



## home affairs

Department:  
Home Affairs  
REPUBLIC OF SOUTH AFRICA

DHA-57

230 Johannes Ramokhoase Street, Private Bag X114, PRETORIA, 0001  
Parliamentary Office, 120 Plein Street, Private Bag X9048, Cape Town, 8000

TO : ASYLUM SEEKERS AND REFUGEES  
ASYLUM SEEKER AND REFUGEE STAKEHOLDERS

**RE : THE DECISION OF THE DIRECTOR-GENERAL OF THE DEPARTMENT  
OF HOME AFFAIRS ON THE FUTURE OF THE CAPE TOWN REFUGEE  
RECEPTION OFFICE (“CTRRO”)**

1. I have consulted pursuant to the order of the Supreme Court of Appeal in the matter of the Minister of Home Affairs v Scalabrini Centre, with relevant interested stakeholders and organisations representing the interests of refugees (“Refugee Stakeholders”) in relation to the future of the CTRRO. This consultation was held on 5 December 2013 pursuant to an invitation for submissions. I thereafter consulted the Standing Committee for Refugee Affairs (“SCRA”) on 27 January 2014, and have since received their submissions. After due and careful consideration of both the written and oral submissions of the Refugee Stakeholders, as well as the submissions made by SCRA, I have come to the following decision:

The CTRRO is to remain closed and the Cape Town Temporary Refugee Facility ("CTTRF") situated at Customs House, Lower Heerengracht, Foreshore, Cape Town will continue not to accept applications for asylum in respect of any person who did not apply for asylum at the CTRRO on or before 30 June 2012, and the CTTRF is to be closed completely upon finalisation of the applications referred to below.

2. The process of winding down the operations and functions of the CTRRO will continue to be conducted at the CTTRF. The following services will be provided at the CTTRF:
  - 2.1 The finalisation of all existing applications lodged by asylum seekers on or before 30 June 2012 at the CTRRO, including the extension of their section 22 permits, pending the finalisation of their applications;
  - 2.2 The granting of limited once off extensions of no fewer than 6 months of section 22 permits to the holders of those permits who applied for them at a Refugee Reception Office ("RRO") other than the CTRRO, subject to the express condition that they attend in future at the RRO at which they originally applied for asylum;
  - 2.3 The CTTRF will entertain applications for the transfer to the CTTRF of the files of those who applied for asylum at a RRO

other than the CTRRO, in exceptional circumstances only and on a case-by-case basis whilst the CTTRF is still in the process of winding down.

3. The holders of section 24 permits may continue to submit their applications for refugee identity and travel documents at the Cape Town Regional Office of the Department of Home Affairs, Barrack Street, Cape Town.
4. All new asylum seekers in South Africa, including those who were in the Western Cape after 30 June 2012 and who have not presented themselves for processing at a RRO in South Africa, must attend the RRO at Musina, Pretoria or Durban for the processing of their applications for asylum.
5. The reasons for my decision will be provided by no later than Friday, 7 February 2014.



**Mkuseli Apleni**

**Director-General: Home Affairs**

**31 January 2014**



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TO : ASYLUM SEEKERS AND REFUGEES  
ASYLUM SEEKER AND REFUGEE STAKEHOLDERS

**RE: REASONS FOR THE DECISION OF THE DIRECTOR-GENERAL (“DG”)  
OF THE DEPARTMENT OF HOME AFFAIRS (the “DEPARTMENT”) MADE  
ON 31 JANUARY 2014 IN RESPECT OF THE FUTURE OF THE CAPE TOWN  
REFUGEE RECEPTION OFFICE**

1. On 31 January 2014, I made a decision that the Cape Town Refugee Reception Office (“CTRRO”) is to remain closed and that the Cape Town Temporary Refugee Facility (“CTTRF”) situated at Customs House, Lower Heerengracht, Foreshore, Cape Town, will continue not to accept applications for asylum in respect of any person who did not apply for such at the CTRRO on or before 30 June 2012, and that the CTTRF is to be closed completely upon finalisation of the applications referred to in my decision. A copy of my full decision is attached as annexure “A”.
2. The reasons for my decision are set out below and will be addressed in the following sequence :

- 2.1 establishment of Refugee Reception Offices (“RROs”) in South Africa;
- 2.2 re-opening/maintaining a fully functional RRO in Cape Town;
- 2.3 closing/not re-opening a fully functional RRO in Cape Town;
- 2.4 effects of the closure of the CTRRO.

#### **ESTABLISHMENT OF RROs IN SOUTH AFRICA**

- 3. Section 8 of the Refugees Act, 1998 (the “Refugees Act”) empowers the DG to establish RROs in the Republic. To this end, RROs were originally established in Pretoria (Marabastad), Musina (Limpopo), Braamfontein/Johannesburg (Crown Mines), Durban, Port Elizabeth and Cape Town.
- 4. The Crown Mines RRO and Port Elizabeth RRO have since been closed. On 30 May 2012, I decided that the CTRRO would be closed to new applicants for asylum with effect from 29 June 2012. Following the closure of the CTRRO, the only RROs where new applications for asylum can be processed are those at Musina, Pretoria and Durban.

**RE-OPENING/MAINTAINING A FULLY FUNCTIONAL REFUGEE  
RECEPTION OFFICE (“RRO”) IN CAPE TOWN**

5. Stakeholders proposed that the CTRRO should not be closed. They submitted proposals concerning the re-opening / maintenance of the CTRRO, including the following:
  - 5.1 using Customs House as a fully functional RRO;
  - 5.2 establishing satellite offices which could deal with the different services of a RRO; or
  - 5.3 establishing a RRO outside the borders of the Cape Town metropolitan area.
6. I have duly considered the above proposals and have come to the conclusion that each of them poses legal and practical difficulties that militate against re-opening/maintaining the CTRRO. I now turn to deal with each of the said proposals.

**Customs House**

7. The CTTRF at Customs House is being used as a temporary facility to provide limited services to asylum seekers who applied at the CTRRO

prior to 29 June 2012. The services at the CTTRF are provided under difficult and challenging circumstances as would appear from what follows:

- 7.1 The Department has already been threatened with litigation concerning the CTTRF and runs the risk that neighbours and interested persons will institute legal proceedings (similar to those previously instituted in respect of the CTRRO) should a fully functional RRO be opened at Customs House.
- 7.2 The available space at Customs House cannot accommodate large numbers of people.
- 7.3 There are also occupational health and safety as well as security concerns at Customs House. In this regard, I have considered the following factors:
  - 7.3.1 The Department currently only occupies three (3) floors at Customs House: the mezzanine floor, the ground floor and the fifth floor. The Department's current clients (existing asylum seekers and refugees) are being served on the mezzanine and ground floors.

- 7.3.2 The mezzanine and ground floors are the only ones in the building where asylum seekers are presently being serviced. However, the rooms on these floors are not big enough to service the number of clients who would need to be serviced if a fully functional RRO were to be opened at Customs House.
- 7.3.3 These two floors are also the only ones which can be safely used by a large number of clients at any one time. This is particularly so, as these floors are the only ones with entrance doors that lead directly to the outside of the building. Moreover, access to the rest of the building is restricted to one access door in front of the building, with lifts going to the other floors. There is furthermore only one fire escape on each side of the building.
- 7.3.4 The rest of the building was not designed and is not suitable to accommodating disabled clients nor is it suitable to accommodate a large number of clients with small children as was previously the case when the CTRRO was operational at Airport Industria and Maitland.



Satellite Offices

8. In terms of the provisions of the Refugees Act, it is not legally permissible to split the services of a RRO and have them dealt with at different locations. This much is clear from the judgment of Rogers, J in the **Scalabrini** matter, where he sets out the legal position in this regard.
9. In addition, should the granting of section 22 permits and the determination of status be dealt with at different locations (as suggested by stakeholders), this would lead to logistical difficulties in relation to file transfers that would complicate any fast-tracking of status determination, which will not be conducive to good asylum seeker management.
10. Operating a RRO through a number of satellite offices would also require the Department and the Department of Public Works ("DPW") to identify suitable premises which would be a time-consuming process.

RROs outside the Cape Town Metropolitan Area

11. The Department will be largely dependent upon the DPW for the procurement of suitable premises at a location outside the Cape Town metropolitan area. The lengthy procurement process is explained in further detail below.

12. Locating a RRO outside a metropolitan area would likely reduce but not eliminate the risk of future litigation.
13. While locating a RRO outside the Cape Town metropolitan area might give rise to fewer problems than have previously arisen at the CTRRO (in relation to, for example, nuisance concerns), in light of the remaining factors that I have considered, I do not regard this as a sufficiently compelling basis for re-opening/maintaining a fully functional RRO in or around Cape Town.

#### **RRO IN CAPE TOWN METROPOLITAN AREA**

14. The following factors relating to the operation of the CTRRO in the Cape Town metropolitan area and the difficulties in locating suitable premises (each of which were raised in the **Scalabrini** litigation and which I believe remain relevant) have been considered by me :

14.1 The Department historically experienced great difficulties in maintaining and running the CTRRO in the Cape Town metropolitan area. It has been faced with expensive litigation, resulting in court orders to close the CTRRO as a result of various factors, in particular, nuisance factors and the breaching of zoning regulations.

- 14.2 Stakeholders have suggested that it is the Department's own shortcomings that have led to these problems and that they could be overcome by better management and planning.
- 14.3 The large number of applicants that have previously used the CTTRO has given rise to logistical difficulties that have been difficult to manage. Re-opening/maintaining a fully functional RRO in Cape Town would require the Department to deploy substantial additional resources to ensure that the RRO is free from the nuisance and disturbance concerns that have previously arisen.
- 14.4 The Department has conducted extensive searches for alternative premises, which have not been successful. This search process was conducted together with the DPW.
- 14.5 As previously explained by the Department in the Scalabrini matter, the process of securing suitable premises is a complex and time-consuming one. The DPW's Asset Management Unit estimates that the process could take at least a year-and-a-half to two years to complete.
- 14.6 The previous difficulties faced in securing suitable premises, the time frames and complexities involved in the procurement process

and the additional resources that would need to be deployed to ensure that the previous nuisance concerns do not arise, are all factors that have contributed to my decision not to re-open/maintain a RRO in Cape Town or the Western Cape.

**CLOSING/NOT RE-OPENING A FULLY FUNCTIONAL RRO IN CAPE TOWN**

15. In addition to the factors referred to above, I have considered the following factors and circumstances in reaching my decision:

*Control of asylum seeker process*

16. The majority of asylum seekers who previously applied at the CTRRO were not genuine asylum seekers, but economic migrants who came to Cape Town in search of work. This is borne out by a comprehensive audit of files at the CTRRO prior to my decision of 30 May 2012. This audit revealed that approximately 77% of the applications adjudicated from 2008 to the date of the audit were rejected as either manifestly unfounded (73%) or unfounded (27%).
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 application process has taken its course.

18. Government is entitled to take steps to control the asylum application process, including taking steps to restrict access to RROs in urban areas where access to RROs has historically been abused by economic migrants.
19. While taking such steps may result in hardship to 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.

*Cape Town as a Port of Entry*

20. The Department's records show that very few of the asylum seekers who utilised the services of the CTRRO entered South Africa through Cape Town's two ports of entry (Cape Town Harbour and Cape Town International Airport). The Department's NIIS records indicate that fewer than 10 persons per month entered through the above ports of entry during the period 2008 to 2012.
21. The vast majority of applicants who historically utilised the services of the CTRRO entered the country through borders in the north of the country.

22. The small number of asylum seekers who enter the country through Cape Town militates against re-opening/maintaining a fully functional RRO in Cape Town.

Existing RROs sufficient

23. I am of the opinion that the three remaining RROs at Musina, Durban and Pretoria are sufficient to serve the needs of asylum seekers and refugees in South Africa and the purposes of the Refugees Act. I have considered the view of the stakeholders that there are backlogs at the above RROs and that these backlogs will increase with the closure of the CTRRO. To the extent necessary, additional resources and measures will be deployed in order to meet any increased flow of asylum seekers at these RROs.
24. Significantly, the Department's records show that the number of asylum seekers in South Arica has decreased over the last few years.
25. While I take cognisance of stakeholders' views that RROs should be maintained and opened in urban or metropolitan areas where there are more job opportunities, I do not regard this as a sufficiently compelling basis for re-opening/maintaining a fully functional CTRRO in light of the aforesaid and remaining factors which I have taken into account.

### **EFFECTS OF THE CLOSURE OF THE CTRRO**

26. In my decision to close the CTRRO, I made provision for a process of winding down the operations and functions of the CTRRO. The following services will be provided at the CTTRF during this period:

26.1 The finalisation of all existing applications for asylum lodged on or before 30 June 2012 at the CTRRO, including the extension of the section 22 permits of such asylum seekers, pending the finalisation of their applications.

26.2 The granting of limited once off extensions of no fewer than 6 months of section 22 permits to the holders of those permits who applied for them at a RRO other than the CTRRO, subject to the express condition that they attend in future at the RRO at which they originally applied for asylum.

26.3 The CTTRF will entertain applications for the transfer to the CTTRF of the files of those who applied for asylum at a RRO other than the CTRRO, in exceptional circumstances only and on a case-by-case basis, whilst the CTTRF is still in the process of winding down.

27. In deciding that these functions are to be conducted at the CTTRF, I considered the following factors :

27.1 In relation to asylum seekers who lodged their applications at RROs other than the CTRRO, but who now live and work in Cape Town, these asylum seekers are currently obtaining extensions of their section 22 permits in Cape Town as a result of court orders and the undertaking by the DG to extend their permits until the finalisation of the **Scalabrini** matter. The following observations are made in respect of this group:

27.1.1 There are legal difficulties in relation to continuing to offer extensions at the CTTRF as it is not a fully operational RRO (as identified by Rogers J in the **Scalabrini** decision);

27.1.2 Whilst a section 22 permit allows an asylum seeker to live and work anywhere in South Africa, this does not absolve an asylum seeker from attending in person at a RRO in order to finalise his/her application.

27.1.3 Asylum seekers in Cape Town whose applications are not to be dealt with to finality at the CTTRF and who will need to present themselves at the RRO at which they



applied, will be given a period of not less than six months within which to do so. I consider this to be a sufficient period of time to enable them to make the necessary arrangements to do so.

27.1.4 There may be exceptional circumstances that warrant the transfer to the CTTRF of the files of those who applied for asylum at a RRO other than the CTRRO (including circumstances where proceeding to the RRO at which the asylum seeker applied is not possible). These exceptional circumstances are difficult to anticipate and will accordingly be dealt with on a case-by-case basis whilst the CTTRF is still in the process of winding down.

27.2 Stakeholders have presented lists of new asylum seekers who were in the Western Cape between 30 June 2012 and 31 January 2014 and who had not presented themselves for processing at a RRO. These asylum seekers should have presented themselves at an existing RRO as the CTRRO had been *de facto* closed since 30 June 2012.

28. I am satisfied that the existing RROs and the measures that have been put into place in respect of the winding down of services at the CTTRF

are sufficient to serve the needs of existing asylum seekers and refugees and new asylum seekers who may wish to apply for asylum in South Africa and that the existing RROs are sufficient for the purposes of the Refugees Act.

M APLENI

A handwritten signature in black ink, appearing to read 'M Apleni', written over a horizontal line.

Director-General: Home Affairs

7 February 2014