various privileges and protections associated with specific areas and length of residence within urban spaces and neighborhoods. Forced removals of unemployed and newly arrived black residents from urban neighborhoods were justified by police in terms of removing unwanted persons from black residential areas (Vigneswaran 2011). Nieftagodien (2011:111) highlights the highly local dynamics and politics of exclusion within the Alexandria township outside of Johannesburg, where national citizenship has been complemented by an "authentic residence in a locality generally based on length of stay." In a context of scarcity in housing and employment, township residents who had been settled in the area during apartheid, felt antipathy to the thousands of "illegal immigrants" coming to the area starting in the 1970s from rural South African homelands (Nieftagodien 2011). Therefore, official concerns and policies around legitimate township residents and illegitimate newcomers, whether from rural South Africa or elsewhere on the continent, resonated with residents who became increasingly divided between authentic residents and unwelcome newcomers.

The management and control of international migration can also be understood within policies around influx control and internal borders. Initial regulations of international migration had as much to do in regulating the movement of immigrants within South African territories as controlling entry into the territories, which fell within British Commonwealth policies (Klaaren 2017). Paradoxically, increasing national recognition of immigrants proceeded at the same time as further restrictions on internal movement for non-white populations. As the administration increasingly restricted urban residence, political rights, and mobility for black South Africans, the enforcement of immigration laws largely merged with internal policing. South African

nationality therefore was further decoupled from citizenship status and political rights (Klotz 2013; Klaaren 2017). Immigration policies were increasingly nationalized and directed inwards to regulating persons within the country's territory. For example, the Commissioner for Immigration and Asiatic Affairs (CIAA) established in 1927 focused on the national registration and restriction of mobility of Indians and Chinese immigrants across provinces within the country (Klaaren 2017). The limits on internal mobility were as much about the containment of these populations within certain provinces and cities – for example, the majority of Indians residing in Durban in Natal – as limiting mobility across the country (cf. Klaaren 2017).

Additionally, the migration of black foreign laborers was largely tolerated and facilitated through similar labor regulations and mobility restrictions as black South Africans, leading to a blurring nationals and non-nationals that was rarely achieved in other countries (Segatti 2011). For example, the removal of black foreign nationals from urban areas, often led to their removal to rural, agricultural labor within the country and not international deportations, which were largely considered too costly and counterproductive by administrators (Klaaren 2017). Though in contrast to black South Africans who could in principle reside in cities under limited conditions and regulations, the 1937 Aliens Control Act made it illegal for black foreign nationals to reside in cities confining them to agricultural and mining in rural areas (Klaaren 2017). In general, individual black foreign nationals were largely tolerated if employed in rural areas, while their presence was generally considered illegal in urban spaces (Segatti 2011; Klaaren 2017).

A main concern for influx control was the long-term residence and politicization of urban black populations. There was increasing grassroots mobilization against the hardening of apartheid policies and legal resistance to forced deportations and removals of black South

Africans from cities. In face of such resistance and coordination necessary to enforce influx control, the increasing bureaucratization of the NAD and related government departments corresponded with more discretion for local administrators enforcing these laws, allocating labor permits, and persecuting violations (Evans 1997). As a consequence, segregation and apartheid laws retained their legitimacy for white employers to the degree that they could be circumvented in accessing labor demands, and their power over black populations to the degree that their enforcement by police and courts was largely discretionary and arbitrary (Evans 1997). Furthermore, in practice, numerous regulations and government departments all regulated movement in a complex system. The complexity of the system assisted in government agencies holding expert knowledge over regulations on movement and enforcing a myriad number of regulations against non-white populations. By the end of apartheid, the regulation of movement was partly distributed against at least nine departments: Foreign Affairs, Internal [Home] Affairs, Cooperation and Development, Police, Defense, Justice, Community Development, Trade and Industry, Agriculture, Minerals, and Energy, and Transport (Vigneswaran 2011).[20]

Importantly, the police have been a key institution in regulating and enforcing control of movement and forced removals during apartheid and the contemporary period.[21] The control of movement and removal of persons has been a main practice in preventing crime and enforcing law and order (Vigneswaran 20011:159). During apartheid, police resources were concentrated in white urban areas dedicated to the removal of black persons, while official police forces were virtually absent in black urban areas where subsidiary forces led raids on illegal activities under the auspices of limiting overcrowding and crime prevention (Vigneswaran 2011). The end of

[20] The post-apartheid DHA emerged from the operations of the apartheid-era Department of Internal Affairs and Department of Cooperation and Development (cf. Vigneswaran 2011).
[21] The apartheid-era South African Police (SAP) was renamed the South African Polices Service (SAPS) at the end of apartheid.

influx controls in 1986 and the end of apartheid in 1994, increased the relevance of national territorial border and formal citizenship, while also increasing the visibility of internal borders and urban policing of black foreign nationals (Vigneswaran 2020).

With the end of apartheid, cities became increasingly important destinations for both internal and international migrants, previously excluded from urban residence and employment (Landau 2006). The logic and rationale of influx control in urban areas persisted, both as a distrust and fear of newcomers overwhelming urban services and neighborhoods, and official policies regulating the movement of prohibited migrants. With the end of ethnic homelands and national disenfranchisement, prohibited migrants were now limited to undocumented foreigners who were now being deported en masse from the country (Vigneswaran 2020). While regulating the movement of persons previously included black foreign nationals along with black South Africans, administrative and policing practices continued removing undocumented foreign nationals (Vigneswaran 2020). The result of continued policing of both national and urban borders has been some of the highest numbers of deportations in the world. Deportations from 732 in 1980, 12,134 in 1985, and 53,418 in 1990, which continued and accelerated through the 2000s with over 300,000 deportations in 2007 (cf. Vigneswaran 2011). However, the focus on regulating foreigners was not a new policy objective at this time, but rather and extension of existing norms and procedures in regulating the movement of persons considered illegal, especially from cities (Vigneswaran 2020). A new Aliens Control Act was passed in 1991, which further codified and centralized existing regulations around community policing and enforcing immigration laws, particularly for the DHA and the police.[22] This law did not

[22] Aliens Control Act 95 of 1991.

necessarily add anything new to immigration control, but rather codified existing practices by government departments (Vigneswaran 2011).

## REFUGEES IN SOUTH AFRICA PRIOR TO THE 1998 REFUGEES ACT (1990s)

Prior to the early 1990s, the South African state did not formally recognize asylum seekers or refugees in the country. Jewish immigrants during the interwar period were not recognized as refugees in face of growing hostility and suspicion of this largely urban-based population in the country (Klotz 2013). During the wave of decolonization on the continent in the late 20th century, white immigrants from countries such as Zimbabwe, Mozambique, and Angola were accepted by the South African government as long-term, legal immigrants and not a special category of official refugees (Segatti 2011). The apartheid state, however, encountered issues with the increasing number of black migrants from neighboring countries experiencing civil wars, often instigated and fomented as part of the apartheid governments destabilizing foreign policy in the region (Peberdy 2001). In the 1980s, significant numbers of persons fleeing violence and persecution arrived from Mozambique primarily, and to a lesser extent, Angola.[23] The South African state generally treated black Mozambicans similar to other black internal and international migrants who were often detained and removed from cities and more or less contained in rural areas (cf. Polzer 2007). For example, Mozambican migrants who resided in bordering homeland areas drew on similar ethnic backgrounds and local traditions to access local networks and institutions to ensure their livelihoods (Polzer 2007, 2008a).

Refugee protections in contemporary South Africa were initially institutionalized through international law, fitting within broader patterns of the post-apartheid state's appeal to international institutions and human rights. In 1991, the South African government had signed a Memorandum of Understanding with the UNHCR and the organization established an office in

[23] By the end of the civil war in 1992, over 240,000 Mozambican refugees had decided to remain in the country (cf. Polzer 2007).

Pretoria in 1991 to facilitate the return of South African exiles under apartheid (Klaaren and Springman 1998). In 1993, the UNCHR, the South African state, and the Mozambican state signed "Tripartite Agreement," after which the UNHCR instituted a repatriation program to return Mozambican migrants back to their communities of origin (Peberdy 2001). There was a similar repatriation program implemented for Angolan refugees, primarily residing in Cape Town (Handmaker and Ndessomin 2008). Also, in 1993, the South African government signed a general Basic Agreement with the UNHCR for refugees in general and by September 1994, DHA internal regulations made reference to international refugee definitions under both the 1951 UN Convention and the regional 1969 OAU Convention and set out initial procedures for the processing of asylum and refugee status (Klaaren and Springman 1998).[24]

At this time, there was no corresponding national legislation concerning asylum seekers and refugees and the refugee regulations fell under the 1991 Aliens Control Act. The DHA created a separate "Subdirectorate: Refugee Affairs" in 1993-1994 with its own funding to administer asylum and refugee decisions (Klaaren and Springman 2008). Refugee claims fell under the discretion of DHA officers in granting exemptions to "prohibited persons" under sections 23 or 41 of the 1991 Aliens Control Act either at the border or within the country.[25] Therefore, the only way to apply for asylum was to approach a DHA officer with the hope to have an asylum application filed and processed. There were specially trained officers for interviews in Durban, Pretoria, Cape Town, and Johannesburg and outlying DHA offices, in which the department would provide an interpreter if necessary and permit the presence, but not intervention, of a legal representative during the interview process (Klaaren and Springman

[24] 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees, and 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa.
[25] See Human Rights Watch (1998) for a full description of asylum procedures under the 1991 Aliens Control Act.

2008). Initial decisions were then made by a Standing Committee for Refugee Affairs (SCRA) based at the department's home office in Pretoria (Klaaren and Springman 2008). Members of the SCRA were all DHA officials including the Director-General, while appealed decisions were reviewed by a Refugee Affairs Appeal Board, which nearly always accepted initial decisions and also did not provide written explanations (Klaaren and Springman 2008). Asylum decisions did not include written reasons and mainly determined based on whether the country of origin was considered refugee-producing and not on individual claims (Klaaren and Springman 2008).[26]

The implementation of international law and national procedures for recognizing and processing refugees had major implications for the way that the state approached black Mozambicans, which were the largest population of potential refugees in the country. Prior to the legal and bureaucratic reforms in the 1990s, the apartheid government did not recognize black Mozambicans as asylum seekers or refugees and were largely treated as other "prohibited persons" under the Aliens Control Act 1991. While international law and national procedures included legal protections and status for potential asylum seekers and refugees from the country, it also increased their visibility as foreign nationals in need of government intervention (Polzer 2007; 2008a). The result was that legal definitions of Mozambicans as refugees overlooked the integration strategies of many Mozambicans, especially in border areas but also in cities, and subjected these populations to possible repatriation and deportation back to Mozambique (Polzer 2007, 2008a; Vidal 2010). The "voluntary" repatriation programs led by the UNHCR for Mozambicans and Angolans received low participation rates and only succeeded in sending back limited numbers of the estimated population of Mozambican migrants residing in the country (Polzer 2007; Handmaker and Ndessomin 2008). Conversely, deportations by DHA Inspectorate

[26] See Human Rights Watch (1998) for further details of the decision-making process at this time.

officials, SAPS, and the South African National Defense Force (SANDF) continued to increase against Mozambican migrants living in border areas at this time.[27]

Related to the apparent failures of the repatriation program and an attempt to regularize the legal status of regional migrants within the country after apartheid, the post-apartheid government in South Africa passed a series of one-off, amnesties for previously prohibited migrants from regional countries. Three official amnesties were understood as one-off recognition of permanent residency among selected groups of foreign nationals without formal legal status who had a continued presence in South Africa during the apartheid regime (Peberdy 2001). They included an amnesty in 1995-1996 for contract mineworkers that voted in the 1994 election, had worked in South Africa for at least 10 years, and were from SADC countries (Peberdy 2001).[28] The second amnesty in 1996 was for unauthorized migrants who had lived in South Africa for more than five years from SADC countries and it was strongly opposed by the DHA (Peberdy 2001). The final amnesty in 1997 was for refugees from Mozambique who had entered South Africa before 1992 and who were still residing in the country. This amnesty was announced in 1997 but was significantly delayed and not implemented until 2000 (Peberdy 2001). The granting of amnesties to these specific groups of persons within specific timeframes, set an official distinction between pre-existing and legitimate foreign nationals, in contrast to any new unauthorized international migrants subject to increased border control measures and deportations by the post-apartheid state (Peberdy 2001).[29]

## DRAFTING AND IMPLEMENTATION OF 1998 REFUGEES ACT

The transition from apartheid brought fundamental institutional and legal changes across the

[27] See Human Rights Watch (1998) for further details on the increase of deportations during this period.
[28] Southern African Development Community.
[29] For example, between 1998 and 2003, over 1.3 million Mozambican migrants were deported (Segatti 2011).

South African state, including formalized legal protections for refugees and asylum seekers.. The final version of the country's new Constitution was ratified in 1996.[30] This legislative framework included a Bill of Rights and numerous legal protections not only for citizens, but "everyone" within the country (cf. Klug 2010). Additionally, the constitution held the state accountable to ratified international and regional treaties and protected the right of administrative justice and judicial review for all residents (Klug 2010). Several provisions of the 1991 Aliens Control Act were therefore considered unconstitutional and challenged in court by legal organizations and immigration lawyers. As a result, the 1991 ACA was amended in 1995 and 1996, for example, removing the prohibition of judicial review of DHA legal status decisions (Klaaren, Handmaker, and de la Hunt 2008). In 1996, the South African government officially ratified the 1951 UN Convention and 1967 Protocol and the regional 1969 OAU Convention on refugee rights and protections paving the way for the drafting and ratification of separate national legislation concerning asylum seekers and refugees (Klaaren et al. 2008).

In 1995, the UNHCR submitted a draft of potential legislation for refugees in South Africa based on the 1983 Refugees Act in Zimbabwe (Klaaren et al. 2008). In turn, in 1996, the DHA released a draft law for refugees and asylum seekers for public comment, which was uncharacteristic for the department (Klaaren et al. 2008). The draft led to a series of meetings organized by the state-body South African Human Rights Commission (SAHRC) and the legal human rights organization, Lawyers for Human Rights (LHR). By the end of the 1996, these drafts were put on hold, and the minister of the DHA created a Green Paper Task Team for international migration more broadly (Klaaren et al. 2008). The task team included representatives from civil society and academia, including the Canadian refugee law professor James Hathaway, as a consultant (Handmaker 1999). The chapter on refugees in the Green Paper reflects ideas of temporary protection and collective, regional protection in addition to a clear

[30] The Constitution of the Republic of South Africa, 1996.

separation of refugees from other categories of international migrants.[31]

Subsequently, a White Paper Task Team specific to refugees was created in June 1998 consisting of DHA and civil society representatives. The resulting White Paper moved away from temporary and collectivized protection, influenced by South African legal professionals and civil society organizations considering the human rights implications of these policies in the region (Handmaker 1999). The White Paper supported a decision-making body independent from the minister and Director-General, expressed concern over the detention and placement of refugees and asylum seekers in possible reception centers, and promoted a five-year period towards naturalization for refugees.[32] The resulting 1998 Refugees Act incorporated significant concessions to civil society and human rights lawyers, including the upholding of international and regional conventions; establishment of statutory independent decision-making bodies, the Refugee Appeals Board (RAB) and the Standing Committee for Refugee Affairs (SCRA); right to administrative justice and access to work, study, and basic healthcare for asylum seekers and refugees.[33] The Act also moved away from detention centers and established Refugee Reception Offices (RROs), though did provide the minister discretion to establish temporary camps in light of a mass influx of asylum seekers.[34] The Act also incorporated language and provisions around the prevention of fraudulent or unfounded applications and the detention and deportation of persons found in violation of various conditions. Therefore, the White Paper, and the resulting Refugees Act, incorporated an unusual and significant degree of civil society oversight and influence, though within a broader framework of policing undocumented migration and fraudulent asylum applications.

While the Act itself was largely viewed by civil society and legal organizations as providing

[31] 1997 Draft Paper on International Migration, 30 May 1997.
[32] 1998 Draft Refugee White Paper, 19 June 1998.
[33] Refugees Act 30 of 1998. Section 27(f) provided refugees to seek employment; Section 11(f) permitted the SCRA to determine conditions for work and study for asylum seekers.
[34] See Section 35(2) regarding the establishment of temporary centers in the case of "mass influx" of asylum seekers or refugees.

significant legal protections and rights through a relatively collaborative drafting process, the 2000 Regulations that set out the implementation of act were heavily criticized for their restrictions (Klaaren et al. 2008).[35] The Regulations were written by the DHA with input from the UNHCR and American immigration officials and not civil society representatives, and were viewed as weakening the legal protections of the act (Klaaren et al. 2008). For example, the regulations required a six-month waiting period for asylum seekers and refugees to apply to the SCRA for permission to work and study within the country.[36] Regulations also placed the burden on asylum seekers to find interpreters and added a two-year renewal period on refugee permits.[37] Regulations did include the requirement to provide written explanations for asylum decisions, but this was only added after legal action and court orders forcing the department to make this concession (Klaaren et al 2008). The 2000 Regulations were therefore a starting point in not only weakening provisions enshrined in the act, but also in moving away from a consultative process with civil society and legal representatives and increasing legal challenges against the DHA's interpretation and administration of refugee procedures.

## 2002 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS

The 2000 Regulations regarding refugees and asylum seekers were more in line with broader DHA immigration policies and legislation focused on securitization and policing undocumented migrants (Segatti 2011). For example, the post-apartheid government retained the electrified border fences that the apartheid government had erected in 1986, increased the number of SANDF border patrols, and reduced the number of official border crossings in the country (cf. Peberdy 2001).[38] Reflecting the complexity of immigration reform in the country, the 1991 Aliens Control Act was only

[35] Regulations to the 1998 Refugees Act, 6 April 2000.
[36] Regulations to the 1998 Refugees Act, 6 April 2000, Section 3(3).
[37] See Section 5(2) of the 2000 Regulations concerning interpreters; see Section 15(2) concerning refugee permit renewal.
[38] Approximately 220 kilometers of electrified fencing with the borders of Botswana, Zimbabwe, and Mozambique were erected by the apartheid government in 1986. International border crossings were reduced from 52 to 19 and international airports were reduced to 10 (cf. Peberdy 2001:23).

replaced by the Immigration Act in 2002 and subsequent amendments (cf. Segatti 2011).[39] The act rationalized the provision of various long-term and short-term permits providing opportunities for high-skilled workers and students to enter the country. While there were earlier discussions of facilitating low-skilled workers from regional countries, therefore addressing historical legacies of racialized labor exploitation, these reforms were stalled and not fully addressed in the legislation (Segatti 2011). Rather, the legislation had a strong focus on policing internal borders and removing undocumented migrants. The law and internal policies emphasized policing of work places and sought out community support in identifying, removing undocumented migrants, while further restricting legal options for the majority of low-skilled, regional labor (cf. Vigenswaran 2008b). The removal of foreign nationals persisted with large numbers of undocumented persons arrested by police and detained in local prisons or the privately-run Lindela "Repatriation Centre" outside of Johannesburg and deported to neighbouring countries. While the policing of workplaces was largely considered a policy failure (Vigneswaran 2008b), the act was recognized as further in line with creating distrust and divisions among South African citizens and foreign nationals.

The result of restrictions on low-skilled, regional migration was an increase in asylum applications in an effort to regularize legal status and acquire work and study permits (Amit 2012). 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. Belvedere 2007; Hoag 2010). Minutes from an SCRA meeting in 2000 highlight alleged abuse by economic migrants as the main reason for the applications backlog and for removing the provision to work and study for refugees and asylum seekers.[40] These

[39] See Immigration Act 13 of 2002; Immigration Amendment Act 19 of 2004; Immigration Amendment Act 3 of 2007; and Immigration Amendment Act 13 of 2011.
[40] Meeting of the Standing Committee, 18 September 2000, accessed in *Watchenuka and Another v. the Minister of Home Affairs & Others,* [2002] 1486/02, ZACGHPD.

concerns escalated with the exponential growth of asylum seekers in the 2000s, above all from Zimbabwe,[41] but also countries in Africa such as the DRC, Somalia, and Ethiopia, and to a lesser extent, South Asia, above all, Bangladesh.[42] For example, asylum seeker applications peeked at over 200,000 applications per year in 2008 and 2009, by far the highest in the world at this time (see Figure 1).[43] The DHA has justified high rejection rates – around 96% in recent years – of asylum applications as persisting evidence of economic migrants abusing the asylum system.[44] Additionally, the country did not recognize Zimbabwe as a refugee-producing country, primarily as a result of South Africa's relationship and involvement in the country and the mixed nature of Zimbabwean migration (cf. Polzer 2008b; Hammar, McGregor, and Landau. 2010; Betts 2013).

Subsequent amendments to the Refugees Act have also called for greater restrictions against the rights and mobility of asylum seekers and refugees.[45] Internal regulations streamlined the rejection of asylum applications while making approvals more time consuming and complicated for officials to finalize (Amit 2012). The country has had significant numbers backlogged asylum applications and waiting times can last several years before decisions are finalized (cf. Handmaker et al. 2008; Fassin et al. 2017).[46] While certain individuals have been able to take advantage of delayed asylum processing times to stay in the country on renewed

[41] While often quoted at much higher numbers in media and political circles, a reasonable estimate of Zimbabwean migrants in South Africa around the time was 1-1.5 million (cf. Polzer 2008b; Amit 2011b).
[42] See, e.g., 2015 Asylum Statistics: Analysis and Trends for the Period of January to December, Presentation to the Portfolio Committee of Home Affairs, 8 March 2016, accessed through the Parliamentary Monitoring Group (PMG): https://pmg.org.za/committee-meeting/22163/
[43] Department of Home Affairs, South Africa Annual Report 2017-2018.
[44] See 2015 Asylum Seeker Statistics: Analysis and Trends for the Period January to December, Presentation to the Portfolio Committee to Home Affairs, 8 March 2016, accessed at https://pmg.org.za/committee-meeting/22163/.
[45] See Refugees Amendment Act 33 of 2008, Refugees Amendment Act 12 of 2011, and Refugees Amendment Act 11 of 2017. The amendments in these acts were only implemented with the Refugee Regulations, 19 December 2019 that were officially enacted on 1 January 2020.
[46] The Minister of Home Affairs estimates that over 60% of Section 22 permits have been pending for 5 years or longer based on mid-2019 statistics; see Parliamentary Question NW1586 to Minister of Home Affairs, 9 December 2019, accessed at https://pmg.org.za/committee-question/12936/.

asylum permits regardless of the validity of their legal claims, the DHA has restricted access to asylum for genuine refugees as well (cf. Amit 2011a). The department has been shown to reject asylum applications in contradiction of legal criteria under the Refugees Act and international law and using cut-and-paste explanations for asylum rejections (Amit 2011a). The department and police have also detained and deported persons trying to access RROs and in spite of legal documents and court orders (cf. Human Rights Watch 2008; Landau and Amit 2014).[47] There is widespread corruption in accessing permits, often with the involvement of DHA officials across various RROs and all levels of administration (Amit 2015). Consequently, asylum restrictions and non-compliance with court orders highlight additional administrative, institutional, and personal incentives within the DHA and are not solely a result of lack of capacity or resources (cf. Vigneswaran 2008b; Landau and Amit 2014).

Policymakers have increasingly viewed the DHA as a national security agency.[48] The Border Management Authority Act to consolidate law enforcement agencies at border crossings and ports of entry received was signed into law on 16 July 2020.[49] 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.[50] In 2009, the DHA initiated a "special dispensation" for Zimbabwean migrants with a temporary moratorium on deportations (Amit 2011b). In 2010, eligible Zimbabweans were able to apply for short-term work and study visas, which further delegitimized their asylum claims (Amit 2011b).[51] In the 2017 White Paper on International Migration, the DHA has further proposed de-linking

[47] See *Tafira and Others v. Ngozwane and Others,* [2006] 12960/06, ZATHC.
[48] See African National Congress (ANC) "Peace and Stability" Policy Discussion Document, March 2012.
[49] Border Management Authority Act 2 of 2020.
[50] See the White Paper on International Migration – Final Version, 28 July 2017.
[51] See Amit (2011b) and CoRMSA (2011) regarding the limitations and challenges of the special dispensation permits for Zimbabweans at the time.

permanent residence eligibility from long-term refugee status. While mentioned by the DHA numerous times over the past decade, the 2017 White Paper has also officially proposed "processing centres" at land borders where asylum seekers could be held during the adjudication of their applications. Legal amendments and regulations to the Refugees Act in effect since 1 January 2020 place restrictions on work and study for asylum seekers and reduce the amount of time that asylum seekers can appeal cases, acquire legal representation, or renew expired permits (cf. Carciotto and Mavura 2016).[52]

## SOUTH AFRICAN CITIES AND URBAN REFUGEES

The majority of refugees and asylum seekers, and foreign nationals and South African citizens more broadly, have lived in major cities in post-apartheid South Africa.[53] While not formally stated in the 1998 Refugees Act or 2000 Regulations, Refugee Reception Offices were only established in major cities – Johannesburg, Pretoria, Cape Town, Durban, and Port Elizabeth. In combination with the provision of various rights and legal protections, and absence of social services and accommodation centers for refugees and asylum seekers, the country now had one of the few urban-based asylum administrations in Africa and the Global South. The implementation of an urban-based asylum process took place within broader processes of urbanization and mobility, as previously excluded black South Africans also moved into cities in search of economic opportunities (Landau 2006). Internal migration, particularly rural-urban and increasingly concentrated within the country's two biggest cities – Johannesburg first and foremost and Cape Town – has greatly outpaced international migration. For example, it was estimated that around 1.4 million internal migrants arrived in Johannesburg and around 440,000

[52] Refugee Regulations, 19 December 2019.
[53] According to OECD/Afripolis data, the urbanization level in South Africa in 2015 was estimated at around 70% (https://africapolis.org/data).

to Cape Town between 2011-2016, while total estimated registered net international migration was less than 1 million for the entire country during the five year period.[54] While immigration numbers are highly disputed and politicized in the country, it is generally acknowledged that urban growth has been driven mainly by natural causes, and to a lesser extent, internal migration, and not international migration.[55]

Urbanization has continued to be viewed as a problem in post-apartheid South Africa, whether among rural South African or foreign nationals coming to cities. Urban migration has been viewed as a social, financial and political problem among national, regional, and local officials (cf. Landau, Segatti, and Misago 2011). In 2012, the Western Cape Premier contentiously called students "economic refugees" coming from the neighboring Eastern Cape to live and study in the Cape Town and the Western Cape.[56] In general, South African cities have been characterized by extensive social, racial, and spatial segregation and inequality (Beall, Crankshaw and Parnell 2002; Murray 2008).[57] The extreme divisions within South African cities have often been attributed to the combination of historical divisions under colonialism and apartheid in combination with neoliberal governance reforms beginning in the 1990s (Heller 2001; McDonald 2008). Consequently, the control of mobility and policing of space has not been reserved for only international migrants or asylum seekers, but is still constantly applied to lower class, black residents (Samara 2011). Policing has focused on removing undesirable persons and preventing crime affluent urban areas, while concentrating and containing violent

[54] See *Statistical Release P0302: Mid-year Population Estimates 2018*. Statistics South Africa (Stats SA).
[55] *Statistical Release P0302: Mid-year Population Estimates 2018*. Statistics South Africa (Stats SA). Based on Stats SA data, ACMS estimates that the total foreign national population of working age is around 2 million, which is about 5.3% of the total workforce in South Africa (Jinnah 2020).
[56] See Hartley and SAPA (2012) accessed at www.iol.co.za/capetimes/zilles-refugees-remark-racist-says-anc-1261553.
[57] The Gini coefficient for inequality was 63.0 in 2014 and the country consistently has one of the highest rates of income inequality in the world (World Bank 2020).

crime within peripheral areas caught within cycles of underdevelopment and largely cut-off from capital inflows of the city center (Samara 2011).

Additionally, municipalities have largely shifted or ignored responsibility for foreign nationals, including asylum seekers and refugees. As McDonald (2008: 271) remarks, "local governments are forced to deal with issues of national and international migration with no legislative authority to deal with them and limited resources to cope with these phenomena." However, as Landau et al. (2011) have highlighted, municipal officials have had little interest in including low-skilled or low-income, regional migrants in urban planning and governance and have largely excluded international migrants from their development plans. In interviews, local ward councilors were generally ambivalent towards foreign nationals in areas with RROs, emphasizing the conditions and politics around South African constituents in these districts.[58] There are no cities that have overtly, supportive politics for foreign nationals as in sanctuary cities in the US or Europe, and while the major political parties attempt to avoid appearing overtly xenophobic, there is a general lack of political support for international migrants across political parties.[59] In general, international migrants have often been viewed as the responsibility of national government and not as local constituents, and municipalities have criticized the DHA and national government for a lack of border control.[60]

## CITIES, LAW, AND XENOPHOBIA

A major event in the politics and management of international migration took place during widespread xenophobic violence in May 2008. While xenophobic violence against

[58] Interviews conducted on 22 February 2008; 12 March 2008; 13 March 2008.
[59] See the Democratic Alliance (DA) Immigration Plan, 15 October 2018 (https://www.da.org.za/2018/10/das-immigration-plan-will-secure-our-borders-and-stop-illegal-immigration) which reiterates many of the restrictive policies supported by the ANC-led White Paper on International Migration – Final Version, 28 July 2017.
[60] See Jensik (2017), accessed at https://www.iol.co.za/news/south-africa/gauteng/joburg-mayor-clarifies-stance-on-migrants-11801024.

foreign nationals was not new and had been documented over previous decades, this was the first and most severe outbreak of widespread violence against foreign nationals in the country.[61] Originating in the Alexandra township outside Johannesburg, over sixty people were murdered and over 100,000 people displaced from shack settlements and townships around the country in the period of a few weeks (cf. Landau 2011). Around one-third of those killed were South Africans, including those considered minorities within their particular urban areas (cf. Landau 2011). In relation to this violence, Landau (2011: 2) has pointed to two "enemies" within South Africa: the first one, directly inherited from colonial and especially apartheid policies, was "an amorphously delimited group of outsiders that is inherently threatening, often indistinguishable from others, and effectively impossible to spatially exclude." The second one was a society that could exert violence against itself, above all, "to exclude and the means of achieving that exclusion: hand-to-hand, street-level violence." Therefore in the perceived absence of the state's ability to exclude foreign nationals, violence against outsiders could not only be seen as rational, but also necessary in addressing past injustices and achieving retribution and self-realization for South Africans today. While xenophobic violence certainly challenged the constitutional legal order, it furthered violent practices of "spatial control, political authority and sovereignty" in relation to national and urban politics over territory and belonging (Landau 2011: 3). The police and DHA, while in the short-term provided protection, eventually focused on registration and forced removals of undocumented migrants (cf. Vigneswaran 2011). Widescale police raids on neighborhoods with large numbers of undocumented migrants have taken place after outbreaks of xenophobic violence, most recently, in 2015 with Operation Fiela, reinforcing institutional

[61] See Xenowatch Report documenting xenophobic violence from 1994-2018 (Mlilo and Misago 2019). Xenowatch continues to compile and map incidents of xenophobic violence in South Africa (www.xenowatch.ac.za).

responses of urban removal in light of violence against foreign nationals (cf. Carciotto and Mavura 2016).

The xenophobic attacks highlighted an important tension between national citizenship based on "official residence" as compared to a citizenship based on constitutional rights (Klaaren 2011: 137). Consequently, the strong rights culture of post-apartheid South Africa may have paradoxically encouraged xenophobic violence based on authentic residence (cf. Klaaren 2011). Additionally, constitutional rights stand in contrast to the lived realities of the majority of urban residents in South Africa (cf. Desai 2003). The Bill of Rights of the 1996 Constitution has included an extensive range of civil, political, socio-economic, and cultural rights that represented "the highest aspirations of the global human rights movement" (Klug 2010: 4). Importantly, it was not assumed that everyone in South Africa actually enjoyed these rights and the Bill of Rights was officially viewed as aspirational and a benchmark for the state and society to work towards (Klug 2010). The aspirational nature of a wide range of rights among persistent inequality and poverty has posed significant issues, especially at the local level where implementation of these rights is realized (Nyamnjoh 2006).

In light of these shortcomings and inequalities, the South African government has emphasized a social cohesion based on nationality and citizenship and has largely left foreign nationals out of this narrative of inclusion (cf. Peberdy 2001).[62] The exclusion and discrimination against foreign nationals are not only within urban neighborhoods or within political rhetoric, but also in structural and institutional exclusion across a range of public and private institutions (cf. Achiume 2014). There has been increasing frustrations around the

[62] The country's first Minister of Home Affairs (1994-2004), Mangosuthu Buthelezi, was head of the opposition party, Inkatha Freedom Party (IFP), and outspoken in restricting immigration and supporting economic protections for South Africans. ANC representatives have held the department's ministerial position since 2004.

narrative of a national community and the actual inequalities across sectors of South African society within cities. Issues around property, land, and corruption have exacerbated frustrations and competition over the allocation of material resources and have further highlighted discrepancies between administrative justice and corrupt implementation (cf. Desai 2013). Service delivery protests and informal land occupations have also significantly increased over the past decades in South Africa.[63] Politicians and residents have often blamed foreign run *spaza* shops for unfair competition and these shops have been targets of looting and ordinances to have them closed down.[64] In all, the majority of foreign nationals, including asylum seekers and refugees, living in inner cities, townships and shack settlements have faced precarious and uncertain urban spaces, in which the rule of law may be limited and replaced by immediate and personal encounters, knowledge, and institutions (cf. Simone 2004; Simone 2009; Landau and Duphonchel 2011; Landau and Freemantle 2016).

Finally, the 2008 xenophobic violence highlighted the limits of involvement of municipalities and influence of civil society organizations regarding displaced foreign nationals. In light of mass displacements caused by the violence in a short period of time and concentrated in major urban areas, provincial and municipal governments became involved in the protecting displaced persons. For example, in Cape Town, several temporary camps were set up around the city for housing and services provided by the local organizations and municipal authorities. While the city was recognized for its involvement in protecting these individuals and providing accommodation (Peberdy and Jara 2011), there was increasing frustration by local officials over

[63] Data from a municipal consulting firm in South Africa, Municipal IQ, shows that service delivery protests have increased from 10 in 2004 to 218 in 2019; see *An Encouraging End to 2019 Service Delivery Protests*, 30 January 2020, Municipal IQ, www.municipaliq.co.za.

[64] See *Somali Association of South Africa and Others v. Limpopo Department of Economic Development, Environment and Tourism,* [2014] 48/2014, ZASCA. The judgment overturned the provincial authorities' decision to prohibit asylum seekers and refugees from applying for small business and licenses and closing down refugee and asylum seeker businesses in the Limpopo province.

the lack of national government involvement. Furthermore, local officials increasing grew frustrated with persons refusing to move from the temporary camps and in the case of Cape Town, the city had to acquire a court order from the Western Cape High Court (WCHC) to have persons removed from some of these camp areas.[65] Refugee organizations have often approached xenophobia at the local and neighborhood levels, often focusing on education and mutual awareness, without fully addressing the broader national policies and politics around the issue (Polzer and Segatti 2011). Paradoxically, considering the location of RROs and the majority of foreign nationals residing in cities, municipal involvement with refugees and asylum seekers has largely been limited to these extreme interventions and local municipal forums, as these populations and foreign nationals continue to be viewed as the responsibility of the national government and do not represent a major political constituency.[66]

## BROADER IMPLICATIONS FOR URBAN RROS AND RIGHTS IN CITIES

The legal and institutional history of internal borders in South Africa has various implications for the rights of refugees and asylum seekers and operations of RROs in cities. Historical patterns of spatial segregation and removals tied to specific urban territories along with the removal or exclusion of political rights were deliberate objectives in excluding the majority of the population from political participation and full citizenship. Importantly, these internal borders were only partial to the degree that they violently tolerated and facilitated the constricted inclusion of black laborers in cities. Internal borders were primarily based on race, and not necessarily nationality, in determining who could have full citizenship rights in the

[65] *City of Cape Town v. All those adult male and females whose names are set out in Annexure "H51" to the founding affidavit and who reside at Bluewaters Site B and C, Lukannon Drive, Strandfontein Western Cape and Another,* [2010] 5083/09, ZAWCHC.

[66] The City of Johannesburg, for example, established a Migrant Help Desk in 2007 and the Johannesburg Migrants' Advisory Committee (JMAC); see CoRMSA 2011.

country and lawful residence within cities. Therefore, political enfranchisement was strongly tied to urban territory in processes of exclusion and partial inclusion for racialized South Africans and foreign nationals.

The reincorporation of South African citizens obtaining political rights and formal citizenship has highlighted an important distinction from foreign nationals, but also the limitations of formal citizenship in light of persisting and extreme social, racial, and spatial inequalities in cities. Official efforts to construct a national identity based on shared South African residence and citizenship have delegitimized the residence and participation of foreign nationals, including refugees and asylum seekers, who are viewed as temporary and not part of the political community and voting constituents. However, rhetoric around equality and belonging for all South African citizens has also faced frustrations over social and economic inequalities and spatial segregation in cities. Paradoxically, while national citizenship – and related bureaucratic and political structures and rhetoric – have led to further discrimination and policing of foreign nationals, they have also highlighted the persistent divisions in the lived realities among South Africans, particularly visible and concentrated within cities and urban neighborhoods. While the detention and deportation – and arbitrary enforcement of laws and policies in general – of foreign nationals has persisted, the majority of urban residents also remain contained in spatially restricted areas excluded from full economic, social, and political participation in cities.

The DHA as an institution further embodies this tension of partial inclusion of South Africans and foreign nationals. The department inherited significant gaps in capacity, training, and infrastructure in fulfilling its dual mandate of providing civic services to South African citizens – e.g., birth and death certificates, passports, identity documents – and regulating legal

status and documentation for foreign nationals, including refugees and asylum seekers, within the country (cf. Hoag 2010). While the department has faced significant challenges in providing these services for citizens, it has also interpreted its mandate to exclude foreign nationals, above all undocumented migrants, from accessing legal status, economic opportunities, and political membership within the country (cf. Segatti 2011). Therefore, general improvements to service provision for South African citizens, while still problematic, have increasingly diverged from the administrative discrimination and anti-foreigner rhetoric of the DHA, particularly visible in the detention and deportations of foreign nationals and RRO operations for refugees and asylum seekers (Segatti 2011). However, the DHA has also been limited in the scope of enforcing immigration laws and border control as a result of institutional legacies in which the police and other government departments with their own institutional objectives have played significant roles in the implementation and enforcement of immigration policies (Vigneswaran 2008b).

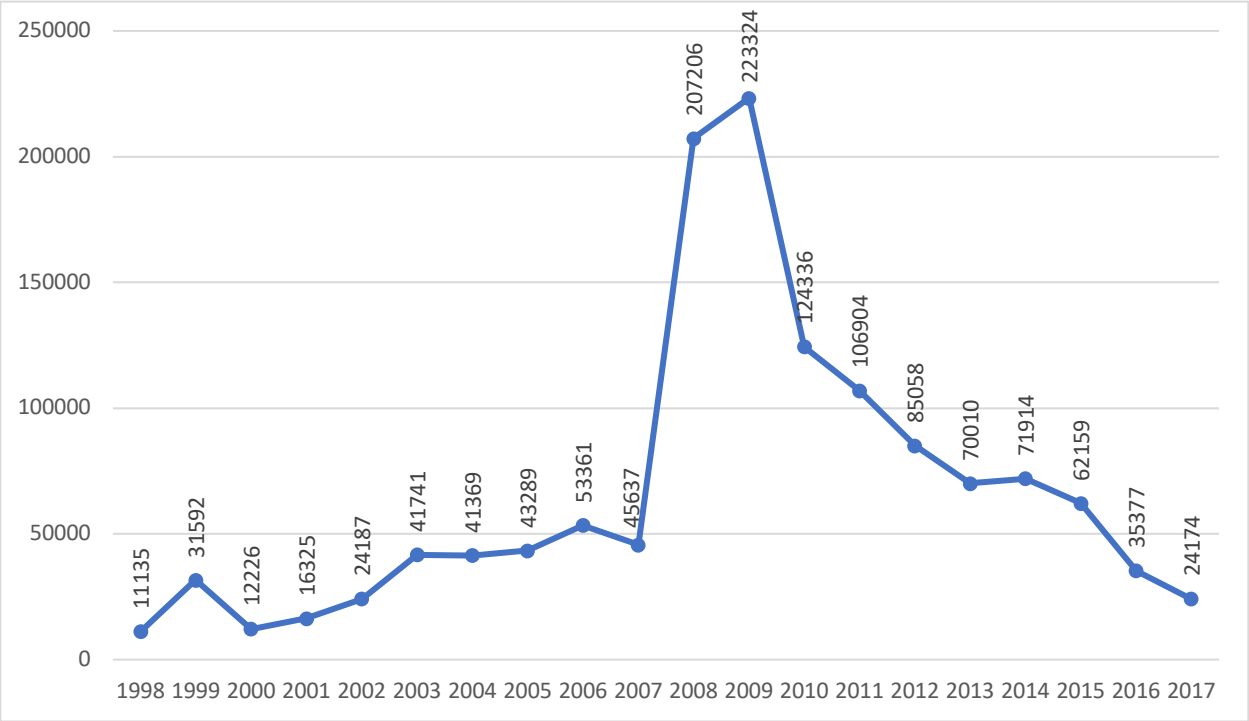
The discriminatory practices of the department, and xenophobia in general, have often been attributed to an "economic nationalism" of protecting labor markets against foreign nationals (Klotz 2013) in face of persisting patterns of local competition over low-cost surplus labor easily accessible to employers in urban centers of wealth and production (McDonald 2008). However, an emphasis on economic factors does not fully explain the extent of political and institutional exclusion and violence against foreign nationals, including asylum seekers and refugees, in South Africa. The clear distinction between South Africans and foreign nationals remains political rights in face of barriers to naturalization and an emphasis on temporary and undocumented migration. In contrast to politics in other settler-colonial countries in which public officials may have been incentivized to respond to multiple generations of immigrants as political actors, in South Africa, there have been a general lack of institutional incentives by

national officials, political parties, or municipal authorities to respond to the majority of foreign nationals without political rights. While the distinction of political rights does not necessarily correlate with social and economic inequalities within the country, it may provide a more plausible explanation to the degree of a lack of responsiveness and accountability of public and private institutions to foreign nationals.

The broader discussion on internal borders for foreign nationals and South African citizens has important implications for the underlying politics and operations of RROs in South African cities discussed in the following chapters. RROs run by the DHA and located in urban neighborhoods are caught between institutional incentives and operational issues that have led to significant limitations and disruptions in the management of these offices. Considering the contested claims on cities and limitations on national border control, I argue that RROs have been as much about policing and regulating urban spaces, as they have been in providing documentation and legal status for refugees and asylum seekers in cities. RROs to a certain degree reflect the urbanization and centralization of bureaucratic institutions in South African cities for the past century, as they reflect new institutions in providing access to rights and residence for asylum seekers and refugees within cities. In light of rights abuses and legally arbitrary operations, legal and civil society organizations, many with roots in protecting South Africans against unlawful detention and removals during apartheid, have challenged refugee and asylum seeker policies and operations (cf. Amit 2011; Segatti 2011; Cote and Van Garderen 2011; Budlender, Marcus, and Ferreira 2014). These legal challenges have been facilitated by a broader legal framework that provides for various rights under international, domestic, and constitutional law. However, in the absence of broader political coalitions and allies in support of foreign nationals, these organizations have been largely isolated in their support of refugees and

asylum seekers and limited in face of non-compliance to court orders by the DHA. Finally, in the context of politicized and contested urban spaces, local actors have not only challenged the presence of foreign nationals, including refugees and asylum seekers in general, but also the presence of RROs. Therefore, RROs have represented contested internal borders and physical spaces with important implications for the competing jurisdictions of state institutions, civil society organizations, and legal institutions, in relation to the rights and membership of local residents, including refugees and asylum seekers, within cities.

Figure 1: Total Asylum Seeker Applications per Year in South Africa 1998-2017




Source: Data compiled from the Department of Home Affairs, Annual Report 2017-2018.

## CHAPTER THREE

## LEGAL RIGHTS, BUREAUCRATIC LABELS, and RRO ACCESS

> *The main policy positions of the government are to effect in legal and practical terms the following distinctions:*
>
> *The granting of asylum to refugees and their protection in South African territory is a matter fundamentally of securing human rights protection. The Government will provide asylum and refugee protection to those persons who have lost their countries of origin, and have fled into, or are forced to remain in South Africa for reasons or circumstances which are recognised in international refugee and human rights law as giving rise to the need for international protection.*
>
> *The government does not consider the refugee protection regime to be an alternative way to obtain permanent immigration into South Africa. It does not consider refugee protection to be the door for those who wish to enter South Africa by the expectation for opportunities for a better life or a brighter future. It does not agree that is appropriate to consider as refugees, persons fleeing their countries of origin solely for reasons of poverty or other social, economic or environmental hardships.*
>
> The Draft White Paper for Refugees, 18 June 1998, p. 7

The 1998 Refugees Act in several ways marked a turning point in the recognition and administration of asylum seekers and refugees, and foreign nationals more broadly, in South Africa. While much attention has been given to the relatively extensive international and constitutional rights protections provided by the legislation, the act was implemented through a series of restrictive regulations and policies (cf. Handmaker et al. 2008). From its inception, the Refugees Act has consisted of contradictory objectives between protecting the human rights of recognized asylum seekers and refugees, and the protection of borders, above all, in limiting employment opportunities to economic migrants. The importance of limiting access to asylum for economic migrants, as elsewhere in the world, has been a primary objective for the DHA, before and after the implementation of the act in 2000. Therefore, while many legal rights and protections were protected under the act, the implementation of the act has often limited the realization of these rights (cf. Khan and Schreier 2014).

As illustrated in the quote above, there have been two different logics of human rights protections and state sovereignty over borders particularly concerned with abuse of the asylum system. In general, there has been a division within asylum seeker and refugee management with civil society organizations and judicial courts referencing the Refugees Act and related constitutional rights, while the DHA has largely operated from internal regulations that are much more restrictive and limiting in nature. Given the department's continued focus on limiting opportunities for employment and asylum to undocumented and presumed economic migrants already in the country, it could therefore seem somewhat surprising that Refugee Reception Offices (RROs) were established in major cities at all. While RROs in major cities could symbolize rights and inclusion within cities for asylum seekers and refugees, in practice, they have often become sites of exclusion and violence for foreign nationals. Therefore, RROs have served as an important bordering institution in regulating formal inclusion and exclusion within cities. The specific location of RROs in cities has acted as a form of urban control and bordering as much as a convenient location for refugees and asylum seekers.

In this chapter, I focus on how RROs have acted as an institution of urban control and internal bordering. Subsequent chapters will analyze local business litigation to close specific RRO buildings in cities and the DHA's efforts to relocate urban RROs to proposed border locations. First, I analyze the various regulations and administrative practices that have limited both physical access to urban RRO buildings and legal status for asylum seekers and refugees. I further look at early local business pressure and civil society litigation that challenged initial policy regulations and administrative practices of RROs. Subsequently, I analyze how litigation and political contention around policy regulations and administrative practices gradually pressured the DHA to seek out alternative locations and buildings for RROs, particularly within

the same cities. In effect, the implementation of the Refugees Act has led to a dialectic between constitutional protections for refugees and asylum seekers and restrictive regulations in face of increasing numbers of asylum applications at urban RROs. The years leading up to the Refugees Act and early years after its implementation (1994-2008), intensified the dual logic of rights protections and restrictive administration behind refugee management in South Africa that eventually pressured relocations of RRO buildings in cities.

By analyzing early litigation and contention over the operations of urban RROs in South African cities, I look at how legal definitions and bureaucratic labels for refugees and asylum seekers are interpreted and contested across civil society organizations, state bureaucracies, and judicial institutions. In particular, I analyze how legal definitions and bureaucratic labels became intertwined with issues of territory and location within specific urban spaces. While there is a rich body of literature looking at issues of bureaucratic labels for refugees and asylum seekers in distinguishing individuals from other categories of foreign nationals, this discussion has often focused on international and national law and policies, academic researchers, and the subjectivities of those who fall under such labels (Zetter 1991; Zetter 2007: Bakewell 2008; Polzer 2008a; Crawley and Skeparis 2018). There is further opportunity to study the interaction and consequences of bureaucratic labels for the location and operations of state institutions in specific urban spaces. Therefore, I look at how tensions between legal status and bureaucratic labels have influenced the operations and locations of RROs in major cities.

This chapter further contributes to broader discussions on the relationship between international law and norms, state policies and institutions, and urban spaces and infrastructure. Discrepancies between institutional structure and administrative practice have often been discussed from two different perspectives on international law in relation to national policies.

First, discrepancies between rights protections and administrative practices have been explained as problems of implementation and relevance of international law and norms at the national level (Meyer et al. 1997; Finnemore and Sikkink 1998; Kneebone 1999; Betts and Orchard 2014; Meyer 2010). In contrast, other studies, particularly based in the Global North, have argued that national law and policy are relatively autonomous and constitutive of international law (Joppke 1998a; Joppke 1998b; Guiraudon 1998). Both perspectives may overlook the degree of endogeneity within international norms, national legislation, and administrative practices as found in many postcolonial countries, especially in connection to refugees and asylum seekers and cities. For example, in South Africa, refugee law and formal recognition of refugees and asylum seekers emerged around the same time that public institutions and cities were opening up to the country's majority of non-white citizens and the establishment of constitutional law in the country. As shown in legal cases highlighted below, legal and administrative questions around the rights of asylum seekers and refugees, asylum administrative practices, and operational capacity at RROs were perceived not only as refugee issues, but central to the development of constitutional rule of law, human rights enshrined in South African legislation, and access to urban spaces. Access to RROs and related rights in cities became an increasingly important and contested issue within South African legal and policy institutions with broader implications for state institutions and urban spaces.

In support of this argument, I review legal and political contention concerning policy regulations and RRO operations in South African cities roughly from the late 1990s prior to the wave of local business litigation against RROs in the late 2000s. Litigation has become an increasing important tactic in contesting restrictive asylum policies globally and is a useful resource in looking at the relative autonomy between bureaucratic and judicial institutions (cf.

Hamlin 2014). In particular, I focus on legal cases that were widely referred to in future litigation around RROs and have set precedent in how refugees and asylum seekers have been understood in the legal system. Furthermore, I trace how initial cases and political contention over policy regulations and administrative practices at RROs led to various pressures to relocate RROs from their initial city center locations. In a political and social context characterized by anti-foreigner rhetoric and violence and lack of political will to uphold legislation, South African civil society organizations have had increasingly relied on litigation to challenge the DHA. However, the DHA has largely been able to ignore, coopt, or at least delay court orders, highlighting issues and limitations of litigation as an effective tool in supporting refugees and asylum seekers. Legal rhetoric on behalf of the various interest groups – e.g., local businesses, civil society and refugee organizations, the DHA, refugee and asylum seeker litigants – has therefore highlighted important ambiguities and contradictions in the bureaucratic labels and legal frameworks tied to specific buildings and locations in cities.

## LEGAL DEFINITIONS AND ADMINISTRATIVE REGULATIONS

The 1998 Refugees Act has widely been recognized as promoting the freedom of movement and rights to work, study, and basic health services, constitutional principles of administrative justice and human rights as protected under the country's 1996 Constitution (cf. Handmaker et al. 2008). The act is also grounded in international law as stated in the act's preamble that the country has acceded to "certain obligations to receive and treat in its territory refugees in accordance with the standards and principles established in international law."[67] Therefore, while there remained significant concerns regarding stipulations for the detention of asylum seekers with expired permits and withdrawal of asylum application status (cf. de la Hunt

[67] Refugees Act 30 of 1998, Preamble.

and Kerfoot 2011), the Refugees Act did provide numerous legal protections for refugees and asylum seekers. In general, the act and its embeddedness within international and constitutional law has provided asylum seekers and refugees, and civil society and legal organizations working on their behalf, a certain level of legal leverage over the DHA regarding asylum management.

The legal definition of a refugee in the 1998 Refugees Act is expansive, incorporating criteria from the 1951 UN Convention and 1967 Protocol Relating to the Status of Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. The act defines a refugee as:

> (a) owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not have a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or
>
> (b) owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refugee elsewhere; or
>
> (c) is a dependent of a person contemplated in paragraph (a) or (b).[68]

The narrower Part A of the act based on individual persecution is line with the 1951 UN definition, while the more expansive Part B concerning general conditions and events reflects the broader 1969 OAU definition.

An asylum seeker is defined simply as "a person who is seeking recognition as a refugee in the Republic."[69] According to the act, an asylum seeker is expected to report to an RRO to file a Section 21 asylum application and receive a Section 22 asylum seeker permit. This permit allows the asylum seeker to sojourn temporarily within South Africa under conditions stipulated by the Standing Committee of Refugee Affairs (SCRA), which has included permission to work

[68] Refugees Act 30 of 1998, Section 3.
[69] Refugees Act 30 of 1998, Section 1(v).

and study in the country. It the applicant's asylum claim is successfully processed, then the application would be considered a "refugee" and receive a Section 24 refugee permit. By law, asylum seekers, simply by filing an application at an RRO, are able to make a legal claim on the state to temporarily "sojourn" within the country until a final refugee status determination. The bureaucratic process moving from asylum seeker to either a legally recognized refugee or an undocumented foreigner in the case of the rejection involves several time-consuming steps all requiring in-person visits to an RRO.

Specifically, after completing a Section 21 asylum application with a Refugee Reception Officer (RRO) and receiving a Section 22 permit, an asylum seeker would then need to have an interview with a Refugee Status Determination Officer (RSDO).[70] The RSDO would make an initial decision regarding the validity of the person's refugee claim. The original regulations for the act state that interviews should be held "normally not later than 30 working days after the initial lodging of the application."[71] The RSDO may consult with the UNHCR if necessary to gain additional information or shared information with an UNHCR representative. The RSDO must also process the asylum application according to Section 33 of the South African Constitution, which stipulates equal and fair administration services and "in particular, ensure that the applicant fully understands the procedures, his or her rights and responsibilities and the evidence presented."[72] By law, the RSDO would then either grant refugee status, reject the application, or seek further review by the statutory independent Standing Committee for Refugee Affairs (SCRA).

[70] Both Refugee Reception Offices and Refugee Receptions Officers are officially referred to as RROs. To avoid any confusion in the dissertation, I only use RRO in reference to Refugee Reception Offices and not Refugee Reception Officers.
[71] Regulations to the 1998 Refugees Act, 6 April 2000, Section 4(1.2).
[72] Regulations to the 1998 Refugees Act, 6 April 2000, Section 24(2).

If the application was rejected, the RSDO could reject it as "unfounded" or "manifestly unfounded" depending on the relative validity of the applicant's refugee claim. If the application was rejected as simply being "unfounded" then the asylum applicant was entitled to submit an appeal to the Refugees Appeal Board (RAB) as established by the act. The RAB may confirm or substitute an asylum decision made by an RSDO and must allow legal representation by the applicant if requested. Initial regulations stated that an appeal to the RAB should be made in person at a Refugee Reception Office within 30 days of receiving the initial asylum decision.[73] If the application was rejected as "manifestly unfounded," it would be sent directly to the SCRA to review the decision without a formal appeal process. If the decision was set aside by the SCRA, it would be returned back to the RSDO for further instructions regarding the asylum application. The initial regulations stated that the RSDO should notify the SCRA of the initial decision of rejection and the SCRA should notify the RSDO within five days of receiving the RSDO's initial decision.[74] Constitutional law permits High Court judicial review regarding rejected refugee status determination decisions as a final option of appeal.[75] If the application was rejected on final appeal, or was never appealed or reviewed in the first place, then the applicant would receive notice to leave the country within 30 days.[76]

While regulations stipulated that the adjudication should take no more than six months from the asylum application, the reality has been that applications have often taken much longer

[73] Regulations to the 1998 Refugees Act, 6 April 2000, Sections 14(1.1) and 14(1.2).
[74] Regulations to the 1998 Refugees Act, 6 April 2000, Section 13(4).
[75] See, e.g., *Tantoush v. Refugee Appeal Board,* [2007] 13182/06, ZATHC; *Katsshingu v. Chairperson of the Standing Committee for Refugee Affairs and Others,* [2011] 19726/2010, ZAWCHC; *Katabana v. Chairperson of Standing Committee of Refugee Affairs and Others,* [2012] 25061/2011, ZAWCHC; *Harerimana v. Chairperson of the Refugee Appeal Board,* [2013] 10972/2013, ZAWCHC; *Akanakimana v. Chairperson of the Standing Committee for Refugee Affairs,* [2015] 10970/13, ZAWCHC.
[76] See *Saidi and Others v. Minister of Home Affairs,* [2018] 107/17, ZACCT, regarding the Constitutional Court decision stating that asylum seekers were entitled to Section 22 extensions while refugee status determination decisions were under judicial review.

to process.[77] Extensive backlogs for refugee status determination, either at the initial RSDO phase or the appeals phase, have been a consistent characteristic of asylum in South Africa (cf. Handmaker 2008; Segatti 2011). Backlogs have been in addition to reports of lost or misplaced files and processing errors that could additionally delay applications. Consequently, it could take years for asylum seekers to receive a decision regarding their refugee status decision (cf. Fassin et al. 2017). In the interim period, asylum seekers have to renew their Section 22 permits at regular intervals in order to keep their applications in process. While initial regulations required asylum seekers to renew their Section 22 permits every month, this period has been extended to three and six months at various times. In general, asylum permits have been renewable anywhere between one and six months based on the discretion of the administering officer. Section 24 refugee permits were initially renewable every two years, but are now renewable every four years. In addition, to Section 24 permits, refugees are expected to then apply for a refugee identity card to fully regularize their stay in the country and a refugee passport to travel outside the country. Finally, the initial time period for a refugee to apply for and acquire permanent resident status was five years after receiving a Section 24 permit and residing in the country.[78]

Asylum seekers and refugees are required to visit an RRO in person for each of these steps, therefore making access and the operations of RROs fundamental for realizing the provisions of the act, providing documentation, and determining refugee status determination. Asylum seekers are required to visit an RRO to file an application, attend an RSDO interview, receive notification of refugee status or initial rejection, file an appeal, appear in front of the RAB, receive notice of appeal decisions, renew Section 22 and 24 permits, and apply for other

[77] Regulations to the 1998 Refugees Act, 6 April 2000, Section 3(3).
[78] Regulations to the 1998 Refugees Act, 6 April 2000, Section 15(4).

refugee documents. While refugees were previously permitted to apply for identity documents and passports at other DHA offices, at the time of research, they were required to attend RROs for these documents as well. Therefore, access to RROs has been essential to fulfilling the mandate of the Refugees Act in processing and administering asylum and refugee documents.

Section 8 of the 1998 Refugees Act stipulates that an RRO must have at least one Refugee Reception Officer and one Refugee Status Determination Officer with the necessary training to perform their professional duties as outlined in the act. Importantly though, the act did not specify how many RROs should be established or in which locations RROs should be located. Rather, Section 8(1) of the act states that: "The Director-General may establish as many Refugee Reception Offices in the Republic as he or she, after consultation with the Standing Committee, regards as necessary for the purposes of this Act."[79] While Section 35(2) of the act provides the Director-General discretion in establishing temporary accommodation and reception facilities in face of a "mass influx" of any group or category of persons, but the default institution for refugee status determination was the RRO.[80] After the implementation of the act in 2000, RROs were officially established only in major cities: Johannesburg, Pretoria, Cape Town, Durban, and Port Elizabeth (see Figure 2). As a result of the fundamental importance of RROs to the functioning of the asylum system and fulfilling the legal requirements of the Refugees Act, the location, operation, and number of RROs have been heavily contested and fundamental in defining the bureaucratic and legal identities and borders for asylum seekers and refugees.

BUREAUCRATIC DEFINITIONS, ADMINISTRATIVE PRACTICES

[79] Refugees Act 30 of 1998, Section 8(1).
[80] Refugees Act 30 of 1998, Section 35(2).

Paradoxically, the legal framework for refugees and asylum seekers has only exacerbated preoccupations by DHA officials and policymakers that the asylum system and RROs are overrun by economic migrants trying to access work permits and temporary legal status. In light of restrictive policies for low-income, low-skilled regional migrants to access work permits, applying for asylum had become one of the only available strategies to try and acquire the right to work (cf. Amit 2012). An asylum permit could be an appealing option as a work permit considering the significant delays in adjudicating refugee status decisions. Asylum seekers were consistently viewed by the DHA less as potential refugees, but rather economic migrants taking advantage of the legislative framework to acquire work permits.[81] The DHA sought to limit permissions for asylum seekers and work and study. The 2000 Regulations prohibited asylum seekers from working or studying during the first six months of their asylum application.[82] After six months, asylum seekers could apply to the SCRA to request the conditions removed against working and studying the country. Additionally, the 2000 Regulations emphasized that the burden of proof was on asylum seekers to establish their refugee status and asylum seekers would have to provide interpreters if the DHA did not have any available. Consequently, bureaucratic labels of asylum seekers as economic migrants had a direct impact on the rights of asylum seekers and refugees in contrast to the legislative framework.

The legal distinction between asylum seekers and refugees has resulted in the country hosting large numbers of asylum seekers and relatively smaller numbers of refugees. Widely recognized by the UNHCR as having the largest asylum seeker population in the world from

[81] Ruhs (2014) has shown that states often view a trade-off between protected rights and potential numbers of international migrants. This trade-off is particularly relevant for refugees guaranteed a number of rights and is an important factor on restrictions for asylum seekers and the proliferation of complementary protection schemes as alternatives to refugee protection (cf. McAdam 2007).
[82] Regulations to the 1998 Refugees Act, 6 April 2000, Section 3(3).

2006-2011, the country has not hosted the largest number of refugees or displaced persons in general, and refugee status has been limited for the vast majority of asylum seekers.[83] Refugee status has also been viewed differently within the DHA than outlined in the legal framework. DHA officials often determined refugee status within the narrower Part A definition of the Refugees Act, while often setting aside the terms set out in the broader Part B of the definition (cf. Wood 2014). Furthermore, while the legal framework outlined an individualized and case-by-case adjudication process, DHA officials continue to consider certain countries as refugee-producing or not refugee-producing; the latter leading to the widespread rejection of refugee status for persons from these countries (cf. Amit 2011; Polzer Ngwato 2013). Rejection based on country of origin was most consistent for Zimbabweans, which South Africa and UNHCR did not recognize as a refugee-producing country due to international relations and mixed migration from the country (cf. Polzer 2008b). The legal avenue towards permanent residence for refugees after five years of continuous residence also became an issue for the DHA, which has viewed refugees as temporary migrants and not permanent residents.[84] Therefore, in face of the significant rights associated with refugee status, above all, permanent residence, DHA officials increasingly sought to limit access to refugee status and corresponding rights.

Section 22 asylum seeker and Section 24 refugee permits themselves signified a partial acceptance of legal status and access to rights and residence in South Africa. These documents were printed on standard, non-laminated paper and were subject to wear and damage over time. The identity numbers of the documents were different from South African identity numbers, specifically lacking the same number of digits.[85] The discrepancy has made it difficult to input

[83] According to the UNHCR Statistical Yearbook 2012, the country had more than 816,000 asylum seekers between 2006-2011, which was the highest in the world during this time period.
[84] See the White Paper on International Migration – Final Version, 28 July 2017.
[85] Interview, 10 February 2018.

asylum seeker or refugee identity numbers into government-approved databases for background checks, for example, to verify bank accounts and employment eligibility (cf. Achiume 2014). Consequently, refugees have had to return to RROs and try to apply for refugee identity documents in addition to the Section 24 permit. The precarity of the physical documents highlighted the legal precarity of asylum seekers and refugees in face of South African police, who have often detained asylum seekers and refugees irrespective of the provisions in the legislation (cf. Landau and Amit 2014). The documents have also made it difficult to access public services and institutions which have been wary to accept these permits as proof of legal status and entitlement to such services (cf. Achiume 2014). Therefore, Section 22 and 24 permits, while considered fundamental for the legal protection of asylum seekers and refugees, have been designed in a way that limits the realization of these rights and entitlements.

In general, the inherent tension between human rights for asylum seekers and refugees and regulatory objectives to limit access to employment opportunities and residence has taken place first and foremost at urban RROs. The location of RROs and provision of legal documents in cities where the majority of asylum seekers and refugees has been viewed as fundamental in ensuring freedom of movement, especially compared to detention centers or refugee camps (cf. Jenkins and de la Hunt 2008). However, these offices have been established within a the DHA's preoccupation of asylum abuse from economic migrants in cities. The limited number of only five RROs was considered a strategy to limit potential abuse of fraudulent asylum seekers in the country.[86] However, the DHA also viewed the urban location of RROs as inherently problematic in providing easier access to economic migrants who could take advantage of greater employment opportunities, social networks, and public institutions and organizations. The DHA

[86] Meeting of the Standing Committee, 18 September 2000, accessed in *Watchenuka and Another v. the Minister of Home Affairs & Others,* [2002] 1486/02, ZACGHPD.

has proposed centers for holding asylum seekers while their applications were under review as early as 1999 (cf. Jenkins and de la Hunt 2008). While these proposals were never implemented, similar centers are currently being discussed as part of the 2017 White Paper on International Migration.[87] Therefore, based on bureaucratic identities of asylum seekers constructed by the DHA and South African state, limiting access to RROs, and in extension, legal status, in cities became increasingly crucial in limiting access to economic and social rights, and deterring and discouraging people from applying for asylum.

Despite the Refugees Act, initial experiences by legal practioners with RROs already highlighted several problems that had carried over from the 1990s in terms of refugee status determination. Legal practitioners have been concerned with the lack of numbers of RSDOs and their lack of training in refugee status determination, while Refugee Reception Officers seemed "to have inherited the behaviour of the former influx control officials, whose poor treatment of (black) foreigners was notorious, marked by a lack of respect and consideration of their situation (de la Hunt and Kerfoot 2008: 95). This tension between human rights and legal documentation on one hand, and limiting access to employment opportunities and residence in cities was an increasing consideration in administrative practice, policy shifts, and political and legal contention over the location and operations of RROs. The following sections therefore discuss key litigation against the limiting of internal borders to work and study, followed by legal and political contention over the operations, capacity, and practices of RROs in cities.

## RIGHT TO WORK AND STUDY FOR ASYLUM SEEKERS

The prohibition of the right to work and study for asylum seekers was one of the first conditions of the 2000 Refugee Regulations to be challenged and overturned through the judicial

[87] See White Paper on International Migration – Final Version, 28 July 2017.

system in South Africa. In light of increasing numbers of asylum applications, whether having valid asylum claims or not, the DHA felt pressure to limit the provision of rights to asylum seekers and deter potential asylum applicants from applying for Section 22 permits. Minutes from a Standing Committee meeting on 18 September 2000 expressed concerns that provisions for work and study for asylum seekers was creating incentives for economic migrants to apply for asylum and overwhelm the system.[88] Backlog applications had already surpassed 27,000 initial applications prior to 2000, and the department attributed this to a lack of staff and resources in face of increasing numbers of fraudulent applications (cf. Handmaker 2008). Therefore, the DHA justified restrictions on work and study based on claims that the clear majority of asylum applicants were not bona fide refugees, but rather economic migrants seeking to take advantage of the asylum system. A department memo from the Director General on 3 January 2000 highlights that the vast majority of persons filing for asylum were young, unmarried men who often entered the country clandestinely and without documents, stating that they were economic migrants as they did not fit the typical description of refugees and asylum seekers elsewhere on the continent.[89] The document also pointed to the relatively high rejection rates of applications considered as manifestly unfounded, fraudulent or abusive as further proof that the system was being abused by economic migrants seeking to circumvent the country's immigration laws.

The SCRA had actually granted permission to work and study to the asylum seekers who applied since 1994 and before the implementation of the 2000 regulations. The blanket provision for asylum seekers was a once-off action as part of an UNHCR-led initiative to deal

[88] Meeting of the Standing Committee, 18 September 2000, accessed in *Watchenuka and Another v. the Minister of Home Affairs & Others,* [2002] 1486/02, ZACGHPD.
[89] Department of Home Affairs, South African's Asylum Procedure, 3 January 2000, accessed in *Watchenuka and Another v. the Minister of Home Affairs & Others,* [2002] 1486/02, ZACGHPD.

with backlogged asylum applications prior the implementation of the Refugees Act.[90] Shortly after the implementation of the Refugee Act in April 2000, the regulations that stipulated discretionary conditions on the right to work and study for individual asylum claims were replaced with the blanket declaration against the right to work and study for all asylum seekers. While all asylum seekers who had pending applications prior to this date would continue to be able work and study, any new asylum applicant would be denied this provision, at least for the first six months. If a final asylum decision had not been made with 180 days, then the applicant would be legally be entitled to apply to the SCRA for these conditions to be lifted.[91]

In practice, the DHA sought to further work around the six-month requirement for the SCRA to consider a request for work and study permission for asylum seekers. Specifically, DHA policies did not consider the six-month period to start until after the Section 21 application was submitted and the applicant received a Section 22 permit.[92] Therefore, the six-month period would not start for any asylum seekers who may have approached an RRO but were unable to submit an application that same day. Potential asylum seekers at this time who did not have an intake meeting, would receive an abridged version of a Section 22 permit that stated, "not in terms of the Act" and which did not have an identification number.[93] These documents therefore did not have any actual legal standing and left potential asylum seekers without any real legal protections. Rather, these documents were primarily administered by the department to delay the six-month decision for a refugee status decision or consideration of work and study permission.

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[90] *Watchenuka and Another v. the Minister of Home Affairs & Others,* [2002] 1486/02, ZACGHPD, First, Second, and Third Respondent's Affidavit Opposing Affidavit, para. 16.
[91] See Regulations to the 1998 Refugees Act, 6 April 2000.
[92] *Tafira and Others v. Ngozwane and Others,* [2006] 12960/06, ZATHC.
[93] See Department Circular No. 40 of 2000, 8 Nov 2000; Document accessed in *Watchenuka and Another v. the Minister of Home Affairs & Others* [2002] 1486/02, ZACGHPD.

In response to the blanket limitations against asylum seekers, legal and civil society organizations based in Cape Town filed litigation against the DHA on February 2002.[94] The case heard at the provincial High Court in Cape Town was brought on by Legal Resources Centre on behalf of a Zimbabwean woman and her son, who were respectively prohibited from working and studying while holding Section 22 permits.[95] The Cape Town Refugee Centre (CTRC), a South African refugee-rights NGO, was also an applicant in the case in order to challenge the blanket limitation for asylum seekers in general.[96] The legal case challenged the policy on two types of grounds: first, on procedural grounds according to the specific criteria of the Refugees Act and second, broader grounds of the constitutional rights of asylum seekers in South Africa. In terms of procedural grounds, legal counsel for the applicants argued that the law mandated the SCRA – and not the Director-General or Minister of the department – to determine the conditions of sojourn for refugees and asylum seekers. In support of this argument, the legal records showed that the directive was taken in April 2000, while the SCRA declaration was only dated in September of the same year. Furthermore, the legal records showed that a Deputy Minister within the department was a member of the SCRA, calling into question the formal independence of the body as stipulated in the Refugees Act. The WCHC ruled in favor of the legal applicants' claim that the directive violated procedural rules that seemed to come from the Director-General and not the SCRA. The judgment declared that the ban on the right to work and study was unlawful based on this procedural error and ordered the

[94] *Watchenuka and Another v. Minister of Home Affairs & Others,* [2002] 1486/02, ZACGHPD.
[95] The cited courts in the dissertation are the provincial High Courts, the Supreme Court of Appeal (SCA) in Bloemfontein, and the Constitutional Court in Johannesburg, which is the highest court in contemporary South Africa (cf. Klug 2010).
[96] In the South African legal system, the filing parties are *applicants*, opposing parties are *respondents*, and appealing parties are *appellants*.

DHA to reinstate these conditions for the first applicant and her son.[97]

The WCHC decision was appealed and heard at the Supreme Court of Appeal (SCA).[98] The SCA judgment concurred with the procedural error in the High Court judgment, and further emphasized the constitutional rights of asylum seekers. The judgment stated that the blanket ban on the provision to work and study for asylum seekers violated their constitutional right to dignity.[99] Considering that asylum seekers did not receive assistance from the South African state, the provision to work and study was viewed as fundamental in upholding their dignity while in the country. While the judgment stated that the constitutional right to choose employment was protected for citizens and did not necessarily include foreign nationals, preventing asylum seekers from gaining employment seemed likely to violate their dignity.[100] Therefore, the judgment stopped short in recognizing a constitutional right to employment for asylum seekers, but did order the SCRA to justify on a case-by-case basis how preventing an asylum seeker from working would not degrade that person's dignity. In practice, considering the policy implications of the order, asylum seekers with Section 22 permits have had the right to work and study in light of this judgment.[101] Regarding the individual applicants in the case, the court reserved in ordering the SCRA to grant them work and study permits, but remitted the decision back to the SCRA, which would now have to justify its decision in light of the court order.[102]

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[97] *Watchenuka and Another v. Minister of Home Affairs & Others,* [2002] 1486/02, ZACGHPD, Judgment, 15 November 2002.
[98] *Minister of Home Affairs and Others v. Watchenuka and Another,* [2003] 10/2003, ZASCA.
[99] See the Constitution of the Republic of South Africa, 1996, Bill of Rights, Section 10.
[100] See the Constitution of the Republic of South Africa, 1996, Bill of Rights, Section 22.
[101] The right to work and study for Section 22 asylum seekers had been common administration practice until the recent implementation on 1 January 2020 of the Refugee Regulations, 19 December 2019 that sought to remove this provision.
[102] *Minister of Home Affairs and Others v. Watchenuka and Another,* [2003] 10/2003, ZASCA, Judgment, 28 November 2003.

## "SPECIAL VULNERABILITY" OF REFUGEES

Limitations on the right to work were also challenged on behalf of refugees, with a similar legal interpretation around the vulnerability of refugees in South Africa. In this case, the Private Security Industry Regulatory Authority, a government body that regulates formal employment in the private security industry, had a general ban on refugees from working in the sector.[103] The case was brought on by the South African legal organization, Lawyers for Human Rights on behalf of the Union for Refugee Women, a voluntary refugee association in the country. The association had appealed court decisions at the provincial High Court and SCA and the case was heard by the Constitutional Court in August 2006.[104] The regulatory authority was explicit in stating that the blanket ban was not about limiting the employment market for only South African citizens, but rather, to ensure the credentials and backgrounds of employees in this critical sector. The regulatory authority further argued that the issue was not that refugees were foreign nationals, but rather that police background checks and other credentials could not reliably be provided or verified for refugees. The ruling judgment in the case concurred with this logic, that in principle refugees could be excluded from certain industries if they could not provide sufficient verification of security checks. However, the judgment ruled that a blanket ban on refugees was unlawful and criticized the authorities for the lack of clarity and communication to refugees on how to apply for a legally mandated exemption. Therefore, while the private security authority retained the authority to exclude refugees from the sector, it had to provide refugees all the options to apply for an exemption before making a decision.[105]

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[103] *Union of Refugee Women and Others v The Director: The Private Security Industry Regulatory Authority,* [2006] 39/06, ZACCT.

[104] When deciding to hear the case at the CCT, the ruling judge considered that there were "important constitutional issues at stake" in the case (Judgment, 12 December 2006, para. 26).

[105] See *Union of Refugee Women and Others v The Director: The Private Security Industry Regulatory Authority,* [2006] 39/06, ZACCT, Judgment, 12 December 2006.

As legal precedent, this case has been referred consistently in litigation concerning refugees and asylum seekers in South Africa based on the judgment's statements of "special vulnerability" of these persons. Building on the legal argument on behalf of the refugees, the judgment states:

> Refugees are unquestionably a vulnerable group in our society and their plight calls for compassion. As point out by the applicants, the fact that persons such as the applicants are refugees is normally due to events over which they have no control. They have forced to flee their homes as a result of persecution, human rights violations and conflict. Very often they, or those close to them, have been victims of violence on the basis of very personal attributes such as ethnicity or religion. Added to these experiences is the further trauma associated with displacement to a foreign country.[106]

While the refugee definitions incorporated within the Refugees Act highlight similar conditions in recognizing the special legal status of refugees, they do not use the term of vulnerability. Rather the judgment emphasized the special vulnerability that refugees have in South African society in relation to the various conditions listed in the cited paragraph. This statement has become an important precedent and oft-cited definition for refugees in proceeding legal cases and litigation concerning the reopening of RROs and various DHA practices limiting access to these offices.

The legal discussion on vulnerability is further relevant in understanding the courts' relationship to xenophobia as well. As early as 1998, the South African Human Rights Commission (SAHRC) had issued statements against xenophobia – defined as "a deep dislike of non-nationals by nationals of a recipient state" in South Africa, which was recognized as a major issue across South African society.[107] Therefore, the discussion around xenophobia and discrimination of refugees was fraught in relation to societal concerns over discrimination and

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[106] *Union of Refugee Women and Others v The Director: The Private Security Industry Regulatory Authority,* [2006] 39/06, ZACCT, Judgment, 12 December 2006, para. 28.
[107] See Article 2 of the Braamfontein Statement on Xenophobia, South African Human Rights Commission (SAHRC), 15 October 1998.

violence against foreign nationals in the country. For the ruling judgment in this case, the term vulnerability was a way to understand the special conditions of refugees in the country, while still upholding their exclusion from the private security industry. It states:

> That is not to say foreign nationals, including refugees, are inherently less trustworthy than South Africans. In a country where xenophobia is causing increasing suffering it is important to stress this. It is not that the Authority does not trust refugees. Rather, it requires everyone to prove his/her trustworthiness.[108]

Therefore, the discussion around vulnerability reflected the legal definition of a refugee as holding special status but still under discretion of state authorities regarding the labor market.

However, this legal interpretation downplayed the importance of context concerning the labor market, especially in cities. A concurring judgment from the court, stated that the general exclusion of refugees was unconstitutional, highlighted that private security jobs, such as car guards, have been one of the primary forms of employment for refugees. As stated below,

> Excluding refugees from the right to work as private security provides simply because they are refugees will inevitably foster a climate of xenophobia which will be harmful to refugees and inconsistent with the overall vision of our Constitution. As a group that is by definition vulnerable, the impact of discrimination of this sort can be damaging in a significant way. In reaching this conclusion it is important to bear in mind that it is not only the social stigma which may result in such discrimination, but also the material impact it may have on refugees. As noted above, refugees will ordinarily be reliant on finding work to provide themselves with the means to maintain themselves and their families.[109]

While not explicitly mentioning access to cities, it is apparent by this statement that the importance of access to labor markets, primarily available in major cities, was a relevant consideration when considering vulnerability, rights, and xenophobia in the country. The relative importance of the cities becomes even more important regarding litigation directly targeting RRO operations and location in urban neighborhoods.

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[108] *Union of Refugee Women and Others v The Director: The Private Security Industry Regulatory Authority,* [2006] 39/06, ZACCT, Judgment, 12 December 2006, para. 38.
[109] *Union of Refugee Women and Others v The Director: The Private Security Industry Regulatory Authority,* [2006] 39/06, ZACCT, Concurring Judgment, 12 December 2006, para. 122.

## CONTESTING LIMITED ACCESS TO RROS

The lack of staff, resources, and office space in face of increasing numbers of asylum seekers led to an immediate institutional crisis for RROs. Not only were the offices insufficiently staffed and resourced, but the physical spaces and locations were increasingly problematic for RRO operations. In light of the lack of capacity and apparent lack of political will to address capacity issues, RROs became sites of various ad hoc administrative practices. It was often unclear if these administrative directives came from the DHA head office, or if they were improvised by local officials in lack of clear orders (cf. Hoag 2010). Such practices included appointment slips, pre-screening appointments, daily quotas for the number asylum seekers received, requiring identification or transit permits to apply for asylum, and fines for asylum seekers with expired permits.[110] Such practices were in addition to corruption perpetuated across the various actors and steps in accessing asylum at RROs, whether in accessing the building itself or acquiring a certain permit (cf. Amit 2015).

At the Johannesburg RRO in Rosettenville, potential asylum seekers were provided appointment slips in lieu of initial RRO interviews and Section 22 permits. These appointment slips would designate a date for asylum seekers to return to file their Section 21 applications and receive Section 22 permits. However, due to the increasing backlog of asylum applications, these appointment slips were often dated over six months to a year in the future, leaving potential asylum seekers undocumented and without asylum seeker protections.[111] Additionally, at the Pretoria RRO in Marabastad, officials developed a pre-screening form, which was administered

[110] Section 23 of the Immigration Act 13 of 2002 sets out transit (Section 23) permits for persons to acquire at a border crossing to file for asylum at an RRO in a given time period. The time period was originally 14 days but was amended to 5 days. See Polzer Ngwato (2013) regarding issues in acquiring these permits and the unlawfulness of requiring these permits to apply for asylum.

[111] *Tafira and Others v. Ngozwane and Others,* [2006] 12960/06, ZATHC.

for potential asylum seekers to complete prior to being granted an initial RRO interview. According to court records, these forms were administered to asylum seekers who were waiting outside in RRO parking lots and without any assistance or access to interpreters.[112] The documents were then taken to the RRO for processing by an RRO official without the applicant who remained waiting for a response outside the office. The pre-screening form asked two basic questions: a) why the applicant was applying for asylum and b) why the applicant left their country or what would happen to them if they returned. Based on the answers in response to these questions, RRO officials would often deny access to the RRO, or would advise individuals to go to a different DHA office to file for a work or study permit, and not a Section 22 permit for asylum.[113] Pre-screening forms served as an initial, and extra-legal, step prior to entering RROs and preventing access to the asylum system for a large number of potential asylum seekers.

Such administrative practices faced legal action by legal organizations acting on behalf of asylum seekers. Lawyers for Human Rights representing a number of Zimbabwean nationals who were either turned away or denied asylum based on these procedures, challenged the DHA in High Court in Pretoria.[114] The DHA argued that these procedures were necessary in face of large numbers of asylum applicants – the majority of whom abuse the system without any valid claim to asylum – and lack of capacity to process them. While the procedures underlined in the 1998 Refugees Act were based on providing Section 22 permits upon initial processing at an RRO, DHA officials claimed that it was simply not feasible to process and administer Section 22 permits for all potential asylum seekers each day. DHA officials further asserted that application slips held legal standing in preventing detention or deportation for asylum seekers. Furthermore,

[112] *Tafira and Others v. Ngozwane and Others,* [2006] 12960/06, ZATHC.
[113] *Tafira and Others v. Ngozwane and Others,* [2006] 12960/06, ZATHC.
[114] *Tafira and Others v. Ngozwane and Others,* [2006] 12960/06, ZATHC.

the department asserted that while pre-screening forms had initially resulted in an outright denial for asylum, these notices were ostensibly revised to only provide advice for potential asylum seekers to seek help elsewhere, and technically did not formally prevent individuals from applying for Section 22 permits at the office.[115]

The High Court judgment declared that both practices – appointment slips and pre-screening procedures – as administered by the DHA were unlawful and unconstitutional.[116] While the judgment did not consider appointments slips as unlawful in principle, the fact that they were scheduled for six months to a year was viewed as problematic, considering that asylum applicants would in all likelihood be considered undocumented and subject to removal without a Section 22 permit. The judgment also did not consider pre-screening procedures unlawful in principle, especially considering the lack of capacity and number of asylum applicants. However, the pre-screening forms used by the DHA appeared to be formal decisions to pressure asylum seekers to drop their claims to asylum and were declared unlawful. The judgment considered the intention of the forms as preventing asylum seekers from accessing the procedures outlined by the Refugees Act, above all, receiving Section 22 permits until applications had been properly adjudicated, and was considered in violation of asylum seekers' constitutional rights. While the judgment did offer off-hand suggestions (e.g., a shorter Section 22 application form, increase in staff capacity, RROs located at the country's border crossings), it fell short of a structural interdict in dictating any procedures that the DHA should follow for RROs.

In Cape Town, asylum seekers and legal and civil society organizations took on the apparent policy of limiting new asylum seekers to 20 persons per day, in spite of hundreds of

[115] See *Tafira and Others v. Ngozwane and Others,* [2006] 12960/06, ZATHC.
[116] *Tafira and Others v. Ngozwane and Others,* [2006] 12960/06, ZATHC, Judgment, 12 December 2006.

new asylum applicants each day.[117] Litigation was brought on by the South African legal organization Legal Resources Centre on behalf of seven potential asylum seekers who had attempted to receive their Section 22 permits several times at the Cape Town RRO. Not only were these individuals denied access to the RRO, but were actually detained at the RRO location and held at the city's Pollsmoor prison for being undocumented. At this time, there were numerous cases of potential asylum seekers being detained at the RRO and requiring intervention by legal and civil society organizations to prevent their deportation.[118] The case was heard at the High Court in Cape Town and the judgment issued on 16 January 2006 declared that the practice of limiting asylum seekers to such a small number each day was unlawful. Specifically, the policy was declared unconstitutional as it was "inconsistent with the fundamental rights of illegal foreigners."[119] The court order issued a structural interdict against the office for the DHA to regularly report on reforms and improvements in addressing capacity issues at the RRO.[120]

CHALLENGING RRO LOCATIONS

In face of structural interdicts, the DHA emphasized technical problems and proposed technical solutions to addressing shortcomings at RROs, while avoiding issues of political will and distrust of asylum applicants as reasons for capacity issues. Therefore, there were proposals to increase the number of staff at RROs, improve the database systems and IT equipment, and restructure the managerial and operational systems at these offices.[121] Additionally, the location

[117] *DeGaulle Kiliko and Others v. Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD.
[118] Court papers show Legal Resources Center submitting various letters to the DHA concerning asylum seekers being arrested and detained; see *DeGaulle Kiliko and Others v Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD; also Landau and Amit (2014).
[119] *DeGaulle Kiliko and Others v. Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD, Judgment, 16 January 2006, para. 35(a).
[120] *DeGaulle Kiliko and Others v. Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD, Judgment, 16 January 2006, para. 23.
[121] See *DeGaulle Kiliko and Others v. Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD.

of these offices was viewed as problematic in face of increasing demand and the department actively sought out alternative locations for offices. For example, in Cape Town, the RRO was initially located within a shared building in the city center. Specifically, the office was located at Customs House located in the Foreshore District next to the elevated N2 freeway, between the city's main port and the central business district with various corporate headquarters, luxury hotels, private hospitals, and municipal buildings. The office had use of the first and mezzanine floors to receive and process applications and the fifth floor as administrative offices. Asylum applicants were often forced to wait outside standing or sitting in a dirt median under the freeway overpass in front of the building. Many potential asylum applicants slept outside the office in hope of getting access the following day. Legal papers further describe how potential asylum applicants faced severe delays in accessing the office and faced detention and removal by local authorities.[122] Members of Parliament on the Parliamentary Committee for Home Affairs reported that an individual was physically caged in the building.[123] The situation at Customs House hit a particular crisis point with the death by starvation of a Zimbabwean man who had been waiting weeks outside the office to try to access the RRO and apply for asylum. Civil society organizations such as People Against Suffering, Oppression, and Poverty (PASSOP), organized sit-ins and protests against the detention of asylum seekers and the conditions they faced outside the RRO.[124]

In response to these conditions and legal and public pressure, the DHA sought alternative locations and logistics in managing asylum seekers. At one point, the department was bussing

[122] See *DeGaulle Kiliko and Others v. Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD.
[123] See "Oversight Committee Reports/Visit to Cape Town Refugee Reception Centre, Home Affairs Portfolio Committee, 16 October 2017; accessed at https://pmg.org.za/committee-meeting/8411/.
[124] See documents in *DeGaulle Kiliko and Others v. Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD; also www.passop.co.za/programmes/other-advocacy-campaigns.

persons from Customs House to the regional office at Barrack Street, also in the city center, to process applications.[125] However, this arrangement proved problematic in terms of logistics and capacity. The department also sought out a new location for the RRO. The DHA, similar to other government agencies in South Africa, relies on the Department of Public Works (DPW) to locate and procure new buildings for its operations. Court-ordered progress reports submitted by the DHA, show that the DPW first identified an old school in Maitland that was owned by the Western Cape Provincial Management at the time. However, according to legal papers by the DHA, this site was rejected as the City of Cape Town would not permit the opening of the office within a zoned residential area. The DPW then identified the top deck of the Cape Town Railway Station in the city center. However, this space became unavailable prior to refurbishments planned for the World Cup in 2010, and is currently used as a transit hub for mini-taxis and surrounding market stalls. An additional building was located in Woodstock but other tenants in the building pressured the landlord not to go ahead with the lease.[126] Finally, there was a building near the Good Hope Centre near the city center that the DHA had claimed would become a permanent RRO location. However, the landlords of this building had become entangled in a legal dispute over the property that made it impossible for the DHA to takeover this building to be used an RRO.[127]

In light of these difficulties, the WCHC ordered to extend the structural interdict against the Cape Town RRO through 2008.[128] The DHA had implemented further reforms such as

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[125] *DeGaulle Kiliko and Others v. Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD, Report: Affidavit, 31 January 2008, para. 7.6.
[126] See *DeGaulle Kiliko and Others v. Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD, Report: Affidavit, 12 February 2007, paras. 7.2-7.9.
[127] See *DeGaulle Kiliko and Others v. Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD, Report: Affidavit, 8 December 2008, para. 9.
[128] *DeGaulle Kiliko and Others v. Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD, Judgment, 4 March 2008.

designating certain days of the week for specific nationalities, as it claimed that the mix of nationalities had caused disorder at the offices.[129] However, in Cape Town, the RRO was still only processing around 50-60 of an estimated 300 new asylum seeker applications each day at the end of 2007.[130] The structural interdict extension specifically requested updates on the proposed move to a new location and the implementation of a more efficient IT system. The interdict extension refrained from any further measures citing that the office at least was now processing more than twenty asylum seeker applications a day as stated in the original suit; the government was constitutionally recognized as having limited resources and current measures seemed reasonable if actually implemented; and the constitutional principle of separation of powers limited the court's authority to determine how the DHA should manage asylum seekers outside of the requirements by law. The interdict extension stated its concern about rights violations against asylum seekers at the RRO, but claimed that the court was limited in what it could require from the DHA in operating RROs.

On 9 March 2009, the WCHC lifted the structural interdict against the Cape Town RRO.[131] While still expressing frustration with the DHA's reforms, the judge determined that the court was limited to enforce further reforms and that current and proposed reforms were legally, if not substantially, sufficient to lift the interdict. The DHA reported that in February 2009, it had processed 5,441 new Section 22 permits and 4,855 Section 22 extensions after increasing staff numbers from nine in 2005 to 52 by 2009.[132] One proposed reform central to lifting the interdict was the impending

[129] *DeGaulle Kiliko and Others v. Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD Judgment, 4 March 2008, para. 7.9.
[130] *DeGaulle Kiliko and Others v. Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD Judgment, 4 March 2008, para. 8.
[131] *DeGaulle Kiliko and Others v. Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD, Court Order, 9 March 2009.
[132] *DeGaulle Kiliko and Others v. Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD, Report: Affidavit, 6 March 2009, para. 14.

Zimbabwean Documentation Project (ZDP) project that would provide temporary work and study permits to eligible Zimbabweans in the country. At this point, the clear majority of new asylum applicants were Zimbabweans, with around 400,000 Zimbabweans applying for asylum since 2008 (cf. Amit 2011b). The vast majority of Zimbabwean asylum seekers were ultimately rejected as the South African and UNHCR did not consider the country as a refugee-producing country in spite of acute political and economic crisis at the time (cf. Polzer 2008b). According to legal papers, the DHA estimated that the project would reduce new asylum applications by around sixty percent and remove ninety-five percent of all Zimbabwean asylum applicants.[133]

After significant delays, in April 2009, the DHA implemented a one-year moratorium on deportations for undocumented Zimbabweans and permitted three-month visa-free entry (cf. Amit 2011b). On September 2010, the DHA opened applications for "special dispensation permits" for Zimbabweans who entered the country prior to 1 May 2010 to apply for four-year work and study permits (cf. Amit 2011b). With short notice, the DHA opened registration across 45 DHA offices for a period on only three months until the end December 2010 (cf. Amit 2011b). The permit application initially required a Zimbabwean passport and proof of employment, study, or business ownership. The application also required Zimbabweans with asylum status to drop this status in order to apply for the permits. While the DHA relaxed the passport and date of entry requirements prior to the application deadline, the offices lacked the capacity to process all potential asylum applicants within the given time period (Amit 2011b). There were also significant delays in processing the applications, and the DHA extended the deportation moratorium until later in 2011. In general, DHA offices faced similar issues to RROs such as a lack of capacity and clear communication, delays in processing applications, and issues of access to offices (CoRMSA 2011). By the end of processing, around 275,000 Zimbabweans applied

[133] *DeGaulle Kiliko and Others v Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD, Report: Affidavit, 6 March 2009, paras. 16-17.

for the permit, out of an estimated 1.5 million Zimbabweans in the country at that time (CoRMSA 2011). A survey conducted by the African Centre for Migration and Society (ACMS) found that out of the 905 permit applicants surveyed, around one half of the applicants were undocumented and the other half had Section 22 permits (Amit 2011b). These permits have been renewed for short-term intervals to the present period, though only for persons who received permits during the initial documentation process in 2010, while ineligible Zimbabweans continue to face high rejection rates in accessing asylum.[134]

RRO BACKLOG OFFICES

In addition to administrative reforms, by 2008, the RRO in Cape Town had moved to a new location outside the city center. The location had been used as a backlog office for the DHA since July 2006.[135] Application backlogs had been a persistent issue with refugee status determination even prior to the implementation of the Refugees Act. Prior to 2000, there was already a backlog of over 27,000 initial asylum cases and 4,000 appealed cases (Handmaker 2008:117). The UNHCR approached the DHA to administer a "backlog project" to address these delayed asylum applications. Lawyers for Human Rights was brought on originally to administer funds as required by UNHCR policy, but increasingly played a coordinating role between the UNHCR and the DHA. The backlog project involved additional short-term staff trained directly in refugee law and was housed at the RRO locations in Cape Town, Johannesburg, and Durban. The project processed around 20,000 of the 27,000 initial asylum applications and it was estimated around 6,000 individuals received refugee status through the

[134] See 2015 Asylum Seeker Statistics: Analysis and Trends for the Period January to December, Presentation to the Portfolio Committee to Home Affairs, 8 March 2016, accessed at https://pmg.org.za/committee-meeting/22163/.
[135] *DeGaulle Kiliko and Others v. Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD, Report: Affidavit, 12 February 2007, paras. 7.1.

project (Handmaker 2008). Lawyers for Human Rights removed itself from the second phase of backlog project dealing with appealed cases due to potential conflicts of interest. The National Consortium for Refugee Affairs (NCRA) replaced Lawyers for Human Rights at this stage in the process. Participants recognized the lack of feasibility of resolving the appeals backlog in a relatively short period of time and focused on strengthening the capacity and independence of the Refugee Appeals Board (RAB) (cf. Handmaker 2008).

Regardless of any initial success by the first backlog project, by the end of 2004, the DHA was facing another backlog of initial asylum applications of over 100,000 applications (Handmaker 2008). The DHA reached out to the UNHCR for assistance in dealing with this backlog, and the second backlog project was launched in 2006. In contrast to the first backlog project which occurred in existing RRO locations, the 2006 backlog project was housed in separate locations in Johannesburg, Cape Town, Port Elizabeth, and Durban. There was concern among legal practitioners about the lack of prior consultation regarding the new locations and that asylum seekers and civil society organizations only received this information after the offices were already opened (Handmaker 2008). The backlog offices were directly supported by the UNHCR in terms of equipment and training of new staff. According to a consulting report by a private consultancy firm, FeverTree Consulting – a South African affiliate of A.T. Kearney – on behalf of the DHA, there were 92 employees in total at all five "permanent" RROs and 159 employees in total at the four backlog offices.[136] The backlog project focused on adjudicating pending initial asylum applications filed before July 2005. According to DHA statistics, by September 2007, the backlog project had processed around 34,700 applications, about 31 percent

[136] See FeverTree Consulting (2007). *Transforming the Department of Home Affairs: Refugee Affairs: Reception Offices Network Integrated Plan Workstream Deliverables #7*, *September 2007*; accessed in *DeGaulle Kiliko and Others v Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD.

of the total 111,200 pending applications included in the project.[137] The project cost around 32 million rand, which was about 50% of the total DHA Refugee Affairs budget at the time.[138] Of these applications, around 18% were granted refugee status, 54% were rejected as unfounded with the right to appeal, and 28% were rejected as manifestly unfounded and sent directly to the SCRA without appeal to finalize the rejections. However, by September 2007, there were over 144,000 backlogged applications, effectively wiping out any gains from the backlog office project.[139]

The 2006 Backlog Project coincided within a broader Turnaround Project to improve the capacity and efficiency of both DHA civic and immigration operations (cf. Segatti 2011). RROs were considered especially problematic considering issues of capacity, corruption, mismanagement and litigation (cf. Segatti 2011; Amit 2012, 2015).[140] In fact, backlog offices were widely recognized as better resourced and managed than the permanent RROs considered to be in complete disarray at this time. The Turnaround Project had two major objectives for Refugee Affairs: reduce the application backlog and reform the permanent RROs. The proposed office in Johannesburg was designated as a "Centre of Excellence" to be a model for the rest of the RROs in the country. The initial issue to resolve was addressing the increased demand at these offices. A Process Engineer audit by the IQ Business Group consulting firm from December 2016 and January 2017 proposed various reforms to improve RROs, including increasing staff and resources and improving physical and operational infrastructure of the offices.[141] The report estimated that demand at all RROs totaled 727 applications per day and

[137] FeverTree Consulting, September 2007.
[138] FeverTree Consulting, September 2007.
[139] FeverTree Consulting, September 2007.
[140] See, e.g., the presentation "DHA – Marabastad Crack Team Project 2007," Home Affairs Portfolio Committee, 24 August 2007, accessed at https://pmg.org.za/committee-meeting/8230/.
[141] FeverTree Consulting, September 2007.

around 160,000 applications per year at all offices combined.[142] In turn, RROs were processing around 55,000 applications per year at this time, resulting in an estimated 470 asylum seekers each day being turned down at RROs without being able to access these offices and claim asylum.[143] The discrepancy in supply and demand was most stark in the three busiest RROs in the country: Johannesburg (Rosettenville), Pretoria (Marabastad), and Cape Town (Customs House), while there was a low capacity for adjudications at all offices (see Table 1).

In light of these capacity challenges major questions confronting the department focused around the number, location, and outlay of RROs in the country. As stated in the FeverTree report, minutes from an August 2007 Refugee Steering Committee established to oversee the turnaround strategy, recognized that South African legislation supported the integration of refugees who needed to sustain a living on their own. The committee determined that RROs should be established in metropolitan centers and not at border crossings or ports of entry. It further made reference to the "liberal" constitution which would not support the establishment of one large "Transit" facility at the border given the "current political and international context."[144] The committee determined that a network of smaller offices would be more feasible given these legal constraints, as well as in terms of procuring and maintaining necessary resources for the offices.

The Turnaround Project confirmed that the five permanent RROs would remain in the cities of Johannesburg, Pretoria, Cape Town, Port Elizabeth, and Durban, but in better-resourced buildings and facilities. The establishment of new RROs was approved in 2002 and four new RROs in the cities of Springbok, Mafikeng, Musina, and Nelspruit were approved as early as

[142] FeverTree Consulting, September 2007.
[143] FeverTree Consulting, September 2007.
[144] Minutes from Refugee Steering Committee Meeting, August 2007 as stated in FeverTree Consulting, September 2007, p. 24.

2004.[145] These four smaller cities were located in the northern provinces of the North-West (Mafikeng), Northern Cape (Springbok), Mpumalanga (Nelspruit), and Limpopo (Musina) provinces. They were located near various land borders of the country, including Namibia (Springbok), Botswana (Mafikeng), Mozambique (Nelspruit), and Zimbabwe (Musina) (see Figure 3).[146] There was also a proposal for a single "Transit" facility. However, at the time, priority was given to the improving and opening RROs within the major cities and funding and planning for these offices were not further pursued, with the exception of the Musina office which was eventually opened in 2008 in face of increasing numbers of Zimbabwean applicants. In 2009, the DHA also opened an additional temporary RRO called the Tshwane Interim RRRO near the Marabastad RRO in Pretoria, primarily for asylum applicants from SADC and especially Zimbabwe.

Rather than open border centers, DHA plans were to consolidate the permanent RRO offices within the existing backlog office locations. With the exception of Pretoria where there was never a backlog office, RROs were moved from their present locations at the time, which were considered to be inadequate in terms of size and resources, and merged with the backlog offices, which were larger and better resourced. In Pretoria, the RRO was sharing the Marabastad office with civic branch services, but the civic branch was now moved out and the building space was dedicated entirely to the RRO. The existing resources and staff at the backlog offices were absorbed within the permanent offices at their new locations within the backlog office buildings. The backlog buildings were significantly larger than the previous RRO

[145] DHA Executive Committee (ExCo) Meeting: Draft Proposed Plan for the Establishment of a New Refugee Reception Office in Mpumalanga, Immigration Services (IMS), Chief Directorate: Asylum Seekers Management, 10 February 2012; accessed in *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others,* [2013] 11681/12, ZAWCHC.
[146] FeverTree Consulting, September 2007.

locations. For example, the Johannesburg office in Rosettenville was only 767 square meters as compared to 1,600 square meters at the existing backlog office in Crown Mines along with an additional 1,500 square meters with a proposed second building on the property.[147] In Cape Town, the Customs House office space was 1,030 square feet while the proposed backlog office plus the rest of the building would be around 2,300 square meters.[148] While the proposed backlog offices in Port Elizabeth and Durban were smaller, they were still bigger than the previous RRO offices in these cities and considered sufficient in relation to the projected number of asylum applicants in these cities.[149]

Not only were the backlog offices better resourced and larger for the new RROs, many previous RROs faced various pressures to leave their present locations. For example, the Johannesburg RRO was originally located in various DHA offices in central Braamfontein until it was relocated to a shopping center suite in the southern neighborhood of Rosettenville in 2004. The Rosettenville office was closed down periodically closed by the DHA in face of health and safety violations and complaints by neighboring businesses and faced legal action from Lawyers for Human Rights concerning the reopening of the office and administrative violations.[150] Therefore, it was determined that the Rosettenville office would never be appropriate as an RRO due to its size and location and that the larger backlog office in Crown Mines would be able to handle and contain the increasing number of asylum applicants and avoid issues of overcrowding outside the building and antagonizing neighboring businesses. The estimated expenditure for moving the office to Crown Mines and related refurbishments and costs, including improved IT

[147] FeverTree Consulting, September 2007.
[148] FeverTree Consulting, September 2007.
[149] FeverTree Consulting, September 2007.
[150] See *Consortium for Refugees and Migrants in South Africa and Others v. Minister of Home Affairs and Others* [2011] 573756/11*,* ZANGHC, Supplementary Affidavit, Executive Director CBRC, 16 September 2011.

equipment, was around 4.5 million rand.[151] Of primary concern, was the procurement procedure to take over the building, which was done in a relatively short period of time with the permanent RRO opening in March 2008. Facilitating the procurement was the fact that the office was already owned by the Department of Public Works (DPW) on behalf of the DHA.

RROs were not only reformed in terms of size and location, but also in terms of management, personnel, and IT resources. The temporary staff at the backlog offices were hired as additional staff for the permanent RROs. The management structure was overhauled and upgraded with additional administrative officers overseeing RRO operations and the work done by RRO officers.[152] There was also further planning for the partitioning and flow of asylum applicants, which was acknowledged as previously haphazard and unplanned. Managing officials were also brought in from civil society organizations with backgrounds in refugee and asylum law and policy. IT equipment was identified as particularly problematic and improved. For example, it was noted that IT crashes in the Johannesburg office were frequent and often resulted in loss of files and data.[153] Many asylum applications were not recorded electronically at the time and there were no systems for registering biometric data. Furthermore, it was acknowledged that there was a lack of communication and access of files across each RRO, providing an opportunity for the same asylum applicants to apply at different RROs across the country.[154] Therefore, various operational reforms were proposed along with relocations to the backlog offices, though progress in implementing these reforms was variable across the offices.

AMBIVALENT LABELS, AMBIGUOUS POLICIES

[151] FeverTree Consulting, September 2007.
[152] FeverTree Consulting, September 2007 and confirmed in interviews with former RRO management (11 November 2017; 8 December 2017).
[153] FeverTree Consulting, September 2007.
[154] FeverTree Consulting, September 2007.

According to legal and policy papers, the DHA took several measures to improve RROs, including relocations to much larger, better resourced, and better managed buildings. At the time of the mergers with permanent RROs and the backlog offices, it appears that the department was at least committed and invested in operating urban RROs. The reinvestment in urban RROs with their location in major cities with the majority of employment opportunities and social networks, further supported early court orders that recognized the right of asylum seekers to work and study and the special vulnerability facing refugees in South Africa. Civil society organizations acknowledged the improvements that these reforms had, at least in terms of logistics and capacity at RROs, with the exception of Cape Town, which was recognized as consistently understaffed and under-resourced (CoRMSA 2011).

However, certain policies based on the department's concern of undocumented economic migrants taking advantage of the asylum system persisted during this period of reforms. For example, the department continued internal policies against transferring files or renewing permits across different RROs. As early as 1998, there was an internal memorandum within the DHA, directing that asylum seekers were required to renew their permits at the RRO where they initially applied, and not necessarily where they currently lived (de la Hunt and Kerfoot 2008: 103). The memorandum also stated that lost or destroyed permits would not be replaced, while anyone who did not renew the permit would be subject to arrest, detention, and deportation. While these provisions have been challenged in court and have undergone various policies reforms – e.g., the DHA instituted fines for renewing expired permits – recent regulations have called for cancelling asylum applications for permits over 30 days expired.[155]

[155] Refugee Regulations, 19 December 2019. This reform has already been challenged in court by civil society organizations; see "Press Release: Scalabrini's 'abandonment' court case challenges constitutionality of South Africa's refugee law." 9 June 2020. https://scalabrini.org.za/news/press-release-abandonment-court-case-challenges-refugee-laws/.

The Refugees Act itself does not specifically state whether an asylum seeker needs to return to the same RRO as the original application to renew the Section 22, leaving this a point of contention and legal interpretation, especially in reference to constitutional rights and principles. Generally, however, the courts have ruled that the DHA should allow permit renewals across different RROs, in order to uphold asylum seekers' rights and in light of their presumed vulnerability and position in society. In Cape Town, Legal Resources Centre has won several cases to renew Section 22 permits for asylum seekers who initially applied for asylum at other RROs.[156] However, the department has continued to delay its full compliance with court orders to allow these renewals. At times, the department has cited technical and logistical issues in refusing these extensions, while other times, the department claimed that it was making these extensions, in spite of complaints from organizations that this was not the case. As argued by Legal Resources Centre during the *Ntumba* case:

> The Respondents did not fail to comply with the orders of this Court because of a fundamental lack of capacity to do so. Instead, the failures were caused by the fact that the orders were inconsistent with the usual policies of the Department of Home Affairs ("*the Department*"), which would refuse to extend the section 22 permits, of *inter alia*, non-CT asylum seekers. This meant that Department officials were slow to adapt to the court orders. Once the "teething problems" were overcome, the Department had no capacity difficulties complying with the orders.[157]

Therefore, the main issue in permit extensions was not logistics or capacity, but rather the internal policies and bureaucratic objectives of the DHA to limit access to asylum (cf. Vigneswaran 2008b). Similarly additional administrative practices such internal policies that have prohibited the joining of family members to the same refugee file have further limited

[156] The most recent case on this issue was *Ntumba Guella Nbaya and Others v The Director General of the Department of Home Affairs and Others* [2016] 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 fully complied with this order. See also, e.g., *Hirsi and Others v. Minister of Home Affairs and Others,* [2008] 16863/20008, ZAWCHC.
[157] *Ntumba Guella Nbaya and Others v The Director General of the Department of Home Affairs and Others,* [2016] 6534/15, ZAWCHC, Applicants Heads of Argument, para. 54.

access to RROs and have also been successfully challenged in High Court.[158]

Not only have internal policies hindered the logistical and technical reforms of RROs, but reforms themselves have led to unintended consequences affecting the rights of asylum seekers and refugees. In particular, an emphasis on efficiency in service provision has had detrimental effects on refugee status determination and the appeal process. As part of administrative reforms, there were incentives for RSDOs to hold more interviews each day and to process decisions more quickly. There was pressure for same-day adjudications and the DHA began taking records on adjudications that happened within the same week as measure of efficiency (Amit 2011; Polzer Ngwato 2013). However, the issue of short turnaround times combined with incentives to limit access to asylum, led to the mass rejection of asylum applications, regardless of the quality of their claims, and often based on country of origin (Amit 2011; Polzer Ngwato 2013). Asylum seekers were receiving rejection letters that appeared to be cut and pasted from standardized templates that at times were in contradiction to the terms and conditions under national and international law (Amit 2011). The result has been a significant increase in appealed applications and corresponding backlogs at the RAB and SCRA in dealing with these cases.[159]

## CONCLUSION

In all, head DHA officials have viewed asylum seekers and the department's mandate in a different light than civil society organizations and national legislation. Department officials have focused on issues of efficiency and detecting fraudulent applications, as compared to

[158] See *Scalabrini Centre of Cape Town and Others v. The Minister of Home Affairs and Others,* [2019] 5242/16, ZAWCHC.

[159] The Minister of Home Affairs stated that the SRCA had 40,326 pending applications and the RAB 147,794 pending applications, in addition to 1,620 pending applications with RSDOs; see Parliamentary Question NW2246 to Minister of Home Affairs, 5 September 2018, accessed at https://pmg.org.za/committee-question/9858/.

providing documentation and the quality of decision-making regarding refugee status determination. These persisting bureaucratic objectives are juxtaposed with various reforms and commitments to improving RRO operations in major cities, which limit these department's capacity and operations in light of increasing numbers of asylum applicants. Consequently, urban RROs have been characterized by competing interests in opening these offices in cities and upholding the various rights of asylum seekers and refugees, and ensuring that access to these offices and legal status would be extremely difficult to achieve. The difficulty in accessing RROs in spite of a legal framework and civil society advocacy, has led to contradictory conditions of increasing numbers of persons trying to apply for asylum permits in spite of the difficulties, and the DHA refusing to reform various policies to the point that could ensure RRO functioning in a lawful and effective manner. This contradiction stems from inherent contradictions in legal and judicial definitions of asylum seekers and refugees, and bureaucratic labels focused on fraudulent economic migrants. In practice, the contradiction has led to a myriad problems at urban RROs, including incentives for widespread corruption and disturbances for neighboring business. With office relocations and refurbishments within major cities, DHA officials signaled their apparent commitment to urban RROs, while at the same time impeded access and limited the capacity and functioning of these offices within these cities.

Figure 2: Map of Initial Refugee Reception Offices (RROs) 2000-2011


Table 1: Difference between Estimated Asylum Seeker Applicants, Accepted Asylum Seeker Applicants, and Adjudication Capacity per Day at each RRO (2007)

| | Johannesburg | Pretoria | Cape Town | Port Elizabeth | Durban | Total |
|---|---|---|---|---|---|---|
| Estimated Applicant Demand per Day | 312 | 182 | 138 | 36 | 80 | 727 |
| Accepted Asylum Applicants per Day | 107 | 41 | 33 | 32 | 44 | 257 |
| Adjudication Capacity per Day | 3 | 4 | 11 | 10 | 3 | 31 |

Source: Data compiled from FeverTree Consulting (2007). *Transforming the Department of Home Affairs: Refugee Affairs: Reception Offices Network Integrated Plan Workstream Deliverables #7, September 2007*.[160]

[160] Accessed in *DeGaulle Kiliko and Others v Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD.

Figure 3: Map of Proposed Refugee Reception Offices (RROs) 2006


Note: Dark shaded icons represent established RROs at the time. Light shaded icons represent proposed RROs that were eventually abandoned with the exception of the Musina RRO, which opened in 2008.

Source: Data compiled from FeverTree Consulting (2007). *Transforming the Department of Home Affairs: Refugee Affairs: Reception Offices Network Integrated Plan Workstream Deliverables #7, September 2007*.[161]

[161] Accessed in *DeGaulle Kiliko and Others v Minister of Home Affairs and Others,* [2008] 2739/05, ZACGHPD.

## CHAPTER FOUR

## STATE-URBAN BORDERS: LOCAL BUSINESS LITIGATION AGAINST RROS

There is a video segment from a South African news agency, Eyewitness News from June 1, 2012.[162] The reporting team is visiting the Cape Town RRO in Maitland off Voortrekker Road. They are there after reports of the death of one Bangladeshi asylum seeker outside the building. The reporters find an ambulance at the location the day they arrive. The ambulance is ostensibly for a Zimbabwean man who was allegedly beaten by security guards, and the camera pans to blood stains on the pavement. There are several camera frames of long lines of predominantly young to middle-aged black men from other countries in Africa, and to a lesser extent, men from South Asia. There are also a number of black women and small children throughout the waiting crowds. There are multiple lines spanning across a large parking lot, around various industrial buildings, and along the sidewalk of Voortrekker Road. In one image, part of a short metal fence is broken down on the ground. A few individuals in the line are holding cardboard signs that say "Do Not Deport," "We Want Papers," and "Refugees Are People Just Like You." Representatives from a Cape Town-based migrant rights organization that specializes in assisting foreign nationals, People Against Suffering, Oppression, and Poverty (PASSOP), are also holding a sign, "Everyone is a Foreigner Somewhere! Say NO to Racism and Xenophobia," while voicing their concern that the office is closing soon without any alternative arrangements for asylum seekers and refugees.

On the other side of Voortrekker Road in front of the RRO, a group of women, all wearing headscarves and orange traffic vests, are protesting against the office. The women are holding printed out signs taped to cardboard that state, "No More Overcrowding", "Home

[162] Eyewitness News. "The SA Story: Part 1," 1 June 2012, https://www.youtube.com/watch?v=CKo4Gm3ELhk.

Affairs Can Move to Pinelands," "We Demand a Cleaner, Drug Free Maitland," "Stop Overcrowding in Maitland, Home Affairs Must Go…" The women express their concern over the conditions at the RRO and complain that the area is dangerous with overcrowding and people sleeping on the street at night. The reporters also interview a man who is participating in the protest. He represents a Maitland neighborhood forum and also wants the RRO to close down and moved elsewhere. He states that this is not a refugee reception area in Maitland, but a dump. While being careful not to criticize the RRO and presence of asylum seekers and refugees directly, with whom they sympathized when talking to the reporter, the protesters were strongly against the DHA's operations of this office and its location in their neighborhood.

The reporter says that she tried to access the inside of the RRO multiple times, as well as contact the regional and national DHA offices by phone, but with no success. In the video, she is found approaching the manager of the office, who is taking a garbage bin out in the parking lot. The manager, along with several security guards, directs the reporter to leave the area and does not respond to her questions whether the protests have anything or not to do with Home Affairs. The news clip then switches to an interview with a lawyer from the University of Cape Town Refugee Rights Unit to discuss pending legal action against the closure of this RRO. Astonishingly, considering the previous video footage, the lawyer states that the RRO in Maitland has been far better than the previous RRO locations in Cape Town. In the clip, the lawyer is concerned about the impending closure of the office, which had already happened in the cities of Johannesburg and Port Elizabeth by this time, and a plan to relocate RROs to the country's land borders. Another PASSOP representative in the clip was concerned how the closure of the RRO would force people to travel far distances to remaining offices to extend and renew applications, especially considering broader issues with backlogged applications,

adjudication delays, and widespread corruption. The news clip finishes with a brief interview of an asylum seeker discussing bribes for renewing permits and pans out across the large crowds of asylum applicants standing across the large parking lot.

While sensational in the degree of violence that day and contention over the pending closure of the office, the news coverage shows the uncomfortable relationship between the RRO run by the DHA and the rest of the neighborhood, not to mention asylum seekers and refugees themselves. The long lines and crowds of foreign nationals trying to access the building complex surrounded by fencing and partially managed by security guards reflected images of an overwhelmed state office. The RRO sits uneasily on this otherwise mundane urban thoroughfare in Cape Town with a mix of commercial enterprises surrounded by residential houses. Therefore, the lack of capacity and mismanagement of the RRO, combined with its location in the middle of a commercial area, was highly problematic for neighboring business, which pressured the DHA to close the office. Despite the flaws of the office operations, civil society and legal organizations were hoping that the office would stay open, either at the current location or somewhere else in city, stating that the current office was an improvement from previous RRO locations in the city. Perhaps the most astonishing aspect of the video was that the office was still there at all by June 2012, considering that the DHA had received a court order over a year ago to either abate the overcrowding and sanitation issues or close down the office.[163] Therefore, in spite of court orders and local pressure, the DHA continued to run the province's only asylum documentation office in the heart of this urban neighborhood, until it was finally closed down at the end of June 2012.

[163] *410 Voortrekker Road Property Holdings CC v. Minister of Home Affairs and Others,* [2010] 26841/09, ZAWCHC.

State borders – commonly understood as territorial boundaries and legal status – are widely recognized as fundamental in differentiating individuals and controlling mobility (cf. Torpey 2000; Waldinger and Fitzgerald 2004; Fassin 2013). In addition, there is increasing attention to internal administrative and spatial borders within countries, and above all, cities (Mbembe 2000; Mezzadra and Neilson 2013; Agier 2016; Yuval-Davis, Wemyss, Cassidy 2019). With the increasing number of asylum seekers and refugees present in cities and urban areas, there has been a corresponding increase in related formal institutions and administrative practices. Internal borders located within designated urban spaces and specific buildings therefore 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). For example, a number of recent studies have looked at the implications of designated accommodation centers in the exclusion and marginalization of asylum seekers and refugees in Western European cities (Fontanari 2015; Casati 2018; Mayer 2018; El-Kayed and Hamman 2018). However, while these studies have often looked at the subjectivities of refugees and asylum seekers residing in these buildings, there has been less attention to the local politics over the location of these buildings and physical structures. In particular, there is a relatively lack of research on political and legal contention over the location and presence of designated physical structures for refugees and asylum seekers, especially those buildings used to process refugee status determination and documentation.

In this chapter, I analyze the local politics and contention over the presence and operations of RROs in specific urban neighborhoods in South African cities. In particular, I look at how neighboring businesses have challenged the presence of RROs in their vicinities, primarily through litigation. 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 therefore develop the concept of *state-urban borders* to highlight the intersection of state institutions and contested urban spaces in relation to these offices (Johnson 2020). 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, neighborhoods, 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 that lead to ambiguous and contingent consequences for asylum seekers and refugees, as well as policymakers, local residents, and civil society organizations (cf. McNevin 2010).

## BROADER IMPLICATIONS AND CONTRIBUTIONS

To develop the argument in this chapter, I analyze litigation brought on by local businesses against the presence and operations of RROs in their neighborhoods. From 2008 – 2010, local businesses successfully won court orders for the DHA to close down specific RRO office buildings that were in violation of zoning and public nuisance regulations. By 2012, whether due to court orders on behalf of local businesses or terminated lease agreements between private landlords and the DHA and DPW, RROs were closed down in Cape Town, Port Elizabeth, and Johannesburg. Importantly, these businesses were not involved in refugee and asylum seeker politics or administration prior to having RROs in their neighborhoods, and were not interested in the broader immigration policies, regulations, or politics. Rather, they reacted to the often sudden transformation of nondescript office buildings and warehouses into overcrowded and contentious border sites represented by RROs in support of their own

properties and interests in the immediate areas. Local businesses did not directly target the presence of refugees and asylum seekers, but rather legally challenged the DHA and RRO management in order to remove the large crowds of unwanted persons who congregated at these offices.

This chapter contributes to broader discussions on the importance of local actors and institutions 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 Tendler 2012). Furthermore, RROs provide an additional case of racialized bordering institutions (Yuval-Davis, Wemyss, Cassidy 2019) and decentered state borders (Agier 2016) that has not been conceptualized in border studies literature focused on the Global North (cf. Fassin 2013). Additionally, local business litigation concerning the location of RROs presents an additional form of urban politics that differs from local actors developing municipal ordinances directly targeting undocumented migrants (cf. Varsanyi 2008; Ramakrishnan and Wong 2010; Steil and Ridgely 2011). Rather, local business litigation in South Africa presents a more contingent and ambivalent case of local migration politics, in which local actors use existing zoning regulations and property laws to contest the presence and operations of state-run offices for their own interests. Local businesses were activated against the DHA only after RROs opened in their immediate vicinities and with the singular objective of limiting their operations or relocating them as soon as possible, rather than removing all asylum seekers from cities or challenging state policies more broadly.

## INTERNAL BORDERS AND URBAN SPACES

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. The relevance of this constitutive view of borders is to decenter them from state institutions and national territorial boundaries, but also to focus on their emergence, reproduction, and disappearance in specific spaces. Furthermore, borders are characterized by official practices to fix and establish set borders, while daily relations and interactions draw attention to the contingent, contextual, and shifting presence of borders with specific histories and actors. As Mbembe (2000: 260) states in his discussion on African borders:

> In the case of Africa, long-term developments, more or less rapid deviations, and long-term temporalities are not necessarily either separate or merely juxtaposed. Fitted within one another, they relay each other; sometimes they cancel each other out, and sometimes their effects are multiplied (Mbembe 2000: 260).

Consequently, official borders sit uneasily with local communities, while a multitude of borders, including national borders, are intersected by specific relations, histories, and geographies.

Building on this framework, 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 violence and exclusion and partial inclusion at these sites (cf. Mezzadra and Neilson 2013). 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.

## METHODS AND DATA

The chapter is based on archival and field research collected in South Africa in 2017-2018 with a particular focus on litigation. I compiled an archive of full case records related to RRO closures from 2008 to 2019, consolidating case records from provincial high courts, the Supreme Court of Appeal (SCA), and the Constitutional Court. Legal case records were obtained online or provided by provincial court archives, legal professionals, and civil society organisations in Cape Town, Port Elizabeth, Johannesburg, and Pretoria. Public legal 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 and conversations with representatives from international organizations, South African civil society and refugee-based organisations, local businesses, legal professionals, and former RRO management in cities that experienced RRO closures. I also conducted field observations outside the buildings of RRO closures with numerous visits to the closed Cape Town RROs and visits to the closed down RROs in Johannesburg and Port Elizabeth. This research was supplemented by records from parliamentary portfolio meetings, official legislation and regulations, DHA press releases, and civil society organizations. Interviews, field observations, and document sources provided verification and clarification of material found in legal case records, which provided the most robust source of data for the chapter.

## RELOCATION AND CONSOLIDATION OF RROS

The emergence of local business litigation began after the consolidation and relocation of permanent RRO operations to the backlog office buildings across various cities in 2008. The consolidation of RRO operations into single buildings previously leased for backlog offices had several specific implications for the physical location and future litigation for RROs in these cities. With the consolidation of RROs into single buildings that were hosting the backlog office, all asylum permit and refugee status determination operations were again located within single buildings. In contrast to previous locations, RROs were now located in buildings that were not shared with other DHA operations or other government agencies. As explained in detail in the previous chapter, the need to acquire larger building spaces often meant that RROs were relocated from office buildings in the city centers to more peripheral industrial and large-scale commercial areas. In Johannesburg, the RRO was moved from Rosettenville to Crown Mines. The Crown Mines office was located on Planet Avenue in an industrial zone with larger industrial and commercial companies southwest of central Johannesburg. In Cape Town, the RRO was moved from Customs House to the city's backlog office located in the Airport Industria area. The office was located off the N2 highway near the city's international airport about 20 kilometers from the city center. In Port Elizabeth, the RRO was relocated to Sidon Street, a small commercial road crammed between the N1 highway and coastline just north of the city center. In contrast, the smaller RRO in Durban was relocated to Che Guevara Road (formerly Moore Road) in the Berea neighborhood, which was more of a mixed-use area of commercial and residential properties near the city center. In Pretoria, where there was no backlog office, RRO operations took over the entire Marabastad building and the department's civic branch moved out from the building.

By 2008, the permanent RROs had been merged into the backlog offices and all RRO operations were being conducted from these single buildings in each city. However, it was soon apparent that the process engineer, FeverTree consultants, and DHA policymakers underestimated the increasing numbers of asylum applicants, antagonism from local businesses, and persistent issues in management and corruption at these offices. Numbers of asylum applicants, the majority coming from Zimbabwe, surged at this time with over 200,000 new asylum applicants per year in 2008 and 2009.[164] The opening of full RRO operations in the backlog offices, with the exception of Durban, therefore coincided with litigation by certain businesses against the presence and operations of these offices in their vicinities. Backlog operations had not received the large numbers of asylum seekers and refugees that fully operational offices had faced, as they were mainly focused on processing existing applications rather than accepting new asylum applicants arriving any day in person. Therefore, neighboring businesses had more or less tolerated the presence of the backlog offices, and in some offices, civic services continued to provide services along with the backlog operations. According to an interview with a business representative at Airport Industria, local business employees had utilized the civic office and had a good relationship with the DHA officials there.[165]

LOCAL BUSINESS LITIGATION - TIMELINE

With the opening of fully operational RROs in these buildings, neighborhoods transformed practically overnight. By consolidating operations within single buildings, RROs concentrated the perceived costs of these offices for certain neighboring businesses. Relocation and operational reforms of RROs did not eliminate issues of overcrowding and access intensified by increasing numbers of asylum applicants. Certain neighboring businesses in Cape Town,

[164] DHA Annual Report 2017-2018.
[165] Interview, 29 August 2017.

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 had resources to take legal action and did not provide any goods or services to asylum seekers and refugees, as opposed to stores or vendors that could profit from asylum 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.

*Crown Mines, Johannesburg*

The first local business case against an RRO was filed in Johannesburg.[166] The building was located at 8 Planet Avenue, in Crown Mines, which was a relatively large commercial and industrial area to the southwest of central Johannesburg (see Figures 4 and 5). The area was a decommissioned mining area that sat off the R41 highway between the city and Soweto. The building had previously been used by the Department of Labour and was a government-owned building procured by the Department of Public Works. The building was designated as the regional asylum backlog office since 2006. The permanent RRO was opened at this site in March 2008. Already, in 26 August 2008, local businesses had won a court order from the provincial South Gauteng High Court (SGHC) in Johannesburg for the DHA to address public nuisances caused by overcrowding around the office.[167] However, the legal applicants viewed the presence of the RRO as increasingly problematic and filed another case with the SGHC on 6

[166] *Spuddy Properties PPY LTD and Others v the Minister of Home Affairs and Others,* [2008] 38198/08, ZASGHC.
[167] Judgment, 26 August 2008, 2008/22791, ZASGHC as cited in *Spuddy Properties PPY LTD and Others v the Minister of Home Affairs and Others,* [2008] 38198/08, ZASGHC.

November 2008, this time to have the RRO completely closed down and moved elsewhere from this location. Litigation was led by the owner of Spuddy Properties, a shoe distribution warehouse company, and supported by neighboring businesses and the area's business forum. Respondents were the Minister of Home Affairs, the Minister of Public Works, and the City of Johannesburg. Local businesses sought to have the office closed in terms of zoning and public safety violations, public nuisance violations, and in support of the constitutional rights of the companies. On 25 May 2011, the court ordered to close down the Crown Mines RRO and relocate the Johannesburg RRO to another site in the city within two months of the judgment.[168] The Johannesburg RRO was found in violation of zoning and health and safety regulations and public nuisance violations affecting neighboring businesses. The DHA, however, instead of relocating the RRO to another location in Johannesburg, closed down the Crown Mines office and moved all files about 70 kilometers away to the RROs in Pretoria. At the time of research, the office building and warehouse were completely vacant, with vegetation growing over the building's walls and an old DHA sign and one security guard seated at the building's front door.

*Airport Industria, Boquinar, Cape Town*

> *Since the refugee reception office has been established at Erf 11593, life and business in the area has changed dramatically and become unbearable, to the extent that it now constitutes a real threat to the businesses and properties of the Applicants in a number of ways*.[169]

In Cape Town, the office was relocated to 3 Montreal Avenue (Erf 11593) at the Airport Industria park in the Boquinar neighborhood (see Figure 6). The office was just off the N2 near the city's international airport and across the freeway from Nyanga, a section of the sprawling Cape Flats township and shack settlement area (see Figure 7). Similar to Crown Mines, Airport

[168] *Spuddy Properties PPY LTD and Others v. the Minister of Home Affairs and Others,* [2008] 38198/08, ZASGHC, Judgment, 25 March 2011.
[169] *Intercape Ferreira Mainliner (Pty) Ltd and Others v. Minister of Home Affairs and Others,* [2009] 20952/08, ZAWCHC, Founding Affidavit, 17 December 2008, para. 25.

Industria was an industrial park of mixed commercial and industrial enterprises along a series of cul-de-sacs and closes (see Figure 8). Since 1990, the building had previously been used by the civic branch of the DHA to handout unemployment and pension payments and other civic branch services. The building was leased from a private landlord by the Department of Public Works on behalf of the DHA. By 2006, it was also being used as the asylum backlog office for the region. By February 2008, the building had become the permanent RRO for the city and the region. Local businesses filed papers at the provincial Western Cape High Court (WCHC) in Cape Town in December 2008 to have the RRO closed down at this specific location.[170] Litigation was led by the head of the Intercape Mainliner bus company, one of the main long-distance bus companies in Southern Africa, which at the time, had its main office and operations located across the street from the RRO. The head of the company had various properties in the area and was supported by other businesses in the neighborhood. Respondents were the Minister of Home Affairs, the Municipality of Cape Town, and the landlord of the building, Cila Executive Apartments. The case also sought to have the RRO closed down due to zoning violations, public nuisance offenses, and violations of the constitutional rights of employees and clients caused by the office's operations and overcrowding and unrest around the building.

The WCHC issued an order on the 24 June 2009 to close down the RRO at its current location.[171] The office was found unlawful in terms of zoning and public nuisance violations that the court considered to be unresolvable through any possible operational or logistical reforms. The office was ordered to close down by September 2009. The DHA requested an extension from the court to remain open until October 2009 and closed the office in mid-October. At the

[170] *Intercape Ferreira Mainliner (Pty) Ltd and Others v. Minister of Home Affairs and Others,* [2009] 20952/08, ZAWCHC.
[171] *Intercape Ferreira Mainliner (Pty) Ltd and Others v. Minister of Home Affairs and Others,* [2009] 20952/08, ZAWCHC, Judgment, 24 June 2009.

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.[172]

*Sidon Street, Port Elizabeth*

Additionally, litigation was filed against the newly opened Port Elizabeth RRO on Sidon Street.[173] The building was also the previous location of the asylum backlog project and became the permanent RRO in the city and region in 2008. Sidon Street is a small commercial road isolated between the N2 freeway and a rail line along the coast northeast of the city (see Figure 9). The street consists of a few properties with various commercial enterprises and tenants. Legal papers were filed on 11 March 2009 at the Eastern Cape High Court (ECHC) in Port Elizabeth against the RRO. The main applicant was the owner of a textiles company, Stuart Graham Furnishing Fabrics, at the south end of the street, who was supported by a few other business owners and commercial tenants on the street. The respondents in the case were the private landlord of the RRO property, Kapbro Properties; the Minister of Home Affairs, and the Nelson Mandela Municipality.[174] The local business applicants initially sought a court order seeking the abatement of nuisance caused by the RRO operations and overcrowding on the street. Later on in the legal proceedings, the local businesses also applied to include the closure of the RRO on Sidon Street as further relief in the court order. In general, the businesses sought a court order in terms of public nuisance violations caused by the RRO claimed to infringe on the constitutional rights of employees and clients.

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[172] Interview, 29 August 2017.
[173] *Stuart James Graham and Others v. Kapbro Industrial Complex (PTY) LTD and Others,* [2009] 2016/08, ZAECHCPE.
[174] Nelson Mandela Municipality is the larger metropolitan municipality covering the City of Port Elizabeth and neighboring cities.

On 2 November 2009, the ECHC in Port Elizabeth ordered the DHA to take concrete measures around queue management and ablution facilities at the RRO building to address the nuisance issues for neighboring businesses.[175] While these measures were never fully implemented, the RRO was not closed down until the end of October 2012. According to subsequent court papers, the Port Elizabeth office was closed due to the termination of the building lease by the private landlord, though the DHA also referred to the 2009 court order as a reason for the closure.[176] Rather than open a new RRO in Port Elizabeth, the DHA claimed it would only process existing extensions and renewals at an annex office elsewhere in the city, and would no longer receive any new asylum applications or renew or process applications initially filed at other RROs in the country.

*Voortrekker Road, Maitland, Cape Town*

As a result of the court order against the Airport Industria office in Cape Town, the DHA relatively quickly located and opened a new RRO across properties at 412-416 Voortrekker Road in the Maitland neighborhood in Cape Town. The main building, a large open warehouse, at 416 was supposed to be a temporary facility pending the leasing and refurbishment of an office building at 412 Voortrekker Road. The landlord who was subleasing the temporary building at 416 Voortrekker Road was expected to purchase the proposed 412 Voortrekker building and lease it to the DHA for the permanent RRO. However, the landlord was unable to acquire the funding for the purchase, which fell through, and the RRO remained at the temporary warehouse

[175] *Stuart James Graham and Others v. Kapbro Industrial Complex (PTY) LTD and Others,* [2009] 2016/08, ZAECHCPE.
[176] See *Somali Association for South Africa, Eastern Cape (SASA) EC and Another v. Minister of Home Affairs and Others,* [2011] 3759/2011 ZAECHCPE.

location.[177] In total, the RRO involved three private leases with different landlords for a private access road, the main building, and annexed buildings used as waiting areas.

On 24 December 2009, only two months since the opening of the RRO, the adjacent business, 410 Voortrekker Properties, filed legal papers to close down the RRO.[178] The respondents listed in the case were the Minister and Director General of Home Affairs, the Minister of Public Works, the City of Cape Town, and the various landlords owning or subleasing their properties for the RRO. The building was located across the private access road used to connect the main RRO building and Voortrekker Road and in front of the large parking lot that was used as a waiting area for the long queues of asylum applicants attempting to enter the building each day. Legal papers sought to close down the RRO due to zoning violations and public nuisance violations. On 3 May 2010, the WCHC ruled in favor of the local business and against the RRO based on zoning and public nuisance violations.[179] However, the court order provided the DHA six months to address the zoning and public nuisance violations to keep the RRO open at the same location, or to close down the office. The DHA did not fully address the issues in the court order. Instead of closing down within the given timeframe however, the RRO remained open until the end of June 2012.

According to subsequent legal papers, the RRO was closed down due to the termination of the private access road lease.[180] The private access road lease was tied to the office building property at 412 Voortrekker. According to property records, since 2011, the property was owned

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[177] See *410 Voortrekker Road Property Holdings CC v Minister of Home Affairs and Others,* [2010] 26841/09, ZAWCHC, Confirmatory Affidavit, 9th Respondent, para. 4.2.
[178] *410 Voortrekker Road Property Holdings CC v Minister of Home Affairs and Others,* [2010] 26841/09, ZAWCHC.
[179] *410 Voortrekker Road Property Holdings CC v Minister of Home Affairs and Others,* [2010] 26841/09, ZAWCHC, Judgment, 3 May 2010.
[180] See *Scalabrino Centre Cape Town v Minister of Home Affairs and Others*, [2012] 11681/12, ZAWCHC.

and occupied by the litigating business.[181] As the Deputy Minister of Home Affairs, somewhat misleadingly, stated at an international law conference at the University of Cape Town on 21 November 2014, the DHA found itself in the "absurd situation of the applicants winning their suit to relocate the RRC (Refugee Reception Centre), only to then purchase the premises we occupied in Maitland to become our new landlord."[182] At the time of research, the storefront of 412 Voortrekker Road was occupied by the local business applicant's apparel company, while the applicant's previous building at 410 Voortrekker Road was vacant (see Photo 7).

RRO operations for pending applications and permit renewals were moved back to Customs House where they are still being processed and renewed at present. However, rather than opening another fully operational RRO location in Cape Town, the DHA opened a "temporary facility" back at Customs House that would only process existing extensions and renewals but would no longer take any new asylum applications or renew or process applications initially filed at other RROs in the country. In all, by mid-2012, not only were RROs closed down at these specific buildings in light of local business litigation, but there were no longer fully operational RROs in Johannesburg, Cape Town, and Port Elizabeth.

The above timeline of local business litigation highlights several specific points for further discussion around the relationship between urban buildings and spaces and the state borders that RROs run by the DHA represent. The following discussion takes up points around the use of existing zoning laws and public nuisance criteria that were central in the outcome of court orders against the DHA. Furthermore, it takes up the relative absence of the city as an actor in spite of being listed as a respondent in the cases, as well as the complicated role that

[181] See Property Report, 412 Voortrekker Road, Maitland, Cape Town, accessed at www.property24.com.
[182] See Deputy Minister Fatima Chohan: International Refugee Law, 21 November 2014, accessed at https://www.gov.za/deputy-minister-fatima-chohans-speech-inaugural-session-2014-cape-town-programme-international.

private landlords had in the litigation proceedings, whether as applicants or respondents. Finally, I conclude the chapter by looking at the relative importance of urban borders that local businesses sought to enforce, and how this intersected with limits on legal status and access to RROs as national government run institutions.

## EXISTING ZONING AND LEASE VIOLATIONS

In contrast to local politics seeking to create or implement new zoning policies to specifically exclude foreign nationals (cf. Varsanyi 2008; Ramakrishnan and Wong 2010; Steil and Ridgley 2011), local businesses investigated existing zoning by-laws, health and safety codes, and lease conditions for any possible violations by RROs. Uncovering zoning and related lease violations by RRO offices was a central tactic used by local businesses in litigation against RROs. Zoning regulations were overlooked and not accounted for by the DPW and DHA in backlog offices such as Crown Mines (Johannesburg) and Airport Industria (Cape Town). Zoning violations provided a justification for *locus standi* for local businesses to legally challenge the DHA's operations and presence at these buildings. As the courts viewed zoning regulations and consent use applications as protecting the interests of neighboring properties and businesses, local businesses could legally challenge unlawful zoning practices by local tenants, including the DHA. Legal judgments on zoning additionally struck down the DHA's legal defense that state entities and government ministers were not accountable to local and provincial zoning regulations. Therefore, the courts recognized the constitutional rights of the litigating local businesses to challenge the national state in relation to zoning violations, as well as local and provincial jurisdiction over the national state's presence and operations in urban buildings.

Zoning violations were intertwined with issues of access and management of RROs, and often interpreted in reference to issues of overcrowding, lack of parking, and other facilities.

Regarding the Airport Industria RRO in Cape Town, zoning and land use issues concerning the DHA's use of the building preceded litigation against the RRO. In 1990, the landlord at the time applied for a special consent use provision by the City of Cape Town to allow the DHA to occupy the building zoned as "General Industrial". At the time, the building served as a DHA civic branch distributing unemployment benefits and other services. The DHA and landlord received a consent use under the zoning exemption of "Place of Assembly" under the provincial Land Use Planning Ordinance of 1985 ("LUPO"). The consent was granted and renewed in 2010 when the new landlord, Cila Executive Apartments, acquired the building. There were a number of objections against the office during the required committee meeting with neighboring businesses. Objections included the lack of security provided by the DHA, litter, the presence of hawkers, lack of ablution facilities, insufficient parking, negative effects on property values, and servicing persons from other neighborhoods and not the immediate area. The City of Cape Town approved the consent use renewal for the DHA in 2010 based on reassurances that the landlord would provide sufficient ablution and parking spaces for the office, adhere to all building and zoning regulations, and submit and implement a revised building plan based on these conditions.[183]

The earlier consent use letter became fundamental in finding the Airport Industria RRO in violation of zoning regulations in 2009. The CEO of Intercape Mainliner hired a town planner to research and confirm that the building was zoned as "General Industrial," and challenged the validity of the consent use exemption for the RRO.[184] Legal counsel for the DHA argued that the consent use as Place of Assembly still applied to the building, even though it was now an RRO

[183] See minutes from Urban Planning Committee meeting, 23 June 2000, accessed in *Intercape Ferreira Mainliner (Pty) Ltd and Others v. Minister of Home Affairs and Others*, [2009] 20952/08, ZAWCHC.
[184] *Intercape Ferreira Mainliner (Pty) Ltd and Others v. Minister of Home Affairs and Others*, [2009] 20952/08, ZAWCHC, Affidavit, Town Planner, 17 December 2008.

and not a civic branch of the department. However, the RRO was found lacking the required parking spaces and waiting areas as outlined in the consent use letter, in addition to general conditions of overcrowding in the area. Therefore, although the building had the consent use exemption, the court ruled that the DHA was in violation of industrial zoning as the consent use was given to the civic branch office and not the RRO under these conditions.[185]

Hiring outside town planners was also a strategy by businesses and the DHA in light of potential zoning issues for the Crown Mines RRO in Johannesburg and the Voortrekker Road RRO in Cape Town. The main applicant in the Crown Mines case commissioned a private town planner to review the zoning scheme for the RRO.[186] It was uncovered that the building was located at a "Decommissioned Mining Property," which did permit limited residential or commercial activities, but not the government operations of the RRO. The applicant also encouraged the City of Johannesburg to inspect the building to find violations in municipal health and safety codes. Concerning the RRO at Voortrekker Road in Cape Town, the DPW and DHA were careful to avoid the zoning issues that they had faced prior at Airport Industria. They secured a temporary building and access road that were zoned appropriately for RRO operations. However, the department was also utilizing an annexed building structure as an ad hoc waiting room for persons waiting to access the main building. The local business applicant discovered that these structures were located on property zoned for railway activities, as they were adjacent to the rail line behind the building. The use of these structures was ruled in violation in terms of *Legal Succession to the South African Transport Service (SATS) Act 9 of 1989* (amended in 1995) governing the use of railway properties. While this structure in question was not the main

[185] *Intercape Ferreira Mainliner (Pty) Ltd and Others v. Minister of Home Affairs and Others,* [2009] 20952/08, ZAWCHC.
[186] See Town Planning Report accessed in *Spuddy Properties PPY LTD and Others v. the Minister of Home Affairs and Others,* [2008] 38198/08, ZASGHC.

building, the court decided that it was fundamental in mitigating nuisance issues and therefore essential for the running of the RRO at this location.[187]

Most striking about the Voortrekker Road location was that, according to court papers, there appeared to be a genuine effort by the department to secure a permanent office with significant investments in infrastructure and planning. The department checked the zoning status of the two main buildings and selected a location that was better served by public transportation and had sufficient space off the main road for asylum applicants to wait and lessen the potential nuisance large numbers of persons. The department expended significant finances in securing the lease, refurbishing the temporary building, including security fencing around the property, and moving all operations, files, equipment from Airport Industria. An affidavit by a private architect hired by the government confirmed the office's zoning compliance.[188] It also showed detailed plans for the redrawing and establishment of the new permanent office at 412 Voortrekker Road. Furthermore, the DHA reached out to the local South African Police Services (SAPS) office in Maitland for a report on the surrounding crime and potential impact of the RRO on the security of the area. The report downplayed any impact from the RRO and supported the DHA's location of the office.[189] Additionally, in light of ongoing litigation and business complaints, the department also implemented certain reforms such as opening the main gate as early as 4am, providing flexible work hours for staff, and providing more outdoor facilities and crowd management outside the buildings. However, these reforms were found lacking by the litigating business and court orders to address the zoning issue and lack of staff and facilities.

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[187] *410 Voortrekker Road Property Holdings CC v. Minister of Home Affairs and Others,* [2010] 26841/09, ZAWCHC.
[188] *410 Voortrekker Road Property Holdings CC v. Minister of Home Affairs and Others,* [2010] 26841/09, ZAWCHC, Affidavit, Architectural Consultant, 9 March 2010.
[189] See SAPS, Operation: Maitland, 2009-10-12 to 2009-10-31, accessed in *410 Voortrekker Road Property Holdings CC v. Minister of Home Affairs and Others,* [2010] 26841/09, ZAWCHC.

RROS AS LOCAL NUISANCE

The most notable aspect of local business litigation concerning public nuisance violations, was that local businesses directly targeted the DHA and its operations of RROs. Asylum seekers and refugees were labelled as uncontrolled crowds and loiterers on private property and in public spaces, and also portrayed as desperate and vulnerable individuals forced to sleep outside and pay bribes to try to access these buildings. The founding affidavit by the owner of Spuddy Properties in the Crown Mines, Johannesburg case states:

> The thousands of refugees who are forced to congregate outside the government property are not provided with any shelter at all and are accordingly forced to suffer very hot conditions in the summer, cold conditions in winter and they get wet when it rains. This inhumane treatment of the refugees by not allowing them to wait within the ample premises of the Government property has resulted in extreme congestion and litter. It has also created an extremely dangerous situation given that many of the vehicles which normally and in the course of their business travel through the industrial area are trucks and delivery vehicles which creates a very high risk for life and limb of the refugees. There have been a number of accidents and although no-one has as yet been killed, it can only be a matter of time before it happens.[190]

While highlighting a narrative around victimhood and suffering caused by the DHA and RRO management, the affidavit also highlights the extensive exclusion and limited inclusion of asylum seekers and refugees at these offices. As a legal strategy, affidavits also sensationalized the frustrations and actions taken by asylum seekers and refugees confronted with these offices. The managing director of Intercape Mainliner states in his founding affidavit regarding the Airport Industria RRO:

> People gather there from the early mornings to the late afternoons, without toilet facilities. Only three or four are allowed into the building at a time. The sheer numbers with everybody pushing, shoving and often even fighting for a place in the queue make control of the crowd virtually impossible. As a result the police are called in regularly to subdue the outbreaks of violence among people and even ambulances are called in from time to time to attend injuries. The use of teargas, pepper spray and even rubber bullets by the police to restore order is not uncommon at all.[191]

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[190] *Intercape Ferreira Mainliner (Pty) Ltd and Others v Minister of Home Affairs and Others,* [2009] 20952/08, ZAWCHC, Founding affidavit, para. 21.2.
[191] *Intercape Ferreira Mainliner (Pty) Ltd and Others v. Minister of Home Affairs and Others,* [2009] 20952/08, ZAWCHC, Founding affidavit, para. 27.

Therefore, although legal counsel for local businesses were careful not to directly blame asylum seekers and refugees, they appealed to popular framing of foreign nationals as threats to public order as well as victims of DHA maladministration (cf. Vigneswaran 2020).

In response, legal counsel for the DHA argued that RROs created a statutory nuisance claiming that international and national legal mandates to provide protection and documentation to asylum seekers and refugees inherently created a nuisance for neighbors, especially in cities. In his affidavit in the Voortrekker Road case, the director of the Cape Town RRO stated:

> The primary function of the officials in the Department is to perform their statutory duties arising under the Refugees Act in a constitutionally sound manner. The second respondent is obliged to establish Refugee Reception Centres to carry out this function. Those services do not extend to clearing pavements of persons who may sleep there. The department is in any event powerless to do anything thereant other than ensuring that the security guards request people to desist from doing so. Security guards are permanently posted on the pavement in Voortrekker Road to minimise these occurrences.[192]

Legal counsel emphasized the increasing number of asylum applicants, the vast majority said to be economic migrants abusing the system, as evidence that the department could not be held responsible for potential nuisance issues outside RRO buildings and properties. Rather, it was argued that the municipalities should be doing more in terms of regulating loitering, overcrowding, and traffic issues, to manage and accommodate these individuals within their cities and outside RRO buildings. In this sense, RROs were perceived as individual islands of national state administration where refugees and asylum seekers left the city and entered a national state space. Regarding statutory nuisance, court judgments consistently rejected this argument, stating that there was nothing inherently problematic with RROs, and that it was management and capacity issues of the DHA that created the nuisance, and not its legal and

[192] *410 Voortrekker Road Property Holdings CC v. Minister of Home Affairs and Others,* [2010] 26841/09, ZAWCHC, First and Second Respondents' Answering Affidavit, para. 154.4.

normative obligations under the Refugees Act, constitution, and international conventions.[193]

Cognizant of the challenges facing asylum seekers and refugees in accessing RROs, courts were reluctant to make judgments on the constitutional rights of employees and clients of local businesses in relation to RRO conditions. For example, the WCHC judgment on Voortrekker Road rejected the argument that the DHA was required to consult with local businesses prior to opening an RRO.[194] The logic of this decision was again tied to the nature of public nuisance caused by RROs: assuming that the proper management of RROs would not lead to a nuisance for neighboring properties, then there was no administrative requirement for the DHA to consult with the local businesses ahead of time. If the DHA knew that an RRO would cause a legal nuisance for local businesses prior to opening an RRO, then the office was anyway unlawful. Instead legal judgments focused on operational issues at the RROs, such as adding outside ablution facilities, increasing staff numbers and parking spaces, and improving crowd management. As an example, the WCHC Voortrekker Road judgment limited its order to a structural interdict of adding more staff and adding more outside ablution facilities, and did not address broader complaints around general noise, informal vending, or criminality in the area.[195]

It is worth noting that not every RRO operated in the same way and there was some degree of variation in how offices operated in response to increasing numbers of asylum applicants. In light of legal pressure, RROs to varying degrees took certain measures to address nuisance issues. In legal papers and reports as well as interviews, the Airport Industria office

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[193] *410 Voortrekker Road Property Holdings CC v. Minister of Home Affairs and Others,* [2010] 26841/09, ZAWCHC, Judgment, 3 May 2010, para. 23.
[194] *410 Voortrekker Road Property Holdings CC v. Minister of Home Affairs and Others,* [2010] 26841/09, ZAWCHC, Judgment, 3 May 2010, para. 18.
[195] *410 Voortrekker Road Property Holdings CC v. Minister of Home Affairs and Others,* [2010] 26841/09, ZAWCHC, Judgment, 3 May 2010.

was recognized as particularly chaotic and unsafe.[196] While the RRO at Voortrekker Road was also recognized as problematic in terms of crowd control and capacity, it was noted as a general improvement from the office at Airport Industria.[197] It was also recognized by civil society organizations and RRO management that the Crown Mines office had significantly improved over time and that management and operations were increasingly dealing with the number of asylum applicants.[198] Additionally, in 2009, the DHA had opened a second RRO, the Tshwane Interim Refugee Reception Office (TIRRO), primarily for SADC applicants and an RRO in Musina near the Zimbabwean border in 2008. Furthermore, after significant delays, the DHA implemented the Zimbabwean Documentation Project (ZDP) in late 2010 for Zimbabweans to apply for temporary work and study permits, as opposed to asylum permits (cf. Amit 2011b).

Despite operational improvements, at least at the Crown Mines office, and declining applicant numbers, local businesses insisted on the closing down RROs and persisted with legal action to have the office closed down. 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."[199] At least in terms of litigation, therefore, local businesses persisted in obtaining court orders against these offices, which resulted in mixed results of some RROs closing down immediately, while other RRO closures were delayed after court orders.

## STATE BORDERS AND PROPERTY FENCES

[196] In addition to affidavits, civil society and refugee organization interviews supported this information (e.g., Interviews, 23 January 2018; 22 February 2018).
[197] Interview, 22 February 2018.
[198] See *Consortium for Refugees and Migrants in South Africa and Others v. Minister of Home Affairs and Others* [2011] 573756/11*,* ZANGHC, Supplementary Affidavit, Executive Director CBRC, 16 September 2011; also CoRMSA 2011; Interview, 11 November 2017.
[199] Interview, 17 November 2017.

Upon opening an RRO, the DHA prioritized securing premises to prevent unauthorized access to the building. An initial measure was to fence off the property and limit entry and exit points. For example, at Voortrekker Road, the DHA worked to ensure that the RRO property only had one entrance and exit for asylum seekers and refugees. The department had to request for a neighboring landlord and businesses to seal off a back-entry way to ensure the security of the property. Management also made sure to construct a fence between the property and the railway to prevent access through this space.[200] At Crown Mines, Johannesburg, local businesses argued that the RRO had fenced off the property and prevented any parking in front of the office itself, pushing crowds, traffic, and parking to neighboring business properties.[201] At the Airport Industria RRO, the exterior wall was extended along the entire property.[202] The entry gates of the property were managed by private security firms and DHA officials at each building. The urban construction and partial securitization buildings based on fences and walls guarded by private security firms, as compared to military or border controls at official territorial borders, created an attempt to reconstruct state borders within these urban buildings and neighborhoods.

However, the logic of state borders based first and foremost on exclusion and limited inclusion quickly had unintended consequences within urban spaces. As stated in the founding affidavit in Crown Mines:

> There is no parking at the Johannesburg Refugee Reception Office and to make matters worse, officials of the Respondent's department place beacons and staff on the pavement and try to do everything which is necessary to ensure that visitors do not congregate on the pavement immediately outside the entrance and do not park on the Government property side of the street. Small groups of about 10 to 20 visitors are ushered into the Johannesburg Refugee Reception Office every hour or so by the officials of the Respondent's department. The result is that whilst the Refugee Reception Office enjoys relatively orderly and uninterrupted access from its

[200] *410 Voortrekker Road Property Holdings CC v. Minister of Home Affairs and Others,* [2010] 26841/09, ZAWCHC, First and Second Respondents' Answering Affidavit, para. 44.
[201] *Spuddy Properties PPY LTD and Others v. the Minister of Home Affairs and Others,* [2008] 38198/08, ZASGHC, Founding Affidavit, 5 November 2008, para. 20.
[202] *Intercape Ferreira Mainliner (Pty) Ltd and Others v. Minister of Home Affairs and Others,* [2009] 20952/08, ZAWCHC.

> pavements and driveways, the use to which the Respondent has put the Government property has severely impeded access for staff and visitors of business properties all along Planet Avenue and especially on the other side of Planet Avenue.[203]

As shown above, local businesses emphasized that RRO protection of their own borders and properties led to a spillover effect on neighboring properties and public roads. The additional fences and walls constructed for RROs had unintended legal consequences regarding zoning and nuisance complaints. At Voortrekker Road, while the DHA limited access to one private access road, this road had to be leased from a private landlord making this space vulnerable to private lease requirements that varied with changing ownership and was eventually terminated.[204] At Crown Mines, RRO management worked to acquire additional building space to eventually accommodate more asylum applicants within the RRO property, but only after local businesses had documented extensive crowds around the neighborhood. In Airport Industria, an extended wall to secure the property was built over the space designated for additional parking bays, as required by the consent use agreement and local zoning regulations. And on Sidon Street, Port Elizabeth, asylum applicants were squeezed between a narrow grass median next the fenced-off freeway and the sidewalks in front of the buildings and businesses in the area. Therefore, the securitization and limited access to RRO properties led to unintended legal consequences regarding zoning and local regulations around private properties.

In response to overcrowding and perceived threats from RROs, local businesses also constructed fences and took additional bordering measures to protect their properties. Affidavits show how local businesses constructed new fences and highlighted the costs involved with their

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[203] *Spuddy Properties PPY LTD and Others v. the Minister of Home Affairs and Others,* [2008] 38198/08, ZASGHC, Founding Affidavit, 5 November 2008, para. 20.
[204] See Lease Termination Agreement: Creative Marketing Property CC, Department of Public Works, and Department of Home Affairs, 18 May 2012, accessed in *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others,* [2013] 11681/12, ZAWCHC.

construction. At Voortrekker Road, the litigating business highlighted the ongoing damage to walls that it constructed around their property as a particularly egregious and costly offense.[205] Most striking, the managing director of Intercape Mainliner sealed off an adjacent public road, Morris Close, where company buses enter and exit Montreal Drive in response to conditions around the Airport Industria Road. In a letter addressed to the City of Cape Town in October 2008, he stated:

> We, as the Business Owners, would like to inform you that we have been forced to close off, by means of Manned Security, the entrance to Morris Close, Airport Industria 3, Cape Town to any unauthorized persons, due to serious Security concerns caused by the escalating problems outside the Home Affairs/Refugee Centre on the corner of Montreal Drive and Morris Close.[206]

While not responding to previous complaints about the RRO in terms of zoning and nuisance issues, the City of Cape Town did require Intercape to dismantle the barrier and remove security guards in violation of municipal by-laws. In general, local businesses took their own measures to separate crowds from their properties, leaving potential asylum applicants to find patches of public or abandoned space between the closed off RRO and surrounding private properties.

## POLICING URBAN BOUNDARIES AROUND RROS

While asylum seekers and refugees were also portrayed as victims by the DHA in light of their statutory obligations to assist these populations, local businesses also complained about other problematic actors attracted to RROs. Local business court papers all reported the presence of informal traders and hawkers who were not licensed to work and sell products in the area. There were also complaints around middlemen and other individuals openly seeking out

[205] Attorney letter correspondence in *410 Voortrekker Road Property Holdings CC v. Minister of Home Affairs and Others,* [2010] 26841/09, ZAWCHC.
[206] Letter to City of Cape Town, Roads Department, 2 October 2008 accessed in *Intercape Ferreira Mainliner (Pty) Ltd and Others v. Minister of Home Affairs and Others,* [2009] 20952/08, ZAWCHC.

bribes outside the offices. Furthermore, above all in Airport Industria where crime was quite severe according to refugee organization interviews, local businesses highlighted criminal activity that targeted asylum seekers and refugees, claiming it also increased the insecurity of their own employees and clients.[207] As stated in the founding affidavit for the Airport Industria case:

> The presence of the refuge seekers has brought with it numerous other elements such as hawkers, street vendors, robbers, pick pocketers, fraudsters, and other criminal elements. That in turn a further cause of regular outbreaks of violence between the refugees and criminal elements. They are being robbed, mugged and there are even fraudsters who take bribes from the refugees against promises of promotion in the queues or preferred treatment when they are inside and who then try to disappear from the scene. The chaosthat results with the traffic is hard to exaggerate.[208]

There were additional concerns about the private security at the RROs, which were portrayed as either unable to control the large crowds, or taking excessively violent measures against them. The same concerns were listed about the municipal police, who were viewed as either relatively absent from the offices, or, when they were present, creating further chaos in trying to disperse crowds by force. Considering the relative separation of industrial areas in Crown Mines and Airport Industria, and plans of regeneration and growth in commercial areas like Voortrekker Road, local businesses sought to highlight issues such as informal traders and criminals. Whether or not they were assumed to be foreign nationals was left ambiguous, but the point was that RROs brought in people who were not supposed to be in these neighborhoods. Therefore, the removal of RROs was also about policing urban borders and maintaining the status quo in public spaces and local neighborhoods in these areas prior to the opening of permanent RROs.

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[207] Interviews, 23 January 2018; 22 February 2018.
[208] *Intercape Ferreira Mainliner (Pty) Ltd and Others v. Minister of Home Affairs and Others,* [2009] 20952/08, ZAWCHC, Founding Affidavit, 5 November 2008, para. 29.

Local business litigants therefore were able to further their personal interests against the DHA and the presence of RROs in the neighborhood without portraying themselves as overtly anti-foreigner or xenophobic. Additionally, local businesses were also able to avoid issues of racism and discrimination, whether against unwelcome foreign nationals or South Africans, the clear majority who were black. Legal rhetoric was largely deracialized and court orders focused on legal technicalities such as zoning and capacity issues at RROs, as opposed to claims around informal traders and crime in the area. However, it was clear that in addition to crowds of asylum seekers and refugees, local businesses were concerned about policing local borders in relation to surrounding areas and persons considered unwanted in the area. Industrial parks such as Airport Industria and Crown Mines were already built in separation from residential areas, particularly low-income, predominantly black townships and shack settlements in their vicinities. Local borders were particularly striking at Airport Industria in Boquinar which, during apartheid, was part of designated industrial buffer zone between the predominantly black Cape Flats area and the predominantly Coloured areas outside of the city center (cf. Western 1996). There is a clear socio-economic, racial, and property division between the Nyanga township and the industrial area and nearby international airport across the freeway. The two neighborhoods are only split by the N2 freeway with a nearby pedestrian bridge connecting them. Furthermore, the township was an area that experienced anti-foreigner violence and displacement during the notorious May 2008 riots against foreign nationals in the country (cf. Peberdy and Jara 2011).

Similar to other business and middle class areas in South Africa, industrial parks were protected by local business forums and private security services that patrol the area. Many of the larger businesses had some sort of fencing, entry gates, and security guards to protect the properties and buildings. Such security measures are not unusual in post-apartheid South

African cities where middle class areas have incorporated a combination of social and spatial segregation and various private security measures, while police aim to contain crime within poorer areas (McDonald 2008; Murray 2008; Samara 2011). Therefore, local business litigation reflected broader dynamics of segregation and xenophobic violence in South African cities, which has been concentrated in predominant black townships and shack settlement areas (cf. Peberdy and Jara 2011; Landau ed. 2011). DHA and RRO management and employees were predominantly black and non-white, while asylum seekers and refugees and other actors around RROs were also predominantly black and non-white. Through litigation, local businesses were able to remove themselves from both anti-foreigner and anti-black politics by focusing on zoning regulations and deracializing nuisance issues. Therefore, maltreatment of predominantly foreign nationals, in this case asylum seekers and refugees was most visible at RROs, while local businesses seeking to have the offices shut down, were largely invisible form this narrative. This is not to deny the well-documented xenophobia within these state institutions and abuses at these RROs, but to reflect on the way that local businesses, and predominantly white business owners driving the litigation, were able to utilize legal and financial resources to have RROs closed down without becoming involved or associated in broader anti-foreigner or racial politics.

MUNICIPALITIES AND PRIVATE LANDLORDS

Private landlords leasing buildings to the DHA and municipal governments also sought to detach themselves from litigation concerning RROs or being viewed as overtly anti-foreigner. For private landlords listed as respondents, the main concern was avoiding legal costs. While certain private landlords submitted initial affidavits supporting the RRO, these landlords eventually filed notices to abide by court orders in exchange for avoiding any costs.[209]

[209] E.g., *Stuart James Graham and Others v. Kapbro Industrial Complex (PTY) LTD and Others,* [2008] 2016/08, ZAECHC-PE, First Respondents Heads of Argument and Frist Respondents Supplementary Heads of Argument.

Additionally, municipal governments were reluctant to get involved in litigation in these cases, and maintained their distance over these concerns. Local businesses expressed frustration that the municipalities did not intervene or respond to their complaints over RROs, while the DHA attempted to shift responsibility for crowd control, traffic and parking, litter, and other nuisances to municipalities.[210] In terms of litigation, municipal governments simply filed notice to abide papers and did not participate in legal proceedings concerning RROs. In the few responses provided by municipal governments, it was clear that they viewed RROs and any complaints against them as a national government issue and not within local government jurisdiction (cf. Segatti and Landau 2014).[211] Therefore, by remaining relatively outside litigation and without directly intervening in RRO management, cities and landlords were also able to avoid becoming involved in broader politics and divisions around asylum seekers and refugees and urban spaces more generally.

## CONCLUSION

Local business pressure to close down RRO locations highlights contradictions in state borders in urban spaces. As argued in the previous chapter, while the DHA established RROs in major urban areas, it did not sufficiently address issues of capacity and political will in reforming these offices. Consequently, certain local businesses viewed it in their direct interest to have these buildings removed as soon as possible. By focusing on removing the buildings and the DHA, as opposed to asylum seekers and refugees or other unwanted individuals directly, local businesses were able to remove themselves from broader urban and anti-foreigner politics, while

[210] E.g., *Stuart James Graham and Others v. Kapbro Industrial Complex (PTY) LTD and Others,* [2008] 2016/08, ZAECHC-PE, Second Respondents Opposing Affidavit, para. 15.
[211] E.g. *Intercape Ferreira Mainliner (Pty) Ltd and Others v. Minister of Home Affairs and Others,* [2009] 20952/08, ZAWCHC, Notice to Abide, City of Cape Town.

still upholding social, spatial, and racial boundaries within their neighborhoods and areas. Therefore, local business pressure against RROs highlights an important dynamic in racialized bordering processes and decentered borders in which urban actors and state institutions overlap and contest specific buildings and spaces. In particular, it provides a more nuanced account of state authority in cities, with examples of the department limited by technical issues of zoning, private leases, and public nuisance issues that have not been fully addressed in the literature over borders and asylum management in cities.

Local business litigation against RROs therefore highlights possible contingent and local mobilization against state borders and immigration administration that is often overlooked by political models on international migration focused on national interest groups (cf. Freeman and Tendler 2012). Additionally, local business litigation varies from urban politics, in which local actors developing municipal ordinances directly targeting undocumented migrants (cf. Varsanyi 2008; Ramakrishnan and Wong 2010; Steil and Ridgely 2011). Rather, local business litigation sought out existing zoning regulations and property laws to contest the presence and operations of state-run offices for their own interests. Local businesses only took action against the DHA after RROs opened in their immediate vicinities and with the singular objective of limiting their operations or relocating them as soon as possible, rather than removing all asylum seekers from cities or challenging state policies more broadly. However, rather than only acting as a direct reaction to RROs, local businesses also took advantage of litigation to further their own interests in removing these offices from their vicinities and upholding broader spatial, social, and racial boundaries around their neighborhoods.

Figure 4: Vacant Crown Mines, Johannesburg RRO Building (Photo: Author 2017)

Figure 5: Planet Avenue, Crown Mines, Johannesburg (Photo: Author 2017)

Figure 6: Previous RRO Building in Airport Industria, Cape Town (Photo: Author 2017)

Figure 7: Nyanga township across N2 freeway from Airport Industria RRO (Photo: Author 2017)

Figure 8: Montreal Drive, Airport Industria. The former RRO building is on the right, Intercape Mainliner is on the left. (Photo: Author 2017)

Figure 9: Sidon Street, Port Elizabeth. The former RRO was housed in the building on the right (Photo: Author 2018)

Figure 10: 410 Voortrekker Road (right) and 412 Voortrekker Road (left). The private access road (that served the former RRO in the back of the property) is between the two buildings. 412 Voortrekker Road is now owned by the litigating business, while 410 Voortrekker Road is vacant (Photo: Author 2017).

## CHAPTER FIVE

## CONTESTED CITIES, CIVIL SOCIETY ORGANIZATIONS, AND RRO LITIGATION

The closure of RROs at Sidon Street - Port Elizabeth, Voortrekker Road – Cape Town, and Crown Mines – Johannesburg marked the end of fully operational RROs in these cities. While nothing in these court decisions prevented the DHA from opening new RRO offices in these cities, the DHA had decided by this time to close down RRO operations in these cities. The RRO in Johannesburg was completely closed down with all files transferred to the Pretoria RROs, while the RROs in Cape Town and Port Elizabeth continued to renew and process existing applications, with the objective to close down these offices once this process had finished. Additionally, at this time, the DHA put forth concrete plans to open a new RRO at the Lebombo border crossing with Mozambique. The permanent RROs in Pretoria, Musina, and Durban remained open to all asylum applicants, though these offices continued to face issues of capacity and access (see Figure 11). While the majority of RROs were still in major cities, statements by the DHA and the ruling ANC party were increasingly clear that policymakers and the department were favorable to opening RROs and shifting asylum management to the country's main border crossings with Zimbabwe and Mozambique.[212] Civil society and legal organizations responded to these closures immediately to challenge the legality of the closures and attempt to force the DHA to re-open RROs in these cities.

The closure of RROs in South African cities highlights initiatives by states to control national borders, criminalize and deport persons already in the country, and limit access to employment and legal status (cf. Menjivar 2006; Dauvergne 2008; Coutin 2010; Fassin 2011; Mezzadra and Neilson 2013). However, closing RROs in cities where they previously operated

[212] ANC "Peace and Stability" Policy Discussion Document, March 2012.

highlights an alternative to the dual understanding of border control of either keeping people out or removing people who are already present. Specifically, RRO closures marked an effort by the South African state to roll back institutions that previously allowed asylum seekers to apply for documentation and access labor markets in cities, while attempting to move asylum operations out of cities and to border areas. Therefore, while the South African state has sought to improve border controls at ports of entry and territorial borders and reform legislation and policies preventing access to labor markets and work permits, in practice, RRO closures have been an additional attempt to work around delays and shortcomings in national border control.[213] Therefore, RRO closures present a unique opportunity to analyze how the state hardens its internal borders – above all, access to major cities and related access to labor markets and social networks – to impede and deter access to asylum and refugee status procedures. RRO closures also highlight a degree of contingency in policymaking as the only RROs to be closed down have been those that faced local business litigation and related court orders, while remaining offices in Durban, Musina, and Pretoria have not faced legal action by local businesses or neighbors.

Therefore, in this chapter, I analyze the specific administrative mechanisms and rhetorical frames that the DHA has employed in justifying the closure of RROs in cities where they were already established. Johannesburg and Cape Town are the two main economic cities in the country with large foreign national populations, while Port Elizabeth also has a large foreign national population and established social networks and work opportunities for foreign nationals. RRO closures faced immediate litigation and resistance from civil society and legal organizations against these closures that has been ongoing since 2011 to the present period. Confronted with external legal pressure and internal administrative issues, the DHA has faced

[213] See Refugee Regulations, 19 December 2019; Border Management Authority Act 2 of 2020.

challenges in closing down these offices and establishing RROs at border crossings. However, the DHA has also shown significant levels of non-compliance to court orders in keeping RROs closed in these cities and has further pursued policies to relocate asylum processing at border crossings. Therefore, the DHA has utilized and manipulated a variety of legal strategies and rhetorical frames in justifying RRO closures and non-compliance with court orders, while at the same time not yet implementing policy objectives to completely close down urban RROs.

## CONTRIBUTIONS OF THE CHAPTER

The chapter contributes to discussions on internal bordering in relation to national border control for asylum seekers and refugees (Yuval-Davis, Wemyss, Cassidy 2019; Mezzadra and Neilson 2013) and the built-in ambiguities and contradictions of the administration of foreign nationals (Fassin 2011). The seemingly ad hoc and ambivalent arguments for RRO closures, non-compliance of court orders to re-open RROs, and delays in implementing a border policy to replace urban RROs reveal the underlying politics and tensions concerning asylum seeker and refugee management and policies. Apparent contradictions and dysfunctions in bordering policies and administrative practices do not necessarily show an inherent weakness or strength in state institutions and border controls vis-à-vis other institutions or social conditions. Instead, such contradictions may highlight an intentional and partial application of law and policy in relation to peripheral and marginalized populations. As stated by Fassin, discrepancy in state policies and administrative practice,

> …does not so much focus on the power of the nation-state as on the limits of its ideal-typical representation as coherent, impartial, and effective. On the contrary, it shows its illegality and illegibility, demonstrates its partiality and ineffectiveness, but also establishes the functionality of these apparent disfunctions (Fassin 2011: 217).

Therefore, by focusing on administrative mechanisms and rhetorical frameworks that highlight inherent contradictions over RRO closures, I argue that inconsistencies in legal

arguments and unlawful policies fit within intentional strategies and expected outcomes in managing asylum seekers and refugees within and across South African cities.

Additionally, this chapter contributes to discussions on civil society resistance to official bordering policies by looking at how legal institutions take into account the specific context of cities (cf. Nicholls and Uitermark 2014). Inherent in this discussion is the endogeneity of law and legal action in which legal rhetoric, actors, and institutions are at least partially influenced by the broader social norms, meanings, and institutions that they seek to regulate (cf. Edelman et al. 2010). Furthermore, while court orders may provide relief to specific individuals or class of litigants, court judgments are also informed by the competing rhetoric, beliefs, and objectives of various power holders, interest groups, and insurgent actors (cf. Brown-Nagin 2005; Cummings 2018). While litigation has been an increasingly important tactic in challenging restrictive state policies and unlawful refugee status determination decisions, there is less research on litigation concerning state policies on refugees and asylum seekers in relation to specific cities. Importantly, litigation against RRO closures has highlighted connections between rights and livelihoods of refugees and asylum seekers and major cities, in addition to national or international rights or protections more broadly. Civil society litigation against the closure of RROs in South African cities further differs from sanctuary movements and cities in the US and Western Europe (cf. Darling 2017). Municipal actors and local state authorities are largely absent from contention over RROs, which has mainly centered on legal challenges by civil society organizations against DHA head officials. And second, civil society mobilization is restricted to a limited number of organizations without broader political and social movements in favor of asylum seekers and refugees, or foreign nationals, in these cities. Therefore, RRO closures highlight the importance of rhetorical framing within the legal system and the rights of

asylum seekers and refugees within specific cities, as well as the limits of litigation, judicial institutions, and legal and civil society organizations within broader anti-foreigner politics in the country (cf. Landau and Amit 2014).

Finally, this chapter further contributes to ongoing discussions around the decentering of state institutions and borders. Studies have highlighted the important differences among local branches and central offices of state institutions leading to arbitrary outcomes in service provision (cf. Gupta 2012). Regarding international migration, service providers in more liberal US cities have been shown to provide more services for undocumented migrants, though within the general confines of official policies (Marrow 2009, 2012). While discrepancies in service provision across local branches or differences between the practices of local service providers and objectives of administrative officials are important issues facing RROs (cf. Hoag 2010), the closure of RROs also highlights contention over the geographic distribution of these offices. While it is generally recognized that there are differences in the quality of operations across South African RROs and individual officers, decisions to close RROs and resistance to have them re-opened is also about the national distribution and specific location of these offices within the country.[214] Therefore, the particular location of these offices within the country has been a central and contested issue, in addition to the operations of public services and individual officers across different branches.

## METHODOLOGY AND CASE SELECTION

In making this argument, I review and analyze the full case records of class action litigation challenging the national government's decision to close various RROs in South African

[214] For example, it was widely acknowledged in conversations with civil society organizations that the Durban RRO was more accessible and better managed than other offices. However, this office has also experienced increasing limitations of access and extensive waiting periods to file asylum applications (Interview, 12 March 2018).

cities. Publicly accessible legal records were acquired online, at provincial courts, and through legal organizations. Legal data was supported by records from parliamentary committee meetings, DHA press releases, and civil society and media reports. Further, I conducted interviews with representatives from various migrant, refugee, and international organizations involved in advocacy and litigation against RROs. I further conducted fieldwork outside RRO locations, including several months outside the Customs House facility in Cape Town and shorter visits outside the other RROs across the country. Data was compiled from the various sources to develop a critical narrative highlighting contradictions and inconsistences in legal arguments and non-compliance with court orders. While civil society reports and previous studies (cf. Amit 2011; Cote and Van Garderen 2011; Budlender, Marcus, and Ferreira 2014) have focused on the implications of non-compliance in light of asylum management and public interest law in general, I focus on the mechanisms and legal rhetoric that the department has used in order to further non-compliance and continue unlawful practices against asylum seekers and refugees and how such legal contention is connected to the relative importance of cities.

Legal cases brought on by civil society organizations in response to the closure of Refugee Reception Offices (RROs) in South African cities presents an ideal case for analyzing local factors around asylum administration and litigation. Between 2011-2012, the Department of Home Affairs closed the RROs in Johannesburg, Cape Town, and Port Elizabeth. The closures of these offices dramatically changed the landscape of RROs in the country, especially for new asylum seekers. Specifically, new asylum seekers were only able to apply for asylum and attend any subsequent appointments at the remaining RROs in Pretoria, Durban, and Musina near the Beitbridge border crossing with Zimbabwe. In response, migrants rights and legal non-profit organizations based in Johannesburg, Cape Town, and Port Elizabeth filed legal papers to

set aside the closure decisions and have RROs re-opened in these cities. Legal arguments were based on procedural violations in closing these offices, but also in questioning the rationality and legality of closing these offices in cities where there had been high demand for their services. In defense of the closures, the DHA pointed to a combination of policy considerations and previous local business complaints and technical issues in operating RROs in these cities. The majority of legal judgments declared that the closures were unlawful, but were more ambivalent in ordering the DHA to re-open RROs in these cities. In light of court orders to reopen RROs, the DHA has shown high levels non-compliance in not re-opening offices within the specific timeframes designated by the court orders.

RRO CLOSURES AND THEIR GEOGRAPHIC IMPLICATIONS

The Cape Town RRO on Voortrekker Road in Maitland was closed by 30 June 2012. Asylum seekers and refugees who initially filed their cases at the Cape Town RRO by 30 June 2012 would be able to continue renewing their permits back at Customs House, where the DHA had set up a "Temporary Refugee Facility."[215] This temporary office was scheduled to close down once all pending asylum seeker applications were processed and finalized, originally estimated by the department to be within two and a half years.[216] According to the Director-General of the DHA at the time, asylum seekers who originally filed their applications at a different RRO in the country, would be able to approach Customs House for one more permit extension, but would then be expected to go to the RRO where they initially filed their

[215] The renaming of the office by the DHA was the Cape Town Temporary Refugee Facility (CTTRF); see *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others*, [2016] 8132/14, ZAWCHC, First to Fourth Respondents Answering Affidavit, para. 47.
[216] *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others,* [2013] 11681/12, ZAWCHC, First to Fourth Respondents Answering Affidavit: Part B – Review, para. 34.

applications for any future renewals or processing.[217] By this time, the RRO in Crown Mines Johannesburg had already closed down and the existing files were transferred to the RROs in Pretoria. The RRO on Sidon Street in Port Elizabeth was also closed down to new asylum applicants and only processing existing asylum applications.

As a consequence of these full and partial RRO closures, the only RROs where new asylum applicants could submit applications and receive Section 22 permits were now in Pretoria, Durban, and Musina near the Beitbridge border crossing with Zimbabwe. At the time of the office closures, there were two RROs in Pretoria: the permanent Marabastad office that would eventually be renamed the Desmond Tutu Refugee Reception Office, and the Tshwane Interim RRO that was opened in 2009 and eventually closed in 2016. The DHA stated that another RRO at the Lebombo border crossing with Mozambique would open by 2012, but this date was continuously delayed and the office has yet to be constructed.[218] The closure of RRO offices had three major consequences in the distribution and landscape of asylum administration in South Africa. First, two of the consistently busiest RROs in the country were now closed in the two main economic cities in the country – Johannesburg and Cape Town. Furthermore, all three cities – Johannesburg, Cape Town, and Port Elizabeth – all have sizeable foreign national, including asylum seeker and refugee, populations that would now not have local access to an RRO.

Secondly, the majority of applications and asylum administration were now concentrated at the Pretoria Marabastad RRO. While this office had been the busiest office in the country,

[217] Director-General letter to asylum seekers and refugees and stakeholders concerning the decision to keep the Cape Town office closed, 31 January 2014, para. 2.2; accessed in *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others*, [2017] 1107/2016, ZASCA.
[218] See email correspondence between the DHA and DPW regarding delays in securing property for the proposed Lebombo office in 2012; accessed in *Somali Association for South Africa, Eastern Cape (SASA) EC and Another v. Minister of Home Affairs and Others,* [2013] 3338/2012 ZAECPEHC.

especially after the closure of the Johannesburg RRO, the office received and processed significantly more applications than the offices in Durban and Musina.[219] These smaller offices have received relatively smaller, but ever increasing, number of applications. And the third major implication of the RRO closures was moving asylum administration closer the countries northern borders, primarily with Zimbabwe and Mozambique, and away from the western coastline. However, RROs were still primarily urban with RROs in Durban and Pretoria. Additionally, while the Musina RRO was initially opened on fairgrounds outside the town, it was moved to an office location on a main road in town. Therefore, RROs have remained primarily within urban and local spaces, as opposed to isolated border areas, despite policy preferences to close down urban offices in favor of border processing centers.

RRO CLOSURES AND THEIR SOCIAL IMPLICATIONS

The social consequences of these closures for asylum seekers and refugees has been well documented in NGO records and legal affidavits, as well as DHA statistics that have shown a steep decline in asylum applicants after 2012, and especially after 2015.[220] After the office closure in June 2012, civil society organizations claimed that thousands of individuals had planned to apply for asylum in Cape Town without prior knowledge of the office closure.[221] Persons living in Cape Town or Port Elizabeth seeking to apply for asylum would now have to travel significant distances in order to file their claims. For example, Pretoria is nearly 1,500 kilometers, Durban is over 1,600 kilometers, and Musina is nearly 2,000 kilometers from Cape

[219] In 2015, the RROs in Pretoria received over 46,000 new asylum applications, while the Musina RRO received less than 10,000 and the Durban RRO received less than 6,000 new asylum applications; see 2015 Asylum Seeker Statistics: Analysis and Trends for the Period January to December, Presentation to the Portfolio Committee to Home Affairs, 8 March 2016, accessed through the Parliamentary Monitoring Group (PMG): https://pmg.org.za/committee-meeting/22163/.
[220] Department of Home Affairs Annual Report 2018.
[221] See, e.g., *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others*, [2016] 8132/14, ZAWCHC, Founding Affidavit.

Town. Section 22 (asylum seeker) permits have been renewable anywhere between 1-6 months at the discretion of the administering office. The Refugees Act further mandates that asylum seekers go to RROs in-person for all steps in the application process, while refugee status determination decisions often take several years. Therefore, an asylum seeker would expect to go to an RRO several times before receiving a final refugee status decision. An additional requirement for asylum seekers and refugees to return to the RRO where they initially applied and the general refusal by the DHA to transfer files have been longstanding and contested internal policies (de la Hunt and Kerfoot 2008: 103). These practices have become even more important as numerous asylum applicants now only had a few RROs to file new applications.[222] If a new asylum seeker therefore originally applied for asylum in Musina, but found a job in Cape Town, she would be expected to return to the Musina office numerous times in the course of the application process. In the short term, the closure caused significant confusion for asylum seekers and relevant organizations, while in the long term, made it increasingly difficult to apply for and maintain asylum status. Heads of arguments and affidavits by civil society organizations and individual asylum seekers in these cases document in detail the significant costs that asylum seekers would incur to travel regularly to far-off RROs on a regular basis. Furthermore, asylum seekers risked losing their jobs due to frequent absences for travel. Additionally, considering that RROs had specific days for specific nationalities each week, combined with long waiting lines, asylum applicants often found that it took several days to access the RRO once they were there. Delays in accessing RROs led to increased costs in accommodation and missed work. In places like Musina, where accommodation and social networks might be limited, asylum seekers have also risked sleeping out waiting to access the RRO. Consequently, many asylum seekers

[222] See *Ntumba Guella Nbaya and Others v. The Director General of the Department of Home Affairs and Others* [2015] 6534/15, ZAWCHC.

and refugees were at risk of exploitation during these trips, as well as running the risk of encountering law enforcement and having to either pay bribes or be subject to detention, deportation, and possible *refoulement*.[223] Additional safety and health risks were documented for women traveling alone, with families, or pregnant. These risks were exacerbated by ambiguous and contested regulations against family joining and difficulties in adding dependents to existing asylum seeker and refugee permits.[224] Therefore, the relocation of RROs added significant risks and burdens for many asylum seekers and refugees, while acting as a deterrent in either applying for asylum or maintain legal status as an asylum seeker.

LITIGATION TIMELINE CONCERNING RRO CLOSURES

*Crown Mines, Johannesburg RRO*

In light of the various challenges that asylum seekers and refugees faced due to RRO closures, NGOs and legal organizations based in these cities filed litigation against the DHA. Litigation focused on having the decision to close the RROs in Johannesburg, Port Elizabeth, and Cape Town set aside, and ordering the DHA to re-open fully operational (i.e., receiving all asylum applicants) at RROs in these cities. Regarding the Crown Mines closure in Johannesburg, legal papers were first filed at the North Gauteng High Court in Pretoria on 16 September 2011.[225] The legal organization, Lawyers for Human Rights (LHR) filed on behalf of the civil society organizations, Consortium of Refugees and Migrants in South Africa (CoRMSA) and the Committee Body for Refugee Communities (CBRC). The application also included eight refugees who had been using the Crown Mines RRO but were no longer able to

[223] Interview, 16 March 2018.
[224] See *Scalabrini Centre of Cape Town and Others v. The Minister of Home Affairs and Others,* [2019] 5242/16 ZAWCHC.
[225] *Consortium for Refugees and Migrants in South Africa and Others v. Minister of Home Affairs and Others,* [2011] 573756/11, ZANGHC.

access and renew their refugee permits at the Pretoria RROs. The original notice of motion filed at the provincial high court in Pretoria was extensive, including proposed orders to declare the Johannesburg RRO closure as unlawful and to mandate the re-opening of an RRO in the city. It further dealt with issues at the existing RROs in Pretoria, seeking relief to increase productivity and efficiency in processing applications, investigate corrupt activities, and establish a system to receive public complaints against the office. Additional sought relief included demanding that all security guards wear uniforms; proper signage at the office; a "first come, first serve" applicant acceptance policy; no unnecessary force against asylum applicants, including the use of *sjamboks*; and the suspension of fines for late renewals. Additionally, the papers sought relief for the eight listed refugees to be able to renew their Section 24 refugee permits in Pretoria.

Therefore, the initial notice of motion called for both the reinstatement of the RRO in Johannesburg, but also individual relief to aggrieved asylum applicants and essentially a structural interdict against administrative practices at the Pretoria RROs. However, the court instructed the organizations to drop the various demands against the Pretoria RRO in this case and focus only on the RRO closure and potential re-opening in Johannesburg. The court order on 14 December 2011 found that the decision to close the office was unlawful based on procedural grounds in failing to consult the Standing Committee for Refugee Affairs (SCRA) as stipulated in Section 8(1) of the Refugees Act, and consulting with relevant parties, i.e., civil society organizations, as required by the Promotion of Administrative Justice Act (PAJA) 2000.[226] However, the court order did not require the Director-General of the DHA to re-open an RRO in the city, but to reconsider his decision to close the office. The Director-General never announced his reconsideration of the RRO closure, therefore not complying with the court order.

[226] *Consortium for Refugees and Migrants in South Africa and Others v. Minister of Home Affairs and Others* [2011] 573756/11, ZANGHC; see the Promotion of Administrative Justice Act (PAJA) 3 of 2000.

Civil society organizations however did not pursue litigation against this office and an RRO in Johannesburg has never been reopened. Instead, civil society organizations have focused on holding the DHA accountable at the Pretoria - Marabastad RRO through litigation concerning corruption, administrative violations, and the rights of asylum seekers and refugees.[227]

*Sidon Street, Port Elizabeth RRO*

> *We had promised on World Refugee Day that "a new Port Elizabeth RRO will be opened in October 2018", and today we are here to fulfil our promise!*
>
> Minister of Home Affairs, 18 October 2018[228]

In contrast to the Johannesburg case, litigation filed at the provincial Eastern Cape High Court (ECHC) in Port Elizabeth was always limited to finding the closure of the RRO unlawful and re-opening an RRO in the city.[229] The case was brought on by the same lawyers from Lawyers for Human Rights and advocates as the Johannesburg case. Lawyers from the locally-based Nelson Mandela Municipality University - Refugee Rights Unit (NMMU-RRU) provided further legal representation. Legal counsel represented the Somali Association of South Africa - Eastern Cape (SASA-EC) and another civil society organization, the Project for Conflict Resolution and Development (PCRD). There were no individual asylum seekers or refugees seeking relief in the case.

Litigation included Part A for immediate relief to reopen the Port Elizabeth RRO to new asylum seekers pending a judgment in Part B to set aside the decision to close the RRO and order the reopening of a fully operational RRO somewhere within the municipality. On 13 December 2011, the ECHC judgment ruled in favor of Part A of the application, ordering the DHA to

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[227] Interview, 16 March 2018.
[228] Press release, "Minister Malusi Gigaba: Re-opening of Port Elizabeth Refugee Reception Office, 19 October 2018; accessed at https://www.gov.za/speeches/statement-minister-home-affairs-19-oct-2018-0000.
[229] *Somali Association for South Africa, Eastern Cape (SASA) EC and Another v. Minister of Home Affairs and Others,* [2011] 3759/2011, ZAECHCPE.

reopen the Port Elizabeth RRO to new asylum applicants by 14 December 2011; not to impose fines for anyone whose permits expired between November 30 and December 14, 2011; and to immediately advertise the reopening in local newspapers.[230] On 16 February 2012, the same court ruled in favor of Part B and found that the Port Elizabeth RRO closure was unlawful again as a result of the Director-General making the decision without prior consultation with the Standing Committee for Refugee Affairs (SCRA).[231] In contrast to the Johannesburg case, the legal judgment in Part B ordered the DHA to open an RRO in Port Elizabeth to all asylum applicants by 1 October 2013 and for written progress assessments concerning the re-opening of the office. The DHA subsequently filed a leave to appeal to the Supreme Court of Appeal (SCA), which was denied on 28 August 2012.[232]

However, the DHA never reopened the RRO for new asylum applicants despite the court orders. Rather than complying with the court order, the Director-General of the DHA released a letter dated 9 December 2012 that stated that on 30 May 2012, he met with the SCRA regarding the closure of the office and received the SCRA's approval to keep the office closed.[233] The Director-General then held a meeting with the "refugee community" in order "to explain the challenges faced by the Department that had led to the closure of the refugee office and also what interim arrangements were being taken to assist asylum seekers and recognized

[230] *Somali Association for South Africa, Eastern Cape (SASA) EC and Another v. Minister of Home Affairs and Others,* [2011] 3759/2011, ZAECHCPE, Judgment, 14 December 2011.
[231] *Somali Association for South Africa, Eastern Cape (SASA) EC and Another v. Minister of Home Affairs and Others,* [2012] 3759/2011, ZAECHCPE, Judgment, 16 February 2012.
[232] See *Somali Association for South Africa, Eastern Cape (SASA) EC and Another v. Minister of Home Affairs and Others,* [2013] 3338/2012, ZAECHCPE, Judgment, 20 June 2013, para. 3.
[233] See Director-General (DHA) letter to Provincial Manager (DHA) of Eastern Cape, 12 September 2012; accessed in *Somali Association for South Africa, Eastern Cape (SASA) EC and Another v. Minister of Home Affairs and Others,* [2013] 3338/2012, ZAECHCPE.

refugees."[234] A subsequent letter reaffirmed the decision to keep the RRO closed to new asylum applicants with the intent of permanently closing down RRO operations in the city once all existing applications had been processed. In response, Lawyers for Human Rights took the DHA back to the ECHC– Port Elizabeth to challenge the lawfulness of the closure and to re-open the RRO for full operations. On 20 June 2013, the court again set aside the Director-General's decision to close the RRO and found the decision in violation of substantively consulting the SCRA and civil society organizations that represent refugees and asylum seekers in the city.[235] The court judgment ordered for the DHA to re-open a fully operational RRO in the municipality within three months from the date of the judgment.

Again, the DHA did not reopen the RRO to new asylum applicants despite this new court order. Instead, the department filed a leave to appeal with the SCA, which was accepted this time. On 25 March 2015, the SCA rejected the appeal and mandated that a fully operational RRO be opened in Port Elizabeth by 1 July 2015.[236] The SCA found that the Director-General's failure to consult respective parties and the decision to close the RRO without alternative arrangements in place were legally irrational and arbitrary. The DHA appealed the SCA decision to the Constitutional Court, which on 5 April 2015 refused to hear the case as it did not have a sufficient chance for success.[237] Therefore, nearly four years after the filing of initial papers, the DHA had run out of legal recourse in defending its decision to close the RRO in the Port Elizabeth. However, the RRO remained closed to new asylum applications after the SCA

[234] Director-General (DHA) letter to Provincial Manager (DHA) of Eastern Cape, 12 September 2012; accessed in *Somali Association for South Africa, Eastern Cape (SASA) EC and Another v. Minister of Home Affairs and Others,* [2013] 3338/2012, ZAECHCPE.
[235] *Somali Association for South Africa, Eastern Cape (SASA) EC and Another v. Minister of Home Affairs and Others,* [2013] 3338/2012, ZAECHCPE, Judgment, 20 June 2013.
[236] *Minister of Home Affairs and Others v. Somali Association of South Africa and Another,* [2015] 831/13, ZASCA.
[237] *Minister of Home Affairs and Others v. Somali Association of South Africa and Another,* [2015] 67/2015, ZACCT.

court order. Legal counsel for the organizations filed non-compliance papers to try to hold the DHA accountable to previous the court orders, while the department justified delays in implementation in terms of building procurement, budgetary issues, and letters of complaint by local businesses.[238] The RRO remained closed to new applications until 19 October 2018, when the DHA held an official ceremony attended by the department minister to reopen a new RRO location that, at least, officially would receive new asylum applications.[239]

*Voortrekker Road, Cape Town RRO*

On 7 May 2012, a "stakeholders meeting" was held at the DHA regional office at Barrack Street in central Cape Town prior to the closure of the RRO on Voortrekker Road.[240] The meeting was the first of a couple of meetings organized by the DHA prior to the office closure. During this meeting, a representative from the Scalabrini Centre of Cape Town (SCCT) sought clarity if there was a new policy to move the RRO out of cities to northern border crossings. By this time, the RRO in Johannesburg was completely closed down and the Port Elizabeth RRO was closed down pending the finalization of existing asylum seeker applications. In response, the DHA representative claimed that there was no such policy. Rather, the representative emphasized, that the meeting was about taking suggestions to keep an RRO in Cape Town in face of the pending termination of the access road lease that would soon close down the RRO on Voortrekker Road. One month later, on 8 June 2012, the DHA called a second stakeholders meeting this time confirming that there would not be a new RRO opened in Cape Town.[241] Only those existing asylum seekers and refugees who applied in Cape Town before 30 June 2012

[238] Director-General (DHA) letter to Lawyers for Human Rights, 18 January 2016.
[239] In subsequent correspondence, legal organizations have expressed concerns over issues of access and waiting times for new asylum seekers to file applications at these offices.
[240] Refugee Stakeholder Meeting minutes, 7 May 2012, accessed in *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others,* [2013] 11681/12, ZAWCHC.
[241] 2nd Refugee Stakeholder Meeting, 8 June 2012, accessed in *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others,* [2013] 11681/12, ZAWCHC.

would now be able to renew or extend their permits at a temporary facility back at the Customs House office. At this time, DHA representatives claimed that there was now a general policy to close down urban RROs in favor of moving these facilities to the country's northern borders.

Subsequently, Legal Resources Centre and the University of Cape Town Refugee Rights Unit worked with the same advocate from the Johannesburg and Port Elizabeth cases to file legal papers at the Western Cape High Court (WCHC) in Cape Town on 19 June 2012 against the impending closure of the Voortrekker Road RRO on 30 June 2012. The main applicant in the application the Scalabrini Centre of Cape Town, the South African branch of the global network of migrant and refugee rights organizations. Similar to the Port Elizabeth case, the application had two parts: Part A for immediate interim relief for new asylum applications to continue being accepted in Cape Town pending a decision in Part B to set aside the decision to close down the RRO and order the re-opening of a fully operational RRO in the city. On 25 July 2012, the WCHC ruled in favor of Scalabrini Centre to re-open the RRO to all asylum applicants while a decision in Part B was pending.[242] The judgment ruled that the closure was unlawful due to the lack of prior consultation with the SCRA.

On 19 March 2012, the legal judgment for Part B also set aside the decision to close the RRO in Cape Town and ordered the reopening of an RRO to all asylum applicants by 1 July 2013.[243] The closure was ruled unlawful based on procedural grounds in terms of failing to consult the SCRA and relevant civil society organizations, and on constitutional principles of legality and rationality in relation to the rights of asylum seekers and refugees. The DHA subsequently filed a leave to appeal, which was heard by the SCA. On 27 September 2013, the SCA further ruled that the closure of the RRO was unlawful due to a lack of prior consultation

[242] *Scalabrino Centre Cape Town v. Minister of Home Affairs and Others* [2012] 11681/12, ZAWCHC.
[243] *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others,* [2013] 11681/12, ZAWCHC.

with civil society organizations representing asylum seekers and refugees.[244] However, in contrast to the provincial high court judgments, the SCA judgment did not order the DHA to re-open the RRO in Cape Town. Rather, court orders required the Director-General to take a new decision concerning the office closure after additional consultation with civil society organizations. In the meantime, the DHA at Customs House continued to only process preexisting asylum and refugee permits and was still not receiving any new asylum applications after 30 June 2012.

Therefore, on 5 December 2013, the DHA held an additional stakeholders meeting in Cape Town to discuss the future of the Cape Town RRO, though without the Director-General attending the meeting.[245] DHA officials were careful to state that the no new decision had yet been taken regarding the closure of the office in light of the recent court rulings. The Deputy General of Immigration for the DHA also repeated that there was no policy to relocate RROs to the country's land borders. In addition to the ambiguity behind any policy shifts informing the closure decisions, many civil society organizations viewed the meeting as a formality and not a genuine consultation.[246] Civil society organization representatives pointed out that the Director-General and DHA rejected every suggestion proposed by civil society organizations and the UNHCR. Unsurprisingly, on 31 January 2014, the Director-General notified the attending civil society organizations of his decision to keep the Cape Town RRO closed. He sent an additional letter on 7 February 2014 with a list of justifications and reasons for the ongoing closure citing both difficulties in operating an RRO in Cape Town and general policy considerations in favor of

[244] *Minister of Home Affairs and Others v. Scalabrini Centre, Cape Town and Others,* [2013] 735/12, 360/13, ZASCA.
[245] Minutes of the Stakeholder Consultation Pertaining to the Future of the Cape Town Refugee Reception Office, 5 December 2013, accessed in *Scalabrini Centre and Others v. The Minister of Home Affairs and Others,* [2016] 8132/14, ZAWCHC
[246] *Scalabrini Centre and Others v. The Minister of Home Affairs and Others,* [2016] 8132/14, ZAWCHC, Founding Affidavit, 6 May 2014, para. 46; also, various correspondence with civil society organizations.

border offices.[247]

Consequently, Legal Resources Centre on behalf of the Scalabrini Centre of Cape Town and the Somali Association of South Africa (SASA) filed new legal papers against this decision.[248] The notion of motion filed on 9 May 2014 at the WCHC again sought to set aside the decision to close the Cape Town RRO and to order the re-opening of a fully functional office in the city. The judgment issued on 24 June 2016 ruled in favor of the DHA and the Director-General's legal authority to close down the Cape Town RRO. The ruling argued that the closure decision was a policy decision and that the court could not intervene based on the constitutional principle of separation of powers among government branches. The legal decision was appealed to the SCA, which heard the case on 4 September 2017.[249] By this time, the SCA had already issued the court order in 2015 for the Port Elizabeth RRO to re-open, which had still not been implemented by the DHA at this date. The judgment issued on 29 September 2017 ruled in favor of setting aside the decision to close the RRO and opening of a fully operational RRO in the city by 31 March 2018. The judgment ruled that the closure was unlawful based on constitutional principles of legality and rationality. The DHA appealed this decision to the Constitutional Court, which dismissed the appeal on 6 December 2017 as not having prospects for success.[250] Therefore, similar to Port Elizabeth, the DHA had finally exhausted legal recourse in keeping the RRO lawfully closed. However, over the five years of litigation and various legal orders, the DHA has kept the Cape Town office operating at Customs House closed to any new asylum applicants. In 2019, the DHA has blamed delays on budgetary issues and the procurement

[247] Director-General, Home Affairs, 7 February 2014, accessed in *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others*, [2017] 1107/2016, ZASCA.
[248] *Scalabrini Centre and Others v. The Minister of Home Affairs and Others,* [2016] 8132/14, ZAWCHC.
[249] *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others*, [2017] 1107/2016, ZASCA.
[250] *The Minister of Home Affairs and Others v. Scalabrini Centre, Cape Town and Others,* [2017] 279/17, ZACCT.

process of locating an appropriate building in the city, stating its plan to open a new RRO in Maitland by 1 June 2019, though this office has not yet been opened.[251] In the meantime, the department continues to discuss establishing the Lebombo office, increasingly understood as part of the proposed border "processing centres" formally mentioned in the 2017 White Paper on International Migration.[252]

## SHIFTING RHETORIC FOR CLOSING RROS

The reasons provided by the DHA for RRO closures and non-compliance with court orders to reopen RROs in Cape Town, Port Elizabeth, and Johannesburg are intertwined with contested local conditions and policy objectives. Both local reasons and policy objectives provided by the DHA were focused on the exclusion of asylum seekers from urban areas, especially in relation to employment opportunities. In the absence of legislation officially excluding asylum seekers from cities and confronted with civil society organizations seeking to the hold the DHA accountable to international and national law, the closure of RROs became a strategy to not only limit access to asylum permits and refugee status, but an attempt to limit access and residence in major urban areas with the most employment opportunities and political influence. Shifting arguments between policy reforms and urban conditions in justifying RRO closures and refusing to reopen RROs are therefore insightful in how the DHA has attempted to win favorable legal judgments and maneuver in face of civil society pressure and court orders against the department.

### *Contested Urban Conditions*

The DHA's justifications for RRO closures have ranged from court orders and urban conditions to policy decisions made at the executive level. Concerning urban considerations, the

[251] Interview, 17 April 2018; see Washinyira 2019.
[252] See Portfolio Committee on Home Affairs, 19 May 2020, https://pmg.org.za/committee-meeting/30253/.

DHA highlighted previous local business litigation and related court orders and terminated private leases leading to the closure of the specific RRO buildings in these cities. The DHA also pointed to difficulties in finding suitable locations that would fit the various criteria for an RRO and in face of resistance from local neighbors. For example, legal papers in Cape Town outline how the department sought out a new location in Cape Town in 2011 as an alternative to the temporary office on Voortrekker Road.[253] After an open tender process where it selected ten possible locations, of which only three buildings fit all the criteria for an RRO, the department selected one building to pursue for relocation. The DPW, on behalf of the DHA, sought out any objections from neighboring businesses to the proposed RRO and received complaints from three local businesses. One of the businesses detailed their complaints in a letter stating their willingness to challenge the potential RRO in court.[254] The location happened to be an adjacent building from the existing RRO off Voortrekker Road, and the local business drew on this experience to resist the relocation of the office. In general, the DHA relied on evidence from potential neighboring businesses in Cape Town and Port Elizabeth to illustrate the difficulties in finding a new building within these cities and metropolitan areas in general.

In its legal papers, the DHA also responded to alternative arrangements proposed by civil society organizations during various public comment submissions and stakeholder meetings with the department.[255] The main suggestions, particularly for Cape Town, were to allow new asylum applicants to apply at the existing "temporary" office, open multiple satellite offices that could divide tasks across multiple buildings in the city, and to open an office outside the Cape Town

[253] *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others*, [2016] 8132/14, ZAWCHC, First to Fourth Respondents Answering Affidavit, para. 27.
[254] See "Risk Assessment Report: DHA Offices Maitland," September 2010; accessed in *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others,* [2013] 11681/12, ZAWCHC.
[255] Selected civil society submissions accessed in *Scalabrini Centre, Cape Town and Others v Minister of Home Affairs and Others*, [2017] 1107/2016, ZASCA.

municipality whether in a smaller city or rural area in the Western Cape province. However, all these considerations were dismissed by the DHA. The Director-General contended that the existing offices at Customs House could not handle new asylum applicants in addition to processing existing applications, and that satellite offices or any offices in the region would face the same issues in delayed procurement times and potential complaints and litigation from neighbors. The Director-General further argued that satellite offices would lead to a duplication of services, waste of financial resources, and logistical problems.[256] Therefore, without addressing the fact that two of the three remaining RROs were centrally located in major cities, the DHA dismissed the option of operating RROs in these cities and urban areas more broadly.

*Urban Locations, Fraudulent Applications*

The DHA argued that it was not just issues in procuring buildings and zoning and nuisance issues, but also that RROs in cities directly encouraged misuse and abuse of the asylum system. In Cape Town, the Director-General highlighted an audit conducted before the office closure that 77% percent of asylum seekers were rejected as manifestly unfounded (73% of rejected applications) or unfounded (27% of rejected applications).[257] In the Director-General's December 2014 letter explaining the reasons for the continued closure of the Cape Town RRO to new asylum applicants and plans to permanently close down the office, he made the following points:

> 17. Economic migrants are exploiting South Africa's legislative framework and refugee services. Historically, they have been able to move to Cape Town and obtain work in Cape Town while the asylum adjudication process has taken its course.
>
> 18. Government is entitled to take steps to control the asylum adjudication process, including taking steps to restrict access to RROs in urban areas where access to RROs has historically been abused by economic migrants.

[256] Director-General, Home Affairs, 7 February 2014, accessed in *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others*, [2017] 1107/2016, ZASCA.
[257] Director-General, Home Affairs, 7 February 2014, accessed in *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others*, [2017] 1107/2016, ZASCA.

> 19. While taking such steps may result in hardship in some genuine asylum-seekers, this hardship must be considered in light of Government's legitimate need to regulate the asylum application process and access to RROs.[258]

Therefore, access to urban RROs was framed as a reason for abuse of the asylum system due to their proximity to economic opportunities. Implicit in this reasoning was that by limiting access to RROs and documentation in cities where employment opportunities were the highest such as Cape Town and Johannesburg, economic migrants would not be able to access Section 22 permits and related rights to work, study, and access public institutions such as healthcare.

*Contested Policy Shifts*

> *I also point out that in support of the Cabinet decision (to deploy members of the Defence Force to render border control and protection services at ports of entry), the Department is finalising policy to move existing Refugee Reception Offices (those in Cape Town, Port Elizabeth, Durban) close ports of entry.*
>
> Director-General of Home Affairs, 27 June 2012[259]

The listed factors against reopening RROs in cities were further supported by claims of a nascent policy decision to move RROs away from cities and open facilities at border crossings. The idea was to move RROs away from cities, including Durban, located away from the northern borders and to open offices at "ports of entry," understood for asylum seekers as the borders with Mozambique and Zimbabwe. Since 2008, there was an RRO established in Musina, which was hastily opened in light of the mass influx of Zimbabwean migrants at that time. According to legal papers, the department first projected that the Lebombo RRO would be open in 2012.[260] The budget and resources from the Cape Town and Port Elizabeth closures would ostensibly be

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[258] Director-General, Home Affairs, 7 February 2014, accessed in *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others*, [2017] 1107/2016, ZASCA.
[259] *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others,* [2013] 11681/12, ZAWCHC, Answering Affidavit, 27 June 2012, para. 22.17.
[260] *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others*, [2016] 8132/14 ZAWCHC, First to Fourth Respondents Answering Affidavit, para. 203.

used to fund the proposed Lebombo RRO. It was further apparent that the legal cases against RRO closures encouraged the DHA to attempt to fastrack opening the Lebombo RRO in support of keeping the urban RROs closed. An email about procuring property in Lebombo sent on 24 May 2012 from the DHA Chief Director: Property and Infrastructure Management to the Chief Architect of the Department of Public Works stated, "the main concern is that Home Affairs has to demonstrate to the courts (PE and Cape Town) that reception centres will be open soon."[261] While the DPW did locate possible premises for the RRO along the border, the DPW responded to the DHA that the procurement process would take longer than the DHA was hoping in light of the pending court cases and the office has not yet been constructed in 2020.[262]

The DHA's discussion of the proposed Lebombo RRO highlighted the oftentimes ambiguous and contradictory statements of the DHA in relation to proposed port of entry policies. The main legal issue with stating the closure of the urban RROs was in line with policy reforms was that there were no relevant formal policy documents drafted at this time (cf. Polzer Ngwato 2013). Any policy reforms would have to have gone through the various administrative procedures such as public comments and parliamentary review. Therefore, basing the closure of RROs on policy decisions that had not yet been drafted was open for legal criticism. Consequently, the DHA oscillated between claims of a policy decision to move RROs to the northern borders, above all at Lebombo, and denying that there were any plans or policies for such a move. Notoriously, in response to an internal Parliament question in April 2014, the Minister of Home Affairs was asked if there would be an RRO established at Lebombo. The

[261] Email from DHA Chief Director: Property and Infrastructure Management to the Chief Architect of the Department of Public Works, 24 May 2012; accessed in *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others,* [2013] 11681/12, ZAWCHC.
[262] See email correspondence between the DHA Chief Director: Property and Infrastructure Management to the Chief Architect of the Department of Public Works, 2012 and accompanying town planning report; accessed in *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others,* [2013] 11681/12, ZAWCHC.

Minister in her reply, simply stated, "No."[263] In legal papers, the Director-General claimed that the answer was correct as it only applied to that fiscal year and that the DHA did still have plans to open an RRO at the site, just not in 2014, which was an argument that was strongly rejected in by the courts.[264]

Therefore, by 2014, the DHA was publicly denying there was any "policy" to move RROs to borders. The following conversation, quoted at length, between the Deputy General and a lawyer from Lawyers for Human Rights (LHR) during the December 2013 stakeholders meeting in Cape Town summarizes this ambiguity and civil society organizations' frustration:

> LHR: Going back, Chair, to what you said about there being no policy to move offices to the borders – we have been involved with case from the beginning, from the closure of Crown Mines up to the closure of PE and observing the closure of the CT office. We have to say that every time that we get a new affidavit, there is a different way in which that policy is being phrased. The very first time – Cabinet had taken a decision after the JHB matter to move all asylum offices to the border and all asylum services to the border. In the PE case, Cabinet is considering a policy to move all asylum services to the border. Now, we are in some policy review stage of some sort. There has been no clarity on where this policy is going or what stage it is at. From what I understand, right now there is a research institution that has tendered to examine this policy.
>
> Chair: Which policy?
>
> LHR: To move asylum services to the border. I think I disagree with what you said – with respect. It was not clearly stated like that by the DG.
>
> Chair: Have you seen the policy? The question is asked: is there a policy? I said there is no policy.
>
> LHR: But the DG has said that there is – he said so in his answering affidavit.
>
> Chair: I will have to ask him to issue that policy but we are telling you now at this meeting that there is no policy on this. There are considerations about many policy changes and issues. A policy is one that is stated on paper and in practice. There is no such policy.
>
> LHR: Sorry to interrupt, but we need clarify from the DG about that – he had said that there is a policy, that it was stated by Cabinet, that Cabinet had made a decision. The Cabinet declaration however did not say that there is a policy. All that the Cabinet declaration said is that we are reviewing the border enforcement. That has been interpreted, at various times, by the Department

[263] Internal Question Paper No 6, Question 323, 14 March 2014, accessed at https://pmg.org.za/question_reply/491/.
[264] See *Minister of Home Affairs and Others v. Somali Association of South Africa and Another,* [2015] 831/13, ZASCA, Judgment, 25 March 2015, paras. 21-22.

> as there being a policy. We need a definitive answer from the DG as to whether there is a policy to move the office to the border.
>
> Chair: I represent the DG here and I am telling you that there is no policy.
>
> LHR: This last issue – the confusion – this debate about the policy comes about because we do not have any information. The only information that we have been able to glean from the Department in the last three years of this issue has been through the court papers. That's not the best way of doing it. We do not want to engage is that way. We want there to be future engagements with all the stakeholders regarding the future of the, or whatever future policy, about border moves, but also about services being provided at RROs. We also need to discuss other elements such as SCRA – how SCRA services are happening, how they are doing their work, the massive backlogs that they have. Also about RAB backlogs – this really feeds into the idea that there are not enough services being provided for the purposes of the Act. When the DG makes his decision, he must take all of these different elements into consideration.[265]

The ambiguity and lack of transparency around this policy shift and the Lebombo RRO continued in the legal papers. The Director-General subsequently claimed that the Lebombo RRO would only be operational by February 2016 but again that the implementation of the office was facing delays.[266] This discrepancy took on a surreal quality during the 2017 SCA case concerning the Cape Town RRO, as by then, the 2017 White Paper on International Migration had been released clearly outlining the department's proposal to open "processing centres" at border crossings in place of RROs. However, legally this information could not be considered retroactively in the court case, especially considering that the Lebombo RRO still had not been constructed.[267]

Similar inconsistencies in the DHA's legal arguments were found in the reasoning to move RROs to the borders in the first place. As illustrated above, a main concern was to restrict access to cities and employment opportunities for asylum seekers, as well as to gain further

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[265] Minutes of the Stakeholder Consultation Pertaining to the Future of the Cape Town Refugee Reception Office, 5 December 2013, accessed in *Scalabrini Centre and Others v. The Minister of Home Affairs and Others,* [2016] 8132/14, ZAWCHC.
[266] *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others*, [2016] 8132/14, ZAWCHC, First to Fourth Respondents Answering Affidavit, para. 121.
[267] In a recent Parliamentary Portfolio Committee, the Director-General referred to the existing Musina RRO as one of these "processing centres" in addition to the proposed Lebombo office; see Portfolio Committee on Home Affairs, 19 May 2020, https://pmg.org.za/committee-meeting/30253/.

control over the asylum process. Furthermore, the legal papers noted that centers at the country's borders would also facilitate detention and deportations by the DHA. For example, the Director-General's affidavit in the Johannesburg case submitted on 31 October 2011 stated,

> We believe that relocating the refugee Reception Office to the ports of entry will be in line with the policy direction of Department and will ensure that legisitimate asylum seekers will be able to be processed at the ports of entry before they get lost in the vastness of the country with the consequent difficulty of tracing them.[268]

However, as later legal papers show, the DHA also made the argument that border RROs would be favorable to asylum seekers and refugees. At a minimum, it was argued, and heavily contested, that the existing RROs were sufficient for dealing with the number of new and pending asylum applications.[269] Furthermore, the Director-General equated corruption, insecurity, and mismanagement of the RRO to its urban location, issues that would somehow be addressed by a border office. In his legal affidavit in the Port Elizabeth SCA case, the Director-General stated,

> The larger strategic issue for the Department was finding strategies for dealing with within its own ranks, the safety of asylum seekers as they travelled inland from ports of entry, and the preservation of their dignity and sense of security ensuring that they were able to renew their permits without having to fork out one cent in extortion money.[270]

Additionally, the DHA has framed the closure of urban RROs and opening of borders offices as an initiative to mitigate xenophobic violence, ostensibly by removing asylum seekers from cities and urban neighborhoods where they may be targeted by local South Africans. Therefore, urban RROs and cities were framed as violent and dangerous for asylum seekers who would be protected by the DHA at the country's borders outside of urban areas.

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[268] *Consortium for Refugees and Migrants in South Africa and Others v. Minister of Home Affairs and Others* [2011] 573756/11, ZANGHC*,* Respondents Answering Affidavit, 31 October 2011, para. 2.16.
[269] Director-General, Home Affairs, 7 February 2014, accessed in *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others*, [2017] 1107/2016, ZASCA.
[270] *Minister of Home Affairs and Others v Somali Association of South Africa and Another,* [2015] 831/13, ZASCA. Answering Affidavit, para. 97.5.

While legal judgments highlighted the cynicism of such statements in concealing the policy interests of the DHA, such arguments have highlighted the DHA's growing conviction that whether for security, economic, or political reasons, asylum seekers should be contained at the country's borders and not within cities.[271] Similar to the paternalistic and moralistic language used by the apartheid government to justify the removal and prevention of black South Africans from cities, containment of asylum seekers in rural border areas has been framed as a way to keep asylum seekers safe and respect their rights (cf. Vigneswaran 2008b). The argument also connects with narratives on the newcomer status of asylum seekers who have no real claim to urban residence or access to employment in cities (cf. Nieftagodien 2011). The relocation of RROs, in addition to various legislative reforms and regulations, has therefore been central in excluding and deterring foreign nationals from living in urban areas. However, the reasoning behind RRO closures – sometimes urban politics, other times national policy – has been heavily contested by legal organizations and courts judgments.

*National Policy, Administrative Justice, Executive Policy, and Urban Rights*

An ongoing legal distinction during litigation over RRO closures were whether such a decision fell under administration action or constituted a policy and executive branch decision. While the provincial courts all found that the decision constituted administrative action and was therefore subject to the Promotion of Administrative Justice Act (PAJA) 3 of 2000, the SCA found that the decision was a policy decision and therefore did not fall under the conditions of this act.[272] Regarding legal decisions, this distinction had little overall consequence in court orders. More important was the court's interpretation of its authority in ordering the DHA to re-

[271] *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others,* [2013] 11681/12, ZAWCHC, Judgment, 19 March 2013, para. 108; also, Interview, 20 July 2018.
[272] See Promotion of Administrative Justice Act (PAJA) 3 of 2000.

open an office or not (see Table 2). While the initial provincial court orders in Cape Town, Port Elizabeth, and Johannesburg did find the RRO closure decisions in violation of PAJA, the court order regarding the Johannesburg office did not order the DHA to re-open the office. Rather the judgment remitted the decision back the Director-General for further consideration after rectifying the procedural errors. The first SCA court order concerning the Cape Town RRO found that the RRO closure decision was not administrative, but rather an executive branch policy decision. While it did find that the Director-General still violated constitutional procedures to consult with the SCRA and civil society organizations, it also remitted the decision back to the Director-General after further consultation with relevant organizations. The subsequent 2014 WCHC judgment concerning the reaffirmation that the Cape Town RRO would remain closed concurred that the decision was policy-driven and did not find the Director-General in violation of any procedures or legal principles in making this decision. However, the SCA decisions concerning Port Elizabeth in 2015 and Cape Town 2017 accepted that RRO closures were a policy and executive decision, but also ordered the DHA to re-open RROs within specific timelines and to submit regular progress reports.

Consequently, a main factor in ordering RROs to re-open was the relative importance that judges placed on a particular city in relation to the rights of asylum seekers and refugees, in contrast to the policy considerations of the department. This consideration was particularly true in legal judgments that found the decision to close RROs as a policy and executive decision, rather than an administrative decision. The 2016 WCHC decision concerning the Cape Town RRO was the only legal decision that found the RRO closure to be lawful. The judgment accepted the Director-General's assertions around logistical and budgetary issues around urban RROs at face value. Cape Town was interpreted as a physical space and geographic location,

without necessarily considering the social networks and specific context of the city. The legal judgment stated:

> …whether or not an RRO ought to be located in a particular city or area, requires a consideration of a number of factors, including the demand for an RRO in a given city or area and the potential difficulties that might arise out of locating an RRO in that city or area. The complexities, costs and practical difficulties associated with accommodating RROs in urban areas, because of past experience, cannot simply be ignored.[273]

The judgment concurred with the DHA's argument that as a policy decision, the RRO closure was "polycentric" and took into consideration a variety of factors, and not just the apparent demand for the office.[274] Therefore, there was equal weight placed on the DHA's assertation around the difficulties and challenges of procuring and operating urban RROs in light of policy initiatives to move RROs to border crossings. The legal decision was based on the institutional history and policy objectives around RROs, as opposed to the specific social context of the city.

Furthermore, certain legal judgments that deferred to the Director-General's statutory authority in deciding to re-open RROs, pointed to broader constitutional principles as opposed to the specific urban context of these offices. The first SCA judgment on the Cape Town closure supported the separation of powers between the judiciary and executive in declining to order the RRO to re-open in the city. The judgment stated:

> The question whether a Refugee Reception Office is necessary for achieving the purpose of the Act is quintessentially one of policy. Where, and how many, offices will be established, will necessarily be determined by matters like administrative effectiveness and efficiency, budgetary constraints, availability of human and other resources, policies of the department, the broader political framework within which it must function, and the like. I do not think courts, not in possession of all that information, and not accountable to electorate, are properly equipped or permitted to make those decisions.[275]

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[273] *Minister of Home Affairs and Others v. Scalabrini Centre, Cape Town and Others,* [2013] 735/12, 360/13, ZASCA, Judgment, 27 September 2013, para. 34

[274] *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others*, [2016] 8132/14, ZAWCHC, Judgment, 26 June 2016, para. 41.

[275] *Minister of Home Affairs and Others v. Scalabrini Centre, Cape Town and Others,* [2013] 735/12, 360/13, ZASCA. Judgment, 27 September 2013, para. 58.

In this case, the specific location of the office, and especially specific urban context, was not relevant to the location of RROs viewed as primarily a policy and departmental issue. Therefore, while the court order did require further consultation with civil society organizations and for the Director-General to reconsider the closure decision, it fell short of mandating the re-opening of a Cape Town RRO. The court order deferred the decision to re-open the office as one of policy, under the authority of the Director-General in consultation with the SCRA and relevant stakeholders, excluding the decision from the more rigorous conditions under administrative justice and PAJA.

*RRO Re-openings and Rights to Cities*

While the DHA continued to frame the decision to close RROs as a matter of necessity and urgency in moving asylum operations out of major cities, civil society organizations sought to have these offices remain in urban areas. Therefore, as stated in the legal papers, the issue was not so much about opening an RRO in a new city, but rather reopening an RRO in a city where it already existed and where there was high demand for its services. As described above, civil society organizations had mixed success in provincial high court cases to have RROs reinstated in these cities. The majority of cases found that Director-General's decision to close RROs was unlawful based on procedural grounds, whether in terms of the Refugees Act or constitutional principles of administrative justice. While the lack of consultation with the SCRA was a general statutory violation, the lack of consultation with civil society organizations was directly related to their knowledge and work within these specific cities.

The DHA attempted to argue that principles of administrative justice could not apply regarding the closures of RROs, as they only affected future asylum applicants who had yet entered the country. Therefore, the department argued that it was not accountable to these

individuals and these individuals could not be represented by South African civil society organizations. However, the court rejected this claim. As stated in the first SCA legal judgment concerning the Cape Town RRO:

> In this case the Director-General was pertinently aware that there were a number of organisations – including the Scalibrini Centre – with long experience and special expertise in dealing with asylum-seekers in Cape Town. His representative, Mr. Yusuf, had specifically undertaken to consult with those organisations on any proposal close the Cape Town office.[276]

The court recognized the importance of civil society organizations as a central resource in cities with relatively large populations of asylum seekers and asylum seekers. Therefore, the location of civil society organizations – Scalabrini Centre in Cape Town; Somali Association of South Africa – Eastern Cape and the Project for Conflict Resolution and Development in Port Elizabeth; and the Consortium of Refugees and Migrants in South Africa and Coordinating Body of Refugee Communities in Johannesburg, was an important legal consideration in their representation of asylum seekers and refugees in these cities and their legal standing in court.

In general, legal decisions that found RRO closures to be unlawful and ordered them to be re-opened placed a heavier emphasis on the broader social context for asylum seekers and refugees. Civil society organizations argued that Section 8 of the Refugees Act was not about control over the asylum system, but to provide documentation and facilitate refugee status determination. Therefore, they argued that the location of RROs should be determined based on the convenience and demand for asylum seekers and refugees, and not solely for the security and policy interests of the DHA. Relocating RROs to facilitate deportations and limit access to employment in cities was viewed as contrary to the ethos of the Refugees Act that supported local integration and self-sufficiency of refugees and asylum seekers. Arguments around the

[276] *Minister of Home Affairs and Others v. Scalabrini Centre, Cape Town and Others,* [2013] 735/12, 360/13, ZASCA. Judgment, 27 September 2013, para. 70.

social context of these cities were received well by the provincial high courts and SCA. Accepting arguments by civil society organizations that asylum seekers did not randomly reside in various cities but were influenced by various social factors, legal judgments highlighted the challenges faced by asylum seekers in these cities. The 2015 SCA judgment related to the Port Elizabeth closure stated:

> The relevant authorities attempt to downplay the significance of the decision to close the PE RRO, contending its closure, coupled with the closure of the two other RROs gives rise to what it describes as 'inconvenience' for asylum-seekers. But that may well trivalise the vulnerability and desperate circumstances of many asylum seekers in the country. It does not appear to be disputed that most asylum seekers who have been forced to flee their countries of origin, would in all likelihood have exhausted their financial resources and other means after having travelled considerable distances to reach South Africa. As a result, many join family acquaintances and communities that are already established and who are able to help support them on arrival. If those communities are established in a particular geographic area of the country, such as the Eastern Cape, it goes without saying that that is where such persons will head. The suggestion by the relevant authorities therefore that asylum seekers freely choose to live and work in Port Elizabeth or the Eastern Cape and can likewise freely choose to live and work near one of the remaining RROs is untenable.[277]

Therefore, while acknowledging that the Refugees Act did not stipulate where RROs should be located, RRO closures were considered largely irrational considering significant demand for these offices and in the face of regular travel to the remaining RROs to maintain and renew permits.

The social relevance of these cities was also considered when challenging the logic of proposed RROs at the border areas. Building on public submissions by civil society organizations in response to the Cape Town RRO closure, the 2017 SCA judgment stated:

> …ports of entry are not even the most likely place where asylum seekers and refugees would need the facilities of a refugee reception office. The borders are not where work opportunities, accommodation and public facilities exist at sufficient scale.[278]

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[277] *Minister of Home Affairs and Others v Somali Association of South Africa and Another,* [2015] 831/13, ZASCA, Judgment, 25 March 2015, para. 28.
[278] *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others*, [2017] 1107/2016, ZASCA, Judgment, 29 September 2017, para. 63.

Moving the RROs to the borders was therefore interpreted as an ulterior motive and arbitrary reason to close the RRO in Cape Town and Port Elizabeth in relation to the Refugees Act and broader legal framework. The decision, although recognized as a policy and executive decision, was considered irrational and unlawful considering the significant demand for an RRO and potential access to economic opportunities, public institutions, and social networks in these cities. Furthermore, the judgment recognized the material and personal burdens of travelling regularly to other RROs for asylum procedures. Additionally, the judgment recognized that the Lebombo office had yet to be constructed, that a significant number of genuine asylum seekers utilized the offices, and sizeable asylum application backlogs. All of these factors made the closures further unreasonable and legally untenable. The judgment further challenged the sincerity of the DHA's attempts to find alternative locations within these cities and questioned the Director-General's claims that that it was impossible to find any suitable locations within these cities.

NON-COMPLIANCE WITH COURT ORDERS

An additional consideration in orders to re-open RROs was the degree of trust the judiciary had in relation to the DHA. Of particular concern was the history of non-compliance from the department in reference to court orders to re-open RROs. While still recognizing RRO closures as a policy decision, the later SCA decisions were more hostile to the DHA in face of increasing non-compliance with provincial court orders. The DHA had consistently refused to re-open an RRO in Port Elizabeth in spite of court orders in 2012 and 2013 by the provincial high court. By the time of the SCA case in 2015, the judgment did not hide the court's frustration with the department. The judgment stated:

> That the State must obey the law, is a principle that is fundamental to any civilised society. The logical corollary is that the State, its organs and functionaries cannot arrogate to themselves the right not to obey the law or elevate themselves to a position where they can be regarded as being

> above the law. That seems to be precisely what has occurred here. Unfortunately it seems to me, in the light of the history of this matter, that there is every likelihood of a future repetition of similar conduct on the part of the relevant authorities. That being so, a declaratory order, without more, will be inadequate and place an unfair burden on the successful litigants in a case such as this of grave systemic problems and when officials have proven themselves not deserving of trust.[279]

The SCA justified the order to re-open the RROs in Port Elizabeth and Cape Town partly in response to the non-compliance of the department and lack of trust of head officials. Additionally, the judgments recognized that the court orders were not about forcing the DHA to open an RRO where there never was an office previously, but rather to re-open previously existing offices in light of unlawful decisions to close them. Therefore, these final court decisions did not interpret re-opening decisions as violating the executive and bureaucratic or to overstep the authority of the judiciary branch. Rather, it was understood in the judgment that while respecting the principle of separation of powers, "courts are responsible for ensuring that unconstitutional conduct is declared invalid and constitutionally mandated and effective remedies are provided for violations of the Constitution."[280] Consequently, the final legal judgments concluded that while the decision to close RROs was essentially one of policy and not administrative, the decision was still subject to constitutional principles and oversight, particularly given the importance of these cities in relation to asylum seekers.

However, legal and civil society organizations increasingly recognized the limitations of litigation in face of non-compliance of the DHA in re-opening RROs. According to legal professionals involved in the cases, while pressure on compliance with the Johannesburg RRO was not pursued in light of other legal challenges against the Pretoria RROs and issues with the RAB and SCRA, organizations have put more pressure on the Port Elizabeth and Cape Town

[279] *Minister of Home Affairs and Others v Somali Association of South Africa and Another,* [2015] 831/13, ZASCA, Judgment, 25 March 2015, para. 36.
[280] *Minister of Home Affairs and Others v Somali Association of South Africa and Another,* [2015] 831/13, ZASCA, Judgment, 25 March 2015, para. 67.

offices.[281] Therefore, while legal organizations continued to put pressure on the DHA regarding its non-compliance, civil society organizations sought alternative strategies to pressure the department as well. As one lawyer involved in court proceedings said, civil society and legal organizations 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."[282] Advocacy organizations such as Sonke Gender Justice became increasingly involved in pressuring the DHA to re-open the Port Elizabeth and especially Cape Town RRO. The organization coordinated protests and rallies in front of Customs House as well as during Parliamentary Committee meetings and coordinated media and social media campaigns to pressure the department. MPs from the main opposition party, the Democratic Alliance (DA), took advantage of the opportunity to also publicly shame the DHA over these offices and non-compliance with court orders.[283] Consequently, after years of inaction, an RRO was re-opened in Port Elizabeth and the DHA began to acknowledge progress in locating and finding a site for the Cape Town RRO.

Political pressure on the DHA to re-open RROs has largely been limited to a committed group of civil society organizations and a few individual politicians without broader political support of the general public or political institutions.[284] It should be noted, that the department has still delayed the opening of the Cape Town RRO by citing delays in the procurement process by the DPW and budgetary issues. Additionally, the 2017 White Paper that has formally

[281] Interviews, 3 March 2018, 20 July 2018.
[282] Interview, 24 January 2018.
[283] Interview 17 April 2018.
[284] For example, while members of the Democratic Alliance (DA), the main opposition party in South Africa, have openly criticized the delays in re-opening RROs, the party itself released a policy stance on immigration that heavily emphasizes policing undocumented migrants and border control; see Democratic Alliance "DA Immigration Plan," 15 October 2018, accessed at https://www.da.org.za/2018/10/das-immigration-plan-will-secure-our-borders-and-stop-illegal-immigration.

proposed processing centres at the country's border continues to make its way through the parliamentary process, while border control remains a particularly powerful narrative across political parties and public opinion. Therefore, while the few committed civil society and legal organizations continue to work on holding the department accountable and in keeping an asylum system that is rights-based and embedded within cities, urban RROs remain under threat from increasing national pressure and global trends in restricting the movement and residence of asylum seekers and refugees within countries and especially cities.

## CONCLUSION

As elsewhere in the world, the South African government has increasingly securitized and criminalized asylum seekers and refugee management in efforts to limit and deter asylum seekers from the country. A primary policy tactic for the South African government has been the closure of RROs in cities where there has been high demand and where employment and social and family networks are most established. These policies have been resisted by a group of committed civil society and legal organizations and a relatively independent judiciary focused on upholding constitutional law. However, civil society organizations and legal institutions face limitations with the non-compliance of court orders and legislation by the DHA and a lack of broader political support for foreign nationals (cf. Landau and Amit 2014). The result of divisions between legal institutions and bureaucratic agencies has been ambiguous and nontransparent policies, while asylum management continues to remain unpredictable and uncertain for various actors and institutions. The ambivalence and partiality around RRO closures and re-openings reflect a broader bureaucratic logic in governing peripheral and marginalized categories of persons in the country and worldwide (Arendt 1968; Fassin 2011). The partiality and inefficiency of documentation around migration has a long history in colonial

and apartheid South Africa and fits broader patterns of governance of asylum seekers and refugees, and other categories of migrants, in contemporary national and global politics.

The lack of political incentives and actors supporting the rights of foreign nationals, for example, a critical voting bloc or political party, has limited the influence of judicial courts and civil society organizations in face of political parties and public opinion against the presence of asylum seekers and refugees, and foreign nationals in general. This lack of a broader political process, as opposed to economic nationalism which is common among most countries in the contemporary period, has created a relatively isolated judiciary, civil society organizations, and supportive media outlets from increasingly populist political parties and social movements and contentious politics in South Africa. There is a lack of incentives for municipalities or political parties to fully support the rights of asylum seekers and refugees, and foreign nationals in general, outside of politicized critiques of the DHA. Therefore, in a sense, there is a high degree of endogeneity among organizations supporting refugees and asylum seekers and court orders against the DHA that remain largely limited and isolated from broader national and urban politics and social movements in the country (cf. Edelman et al. 2010).

Finally, in addition to RRO closures, the DHA has implemented a series of legal amendments and regulations that further threaten the rights of asylum seekers in the country. Legal amendments and regulations include removing the right to work and study for asylum seekers, severely limiting the time frames for asylum seekers and refugees to access judicial assistance for appeals or detention, terminating asylum applications in light of expired permits, and severe restrictions on the political activities of asylum seekers and refugees in the country.[285] In addition to closing and relocating RROs, civil society organizations see these amendments as

[285] Refugee Regulations, 19 December 2019.

an effort to deter and remove persons from the asylum system and related economic opportunities and rights.[286] While many of these legal amendments are already being challenged by civil society and legal organizations, these amendments reinforce trends to not only restrict asylum, but to also further depoliticize refugees and asylum seekers.[287] Therefore, the department continues to rollback access to previously protected institutions and rights, including access to major cities, which reduces opportunities to participate in economic, social, and political structures in the country. While the case of RROs and limited access to asylum particularly highlights limits on economic and social rights, these limitations are directly related and informed by a lack of political rights and movements to make local and national government authorities and other institutions fully accountable to foreign nationals, including refugees and asylum seekers.

[286] Interview, 16 February 2018.
[287] See "Press Release: Scalabrini's 'abandonment' court case challenges constitutionality of South Africa's refugee law." 9 June 2020. https://scalabrini.org.za/news/press-release-abandonment-court-case-challenges-refugee-laws/

Table 2: Legal Judgments concerning RRO Re-openings (2011-2017)

| | WCHC - CT 2012 & 2013 | ECHC – PE 2011 & 2013 | NGHC – Johannesburg 2011 | SCA – CT 2013 | WCHC – CT 2016 | SCA – PE 2015 | SCA – CT 2017 |
|---|---|---|---|---|---|---|---|
| Administrative Justice (PAJA) | Y | Y | Y | N | N | Y | Y |
| RRO Closure Unlawful | Y | Y | Y | Y | N | Y | Y |
| Order RRO Reopening | Y | Y | N | N | N | Y | Y |

Note: The table illustrates that whether or not the decision to close an RRO was considered falling under PAJA in High Court or SCA judgments did not necessarily determine whether or not the court ordered the re-opening of that RRO. The court's interpretation of its own authority not was a more important consideration in ordering the DHA to re-open an office.

Figure 11: Map of Refugee Reception Offices 2012-2018


Note: Partially opened offices are shaded light (Cape Town and Port Elizabeth); fully opened offices are shaded dark (Pretoria, Durban, Musina). The top right RRO is Musina at the border with Zimbabwe and the star represents the proposed RRO at Lebombo at the border with Mozambique.

# CHAPTER SIX

# CONTESTED BORDERS: POLICIES, LITIGATION, AND CITIES

In this dissertation, I have analyzed the underlying political and legal contention over the operations and location of RROs in South African cities. Initially located in major cities across the country, many of the busiest offices were closed in face of local contestation and policy support for shifting asylum management to the country's land borders with Mozambique and Zimbabwe. However, RROs continue to mainly be located within cities with significant numbers of asylum seekers and refugees waiting each day at these offices, and legal and civil society organizations continue to pressure the DHA to re-open urban RROs that were previously closed. The case of RROs in South African cities highlights underlying tensions that challenge binaries between national and local, rural and urban, and public and private in the construction and contestation of internal borders and state institutions within cities. In this conclusion, I discuss the path dependent processes and contingent litigation that help explain the persistence of urban RROs and the ambiguous and partial administration of these offices and asylum policies more broadly in South Africa. I also review how litigation and politics concerning South African RROs have important implications for comparative cases in the Global South and North, and in furthering discussions around internal borders and state institutions with an emphasis on the physical location and related infrastructure of specific buildings and spaces.

## PATH DEPENDENT ADMINISTRATION AND CONTINGENT LITIGATION

There have been two competing institutional narratives around refugees and asylum seekers in post-apartheid South Africa: a rights-based legal definition and a bureaucratic label preoccupied with economic migrants abusing the asylum system. The inherent tension behind these identifications has led to two different territorial borders for asylum seekers and refugees.

First, a rights-based legal definition that emerged in resistance to apartheid encourages an urban-based asylum regime in which asylum seekers and refugees can have greater access to economic opportunities, social networks, and public institutions in cities. In contrast, a bureaucratic label preoccupied with economic migrants and abuse of the asylum system fits historical patterns of policing internal borders with removal from major cities, detention and deportation, and limited access to legal institutions. The tensions between urban locations and national borders highlights tensions within refugee management from the drafting of the 1998 Refugees Act to the 2017 White Paper on International Migration and recent Refugee Regulations. With political and bureaucratic preferences for border crossing centers stated as early as the late 1990s and gaining significant traction since the early 2000s to the present period, it may be somewhat surprising that urban RROs have continued to operate in some form at the present moment.

As this dissertation has shown, however, once RROs were officially established in major cities, they have been difficult for the DHA to fully remove them. Urban RROs were viewed by refugee and asylum seeker advocates as essential in realizing rights on the freedom of movement, employment, and general livelihoods in the absence of social accommodations and provisions (Handmaker 1999; Handmaker et al. 2008). Additionally, from an administrative point of view, RROs were also viewed as cost-effective involving a limited number of offices and a minimal amount of infrastructure and resources in the administration of asylum seekers and refugees. Therefore, in the early years of the 1998 Refugees Act and department Turnaround Projects in the mid-2000s, urban RROs were viewed as preferable not only in facilitating access to rights but also in terms of administrative control and resources. RROs in cities ensured that the DHA and other government agencies would not have to become involved in social accommodations specifically for refugees and asylum seekers who would be left to

support themselves within the country. The minimal administration of RROs, as compared to processing centers or refugee camps, was favorable for the DHA administration in operating these offices in terms of resources and documentation. Therefore, simply continuing with asylum administration in cities that started in the mid-1990s had administrative benefits in addition to the supporting the rights and livelihoods of asylum seekers and refugees.[288]

In spite of increasing pressures due to the rising numbers of asylum applicants, the lack of resources and capacity for the administration of applications, and persistent suspicion and lack of political will in supporting these institutions, urban RROs remained the primary asylum institution in South Africa in the 2000s. Prior to the enactment of the 1998 Refugees Act, the DHA was already facing a significant backlog of initial and appealed asylum applications, largely attributed by DHA officials as a result of economic migrants abusing the system. This backlog and suspicion of fraudulent applications has persisted and increased through the present period, especially in the absence of robust alternatives to regularize legal status and access work permits for undocumented migrants. RROs did not have the capacity to process the number of asylum applicants and did not have the political support to review each application under the full criteria of the Refugees Act. The result of this failure in capacity and administration has been litigation and civil society mobilization against the operations and regulations for RROs and asylum in general. Therefore, legal organizations increasingly challenged the DHA in court over the administration and capacity of RROs. One result of this legal pressure and subsequent court orders was to seek out alternative locations and buildings for RROs.

[288] A main point of confusion among civil society organizations around proposed processing centers has been around their funding and administration considering the high costs and required services to detain asylum seekers. For example, the DHA has stated that UNHCR would provide services at these centers without the prior knowledge, support, or consent by the UNHCR of this proposal (Interview, 5 December 2017).

The apparent commitment to urban RROs in alternative locations, as opposed to processing or transit centers, was reaffirmed by the department in the mid-2000s. Due to issues of feasibility and legality, the DHA continued to invest in newly established RROs with greater infrastructural capacity and improvements in staff, resources, and management. RRO reforms were based around the so-called "Centre of Excellence" RRO in Crown Mines, Johannesburg. While there was a significant amount of investment and planning behind this office and RROs in other cities, these reforms overlooked the practical implications of these offices in their specific locations. In cities with some of the busiest RROs – Johannesburg, Cape Town, and Port Elizabeth – large queues and overcrowding persisted as these offices continued to face rapidly increasing numbers of asylum applicants. The presence of these offices led certain local businesses to take legal action against these RROs to remove them from specific buildings due to zoning and public nuisance violations.

Local business litigation against specific RRO locations therefore was an important contingent event outside of conceptual models that focus on national politics and interest groups or municipal politics within formal government and civil society organizations affecting the administration of international migrants in cities (cf. Garbaye 2000; Freeman and Tendler 2012). Local business litigation against RROs fits better with models drawing attention to localized politics and spaces in the exclusion of foreign nationals, including refugees and asylum seekers, and urban residents more broadly (cf. Simone 2004; Landau ed. 2011, Landau and Amit 2014). Litigation against RROs was led by a certain number of well-resourced individuals and businesses in specific locations over contested properties. These business owners did not have anything to gain from having RROs in their vicinity and RROs were viewed negatively and problematic for their businesses. Local business litigation directly targeted the DHA and its

management of these offices, while attempting to avoid directly blaming refugees and asylum seekers for the issues caused by these offices. Instead, local businesses sought out apparent zoning violations and issues around sanitation, health, crime, traffic, and informal vending that were not limited to asylum seekers and refugees, but to the local economy of the offices themselves. The marginalized and racialized spaces that RROs represented in these neighborhoods were completely at odds with established social and spatial borders of these properties and streets. Local businesses were able to take legal action against the DHA and their management of these RROs to police and enforce these internal borders without appearing as overtly xenophobic or discriminatory. Caught between the mismanagement of the DHA and antagonism of local businesses, asylum seekers and refugees were stranded between state buildings and private properties as they tried to acquire or renew their legal status and avoid detention and deportation.

In spite of initial legal opposition against local businesses and delayed implementation of court orders to close down specific RRO locations, local business litigation provided an opportunity for the DHA to pursue policies of moving asylum administration towards land borders. Increasingly supported by the ruling ANC party under President Jacob Zuma and DHA head officials, closing down RROs in major cities became part of broader policy reforms to further securitize migration, strengthen national border controls, and limit the rights of asylum seekers. In face of issues of legality and civil society pressure to keep RROs in major cities, local business litigation provided a convenient resource in justifying closing down RROs in cities associated with economic opportunities and social networks, but also xenophobic attacks and violence against foreign nationals. From a path dependent perspective, local business

litigation became a contingent event that facilitated the DHA's closure of these offices in these cities, in spite of the actual content and intention of the court orders.

In fact, the only RROs that were fully or partially closed down have been in cities – Johannesburg, Cape Town, and Port Elizabeth – where the offices face legal action by neighboring businesses. The DHA continued to justify RRO closures and delays in re-opening these offices through legal rhetoric that emerged out of local business litigation: e.g., the difficulties in procuring a lawfully zoned property, public nuisance issues caused by large numbers of asylum applicants, and the general lack of feasibility in running urban RROs. The DHA had to increasingly rely on this rhetoric as legal professionals and court judgments questioned the closure of these offices without any formalized policy alternatives established. Therefore, while the ultimate result of policy preferences by the DHA and ANC, the department seized the opportunity that local business litigation and antagonism provided in closing down these offices, and increasingly relied on legal rhetoric in justifying the closures and delayed re-openings as an issue of local politics and urban administration initiated by local business litigation.

By the late 2010s, court orders clearly mandated the re-opening of RROs while the DHA policies increasingly formalized plans to move asylum administration to the land borders. Court orders had declared the closure of RROs as unlawful – both in terms of administrative procedures and constitutional rights – and had ordered the re-opening of offices in Cape Town and Port Elizabeth. Around the same time, the DHA published a Green Paper and later on the White Paper on International Migration that clearly stated the department's objectives of establishing "processing centres" for asylum seekers at land border crossings. The department has also shown significant degrees of non-compliance in delaying the re-opening of urban RROs.

In the meantime, remaining fully operational RROs in Pretoria, Durban, and Musina, and the partially operational RROs in Cape Town and Port Elizabeth, continue to face issues of access, corruption, and quality of refugee status decisions leading to further and ongoing legal action against these offices. Recent legislative and regulative reforms that went into effect in 2020 have made it increasingly difficult for asylum seekers to access legal assistance and maintain legal status, in addition to placing restrictions on the right to work and study for asylum seekers. However, while the current and proposed administrative landscape of RROs and asylum management has changed, the same administrative practices, ambiguous policies, and adversarial litigation have persisted. While deportations and detentions at the borders remain central to immigration enforcement in South Africa, especially with the large influx of Zimbabwean migrants starting in the mid-2000s, after nearly three decades of asylum administration in post-apartheid South Africa, the administrative system has largely remained urban-based but with an increasingly precarious and uncertain future.

## RROS AS INTERNAL BORDERS IN COMPARATIVE PERSPECTIVE

In this dissertation, I have argued that RROs represent contested internal state borders within urban spaces. RROs are state borders as they are run by the Department of Home Affairs (DHA) for the determination of legal status and provision of legal documents. RROs also represent urban borders in occupying specific buildings in urban neighborhoods subject to various local institutions, regulations, and interests. In the case of RROs, the DHA – a department within the executive branch of government – becomes an additional stakeholder within broader urban politics around property regulations and lawful occupancy of buildings. However, due to the fact that the office is dealing with a specific legal and bureaucratic category of foreign nationals, the operations and location of these offices have implications for lawful

residence and inclusion of international migrants in cities and the country more broadly. Therefore, the closure of urban RROs represents challenges to international migrant claims of rights within cities, while political and legal contention against these closures has contested the DHA's authority to determine where international migrants can or cannot reside within the country.

RROs are not the only bordering institutions for asylum seekers and refugees within the country. As highlighted by Yuval-Davis, Wemyss, Cassidy (2019), bordering processes incorporate a wide range of institutions and facilities in the separation and control of different legal and racial categories of persons. Many of these institutions are present within post-apartheid South Africa affecting the exclusion and differential inclusion of asylum seekers and refugees. While the country has sought to pressure neighboring countries from deterring asylum seekers from reaching the country, the country does not have the externalized infrastructure in either containing or processing asylum seekers outside the country. Within the country, South Africa has had an had an extensive detention and deportation infrastructure, whether based at the privately-run Lindela "repatriation centre" outside of Johannesburg or detention facilities run by the South African Police Services (SAPS) at the Zimbabwean border and across the country. Furthermore, in spite of legal protections, asylum seekers and refugees have had difficulty accessing public institutions such as education and healthcare facilities, as well as private institutions such as bank accounts and employment permissions (cf. Achiume 2014). In daily life, asylum seekers and refugees – similar to other urban residents in precarious conditions – may face numerous internal borders within the personal encounters, immediate locations, and local institutions where they reside and work outside of official legal and political institutions (cf. Landau and Freemantle 2016). The policing of foreign nationals in cities, which often

results in paying bribes or facing detention and possible deportation, represent an additional bordering process within the country (cf. Vigneswaran 2011). Acts of violence against foreign nationals, particularly in township and shack settlements, reinforce further bordering processes of exclusion and partial inclusion that complement official bordering institutions (cf. Landau ed. 2011). Additionally, during periods of widespread anti-foreigner attacks, the country has had temporary camp facilities to shelter and accommodate displaced persons, representing an exceptional spatial arrangement of exclusion and partial inclusion within the country for international migrants (cf. Peberdy and Jara 2011).

The various institutions and facilities of asylum management and immigration control therefore mirror many of the bordering processes and internal borders found elsewhere in the world (cf. Mezzadra and Neilson 2013; Yuval-Davis, Wemyss, Cassidy 2019). However, RROs primarily located in South African cities have unique characteristics making them an important – and relatively understudied – contribution to discussions on borders across the Global South and North. The important characteristics of RROs are a) the relative absence of the UNHCR and municipalities in refugee and asylum seeker administration; b) the limited mandate on legal documentation and refugee status determination; c) the importance of local politics, spaces, and buildings in challenging the sole jurisdiction of the DHA over these offices; and d) litigation as a primary civil society tactic and DHA non-compliance vis-à-vis legal frameworks and institutions, which has led to the partial and ambiguous operation and distribution of RROs.

The main administrative feature of RROs is their centralized administration under the DHA as opposed to full or partial administration by the UNHCR and local municipalities. The relative absence of the UNHCR and local municipalities in the registration and management of asylum seekers and refugees as legal and bureaucratic categories is an important feature of the

South African asylum system. Furthermore, the DHA Head Office has increasingly centralized operations and command over management at individual RROs and provincial officials. In contrast to cities such as Cairo, Egypt and Kampala, Uganda where the UNHCR has played more of a role in the registration and legal status for refugees and asylum seekers (cf. Grabska 2006; Sandvik 2012), RROs are institutions of the national state. While certain refugees and asylum seekers have targeted UNHCR offices with protest action, this has been directed to pressuring for resettlement to third countries and not legal status or documentation in South Africa.[289] Furthermore, in contrast to many countries in the Middle East and Europe where municipalities and provinces have either taken a direct administrative role in the registration, service provision, and local policies (cf. Janmyr 2016; Baban, Ilcan, and Rygield 2017; El-Kayed and Hamman 2018), municipalities and provinces in South Africa have largely played an ambivalent and indirect role in the management of asylum seekers and refugees often deferring to the national government. Asylum seekers and refugees in South Africa as individuals confront uncertainty with employers, healthcare and educational facilities, police forces, and other actors and institutions in South African cities that are not explicitly refugee institutions. RROs therefore remain the primary institution where individuals are identifiable as asylum seekers and refugees collectively in one particular location determining their status in legal and bureaucratic terms. South African law, whether adhered to or not by public officials at an individual level, still permits the freedom of movement and access to documentation of those asylum seekers who have managed not to be detained or deported. Therefore, RROs represent an uncertain border as asylum seekers and refugees risk rejection, detention, or deportation, in addition to legal status at these offices.

[289] See Ntseku 2019.

RROs – and the role of the DHA concerning asylum seekers and refugees in general – is focused on the administration and policing of legal status and not the provision of social services or other accommodations. The limited role of the state in the accommodation of refugees and asylum seekers was viewed by stakeholders as a way of limiting administrative costs, but also to reduce resentment from local South Africans, many of whom face extensive socio-economic precarity and inequality. RROs, therefore, differ from accommodation centers and public housing for asylum seekers and refugees, as found for instance in Western Europe (cf. Fontanari 2015; Casati 2018; Mayer 2018; El-Kayed and Hamman 2018). An asylum system built around RROs further differs from refugee camps or detention centers based on the spatial containment of asylum seekers and refugees and corresponding provision of services and accommodations (cf. Fabós and Kibreab 2007; Yacobi 2011), or camp-like arrangements in informal settlements and impromptu camps outside of cities and border crossings (cf. Fassin 2012; Agier 2016; Sanyal 2017; Agier et al. 2018). An important emphasis of these studies has connected the physical location of refugees and asylum seekers with their subjective experiences of exclusion and partial inclusion in local and national contexts outside of countries of origin (cf. Malkki 1992).

The case of RROs as an institution presents additional contribution in analyzing the underlying contention over the physical location of refugee status determination offices run by national state departments. It is outside the scope of this dissertation to look at the potential border spaces and bordering institutions where asylum seekers and refugees actually live in South African cities, or the subjective experiences of asylum seekers and refugees caught within the asylum system (cf. Fassin et al. 2017). It is further outside the scope of the study for a full detailed analysis of the country's extensive deportation structure and the Lindela and police

detention facilities (cf. cf. Vigneswaran 2020), as well as the temporary camp-like areas developed in face of xenophobic violence and the mass influx of Zimbabweans in the mid-2000s (cf. Polzer 2008b; Peberdy and Jara 2011; Betts 2013). However, the case of underlying political and legal contention around the operation of RROs in specific locations within South African cities provides a relatively understudied opportunity to analyze the complex and ambivalent factors in maintaining and contesting refugee and asylum seekers institutions within specific cities and urban neighborhoods and buildings. Overall, the experience of South African RROs over the past two decades has shown the DHA to respond to certain legal challenges and internal limitations, while also showing high levels of non-compliance and autonomy to legal institutions and legislative frameworks. The result of these contradictions has been an often ambiguous and partial administration of RROs leaving not only asylum seekers and refugees, but also civil society organizations, legal professionals, local residents, and lower-ranking DHA officers, uncertain and unclear about the department's official policies and administrative practices (cf. Hoag 2010).

The case of RROs in South Africa sheds further light on two processes that have been relatively understudied concerning state institutions and internal borders for refugees and asylum seekers in cities: contingent litigation brought on by neighboring residents and businesses against the presence of these offices, and the relative non-compliance of state departments in face of legal institutions and court orders. Tracing the various legal action taken by local businesses against particular RROs highlights the importance of local actors and institutions 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 Tendler 2012). By doing so, I build on contributions from the Global South in looking at the importance

of local politics and everyday relations, as opposed to official legal and policy institutions, for the protection of refugees and asylum seekers and urban residents more broadly (cf. Simone 2004; Simone 2009; Landau and Duphonchel 2011; Landau and Amit 2014; Lyytinen 2015; Landau and Freemantle 2016). However, while these approaches have often focused on implications for the individual protection and local relations, I have looked at the importance of urban politics and spaces in relation to the operations of RROs and legitimacy of the DHA within cities. Additionally, local business litigation concerning the location of RROs presents an alternative form of urban politics that differs from local actors developing municipal ordinances directly targeting undocumented migrants (cf. Varsanyi 2008; Ramakrishnan and Wong 2010; Steil and Ridgely 2011), or municipalities and civil society organizations establishing sanctuary cities or movements (cf. Chinchilla et al. 2009; Darling 2017). Rather, local business litigation in South Africa presents a more contingent case of local migration politics, in which local actors use existing zoning regulations and property laws to contest the presence and operations of state-run offices for their own interests. As local businesses were only activated against the DHA after RROs opened in their immediate vicinities and with the singular objective of limiting their operations or relocating them as soon as possible, their interests have differed from removing all asylum seekers from cities or challenging state policies more broadly.

While litigation has highlighted the contingent role that neighboring businesses may play on the operations and location of RROs, it also highlights the non-compliance of the DHA in implementing court orders and adhering to legislative frameworks. The closures of RROs can be understood as the implementation of nascent policies before these policies were put forth through the formal legislative processes and channels (cf. Polzer Ngwato 2013). Non-compliance of court orders extended from insufficient reforms and resources in running RROs, delays in

closing down RRO offices, and significant delays in re-opening offices. Legal professionals and organizations have faced significant issues with non-compliance of court orders and legislative frameworks regarding individual refugee status determination and detention cases (cf. Landau and Amit 2014), and this non-compliance is further reflected in the department's responses to class action and RRO-related litigation (cf. Amit 2011; Cote and Van Garderen 2011; Budlender, Marcus, and Ferreira 2014).[290] Considering difficulties in enforcing the compliance of court orders, the DHA has had significant room to co-opt, interpret, and evade court orders to further the department's interests in limiting access to asylum and the rights of asylum seekers.

The non-compliance of the DHA and the contradictory role of legal institutions – both central to challenging the DHA but also limited in accountability and scope – highlights an additional contribution in looking at the relationship between legal institutions and bureaucratic agencies concerning asylum administration (cf. Dauvergne 2008; Hamlin 2014). The limitations of litigation by civil society organizations also highlight the relative absence of political allies – whether political parties or other actors such as unions or co-ethnic voters (cf. Varsanyi 2005) – and lack of opportunities for long-term political participation and rights (cf. Bloemraad 2006). In the absence of political allies and incentives in support of asylum seekers and refugees across the political spectrum and the shortcomings of refugee mobilization in South Africa (cf. Amisi and Ballard 2006; Polzer and Segatti 2011), civil society organizations and legal professionals have been relatively isolated in their support for refugee and asylum seeker rights and protections. The absence of political allies is not so much a result of economic nationalism (cf. Klotz 2013), but rather a long history and current policies of disenfranchisement of the majority of foreign nationals – and citizen – within the country (cf. Segatti 2011). Civil society

[290] The issue of non-compliance was further highlighted in several interviews with legal professionals; e.g., interviews on 24 January 2018; 9 February 2018; 16 March 2018; 20 July 2018.

organizations and legal professionals have increasingly utilized other mobilization tactics around protests and media campaigns against the DHA's delays in re-opening RROs, pressuring the department to respond to these court orders. However, this mobilization faces limitations in appealing more broadly outside civil society organizations and connecting to local and urban politics outside of rights-based organizations (cf. Chatterjee 2004). The combination of adversarial litigation in face of DHA non-compliance and lack of transparency has further resulted in the ambiguous and tenuous administrative practices the department has utilized to further its interests in face of internal and external constraints on implementing new policy and legislative reforms (cf. Fassin 2011).

## IMPLICATIONS FOR FUTURE RESEARCH

The conclusions drawn from the dissertation research lead to two potential avenues for future research: a) further domestic and international comparative analysis of the role of urban politics and spaces over the location of state institutions concerning refugees and asylum seekers; and b) implications for the participation of refugees and asylum seekers, and political actors in general, in a political context that heavily favors litigation but faces extensive non-compliance. Further domestic comparison within South Africa could shed light on why RROs in certain neighborhoods did not necessarily trigger local antagonism and did not face litigation by local businesses in every city or neighborhood. Additional research could look into why certain actors and spaces become antagonized, while others do not either in South Africa or across other countries. Total numbers and overcrowding on their own do not necessarily explain the local business litigation against these offices, as the Pretoria RRO was also characterized by overcrowding outside the building. Furthermore, urban location does not fully explain local business litigation as the RRO in Durban has not faced litigation by local businesses, and this

office has not been closed despite earlier statements by the Director-General of the DHA.[291] Preliminary observations in this research point to a combination of factors such as the numbers of asylum applicants and availability of nearby open spaces, along with the nature and resources of local businesses in each area. While this dissertation has focused on tracing the various political and legal contention over RROs by local businesses, further systematic research could result in more concrete conclusions over negative cases where local businesses did not take the DHA to court.

At a broader analytical level, the implications of urban politics on the operations and location of RROs in South Africa presents a starting point for wider international comparison concerning urban buildings and spaces that are transformed into locations designated for refugee and asylum seekers. The majority of studies on internal borders and bordering processes have focused on the subjective experience of refugees and asylum seekers caught within these spaces (cf. Fontanari 2015; Casati 2018; Mayer 2018; El-Kayed and Hamman 2018), while overlooking the underlying political and legal contention around the use of specific buildings in particular locations for the accommodation, service provision, and documentation of refugees and asylum seekers. As the increasing numbers of refugees and asylum seekers confront various policies that often leave them waiting in ambiguous and precarious legal and material circumstances, local residents and institutions increasingly have reacted to often sudden transformations of spaces and buildings. Therefore, this study, which focused on one of the most established – and precarious and threatened – urban-based asylum administrations in the world, has important implications in understanding local and national reactions and policies to the presence of buildings and spaces associated with refugees and asylum seekers. The case of RROs in South

[291] See *Scalabrini Centre, Cape Town and Others v. Minister of Home Affairs and Others,* [2013] 11681/12, ZAWCHC, Answering Affidavit, 27 June 2012, para. 22.17.

Africa presents an opportunity for broader theoretical insights on internal borders and bordering processes drawn from the Global South, but applicable in understanding contemporary asylum politics and policies across the world (cf. Robinson 2006; Roy 2009).

Finally, this dissertation calls attention to the broader implications and limitations of litigation as primary tactic in the protection and resistance to policy and legislation reforms concerning refugees and asylum seekers. One important implication for future research could be the relationship between a political context that favors litigation and discourages political mobilization and the participation of refugees and asylum seekers and potential political allies (cf. Landau and Amit 2014). Litigation involves a significant amount of resources and expertise of institutions often working on behalf of or against the interests of those persons represented and affected by legal proceedings (cf. Brown-Nagin 2005; Edelman et al. 2010; Cummings 2018). Therefore, litigation favors those institutions with some degree of resources, expertise, and status, e.g., government departments, legal professionals, certain civil society organizations, and certain businesses, while providing limited inclusion of affected refugees and asylum seekers and other residents. For the minority of refugees and asylum seekers who access the legal system or participate in class action proceedings, their participation may be limited to providing interview material for affidavits and supporting evidence. Therefore, they may have a limited inclusion within these proceedings, and face internal boundaries due to the expertise and resources of the field (cf. Lamont and Molnar 2012). While outside the scope of this dissertation, future research could explore the experiences of asylum seekers and refugees who participate in legal proceedings, as well as those individuals and organizations that face barriers in accessing and participating in litigation. Considering the central role of litigation, especially in South Africa, a further analytical disaggregation of legal institutions and proceedings may

shed further light on the implications of participation within litigation.

In all, the dissertation calls attention to the disaggregation of borders that moves away from solely looking at international and national institutions, to incorporating local and urban spaces, actors, and institutions in relation to these broader institutions. Additionally, I argue that underlying political and legal contention around the location of state institutions concerning refugees and asylum seekers is an important and relatively overlooked feature of internal borders and bordering processes that often focus on the functions of these institutions. By looking at the importance of specific buildings, neighborhoods, and cities framed across a variety of local and national interest groups, this study sheds light on the ambiguous and precarious administration of RROs as a threatened institution in favor of political trends in removing and containing asylum seekers and refugees in South Africa and around the world. In doing so, it highlights inherent contradictions and complexities behind the establishment and implementation of state institutions within urban spaces for refugees and asylum seekers, but also urban residents and state institutions in general.

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