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SCALABRINI CENTRE OF CAPE TOWN AND SOMALI ASSOCIATION OF SOUTH AFRICA SEEK APPOINTMENT OF SPECIAL MASTER REGARDING THE RE-OPENING OF THE CAPE TOWN REFUGEE RECEPTION OFFICE

The [Scalabrini Centre of Cape Town](#) (SCCT) and [Somali Association of South Africa](#) (SASA) along with our legal representatives the [Legal Resources Centre](#) (LRC) have launched a new case against the Department of Home Affairs (DHA) in regards to its non-compliance with orders of the court regarding the operations of the Cape Town Refugee Reception Office (CTRRO). The present case combines two cases – the *Scalabrini* case and the *Nbaya* case – both of which found DHA's policies at the CTRRO unlawful and issued orders requiring DHA to comply. At the present time, both of these orders are not being implemented causing great hardship for asylum seekers.

The *Scalabrini* case, launched in 2014 by the SCCT, SASA and asylum seekers, resulted in the [Supreme Court of Appeal](#) (SCA) finding DHA's decision to close the CTRRO to new applications for asylum unlawful and irrational, and ordered DHA to re-open and maintain a fully functional RRO in the Cape Town metropolitan area by 31 March 2018; it further ordered DHA to report monthly on its progress in complying with the order.

The *Nbaya* case, launched in 2015 by the LRC on behalf of asylum seekers, which relates to the renewal of asylum permits of asylum seekers at the CTRRO who lodged their applications at other RROs around the country. In this case, the Western Cape High Court (WCHC) found that DHA's policy of refusing to renew asylum permits from other offices was unlawful and ordered DHA to renew the permits of asylum seekers residing in Cape Town or to be informed of any decision relating to his or her application through the CTRRO.

These orders have not been adhered to and asylum seekers remain undocumented and vulnerable to arrest, detention and deportation. Furthermore, they are unable to lawfully conduct work and are at risk of exploitation. These policies of exclusion have resulted in the collapse of the asylum system which has both caused great harm to [many individual refugees](#) and to the asylum system itself, which is now characterised by [immense backlogs](#) where it can take a [decade or more](#) to receive recognition of refugee status.

To date, the CTRRO [remains closed to new applicants](#) despite the 31 March deadline. Further, we have not received any official status reports on DHA's progress on re-opening the CTRRO. Despite this, DHA issued a [media statement](#) on 17 April 2018 stating that 'the Department of Home Affairs has no intention to disregard the judicial directive and we will duly respect the judgement' and further, that it has 'commenced with plans to comply with the order'.

Unfortunately, DHA has yet to comply with the order as the CTRRO remains closed and it has not yet provided progress reports. We have received a two-page letter dated 18 April 2018, addressed to the South African Human Rights Commission, making vague and unsubstantiated undertakings regarding the CTRRO's status. The letter included a project execution plan in which the deadlines had already



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passed without action. The plan indicated that the Department of Public Works has set a date of 1 October 2018 for new premises for the CTRRO to be occupied, well beyond the date of the SCA order. This is consistent with DHA's conduct in the Port Elizabeth RRO closure, which was also declared unlawful by the SCA who [ordered it to be re-opened](#) by February 2016; however, to date, it still remains closed to new applicants.

In the *Nbaya* matter, refugees [continue to struggle to access the CTRRO](#) and DHA is subjecting those with expired permits from other offices to an administrative fine process due to the expiration. Many have reported that DHA has advised them to report back to the CTRRO for assistance in June 2018; others have paid the fine but have not been able to resume their claims.

This process absurdly penalises asylum seekers for being unable to comply with DHA's unlawful policy and adds an extra and unnecessary administrative burden to the RRO's workload.

We have decided against bringing contempt proceedings against DHA, despite clear grounds to do so. Such an approach would have held DHA accountable for its non-compliance, but it would not have translated into protection for asylum seekers. We have lost faith in DHA's ability to ensure that proper implementation plans are put in place, deadlines are met and substantive and accurate reports are provided as ordered by the Courts.

It is our primary concern to have a functioning asylum system and that asylum seekers are able to access the protection they so desperately need.

Accordingly, we have consolidated the two cases into a new application where we are asking the court to fashion an effective and meaningful remedy to ensure DHA complies with the orders of the court.

The current application seeks to remedy this pattern of non-compliance and will ask the court to:

1. Declare that DHA are in breach of the order of the SCA in regards to the CTRRO being re-opened and maintained and the order of the WCHC in the *Nbaya* case.
2. Appoint a Special Master to oversee the compliance of the orders which shall include the implementation of interim measures to assist new asylum seekers prior to the full re-opening of the CTRRO and renewing the permits of asylum seekers who fall under the *Nbaya* order.

We believe that the appointment of a Special Master will assist in both finding solutions and reporting to the Court on measures taken to comply with the Court orders. We believe this will allow for better coordination and proactive problem solving to ensure refugees are able to access protection in Cape Town.

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