

FOLLOW-UP PERFORMANCE AUDIT

of the immigration process for
illegal immigrants at the
DEPARTMENT OF HOME AFFAIRS



AUDITOR - GENERAL
SOUTH AFRICA

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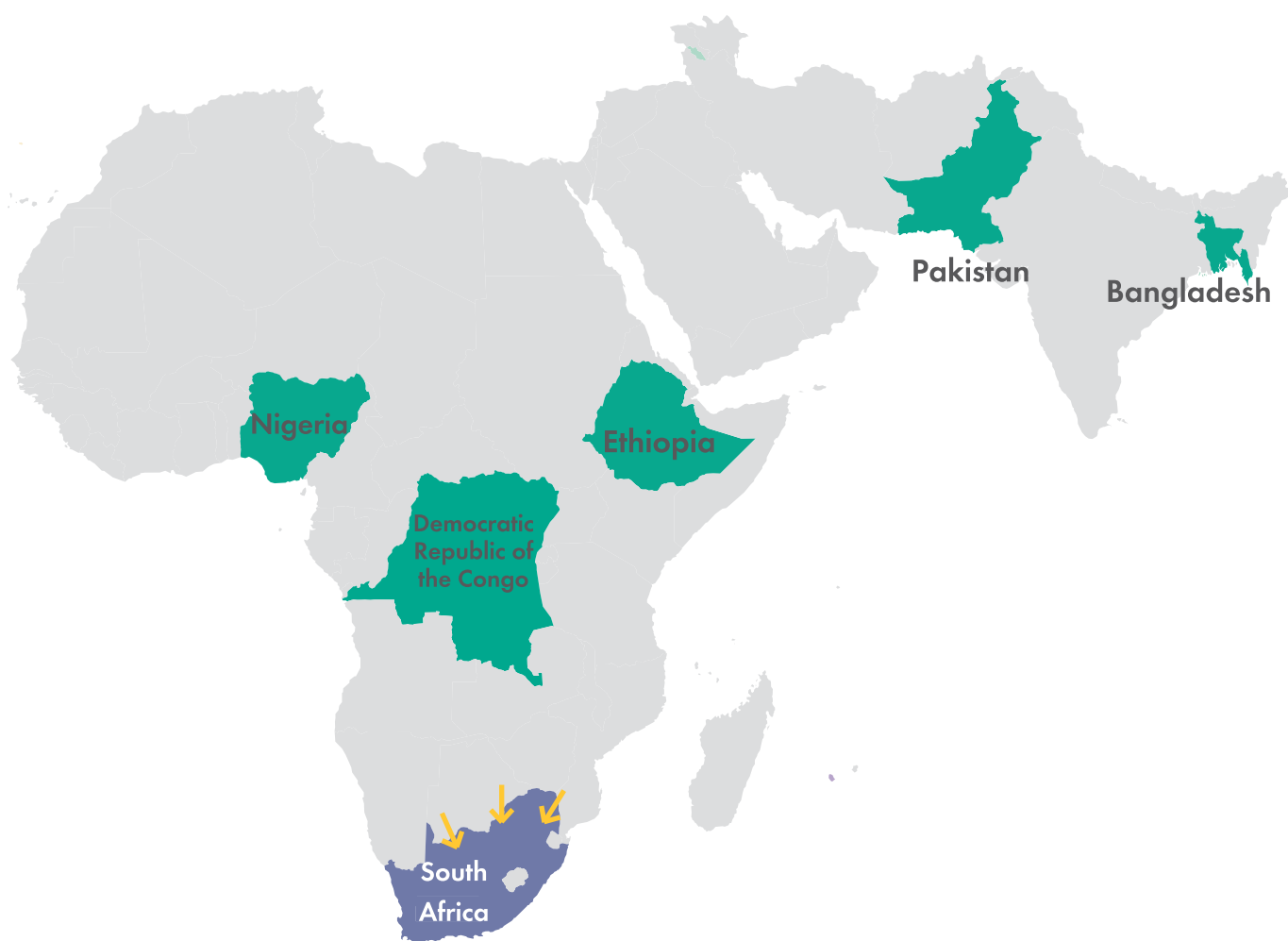


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The five countries with the most asylum seekers in South Africa in 2017, excluding neighbouring Zimbabwe





Foreword



Illegal immigrants entering and residing in the country have a direct impact on the country's resources



I am pleased to present a report on the follow-up performance audit of the immigration process for illegal immigrants¹ at the Department of Home Affairs.

This audit follows the 2007 follow-up performance audit (RP 29/2007) of the immigration process at the department. The first performance audit of the migration process was conducted in 2000 (RP 125/2000).

This audit was done in terms of section 5(1)(d) of the Public Audit Act, 2004 (Act no. 25 of 2004).

Immigration in South Africa, as in the rest of the world, remains a key issue. Illegal immigrants entering and residing in the country have a direct impact on the country's resources, the health and education sectors, and employment.

This audit evaluated the department's progress in managing the immigration process since 2007, focusing on whether the previous findings still existed.

It revealed findings similar to the previous audits and, in some instances, a regression in the environment. This audit was conducted against a value chain that represents the processes for an undocumented immigrant from their entry into South Africa, to their arrest and ultimate deportation to their country of origin.

During this process, many individuals apply for asylum and remain in the country indefinitely, pending the final decision on their status.

This report highlights a number of critical areas that affected the economical procurement of resources, and the efficient and effective delivery of services. Although the information produced by various information systems was unreliable, it was the best information to illustrate the findings.

The outcomes of the performance audit were shared with the management of the department, the executive authority and the relevant independent bodies including the Standing Committee for Refugee Affairs and the Refugee Appeal Board. Constructive dialogue led to the department's management committing to address the findings and recommendations identified in this report.

I wish to thank the staff of the department and independent bodies for their assistance during this audit.

Auditor-General

**Pretoria
2019**

(1) Illegal immigrants for purposes of the audit, refer to an individual who is not a citizen, and who is in the country in contravention of the Immigration Act. This person does not have a document that proves their legal stay in the country.



Executive Summary

Introduction



Overall audit question

Are the DHA's processes in managing the immigration process, transporting, housing and deporting illegal immigrants, economical, efficient and effective?



The Department of Home Affairs (DHA) mandate requires the DHA to manage immigration securely and efficiently in the interest of economic development and national security. One of their key outcomes is to provide a secure and responsive immigration system.

The objective of this 2018 follow-up performance audit was to evaluate the DHA's measures since the 2000 and 2007 audits to ensure the economical use of available resources.

The audit also evaluated the DHA's efficiency and effectiveness in managing the immigration process, including transporting, housing and deporting illegal immigrants.

Figure 1 indicates the value chain for processing an undocumented immigrant from their entry into South Africa, to their arrest and ultimate

deportation to their country of origin. During this process, many individuals apply for asylum and remain in the country indefinitely, pending the final decision on their status.

The first audit, done in 2000, identified serious issues. The follow-up audit in 2007, identified improvements on a number of issues. The 2007 performance audit included the following areas:

- Border management
- Detention at the holding facility
- Funding for deportation
- Port controls and equipment
- Asylum regime.

The 2018 follow-up audit added the transportation of illegal immigrants to these areas, and identified major regressions in most of the areas previously reported.

Movement of illegal immigrants

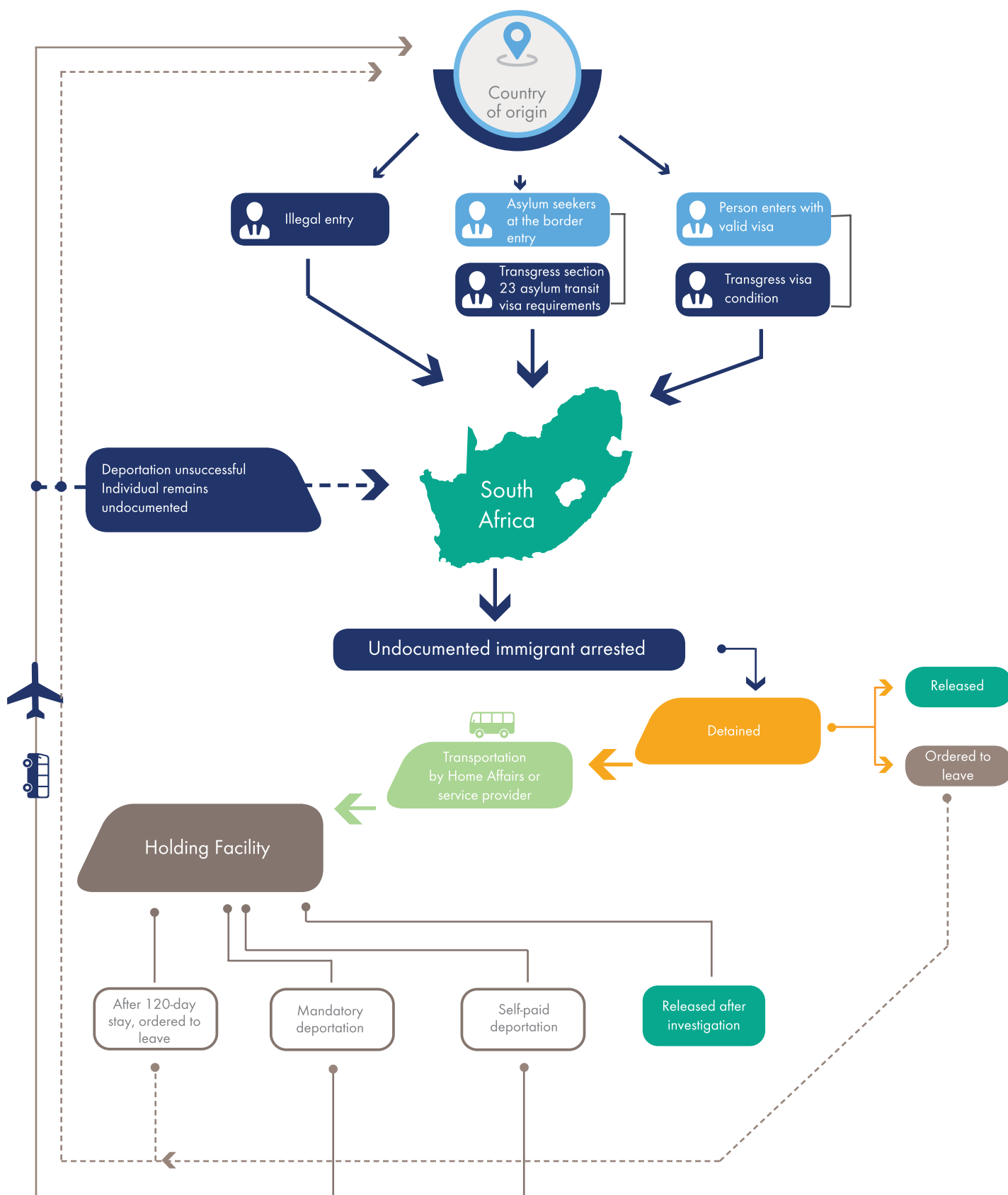


Figure 1: Value chain for the movement of an undocumented immigrant, where an arrest has been made

Key findings

The following key findings contributed to an uneconomical, inefficient and ineffective immigration process.

Leadership and oversight

Managing population movements across South African borders and immigration into South Africa fall under the jurisdiction of the DHA. However, the DHA is not the only role player mandated to control the movement of illegal immigrants. Border management in South Africa is exercised and influenced by multiple organs of state, most notably:

- Department of Home Affairs
- Department of Agriculture Forestry and Fisheries
- Department of Health
- South African Revenue Services
- South African Police Service
- South African National Defence Force
- Department of Public Works.

In June 2013, Cabinet resolved to establish the Border Management Agency (BMA) in South Africa to address the policy on integrated border management. By July 2019, the BMA Bill had not been passed, and the new minister called for the urgent finalisation of the bill. The

delay in finalising the bill, resulted in the organs of state that perform the functions of their individual mandates at ports of entry, not being coordinated effectively. The delay can be attributed to a lack of buy-in by the different organs of state.

This ultimately contributed to a large volume of people entering the country illegally, or not exiting the country as required by visa or permit requirements.

The DHA also did not have a policy on transporting illegal immigrants. The three-quotation system was used to procure transport to the holding facility and for deportation, as the road transport contracts lapsed on 31 March 2018. Securing service providers through the three-quotation system delayed the transport of individuals by up to nine weeks.

Enabling resources

According to the previous audits, the deportation budget allocation was not sufficient to deport illegal immigrants back to their country of origin. The budget declined by 56% from 2015-16 to 2017-18. The number of deportees decreased by 55%.

“ The DHA is not the only role player mandated to control the movement of illegal immigrants. The border is managed and influenced by multiple organs of state ”

The DHA faced staff shortages at ports of entry and the head office. Other challenges included outdated equipment, software that was incompatible with hardware and poorly-maintained infrastructure.

New asylum seekers must report to a refugee reception office (RRO) to be registered. The up to seven-month backlog in registering new asylum seekers after their original arrival at the RROs was mainly due to interpretation services being unavailable.

Operations

The information systems were unreliable, not integrated and not in real time, resulting in outdated information, and ineffective monitoring and decision making. The systems affected cut across all focus areas: port control, transportation, the holding facility, detention centres, deportation and the asylum regime.

The automated booking system was implemented at one RRO, and new asylum seekers manipulated the system as it allowed appointments to be made 19 months in the future. With the proof of the appointment, asylum seekers could reside in the country for more than a year without having to go through the formal process of status determination.

Section 22 permits, issued in terms of the Refugees Act, 1998 (Act no. 130 of 1998) (the Refugees Act), are generally valid for up to six months, and legalise an asylum seeker's stay in the country. It allows the asylum applicants to legally work and study in South Africa during their status determination process. The DHA did not know how many of the 946 314 inactive section 22 applicants (as at 31 December 2017) were still in the country as the various systems were not integrated. The courts also issued minimal fines to arrested undocumented asylum seekers brought

before the court as their section 22 permits had expired.

The independent bodies established in terms of the Refugees Act, namely the Standing Committee for Refugee Affairs (SCRA) and the Refugee Appeals Board (RAB), experienced backlogs of 40 326 and 147 794 cases respectively. With their current capacity, the SCRA would take just over one year and the RAB 68 years to attend to the backlog without taking new cases.

The DHA ordered individuals to leave, but did not know how many individuals were ordered to leave South Africa at any given time due to ineffective record keeping. There was also no follow up or monitoring to determine whether these individuals left the country.

The DHA requires a facility at which to detain illegal immigrants, as contemplated in section 34(1) of the Immigration Act, pending their deportation from the Republic of South Africa.

The contract with the service provider of the holding facility provided for a minimum threshold (the department had to pay an amount equal to the threshold, irrespective of the actual number of detainees). The threshold was only exceeded once in 29 months. This increased the average daily cost per person by 454%. The pricing annexure of the contract could not be provided by the DHA for audit purposes.

Detainees were often released from the facility: some because their detention did not comply with the requirements of admission to the facility, and others because of long detention (over 120 days).

Intragovernmental and other coordination

The DHA experienced challenges in coordination with different role players and did not have memorandums of understanding (MoUs), agreements or other documented processes:

- The DHA did not always know when the Department of Correctional Services (DCS) released illegal immigrants, so could not effectively plan and coordinate their deportation.
- The DHA did not have coordination processes with the Department of Justice, which is responsible for the judicial review of asylum seekers. The Department of Justice also deals with, and deposes, asylum seekers that did not proceed further with matters for hearing.
- Only a few MoUs were in place to negotiate recovering deportation costs from other countries.
- There was only one MoU with a conveyor on cooperation to combat the irregular movement of persons.

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The information systems were unreliable, not integrated and not in real time, resulting in outdated information, and ineffective monitoring and decision making

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Key recommendations

Leadership and oversight

1. The relevant stakeholders for border control should improve their coordination to reduce the number of illegal immigrants entering South Africa. Passing and implementing the BMA Bill will contribute greatly to improved coordination.
2. National legislation on border management in South Africa, should be implemented urgently.
3. Policies and procedures on transporting illegal immigrants should be finalised, communicated, implemented, regularly reviewed and monitored.



Enabling resources

1. The DHA should allocate sufficient resources to carry out its mandate in an effective and efficient manner.
2. The DHA should look for opportunities to rationalise current resources, processes and systems, to improve efficiencies.
3. The DHA should improve processes to resolve cases where illegal immigrants have been detained for more than the prescribed number of days to reduce the number of illegal immigrants released back into South Africa.
4. The DHA should effectively manage the availability of interpretation services and reconsider its needs determination when inviting tenders to ensure that an appropriate number of interpreters are available to provide an effective service.

Operations

1. The DHA should implement effective and efficient systems and processes for integrated information management systems to ensure that the movement of persons is efficiently and effectively processed and monitored.
2. Implementing the amendments to the Refugees Act, and finalising the regulations, should be expedited to allow a single member of the RAB to consider an appeal instead of a quorum.

3. The DHA needs to systematically and effectively follow-up on orders to leave.
4. The DHA should perform a proper needs analysis before inviting tenders for a holding facility, to ensure that the actual need is addressed. In the process, it should review the effectiveness of the threshold in its contracts to bring service providers in line with the current occupation figures.



Intragovernmental and other coordination

1. The DHA should improve its coordination and cooperation with all appropriate role players, both in South Africa and other countries. This would help ensure that, in the movement cycle of individuals across South African borders,

the process becomes an effective, efficient and economical one.

2. The DHA should secure relevant MoUs with other countries where possible to alleviate the burden of deporting illegal immigrants on its budget.

Conclusion

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The audit revealed similar findings to the previous audits and, in most instances, the situation in the environment has regressed. There is no accurate figure or estimate for the number of illegal immigrants in the country

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The root causes for the identified deficiencies include:

- a lack of leadership and oversight
- inadequate funding and other resources
- poor project management and a lack of operational efficiencies
- a lack of integrated, efficient and effective processes and systems
- poor intergovernmental coordination on strategic and operational levels.

The effects of these root causes were:

- an increase in individuals that transgressed their visa and other requirements and remained in the country beyond their allotted time frames
- a decrease in the number of detained and deported illegal immigrants to their respective countries of origin
- the abuse of the system for seeking asylum as backlogs in registering and finalising asylum applications increased.

The DHA has agreed to, and accepted, the recommendations of the report. A number of initiatives to address the findings have been implemented, or are planned by the DHA.

Key initiatives planned or implemented

The DHA noted the AGSA's recommendations and has implemented a number of initiatives to address the findings in this report. The acting director-general of the DHA's comments were received on 18 March 2019.

The comments included the following:

1 The coordination of border control and security is managed under the Border Management Authority project office. The DHA participates with other stakeholders in the various BMA task teams to strengthen border control and security. The progress of the BMA Bill through Parliament has been inordinately delayed, whereas a resolution is required to ensure that our borders and the borderline is secured.

2 To assist in funding deportations, the DHA has been encouraging self-paid deportation and continues to explore how this can be expanded.

3 The DHA is working on improving processes for transporting individuals from detention centres to the holding facility, and deporting them. The inspectorate has submitted input to the policy drafts on the overall departmental transport policy. No due date was communicated.

4 The DHA is preparing a transport tender for deportation and transfers from provinces to the holding facility. The tender will commence in the new financial cycle of 2019-20. Attention will also be given to improving coordination to limit delays in transportation.

5 The service provider of the holding facility has agreed to investigate the threshold condition of the contract. The DHA suggested a revised calculation based on average occupancy figures. The department indicated that they received credit notes from the service provider of R2 921 033 for the period August 2018 to March 2019. This is, however, subsequent to the period covered in the analysis. The DHA is also exploring the option of smaller deportation centres to allow for shorter travel distances. The process will allow smaller potential service providers to be considered. The DHA is also considering purchasing the facility and managing its operations; however, this needs to be presented to the executive committee and the minister's management meeting.

6

Immigration has developed a technology flight path, the immigration flight plan, indicating the critical path to arrive at an integrated, reliable and fully enabled IT solution to render a real-time risk profile of the traveller. The enhanced movement control system (EMCS) remains fully functional and is essentially the backbone of the immigration controls providing the foundation for the development of the new biometric movement control system.

7

The development of the biometric movement control system is planned for testing before the end of the financial year. It will address equipment and integration challenges.

8

Orders to leave will be recorded on the case management system and will be monitored. A standard operating procedure for this is being finalised.

9

The DHA will contemplate how to deal with conveyors considering all the complexities going forward. A better process will be devised.

10

The DHA has engaged in high-level discussions with countries where there are serious blockages in the deportation processes. The engagement will help to understand and gain experience of the contributing factors, and to remove any barriers, to deportation. The country-funded deportation model is not sustainable and needs to be replaced with one that relies on shared cost and greater cooperation with the sending country.

This report was discussed with the previous minister of Home Affairs on 2 April 2019. During this meeting he instructed the department to compile

an audit action plan. In addition, the report was discussed with the minister of Home Affairs on 30 September 2019.



Overview

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SA has a land border of some 4 471 km which it shares with neighbouring countries Mozambique, Zimbabwe, Botswana, Namibia, Lesotho and Swaziland

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South Africa has a land border of some 4 471 km, which it shares with neighbouring countries Mozambique, Zimbabwe, Botswana, Namibia, Lesotho and Swaziland. South Africa also has approximately 1,2 million km² of air space and a coastline calculated at 3 924 km. This vast area makes the challenges facing the South African border environment diverse.

The Immigration Act regulates foreigners' admission to, residence in, and departure from South Africa. Foreigners in South Africa that transgress this act are dealt with according to the act's provisions.

The DHA captures travellers' movements across South Africa's ports of entry. Where illegal immigrants are identified, they are arrested and detained pending an investigation. In terms of section 34(1) of the Immigration Act, 447 stations of the South African Police Service have been identified as places of detention.

From the detention centres across all provinces, illegal immigrants are transported to a holding facility.

Illegal immigrants may not be held in detention for longer than 30 calendar days without a court warrant. A warrant may extend such detention on good and reasonable grounds for an adequate period not exceeding 90 calendar days.

Transportation from the detention centres to the holding facility is either by the Home Affairs provincial offices or by a service provider, and usually by road. The second leg of transportation, from the holding facility to the country of origin, is via either road or air.

Transportation via road is usually done by a service provider. However, where none is available, the DHA uses its own vehicles for transportation. To South Africa's neighbouring countries such as Zimbabwe, Mozambique and Lesotho, transport is via road.

Deportees have the option to pay for their own bus ticket (voluntary or self-paid deportation) or remain in the holding facility until the DHA can arrange a compulsory deportation. The DHA does not use rail or sea transport for deportation.

According to the DHA, the reality of a deportation mandate is that it requires an extensive degree of funding when it comes to the administration of facilities, modes of transportation and adherence to internationally accepted protocols giving recognition to human rights and the protection of vulnerable persons. The relevant directorate has seen a year-on-year regression in the allocation of its budget to manage deportation.

Deficiencies within IT and information systems within the DHA have remained since the last performance audit in 2007. While the DHA modernisation programme was launched in the interim, priority was given to developing and improving civic service systems in the interest of rendering services to South African nationals first.

Nonetheless, the DHA introduced important developments during the 2008-09 years, supporting preparations for the 2010 FIFA Soccer World Cup and introducing the advanced passenger profiling system. The next significant technology milestone was the development of the visa adjudication system in 2014. In 2019-20, the first concepts of the biometric enhanced movement control system (BEMCS), eVisa and eGates will be piloted.

Asylum seekers can enter South Africa through a port of entry, giving an indication that they want to apply for asylum. However, some asylum seekers enter the country without using a designated port of entry, or transgress their visa or permit requirements.

To apply for asylum, an asylum seeker must lodge an application in person at any of the five designated RROs.

At the RRO, the new asylum seeker's biometrics are captured and their claim is registered on the national immigration information system (NIIS). The applicant is issued with a section 22 permit that legalises their temporary stay in the country,

pending a final decision on the application (status determination process).

During the status determination process an application will move through the various decision-making bodies such as the DHA's refugee determination officers (RSDOs), the SCRA that reviews certain RSDO outcomes and the RAB, where the applicant can appeal a rejected case.

The holder of a section 22 permit has a right to work or study in the country and can access the health system. They are protected against deportation. The section 22 permit must be renewed continuously until the status determination process is concluded.

On being granted refugee status, the applicant receives a section 24 permit in terms of the Refugees Act, which is valid for four years. If refugee status has been rejected after all decision-making and status determination processes, the failed applicant is required to leave the country and ordered to leave.

Asylum cases were backlogged as at 31 December 2017. Figure 2 presents the different nationalities of the applicants undergoing the process during the 2007 audit, and figure 3 presents the distribution of nationalities in process at 31 December 2017. The countries of origin of asylum seekers in South Africa have changed considerably from the 2007 audit, as indicated in figures 2 and 3.

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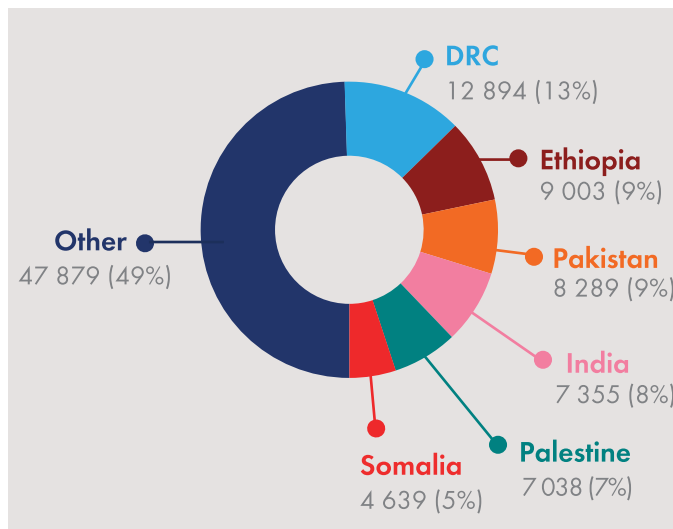


Figure 2: Countries of origin of 97 097 asylum applications in process (section 22 permits) at the 2007 audit

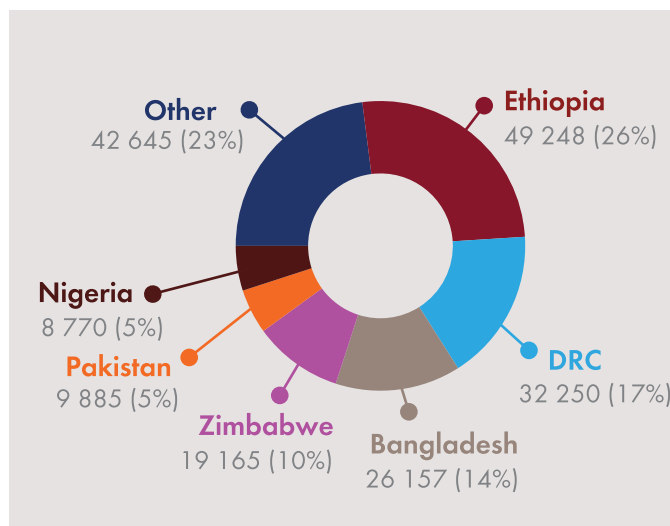


Figure 3: Countries of origin of 188 120 asylum applications in process (section 22 permits) at 31 December 2017

Source: Performance audit of the immigration process at the Department of Home Affairs, 2007.

Note: Ethiopia is the largest refugee-hosting country in Africa

Department of Home Affairs, asylum seeker management, 2017 annual report. 2017 Asylum Trends Report January - December 2017

During the 2007 audit, 45 637 persons applied for asylum. In 2008 it increased to 207 206 and peaked in 2009 with 223 324 applications.

This was mostly driven by the economic meltdown in Zimbabwe and placed immense strain on the DHA's capacity to respond with innovative business solutions and processes to address the unprecedented demand.

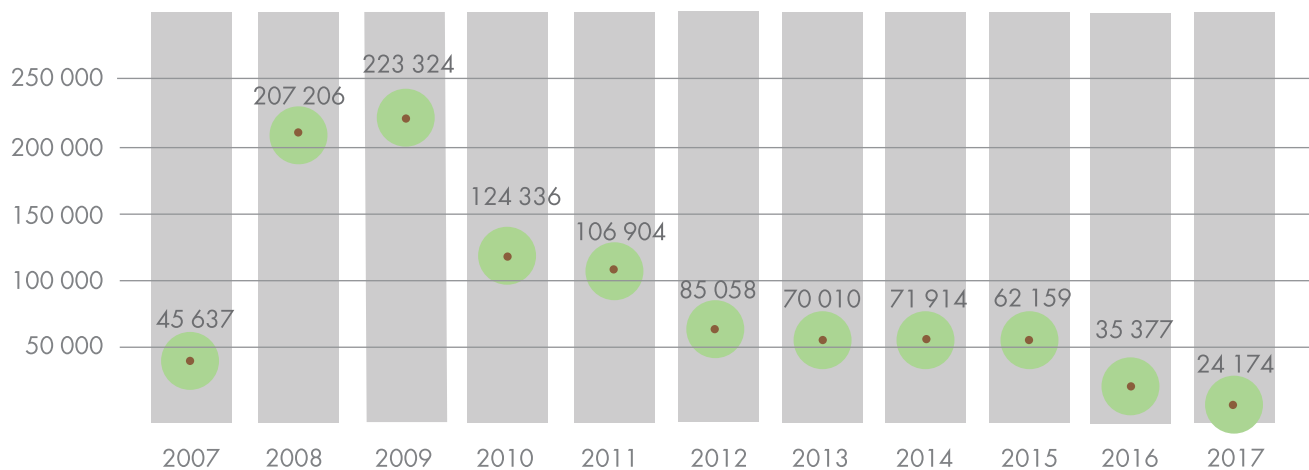
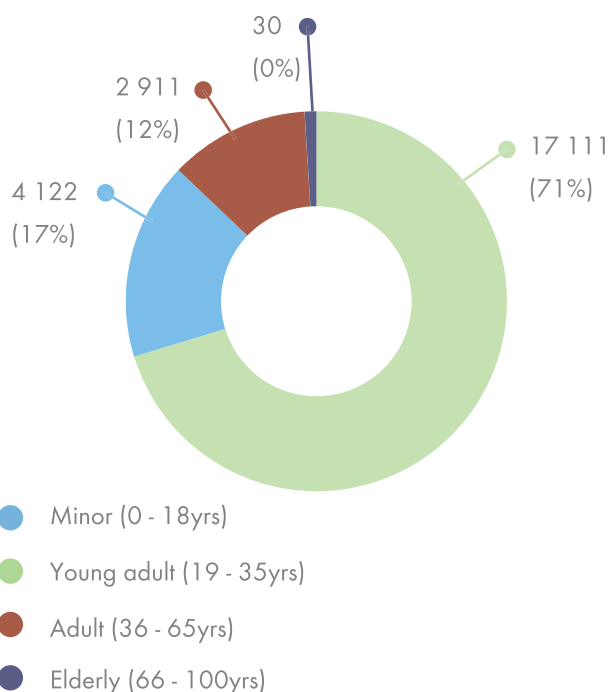


Figure 4: Asylum application figures in South Africa 2007 – 2017

Source: Department of Home Affairs, Asylum Seeker Management, 2017 annual report. 2017 Asylum Trends Report January – December 2017

The age diversity of registered asylum seekers showed that the strong inflow of a ‘young asylum population’ in South Africa in 2017 continued from previous years.

The largest number of applications was in the young adults age group, between the ages of 19 and 35. According to the DHA, indications were that the young adult category is a mixed basket of highly-skilled, semi-skilled and low-skilled migrants who knowingly, or unwittingly, find their way into the asylum system.



Individuals who are arrested after their permits have expired are taken before a court and may renew their permits after paying a fine. For example, an individual whose permit had lapsed for 12 years was fined R1 000 and his asylum application was reactivated.

In exceptional cases individuals are granted refugee status immediately. Depending on the circumstances, other applications will be subject to the SCRA and RAB reviews and processes.

As a last resort, asylum seekers unable to obtain refugee status can opt for a judicial review from the Department of Justice, or turn to the courts. Those unable to obtain refugee status must leave South Africa.

Figure 5: Age classification analysis of new asylum seekers in 2017

Source: Department of Home Affairs, Asylum Seeker Management, 2017 annual report. 2017 Asylum Trends Report January – December 2017

The map below indicates the location and proximity or remoteness of the different sites applicable to the immigration environment mentioned in this report.

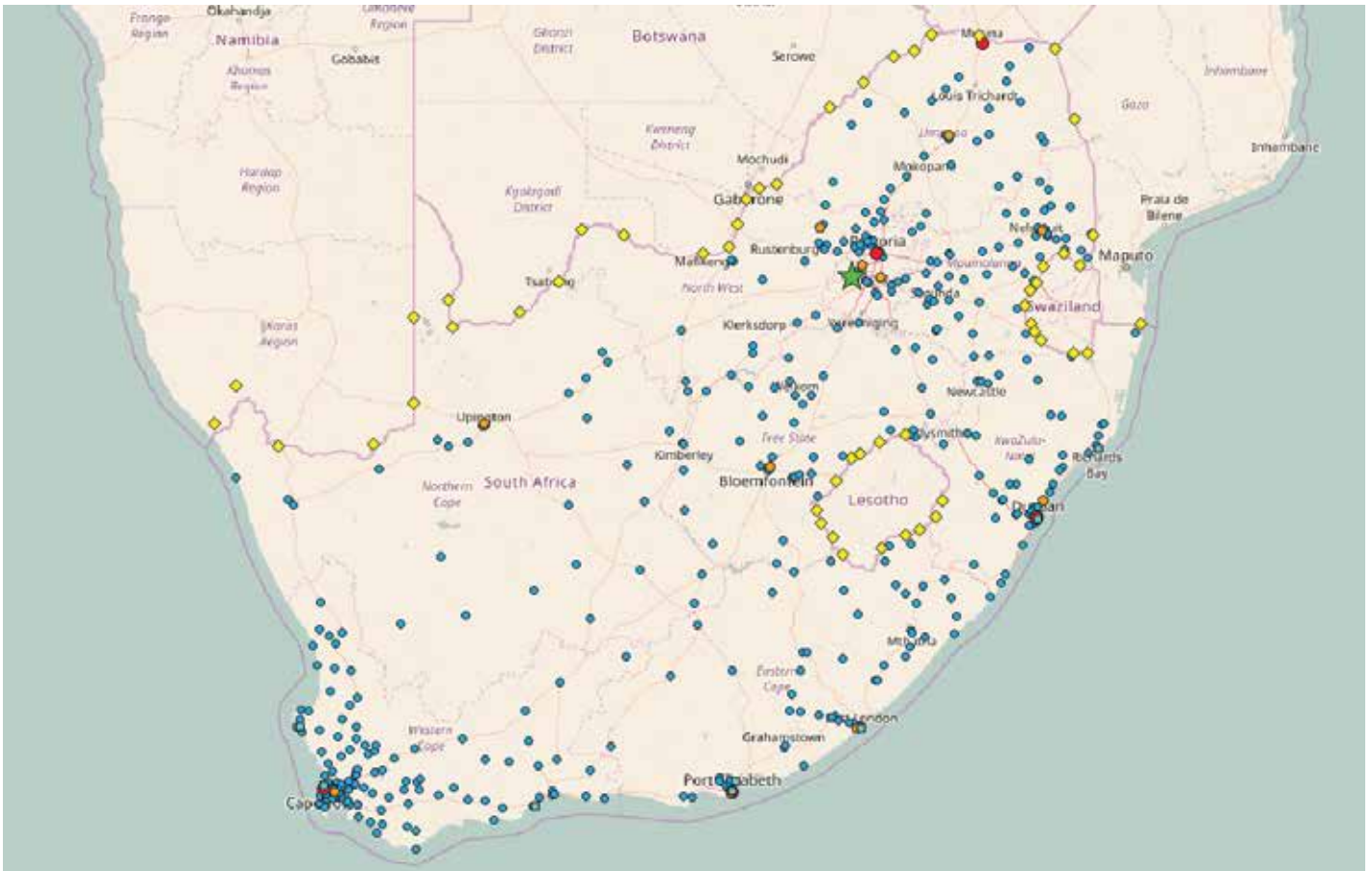


Figure 6: The location and proximity of the different immigration sites

- Detention facility
- ★ Holding facility
- Refugee Reception Office
- Sea port of entry
- ◆ Land port of entry
- ◆ Air port of entry



Detailed findings and recommendations

Overall audit question

Are the DHA's processes in managing the immigration process, transporting, housing and deporting illegal immigrants, economical, efficient and effective?

Border management

1.1 Policy on border management in South Africa

1.1.1 There is currently no single national policy on integrated border management in South Africa. The current approach to border management requires a level of coordination between 27 different organs of state². These organs of state perform the functions of their individual mandates as set out in a range of different legislation. The fragmented border management environment promotes possible fraud and corruption. This generates a high volume of persons and goods that continue to enter the country illegally.

1.1.2 The BMA, established by Cabinet in June 2013, was to be responsible for integrating all border law enforcement functions and replace the Border Control Operational Coordinating Committee (BCOCC) established in 2001 to facilitate interagency cooperation. However, the BCOCC lacked a formal mandate. The BMA could not be launched as the prerequisite enabling legislation was not in place. The BMA Bill was published for public comment by 31 August 2015 and was formally introduced to Parliament in May 2016. Enactment was envisaged for 2017-18, after which the BMA would be launched. However, by October 2016 only 17 of the 22 identified parties had signed the multi-party agreement.

In September 2018, the minister of Home Affairs announced that the BMA Bill was at the National

Council of Provinces. During the new minister's budget vote in July 2019, he called for the urgent finalisation of the bill.

1.2 Administration of fines and individuals that overstay

Audit question

Were fines levied and collected effectively from organisations such as airlines and bus companies to deter them from bringing individuals into South Africa without valid travel documents?

1.2.1 Outstanding fines owed by airline companies increased from R4,2 million to almost R17 million between the 2000 to 2007 audits.

1.2.2 In 2018, the system administered by the DHA had deteriorated and the value of the outstanding fines was not available.

- The DHA did not have an accounting system for fines and maintained a register of fines issued on MS Excel.
- In the absence of an accounting system to manage the fines, the DHA was unable to send monthly statements to the conveyors³ and did not perform reconciliations over the years.
- Coordination between directorates within the DHA did not effectively address the issue of levying and collecting fines from conveyors,

Post Office, South African Revenue Service (Sars), etc.

(3) Conveyance means any ship, boat, aircraft or vehicle, or any other means of transport.

(2) The BMA will assume a basket of functions currently performed by a number of organs of state, including Health, Home Affairs, Agriculture Forestry and Fisheries, Environmental Affairs, Public Works, Transport, the SA

as they needed to reach a mutually accepted agreement on how to deal with this matter.

- There was only one MoU with a conveyor.
- Approximately 20% of the fines issued over the period 2015-16 to 2017-18 were paid.

1.2.3 The Immigration Act was amended and, in 2016-17, scrapped fines to individuals overstaying their visa requirements. This was replaced by declaring a person undesirable⁴. Departmental officials at OR Tambo International Airport (Ortia) indicated that the change from the fine payment system to the five-year undesirable status did not deter travellers from overstaying their visas. The graph below indicates the increase in the number of persons declared undesirable due to overstaying. These numbers are not inclusive of all travellers that have overstayed, but only travellers that aimed to exit the country and who were detected through the systems.

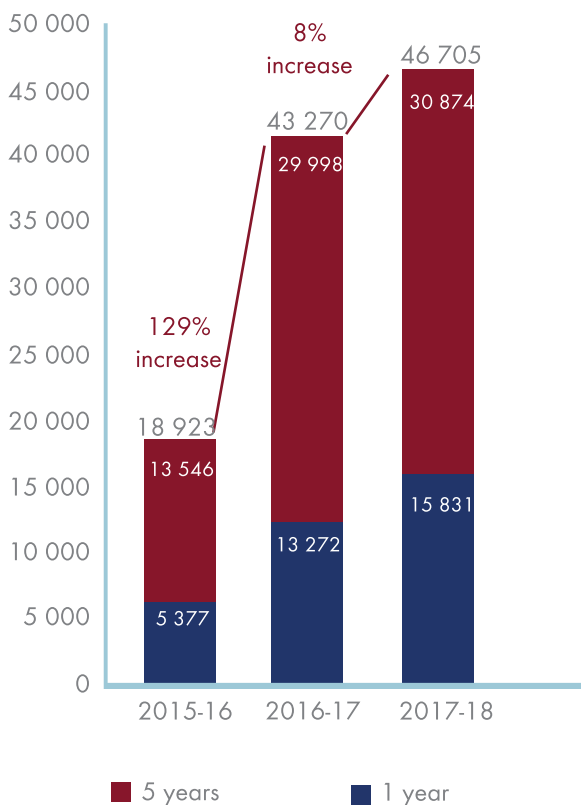


Figure 7: Number of persons declared undesirable due to overstay

Source: Statistics extracted by the DHA from the MCS

Example:

A foreign national entered South Africa on 1 January 1991 and was only detected when he attempted to travel to Portugal through Ortia in January 2017. On his arrest, the individual was found to have overstayed for up to 9 512 days (26 years) in South Africa. The consequence of his overstaying for 26 years and being undocumented was his being declared undesirable for five years.

1.3 Resources

The DHA experienced a shortage of staff at ports of entry and at the head office. It also faced challenges of outdated equipment and poorly-maintained infrastructure. Old equipment and incompatibility issues resulted in additional pressure on resources, long delays and human error.

1.4 The movement control system

Audit question

Was the movement control system (MCS) regularly updated with the movement of people across South African borders?

1.4.1 The 2000 audit found that the MCS was not regularly updated with information on the movement of people across borders. The 2007 audit found that the MCS mainframe had not been completely updated as data had not been received from three ports of entry due to poor communication in remote areas and inadequate equipment.

(4) A person who overstays for a period:

- not exceeding 30 days must be declared undesirable for a period of 12 months
- of more than 30 days must be declared undesirable for a period of five years.

A person, who overstays for the second time within a period of 24 months, must be declared undesirable for a period of two years.

1.4.2 The MCS had not been integrated at the time of the two previous audits. To create the history of a person, information had to be consolidated from at least six information systems. The MCS software had not been updated for many years and the DHA was in the process of developing a new Windows-based system that would be integrated with all related systems.

1.4.3 During the 2018 audit we found that the MCS mainframe had not been updated with the movement of travellers since 15 January 2017. The file server that uploaded the movements onto the mainframe, crashed and could not be recovered. The consultants that developed and maintained the application had left the department, the department did not have the necessary in-house skills and the current service provider does not have the resources to recover the data. The backlog was on the movements that must be transferred from the EMCS at the ports of entry to the MCS mainframe.

1.4.4 Interim processes had been put in place for the operational centre to assist in the enquiries on the movement of people. This contributed to an inefficient investigation process that was time consuming.

1.5 Recommendations

1.5.1 A single national policy, encapsulated in legislation, on border management in South Africa should be prioritised.

1.5.2 The DHA should improve processes to manage conveyors' compliance with the Immigration Act, including the recording or accounting system, fines levied and collected, and deterrence for transporting undocumented immigrants to South Africa.

1.5.3 The DHA should ensure that integration challenges are addressed and that an appropriate system is developed and implemented. This will ensure that persons are effectively processed and monitored in real-time.



1.6 Summary

The establishment of the envisaged BMA has been delayed since the cabinet resolution in 2013. The BMA should address the coordination between the different role players and border management.

Transportation of detainees and deportees

2.1 Transportation policy

Audit question

Are illegal immigrants transported in time and in the most economical way?

The DHA did not have an approved policy, directives, procedures or guidelines to manage the transportation of illegal immigrants from detention centres to the holding facility, and again from the holding facility to country of origin.

2.2 Transportation of detainees

2.2.1 The contractual agreements that the DHA had prior to March 2018 facilitated detainees being transported within 48 hours. However, the DHA failed to conclude supply chain management processes in time to re-enter into contracts and subsequently used the three-quotation system to arrange transport. The waiting period to transport detainees increased since the three-quotation system was implemented, varying from three to nine weeks.

Example:

A request for a trip from the holding facility to Lesotho, was initiated on 11 April 2018. The actual date of transport was only on 19 June 2018, 69 days later (or nine weeks and six days).

Example:

A deportation from the holding facility to Mozambique on 29 May 2018, took six weeks and six days to arrange and secure. This was for the transport of 221 detainees. The turnaround time for arranging the transport was set at ten days. The detainees were therefore in detention for an additional 38 days. The cost calculation for the prolonged stay of the 221 detainees is R920 880.

2.2.2 The impact of delays in transporting individuals are:

- individuals being housed/accommodated for longer periods than necessary
- detention facilities, designated police stations, exceeding the agreed number of illegal immigrants
- detention facilities not having space for the illegal immigrants received from correctional services
- detainees having to be released because courts and magistrates did not always approve a further extension of detention

- busses being overloaded in contravention of the National Road Traffic Act, 1996 (Act no. 93 of 1996) (the National Road Traffic Act)
- illegal immigrants being housed at places of detention awaiting transportation, while the capacity at the holding facility was below the threshold.

Example:

On 13 August 2018 one of the DHA's provincial offices requested the head office to source a bus to transport 60 illegal immigrants from various detention centres across the province to the holding facility. Three quotes were obtained; however almost a month later, on 5 September 2018, the provincial office had not been updated on the progress of the bus and had started receiving complaints from the detention centres.

The agreed turnaround time to approve the bus was 10 days but this was not adhered to. The provincial office complained that it had already exceeded the agreed number of illegal immigrants stated in the detention facility agreement. It also indicated that some of the detention facilities were full and did not have space for the illegal immigrants who were received from correctional services. In addition, the courts and magistrates did not always approve further extensions of detention.

The detainees were only transported on 7 September 2018, 25 days after the request was made. During the delay in securing transport through the three-quote system, the original number of illegal immigrants that had to be transported increased from 60 to 69. As a 65-seater bus had been requested, four people had to share seats with other detainees, contravening the National Road Traffic Act.

2.3 Legal status of investigations and completeness of documents

2.3.1 The provincial Home Affairs offices did not always conduct proper investigations into the legal status of foreign nationals in South Africa. They also did not ensure the completeness of documents and files prior to transporting illegal immigrants to the holding facility.

Example:

The audit team observed a trip on 7 September 2018 from a province to the holding facility. There were 22 illegal immigrants whose files did not contain a warrant of removal (approval letter) from the head office. This was despite managers in the province being instructed, on 13 August 2018, to urgently check their files before handing them over to the bus service provider. The bus was delayed almost eight hours by Home Affairs officials working on the files. Upon arrival at the holding facility, the files were still not completed.

In addition, DHA had transported a pregnant woman and a minor who could not be admitted to the holding facility. The woman disclosed her pregnancy during investigation, before transportation. The Department of Social Development is responsible for housing pregnant women and children pending deportation.

The pregnant woman was 25 years old. She entered South Africa in 2016 with a visitor's visa through the Beitbridge border. In 2017 she applied for asylum but was denied. She had been undocumented since her visitor's visa expired.

2.3.2 Based on the refusal reports received from the service provider for 2016-17 and 2017-18, 1 177 illegal immigrants were refused entry at the holding facility due to poor investigations and ineffective administration by the DHA. The following are examples of the reasons indicated on the refusal forms inspected:

- Incomplete investigation by the arresting officers
- The arrested individual is a valid asylum seeker, and/or the case is not finalised with the RRO; however, the individual did not have documentation at the time of the arrest
- Confirmation of court does not correspond to the actual date of arrest, or was done after the allotted 48 hours
- Final signed rejection letter, of application for asylum.

The accuracy of the reasons for refusal was, however, questionable in some instances.

Example:

Person A was refused admittance at the holding facility in 2017-18, as he was under age. However, his date of birth was recorded as 25 September 1991, which made him ±26 years old at the time.

Person B was refused admittance to the holding facility in 2016-17, as he was a pensioner and could not be admitted into the facility. However, his date of birth was recorded as 28 January 1983, which made him ±34 years at the time.

2.4 Coordination and planning

2.4.1 The DHA did not always know when illegal immigrants were released by the DCS. It therefore could not effectively plan and coordinate their transport to the holding facility, and the subsequent deportation to the country of origin. This was because there was no service level agreement (SLA) or MoU between the DHA and the DCS. This would have provided guidance and direction on the processes to follow when illegal immigrants were released from correctional facilities.

2.4.2 The DHA had no central recording system to keep track of the number of detainees at the detention facilities. The case management system was implemented in 2018, but was not fully used and detainees were recorded manually due to inadequate equipment.

2.4.3 The provincial Home Affairs offices had to liaise with the South African Police Service and DCS to identify the number of detainees to be transported and when the transport was needed. As the actual number of illegal immigrants being transported was less than originally planned, the actual transport cost per person increased by 41% and 95% in two different instances. The driving cost for transport is the bus size, which is quoted based on the number of people that need to be transported. A change in the actual number of illegal immigrants being transported could therefore have a negative economic impact. The difference in price between a 65 and 28-seater bus was 27%.

Example:

The provincial Home Affairs office requested a 65 seater bus to transport 43 illegal immigrants to the holding facility on 9 February 2018. However only 22 individuals were transported as some had already been transferred to the holding facility. The cost per person increased by 95%.

A 65-seater bus was requested and paid for 31 illegal immigrants to be transported from a province to the holding facility in October 2017. However only 22 individuals were transported. Six were not transported because their investigation files were not ready when the services provider arrived. One individual was refused because he did not have head office approval to be at the holding facility. The cost per person increased by 41%.

2.5 Recommendations

2.5.1 A policy and related procedures on transporting illegal immigrants should be finalised, communicated, implemented, regularly reviewed and monitored as a matter of urgency. It should address the following:

- Roles and responsibilities
- Norms and standards
- Operating guidelines
- Criteria for transporting individuals
- Monitoring and evaluation.

2.5.2 The DHA should effectively plan, coordinate and procure the transport services to ensure a timely and effective transfer and deportation process. It should also consider and compare

different transportation options in terms of transporting the right detainees, at the right time and at the best possible price.

2.5.3 The DHA should strengthen consequence management and action should be considered against staff not completing investigations and required documents in time.

2.5.4 The DHA should improve internal coordination to ensure that transport is provided in the most economical and efficient way.

2.5.5 The DHA should consider entering into MoUs or agreements with the DCS and other organs of state to improve coordination efforts.



2.6 Summary

There was no policy on the transportation of illegal immigrants and no contract with suppliers for the transportation of detainees and deportees. Transportation was not economical and efficient.

Holding facility

3.1 Housing illegal immigrants at the holding facility

Audit question
Are illegal immigrants housed at the holding facility in the most economical way?

3.1.1 During the 2007 audit, the service provider’s fee was R79,90 per person per day with a minimum threshold of 3 250 persons. However, the average number of persons held at the holding facility had not exceeded the 3 250 persons since the inception of the contract. The effective cost per person therefore increased by up to 214% as the department had to pay an

amount equal to the threshold, irrespective of the actual number of detainees.

3.1.2 In December 2015, a new contract was entered into with the same service provider, for an amount of R124,49 per person per day with a lowered threshold of 2 500 persons. The threshold of 2 500 was, however, only exceeded once over a period of 29 months, from January 2016 to May 2018. This increased the average cost per detainee to R690,07 per person per day, an increase of 454%.

Figure 8 indicates the average number of detainees in the holding facility per month, over the 29-month period. On average, the department used 64% of the 2 500 threshold over this period. The usage declined over the period.

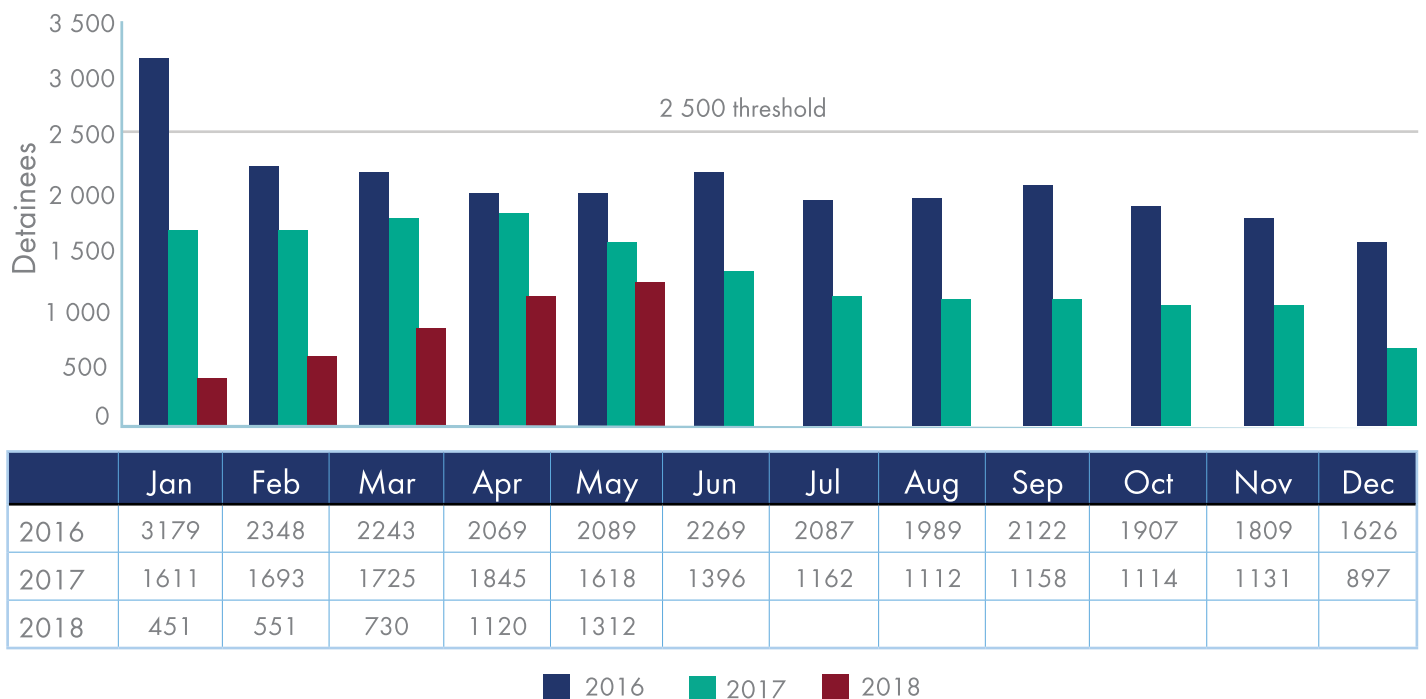


Figure 8: Average monthly number of detainees in the holding facility with a maximum capacity of 5 000

Source: Holding facility occupancy registers

The DHA indicated that one of the contributing factors to the decrease in detainees was the decline in the number of people being arrested due to the lack of resources. The DHA is constrained in its execution of both its investigative and deportation function by a limited number of inspectorate officials (less than 750 officials to deploy across South Africa).

3.1.3 Furthermore, it could not be determined how the DHA ensured and verified the accuracy of the service provider’s monthly invoices as the pricing annexure to the contract could not be provided by the DHA for audit purposes. The invoiced amount over this period was R269 103 282.

3.2 Deportation of illegal immigrants

Audit question

Were illegal immigrants detained for the shortest possible time before deporting them to their countries of origin?

3.2.1 During the 2000 audit, we noted that detainees were not deported to their countries of origin within the shortest possible time. They had remained in the holding facility for up to 157 days. During the 2007 audit, the number of days had increased to 200 days. In 2018, the problem persisted and detainees were still detained for 120 days or more. The 120 days are the maximum detention period allowed by legislation. In addition, detainees were released after 120 days with an order to leave the country.

However, there was no follow-up process to ensure that these individuals had left South Africa and that the order to leave was implemented.

3.2.2 Not all detainees who were detained for 120 days were released on time, and instances of prolonged detention were identified.

Example:

As at 28 December 2015, there were 426 detainees whose number of days stay at the holding facility was more than 120 days.

The nationalities of the detainees in prolonged detention varied, and in instances required deportation by air. The DHA had insufficient funds to deport these individuals, which contributed to detainees not being deported in the shortest possible time and the long detention of individuals.

3.2.3 During the 2015-16 to 2017-18 financial years, 8 503 detainees were released from the holding facility. The majority of releases related to detention in excess of 120 days, while other releases were due to detention that did not comply with the standard operating procedures⁵ of admission at the facility. In some instances, convicted criminals who had served their sentences were released from detention and issued with an order to leave the country in August 2018.

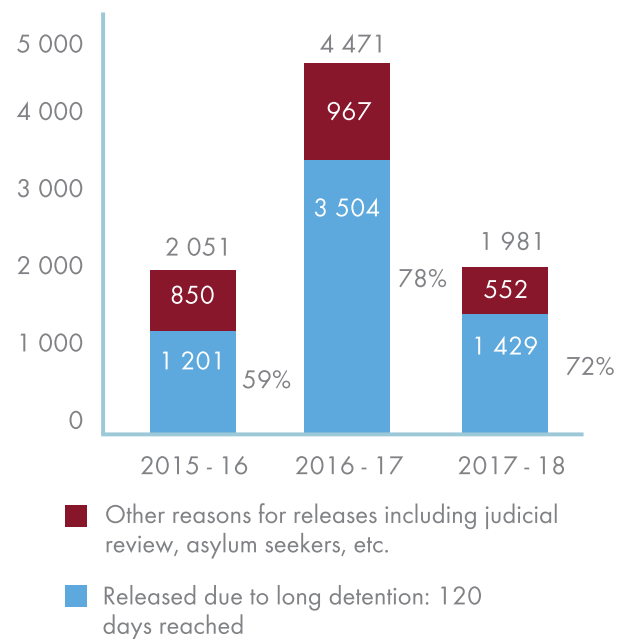


Figure 9: Total number of releases from the holding facility

Source: Holding facility release statistics

(5) The holding facility’s standard operating procedures prohibits the detention of minors, sick individuals, asylum seekers and foreigners in possession of valid documentation.

3.3 Information systems at the holding facility

3.3.1 The DHA did not have its own information system installed at the holding facility. It was therefore solely dependent on the information provided by the service provider. However, instances were identified where the service provider's system contained noticeable errors, overstating the number of days in the facility. This resulted in a significant risk to the DHA as the verification of the information supplied by the service provider could not be confirmed independently.

3.3.2 Furthermore, the system only retained occupancy data for three months after the release of a detainee. Hardcopy documents were filed in a storeroom and information dating back more than three months had to be sourced from these files. The information could not be electronically extracted from the system. The DHA was issued with monthly invoices, supported by a printed daily occupancy schedule indicating the average number of detainees for the month.

3.3.3 The DHA did not have a biometric system installed at the facility to identify a prohibited person that had been previously detained and deported to their country of origin. Previously deported persons did, on occasion, return to South Africa and were brought back to the holding facility. In such cases, the person should be prosecuted in accordance with section 34(5) of the Immigration Act. Without a biometric system, the DHA manually verified the individuals, which was resource intensive and time consuming. The service provider also did not keep records to report on repeat detainees identified through their system.

The DHA indicated that the holding facility had 211 self-declared repeat detainees in the 2017-18 financial year.



Picture 1: The holding facility that was not optimally used

3.4 Recommendations

3.4.1 The DHA should do a proper needs analysis before inviting tenders for a holding facility, to ensure that the actual need is addressed in the most economical way.

3.4.2 The DHA should strengthen and monitor the processes and procedures followed by immigration officers at the holding facility for admissions to the facility, to minimise instances where detainees are admitted and then have to be released.

3.4.3 Action should be considered against officials who do not follow processes and procedures in the detention of illegal immigrants.

3.4.4 The controls of the information system at the holding facility should be strengthened, information regularly monitored and exceptions verified.



3.5 Summary

The capacity of the holding facility, in terms of the contract with the service provider is in excess of the DHA's needs. The threshold for the minimum number of detainees was only exceeded once since the start of the contract. The same amount was paid to the service provider each month, although the occupancy was low.

Funding for deportation

4.1 Funds to deport

Audit question

Were sufficient funds available to deport detainees out of South Africa?

4.1.1 During the 2000 audit we found that the allocated deportation budget was not sufficient, a finding that persisted during the 2007 audit.

During the 2018 audit, we found that the allocated budget of R28,3 million was still not sufficient to achieve its objectives. Since 2015-16, the budget of R64,5 million declined by 56%. The number of deportees also declined by 55%. For the 2017-18 financial year, the DHA spent an average of R1 698,88 per person to deport 15 033 deportees. Figures 10 and 11 indicate the respective declines.

4.1.2 The DHA also used self-funded deportation, where illegal immigrants pay for their transport to their country of origin. A weekly bus service, initiated by the DHA in 2017, travels from the holding facility to neighbouring Zimbabwe, Mozambique and Lesotho. The self-paid trips proved to be very economical and efficient, and also did not incur the same delays experienced with securing service providers.

A comparison between the cost per person for a self-paid trip, and cost paid by the DHA through a three-quotation service provider, indicated that the three quotations were more expensive. Two self-paying individuals could be deported for almost the same amount the DHA paid to deport one person. The service providers' cost was up to 131% more than the self-paid trips.

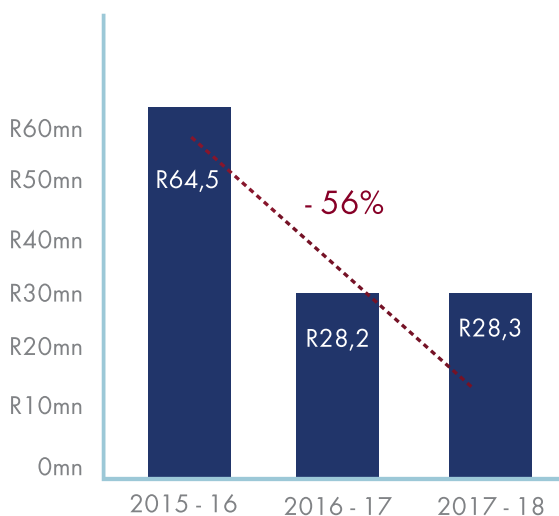


Figure 10: Deportation budget since 2015-16 to 2017-18

Source: Deportation budgets provided by the DHA

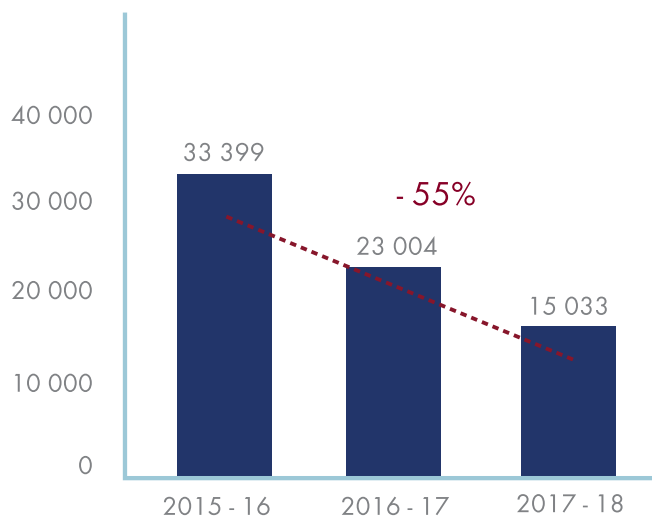


Figure 11: Number of illegal immigrants deported during 2015-16, 2016-17 and 2017-18

Source: Statistics as published in the DHA's annual performance plan 2015-16 and 2016-17, budget 2016 and annual report 2017-18.

4.1.3 Based on the geographical or regional representation of detainees at the holding facility, the majority of detainees staying more than 25 days would require air transport. Deporting individuals to countries such as Nigeria, Ethiopia, the Democratic Republic of the Congo, Pakistan and Bangladesh is very expensive as air travel is required.

4.1.4 One of the DHA's biggest challenges was to negotiate with the countries of the arrested individuals to pay for their citizens' deportation costs. In certain instances, the country of origin denied the deportee's return to their country. Only a few MoUs were in place and the DHA experienced challenges in deporting to certain countries.

Example:

In 2017-18, two deportees were rejected by their respective authorities in their country of origin and had to return to the holding facility. As the holding facility cannot detain them indefinitely, they are released with an order to leave.

4.1.5 Due to insufficient budget to deport the individuals, illegal immigrants detained for 120 days or more were released by the DHA and issued with an order to leave the country. An instance was identified where six convicted criminals, who had served sentences of up to six years each, were released with orders to leave the country as the 120-days limit had been reached. This is contrary to operating standards that convicts may not be released. The immigration officers at the holding facility failed to monitor their detention period in order for their deportation to be prioritised.

4.2 Orders to leave

4.2.1 The DHA did not know how many orders to leave had been issued at any given time. The orders were not issued according to sequential numbering, but copies were made or printed from the system. The orders to leave were manually issued by officials throughout the country and the DHA did not have a central recording system to document them. Some officials recorded the orders manually in registers, but this was not consistently done by all officials. The case management system was implemented early in 2018, but is not fully used.

4.2.2 Orders to leave were also not monitored as the DHA did not know whether these individuals had left the country. Supervisors did not inspect the MCS subsequent to the letters being issued.

4.3 Recommendation

4.3.1 The DHA should explore options to optimise their budget to recover costs, optimise their staff, update equipment and integrate systems to increase efficiencies.

4.3.2 Options to recover the deportation cost for illegal immigrants from their countries of origin should be explored, and where possible, formalised into intergovernmental agreements to alleviate the burden on South Africa.

4.3.3 The DHA should strengthen their system of orders to leave to ensure that they are fully executed and that the undocumented immigrant leaves South Africa.

4.3.4 The orders should be consistently recorded, followed up and monitored.



4.4 Summary

Limited funding affected the DHA's capacity to deport illegal immigrants. The budget and the number of illegal immigrants deported declined sharply over a period of three years.

Orders to leave were not an effective tool to ensure that illegal immigrants leave the country, as it was not effectively monitored.

Port controls and equipment

5.1 Controls over deportees transported via road

Audit question

Were controls over detainees deported from the holding facility through border posts effective?

During the 2000 audit we found that deportation controls were not effective and that some deportees did not exit South Africa. This finding persisted during the 2007 audit as deportees escaped and reconciliations had not been done between the number of deportees received at the border post and number of deportees leaving the holding facility.

During the 2018 audit we found that detainees being deported from the holding facility to Beitbridge on 27 July 2018 reached the border post and were received by the country of origin.



Picture 2: Self-funded busses arriving at Beitbridge Border on 27 July 2018.

5.2 Computer equipment at border posts

Audit question

Is the necessary computer equipment available at border posts to ensure the effective processing of travelers?

During the 2000 audit, equipment at the previously named Johannesburg International Airport, used to process arrivals and departures, could not always be accounted for or did not always work properly. In 2007, there was an improvement and almost all of the workstations were working at the Johannesburg International Airport.

During a site visit to Ortia on 5 September 2018, all workstations were operational. However, during the site visit at the Beitbridge border post on 27 July 2018, not all of the computers at the home affairs office were operational.

5.3 Recommendation

The DHA should ensure that computers at workstations are operational to effectively process and monitor the movement of persons.



5.4 Summary

The effectiveness of ports of entry was affected negatively as not all computers worked.

Asylum regime

6.1 Asylum procedures

Audit question

When entering the country, did asylum seekers apply for asylum within the prescribed period?

During the 2000 audit, we found that asylum seekers did not always apply for asylum within the prescribed period. Some had been in the country for up to 11 months before applying for asylum. In 2007, the DHA did not know how long it took for an asylum seeker to make an application at an RRO after entering the country or whether all such persons presented themselves to RROs.

In 2018, the DHA still did not know how long after entering South Africa it took for asylum seekers to apply for asylum. In addition, the DHA did not verify the purpose of entry of a new asylum seeker against the MCS, as the DHA's systems were not integrated. An estimated 7% of asylum seekers entered South Africa through a port of entry and an average of 9% of asylum was granted during the last five years. Other individuals that registered as asylum seekers entered the country illegally, or legally with a visa but transgressed the visa requirements and subsequently applied for asylum to legalise their stay. The DHA's systems were not integrated in a way that would indicate that someone claiming asylum actually entered with a passport or visa to travel.

6.2 Registering new asylum seekers

6.2.1 There was a backlog of up to seven months at some RROs in registering new asylum seekers on the NIIS. Due to the volume of people coming to the RRO, which is only able to process a certain number⁶ of applications per day, the RRO had to resort to scheduling appointments⁷ with newcomers to be registered. The backlog was not quantified as there was no central recording system available.

Example:

On 4 June 2018, 75 nationals from a country made appointments at a RRO as they could not be immediately processed. The appointments started from 20 August 2018 up to 3 December 2018. On 11 June 2018, a further 14 nationals arrived and booked appointments up to 14 January 2019. The waiting period for these individuals to be registered stretched between 77 days (2,57 months) and 217 days (7,23 months).

6.2.2 The delayed registration was mainly because of the unavailability of interpretation services and a lack of resources at the RROs. The service provider for interpretation services could not meet the DHA's demand and the RROs were negatively affected. This contributed to the slow progress of registering newcomers and interviewing asylum seekers.

(6) The Durban RRO indicated that they can process between 15 and 40 individuals per day depending on the capacity of the RRO.

(7) Appointments are made in accordance with regions and languages spoken, so as to streamline the processing of newcomers and asylum seekers.

6.2.3 New asylum seekers or newcomers also abused the automated booking system as they could make their own appointments on the system, and did so up to 19 months in the future. With proof of their appointment they remained in the country without legally going through the necessary processes from the DHA. The system controls did not limit the appointments to the next available time slot.

Example:

In 2017, 49 newcomers at a RRO made appointments on the automated booking system via the automated booking terminal (ABT). These appointments were made nine to 19 months in advance.

6.2.4 The backlog for registering newcomers was not quantified as there is no central recording system available. The Desmond Tutu RRO made use of the ABT while the RRO in Durban kept a manual register, as the ABT had not been rolled out to the RRO yet.

6.3 The national immigration information system

Audit question

Are asylum seekers recorded and processed in a timely manner by the department?

6.3.1 The refugee database during the previous audit consisted of 129 093 records. The NIIS (31 December 2017) consisted of 1 263 646 records. Of these:

- 191 333 asylum seekers were actively involved in the determination of status⁸ process,

renewing or extending their permits as and when required.

- 946 314 were no longer actively involved in the determination of status process.

6.3.2 The DHA did not know how many of the 946 314 inactive applicants were still in the country as various systems, such as the MCS, the national population register and the NIIS were not integrated. The inactive cases mostly referred to cases (514 854) that may have been finalised, but the decisions had not been captured on the NIIS. A portion of the 514 854 cases had been abandoned by the asylum seekers (people that registered and did not continue with the process). At least 225 690 (24%) cases had been finalised on the NIIS, indicating they were out of the refugee regime (application was unsuccessful) and that they were no longer in the process. However, this did not mean that these failed applicants returned to their own country or that they were deported.

6.3.3 When the NIIS replaced the previous refugee system in 2008, a number of cases were not captured on the NIIS. The process required the applicant to be present to complete the electronic capturing. The DHA did not know how many cases were not captured.

6.3.4 During a visit to Ortia on 5 September 2018, we noted that a huge number of asylum documents in storage had not been processed⁹ on the NIIS. The officials at Ortia did not have access to the system, nor did they have a standard operating procedure that indicated how to deal with the documents. There was a lack of coordination between Ortia and RROs, with no established protocol for moving the documents. As such, the documentation was kept in an office at the airport.

(8) The outcome of the determination process is either the asylum seeker is recognised as a refugee, or is denied refugee status.

(9) When asylum seekers want to leave the Republic to go

back to their country of origin or travel, they have to submit their original permits as part of their travel documents in order to depart. The original documents need to go back to the relevant RROs where it was issued, to be able to finalise and update the NIIS.

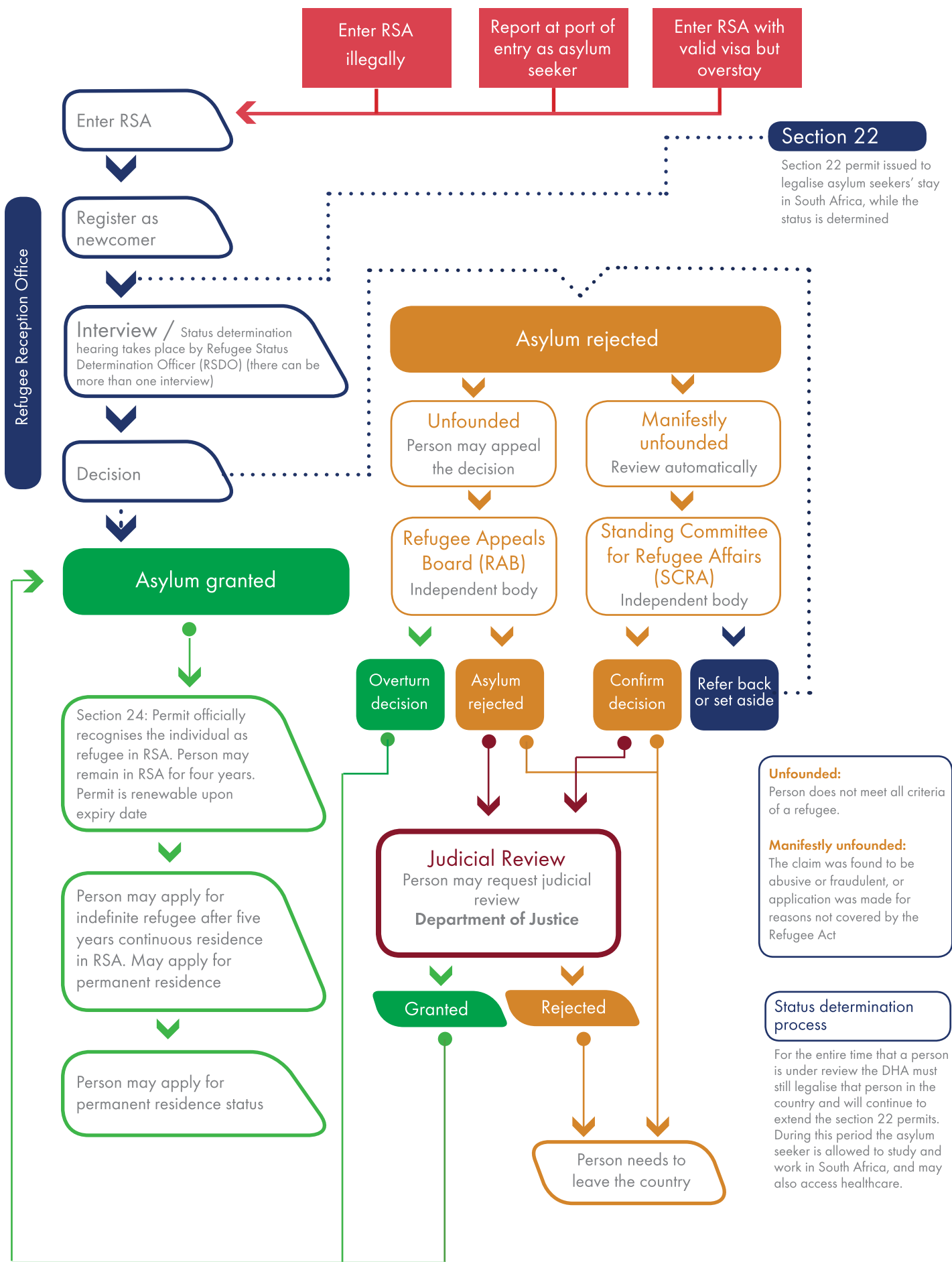


Figure 12: The decision-making process and different role players in determining an asylum seeker's status in South Africa



Picture 3: Unprocessed documents of asylum seekers at Ortia

6.4 Processing asylum applications

Audit question

Are asylum seekers processed in a timely manner by independent bodies?

6.4.1 During the 2000 audit, the DHA indicated that pending applications for asylum would be finalised by January 2001 with the help of the United Nations High Commission for Refugees. Some pending applications for asylum were finalised by January 2001. However, the database of asylum applications provided by the DHA indicated pending applications dating back to 1992. At 30 May 2006, the backlog of refugee applications was 97 097 and not all applications had been adjudicated within 180 days¹⁰.

6.4.2 In 2018, the backlog consisted of 188 120 active cases (an increase of 13 651% since 2007).

(10) Regulations to the Refugees Act stipulates in section 3(1) that applications for asylum will generally be adjudicated by the Department of Home Affairs within 180 days of filing a completed asylum application with a refugee reception officer.

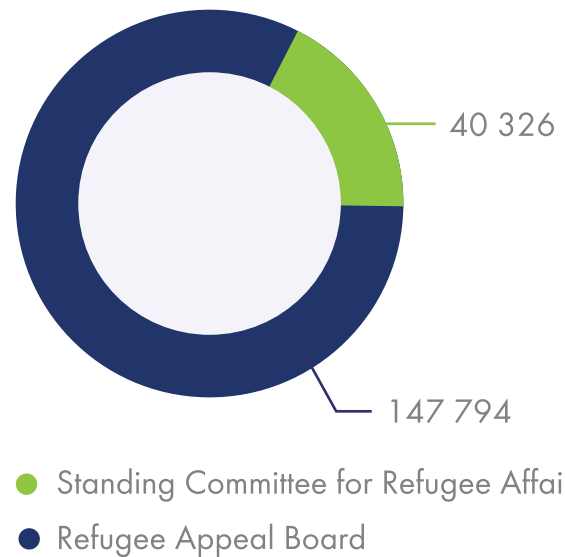


Figure 13: Backlog cases at the independent bodies in the asylum application process as at 31 December 2017

Status determination processes took years to finalise due to the backlogs and, as a result, permits were continuously extended. For two years up to 17 August 2018, more than 18 000 permits had been extended more than 20 times. The RROs extended on average between 283 and 1 165 permits per day. Most permit extensions were due to the asylum seeker's status being at the appeal stage with the RAB, confirming the large backlog.

Example:

Person A, was registered as an asylum seeker in February 2007, when she was 27 years old. Her permit had expired 10 times. Her application had been in process for 12 years. She was awaiting an appeal date

6.4.3 We found that many section 22 permits, generally valid for up to six months, were not extended by permit holders or asylum seekers, with limited consequences. Minimal fines were paid by individuals whose permits had expired for seven to eight years or more.

Example:

An individual whose asylum application's status was indicated by DHA as 'rejected, unfounded', did not leave the country. She had not extended her section 22 permit since 2012. After her arrest and court appearance in 2018, she was fined R200, and allowed to remain in South Africa to continue her application for asylum.

Another example is an individual that registered as an asylum seeker in 2006. He had never extended his section 22 permit and was arrested. Although he was undocumented in the country and undetected for almost 12 years, his fine was R1 000. He also remained in South Africa, to continue seeking asylum.

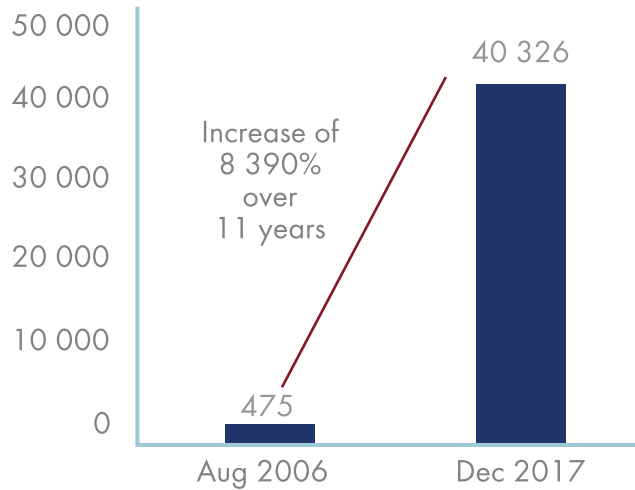


Figure 14: Increase in number of backlog cases at SCRA

Source: The information in the graph above was obtained from statistics provided by the DHA during the audit in 2007, as well as the asylum seeker management, 2017 annual report. 2017 Asylum Trends Report January - December 2017

6.5 Asylum cases with SCRA

6.5.1 Some decisions on status determination are referred to the SCRA for mandatory review. The SCRA had a backlog of 17 325 cases during the 2000 audit, which decreased to 475 cases during the 2007 audit.

The backlog with the SCRA increased by 8 390% to 40 326 in December 2017. This was mainly due to the SCRA's capacity challenges, as it only had three members. Members could not attend to cases individually and two members had to be present (or a quorum) to make a decision. From 2016 to 2017, there was a reduction of 24% in the number of backlogged cases. This was due to the fast tracking project, where same-day interviews were held.

It will take approximately 17 months to finalise the backlog of 40 326 cases if the capacity is not increased. This does not include new reviews referred to the SCRA during this time. On average, there is a daily intake of 13 cases. A final decision on the status of an asylum seeker cannot be made until the SCRA has completed its work.

6.5.2 The Refugees Act was amended (Government Gazette 41343 dated 18 December 2017); however, the regulations were still outstanding and the amendments were not effective. The changes to the act included a review considered by a single member or such number of members of the SCRA as the chairperson may consider necessary. This provision will enhance the SCRA's efficiency as all three members review cases individually instead of in a quorum. The amended act was not effective by 8 February 2019.

6.6 Asylum cases with RAB

6.6.1 An unsuccessful asylum seeker may approach the RAB to appeal the decision. During the 2000 audit the RAB had a backlog of 4 419 cases, which decreased to 893 cases during the 2007 audit.

The backlog at the RAB increased by 16 450% to 147 794 as at December 2017. This was mainly due to capacity challenges at the RAB. The RAB

had three members that could attend to cases. However, as at the SCRA, members could not attend to cases individually and two members had to be present (or a quorum) to make a decision regarding appeals.

It will take approximately 68 years to finalise the backlog of 147 794 cases if the capacity is not increased. This does not include new reviews referred to the RAB during this time. On average, the RAB had a daily intake of 49 cases. An unsuccessful asylum seeker may not be deported from South Africa before the appeal process has been concluded.

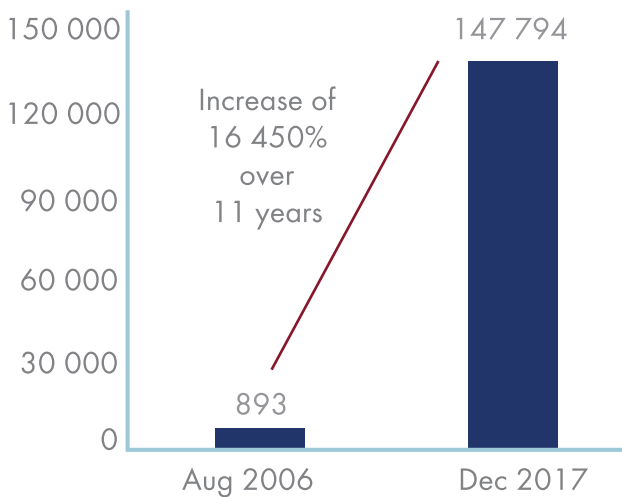


Figure 15: Increase in number of backlog cases at RAB

Source: The information in the graph above was obtained from statistics provided by the DHA during the audit in 2007, as well as the asylum seeker management, 2017 annual report. 2017 Asylum Trends Report January – December 2017

6.6.2 The changes to the Refugee Act includes an appeal being considered by a single member or such number of members of the RAB as the chairperson may consider necessary. This provision will enhance the efficiency of the RAB as a single member will be able to consider an appeal instead of a quorum. The amended act was not effective as at 8 February 2019 as the regulations have not been finalised.

6.6.3 The lengthy asylum seeking process constrained South Africa’s resources and had a social and economic impact on the country. Any foreigner could register as an asylum seeker for free without having entered South Africa legally through a port of entry. An asylum seeker has access to the health and education system, as well as work. In comparison, should a foreigner wish to study or work in South Africa, they would need to obtain costly visas.

6.7 Coordination on judicial reviews

The DHA indicated that their coordination with the Department of Justice was problematic on judicial reviews. The asylum seekers requesting review from the Department of Justice on decisions made by the DHA on their asylum status, did not always proceed further with the matters for hearing, and the two departments did not have a process to deal with these matters and depose them. In addition, capacity constraints played a role and numerous matters were still pending in court. As a result, the judicial reviews took many years to finalise.

6.8 Recommendations

6.8.1 The DHA should develop integrated information systems where necessary and implement them to ensure that the movement of persons is effectively processed and monitored in real time.

6.8.2 The DHA should develop and implement standard operating procedures to ensure that all asylum documents, decisions and changes to statuses, are captured promptly on the NIIS.

6.8.3 The DHA should address the shortcoming identified in newcomers scheduling appointments significantly in advance on the ABT. The system should only allow appointments for registration of a newcomer for the next available time slot and not beyond that time and date.

6.8.4 In instances where the contractor cannot provide the required interpretation services in time, the DHA should increase the availability of interpretation services by exercising their right to procure interpretation services outside the agreement.

6.8.5 The DHA should improve staffing, equipment and processes to ensure that asylum seekers are processed efficiently and without delay at RROs and independent bodies.

6.8.6 The DHA should improve coordination with the Department of Justice and consider an MoU or agreement between the two parties. There should be agreement on a feedback loop or mechanism from the Department of Justice to the DHA on the outcome/result of the judicial reviews.



6.9 Summary

The asylum regime is not managed to conclude the process within a reasonable period and asylum seekers remain in the country for extended periods of time.

A hand holding a Canon EF 50mm 1:1.4 lens against a blurred background of trees and a field. The lens is the central focus, with text on its barrel: "CANON LENS EF 50mm 1:1.4" and "CANON LENS MADE IN JAPAN". The background shows a field of yellow flowers in the foreground and trees in the distance. The image is overlaid with a semi-transparent orange banner.

Audit approach and concepts

Background

The auditing of government institutions is based on the premise that the accounting officer is responsible for instituting measures to ensure that resources are procured economically and used efficiently and effectively.

The primary objective of performance auditing is to confirm independently that these measures do exist and are effective. A structured reporting process is used to provide management, Parliament and

other legislative bodies with information on shortcomings in management measures where applicable, examples of their effects and suggestions for improvement.

The function of the AGSA is not to question policy but rather to audit the effect of policy and the management measures that lead to policy decisions.

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Audit approach

Performance audits are conducted according to the Performance audit manual, 2018, which contains the standards and methodology for the planning, executing, reporting and following up performance audits in the public sector. In view of the complexity of the environment to be audited, each performance audit focuses on a delimited segment of the activities of a particular institution. Preference is therefore given to the more important aspects.

The DHA's management was given detailed information about the objectives of the audit and the researchable questions to be addressed during the audit. In addition to interactions during the weekly audit steering committee meetings, arrangements were made to establish a steering committee consisting of the audit team and senior departmental staff. The main purpose of the steering committee was to ensure factual correctness of the findings. During a meeting with management, agreement was sought on the audit criteria for the transportation focus area that did not form part of the previous audit. During the steering committee meetings issues were deliberated on and the DHA representatives were afforded the opportunity to submit timely inputs to the final management report. This approach should lead to the prompt implementation of corrective steps where weaknesses have been noticed.

It is, however, in no way the intention or practice of the steering committee to provide the institution with a veto on the nature and scope of the performance audit or the resultant report. A steering committee is a consultative consensus-seeking forum, but the relevant statutory powers remain vested in the AGSA. Consensus

about the factual correctness of the findings contained in the report was reached during a meeting held with the DHA management on 27 November 2018.

Audit objective

The audit objective was to evaluate the measures instituted by the DHA to ensure the economic use of available resources. It was also to evaluate the efficiency and effectiveness with which the DHA managed the immigration process and transported, housed and deported illegal immigrants in the country.

In 2007, the AGSA conducted a performance audit (RP 29/2007) of the immigration process at the DHA. The focus areas included penalties and administrative fines charged, deportation of prohibited persons, insufficient budgets for deportation, control at the holding facility, equipment and documentation at the holding facility, asylum procedures, management information and equipment at airports. The audit was a follow-up of a previous performance audit of the migration process conducted in 2000 (RP 125/2000).

This audit represents a follow-up of the 2007 performance audit on the immigration process. As a result of a long lapse since the previous audit, change in management at the DHA, change in legislation and the release of the white paper on immigration in July 2017, the focus on recommendations and corrective actions were not always practical. This audit was done to evaluate the progress made by the DHA since 2007, focusing on whether the findings/situation

still existed. In addition, the audit focused on transporting illegal immigrants¹¹ from detention centres to the holding facility.

The overall audit question of the performance audit was *Are the DHA's processes in managing the immigration process, transporting, housing and deporting illegal immigrants, economical, efficient and effective?*

For the additional focus area of transport, the researchable question was *Are undocumented immigrants transported in time and in the most economical way?*

The findings in the previous audit were formulated as audit questions to facilitate a consistent approach and reporting.

Audit scope

The audit focused on the effective progress made by the DHA since the 2007 audit and, as a new focus area, included the transportation of illegal immigrants from detention centres to the holding facility, as well as their deportation. During the audit, two ports of entry, two RROs and the holding facility were visited. Detailed testing focused on the 2015-16, 2016-17 and 2017-18 financial years, or older information where required.

Audit methodology

All performance audits are conducted according to ISSAI 3000, Standard for performance auditing, and the AGSA Performance audit manual 2018.

As required by the Performance audit manual 2018, sufficient audit evidence was obtained for the findings and illustrative examples contained in

this report. These examples have been included to illustrate the consequences and effects of deficient management measures and are not collectively a full reflection of the extent of audit work conducted at entities.

The following are some of the methods applied in conducting the audit and obtaining evidence:

- Interviews with management and relevant staff
- Observations
- Analysis, inspection and review of information and data
- Comparisons of information.

Data or information was not always available for the audit team to evaluate. In these instances, best available information was used to illustrate the problem and not as supportive evidence to the findings. The data or information was therefore also not used in the audit conclusions. Data from the sources below were analysed. This is not an exhaustive list but indicates the important sources used. The limitations of the data are also included in more detail in the different sections of the report:

- Annual reports and financial statements
- Budgets and annual performance plans
- Asylum seeking management annual reports and trends analysis¹²
- Movement control system¹³
- National immigration and information system¹⁴
- Occupancy registers¹⁵ and refusal statistics (service provider for the holding facility)
- Invoices and supporting documents
- Penalty registers¹⁶
- Contracts with services providers.

(11) Illegal immigrants for purposes of the audit, refer to an individual who is not a citizen, and who is in the country in contravention of the Immigration Act. This

person does not have a document that proves their legal stay in the country.

(12) The reports were based on information from NIIS which was not complete.

Audit criteria

As this was a follow up audit, criteria were only developed for the new focus area of transportation. The criteria were discussed and agreed with the auditee on 6 August 2018.

1. There should be a policy/directive and or procedure on the transporting of undocumented immigrants to the holding facility and/or border post, and it should be implemented and strictly enforced.
2. The most economical method of transport should be determined and used – for example own transport, the use of contractors, travel by land or air – from detention facilities to the holding facility, and then also when deporting.
3. The cost of transport should be recovered from the individual as far as possible.
4. Sufficient controls should be in place to ensure that the individuals reach their destination or leave

the country (this should happen in time to ensure that costs at the holding facility are reduced).

5. Measures should exist to ensure that illegal immigrants travelling are properly recorded and identified to ensure the completeness and validity of deportation.
6. The case management system should provide reliable and accurate information in time for the transfer, recording and release of an undocumented immigrant.
7. A cost benefit analysis should be done to determine the optimal time for transporting individuals from the holding facility to the border post (not enough people to fill a bus).
8. All means of transport should be roadworthy and have the required public transport permits and relevant licenses.

(13) The system was not audited. The information on the system was not complete as the system was not always timely updated with information. However, the information extracted from the system was best available information and is used in the report to illustrate the problem or the principle.

(14) The system was not audited. The information on the system was not complete as the system was not always timely updated with information. However, the information extracted from the system was best available information and is used in the report to illustrate the problem or the principle.

(15) Occupancy registers contained errors due to incorrect capturing. Refusal statistics were consolidated by the service provider on MS Excel which does not provide an audit trace of changes.

(16) The accuracy of the MS Excel penalty registers could not be verified as information was captured on MS Excel which does not provide an audit trace of changes.





Criteria sources

- Good practice with regard to general management
- National Treasury: Supply chain management guide for accounting officers
- Immigration Act, 2002 (Act no.13 of 2002)
- Immigration regulations 22 May 2014
- Department of Home Affairs standard operating procedures
- Immigration directive 28 of 2014
- National Road Traffic Act, 1996 (Act no.93 1996)
- National Road Traffic Regulations, 2000.








Summary of key findings






Summary of key findings from the previous audit, and the new findings

Leadership and oversight	Enabling resources	Operations	Coordination
 <ul style="list-style-type: none"> Lack of integrated border management and control Lack of transportation policy for illegal immigrants 	 <ul style="list-style-type: none"> Reduced deportation budget Shortage of staff Outdated equipment 	 <ul style="list-style-type: none"> Information systems not integrated Backlogs in processing asylum seekers Poor control over individuals ordered to leave the country High cost of the holding facility 	 <p>Multiple departments need to cooperate to effectively manage illegal immigrants. These role players did not coordinate their functions</p>

The summary below shows the findings and the DHA's progress since 2007, as well as new findings identified during the 2018 audit.

	Audit 2007 [RP 29/2007]	Audit 2018	Movement
Movement of illegal immigrants across SA borders		Enabling legislation on border management in South Africa has not been finalized and the BMA Bill has not been passed	
Outstanding fines to conveyors to deter them from bringing illegal immigrants to SA	R16,9 million	The system to account for outstanding fines had deteriorated and the value of the outstanding fines was not available	
Movement of travelers across borders	Not regularly updated on the MCS	The MCS mainframe had not been updated with the movement of travelers since 15 January 2017	
Policy on transporting detainees and deportees		No policy to manage the transportation of detainees and deportees	

	Audit 2007 [RP 29/2007]	Audit 2018	Movement
Procuring transportation services for detainees and deportees		No contract with service providers to facilitate transportation within 48 hours, and therefore used the three-quote system that resulted in delays of transporting individuals of up to nine weeks	
Delays in transporting detainees to the holding facility		Delays in transporting detainees to the holding facility due to: <ul style="list-style-type: none"> • Incomplete files of detainees • Incomplete investigations for detainees 	
Coordination of transportation from provinces to holding facility		Poor coordination and planning between head office and provinces for transporting detainees. No central recording system to track the number of detainees at detention facilities. No MoU with the DCS to coordinate the deportation of illegal immigrants released by the DCS	
Cost of detention at the holding facility	The cost of detention at the holding facility was R79,90 per person per day. There was a minimum threshold of 3 250 persons, although the average number of people did not exceed this threshold. The effective cost per person increased by 214% to R251	The cost of detention at the holding facility was R124,49 per person per day. There was a minimum threshold of 2 500 persons, although the average number of people only exceeded this threshold once in a period of 29 months. The effective cost per person increased by 454% to R690,07	
Length of stay in the holding facility. Illegal immigrants not deported in the shortest possible time.	Some illegal immigrants were not deported within the shortest possible time and stayed in detention for more than 200 days (120 days are the maximum detention period allowed by legislation)	Some illegal immigrants were not deported within the shortest possible time and stayed in detention for more than 120 days Some detainees were released after 120 days and ordered to leave the country	
Funding for deportation	Funding for deportation was not sufficient	Deportation budget reduced by 56% from 2015-16 to 2017-18	

	Audit 2007 [RP 29/2007]	Audit 2018	Movement
Alternative to DHA funded deportation		DHA used self-funded deportation where illegal immigrants paid for their own bus transport back to SA's neighbouring Zimbabwe, Mozambique and Lesotho. DHA issued orders to leave, but did not know how many were issued due to ineffective record keeping. DHA also did not monitor whether individuals had left the country	
Controls over detainees being deported by road or rail	Lack of controls over detainees being deported by road or rail	No finding on escapes during deportation were identified	
Equipment at border posts	Improvement in equipment serviceability	Computers were not always operational	
Asylum seekers apply for asylum within the prescribed period from entering the country	DHA did not know how long it took asylum seekers to make an application after entering the country	Only 7% of asylum seekers enter legally through a port of entry. The period after entry into SA up to registering as an asylum seeker, could not be calculated	
Backlog in registering new asylum seekers		There was a backlog of up to seven months in registering new asylum seekers. Cannot quantify the backlog as no central recording system was available	
Pending asylum application backlogs	Backlog of 97 097 cases	Backlog of 188 120 active cases	
Backlog at Standing Committee for Refugee Affairs	Backlog at SCRA 475	Backlog increased to 40 326	
Backlog at Refugee Appeals Board	Backlog at RAB 893	Backlog increased to 147 794	
Coordination on judicial reviews		No MoU with the Department of Justice to coordinate judicial reviews	
Completeness of the NIIS – tracking the asylum seeking process in SA		The NIIS that track the asylum seeking process in SA was not updated in time or integrated with other information systems	



No movement as there was no real improvement



Improvement since previous audit



Regression since previous audit



Acronyms and abbreviations

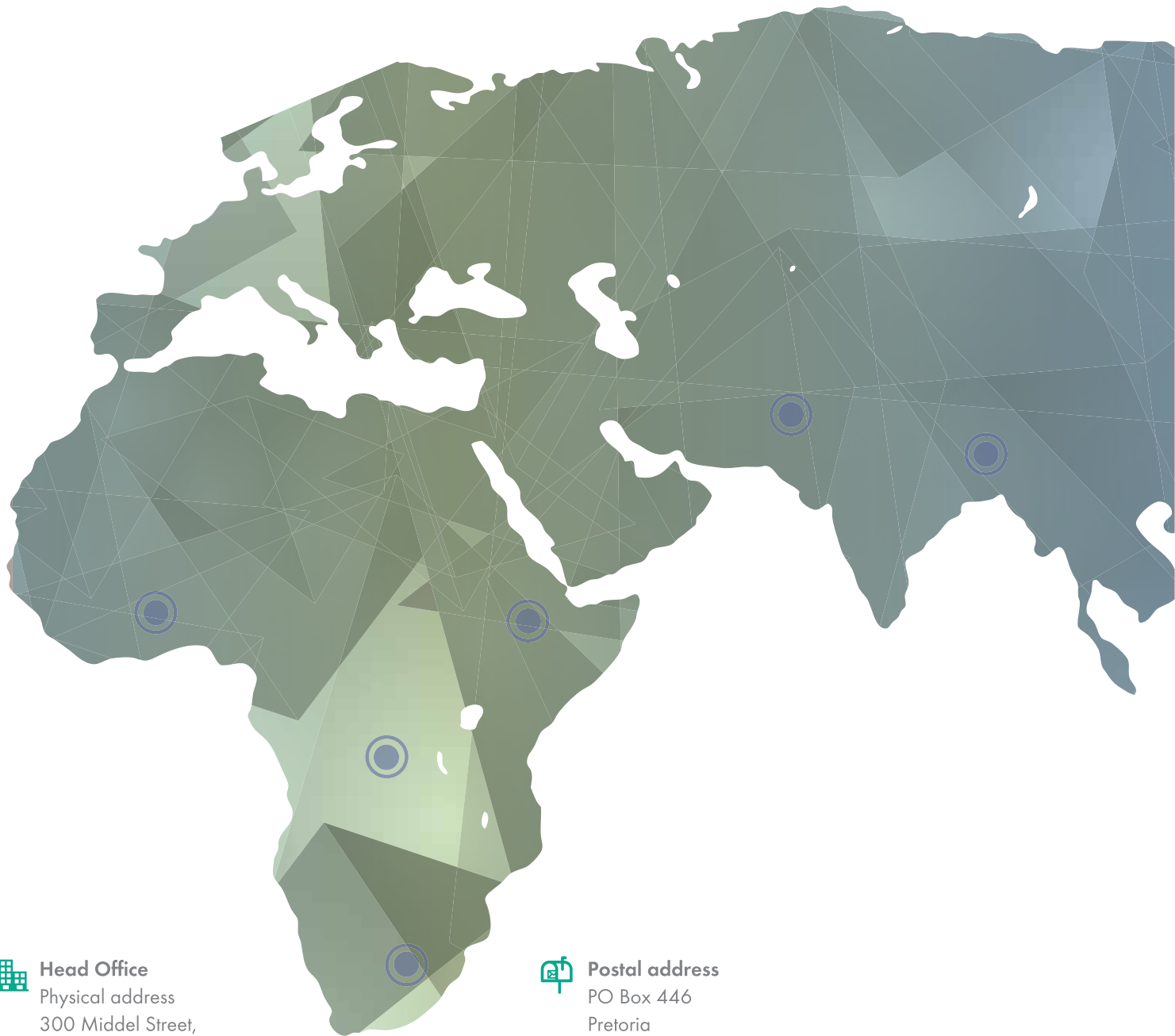
ABT	Automated booking terminal
AGSA	Auditor-General of South Africa
BMA	Border Management Agency
BCOCC	Border Control Operational Coordinating Committee
DCS	Department of Correctional Services
DHA	Department of Home Affairs
EMCS	Enhanced movement control system
km	Kilometre
MCS	Movement control system
MoU	Memorandum of understanding
NIIS	National immigration information system
Ortia	OR Tambo International Airport
RAB	Refugee Appeals Board
RRO	Refugee Reception Office
RSDO	Refugee determination officer
SCRA	Standing Committee for Refugee Affairs



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Inflow of illegal immigrants puts pressure on the country's resources and the shortcomings identified in this report should be addressed as a matter of urgency

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