

2 JUNE 2021

# PRO BONO & HUMAN RIGHTS ALERT

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### Refuge at last for Cape Town Refugees – or so we hope!

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Prior to its closure in 2014, the Cape Town Refugee Reception Office (CTRRO) was the second busiest in the country as it performed its crucial role in supporting and facilitating refugee affairs in the broader Cape Town area. However, over the years the CTRRO's operations at various premises across the city were found to be in violation of the relevant zoning scheme regulations and were said to have caused an unlawful nuisance.

Rather than redoubling efforts to find suitable premises for the CTRRO the Director General: Department of Home Affairs (DHA) instead decided to close the CTRRO in January 2014. There being no suitable alternative measures put in place to adequately assist the local refugee population several years later, the Scalabrini Centre in 2017 challenged the DHA's decision to close the CTRRO. On appeal, the Supreme Court of Appeal (SCA) found that the Director General's decision to close the CTRRO was unlawful and ordered that a fully functional refugee CTRRO be maintained in or around Cape Town by 2018.

In addressing the court in those proceedings, it was pointed out that the DHA's own numbers indicated that thousands of refugees and asylum seekers are seeking refuge in Cape Town. One would sensibly conclude, therefore, that the DHA was aware of the dire need for the services provided by the CTRRO and the consequences of its closure. The DHA would also reasonably have been aware that there were new refugees and asylum seekers who required their assistance insofar as obtaining or renewing their

permits was concerned, and that several further legislated procedures required attendance or submission to an office such as the CTRRO, including the renewal of temporary asylum seeker permits. The SCA declared the DHA's denial of such access to a refugee reception office to be irrational and declared the decision to close the CTRRO unlawful. It directed the DHA to reopen the CTRRO by 31 March 2018 and to report to Scalabrini and the further appellants by 31 October 2017 – and thereafter on a monthly basis leading up to the reopening of the CTRRO – the steps taken by the DHA to ensure the reopening of the CTRRO.

To this day, the CTRRO has remained closed in contravention of the SCA's order.

The DHA's flagrant disregard for the 2017 SCA order left Scalabrini and the Somali Association for South Africa little choice but to recently approach the Western Cape High Court yet again in an attempt to achieve the prompt re-opening of a fully functional CTRRO. By agreement between the parties an order in these most recent proceedings was handed down on 18 May 2021, in which it was declared that both the DHA as well as the Chief Director for Asylum Seeker Management were in breach of the 2017 SCA order. In order to achieve the prompt reopening of a fully functional CTRRO, the order goes on to make provision for the matter to be subjected to case management before the presiding judge De Wet AJ. The order sets out precisely how the CTRRO's reopening is to be managed by the court and sets out framework steps required to be taken by the DHA.

## Refuge at last for Cape Town Refugees – or so we hope!...*continued*

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Monthly case management meetings among the parties' legal representatives and De Wet AJ are provided for and the DHA is required to file a report one week before each case management meeting setting out details of the steps taken toward the reopening of a fully functional CTRRO. The DHA will be expected to file an additional report on steps still to be taken on aspects such as office premises and operational budget. It is worth noting that the order also requires the names of the individuals or entities responsible for implementing the above-mentioned steps. Perhaps this is one of the ways in which there may be increased accountability in seeing to the reopening of the CTRRO. The order requires the DHA to file its first report by 11 June 2021, which must include particular details regarding matters such as renovations of the CTRRO and the transfer of the property. It is equally important that this report states the anticipated dates for the implementation of the steps. It remains to be seen whether the requirement to provide a detailed account of all steps taken in reopening the CTRRO to the court will be effective in holding accountable those tasked with its reopening.

The CTRRO's seven-year closure has not been without consequence. Under our Refugees Act all those who apply for asylum are entitled to a temporary permit

(section 22 permit) while they wait for their refugee status to be determined (which needs to be renewed usually every three months). This permit enables asylum seekers to ultimately live, work, study and receive public healthcare in South Africa until such a time as their asylum seeker applications have been processed. The closure of the CTRRO, however, has resulted in significant setbacks for many refugees and asylum seekers, and some of our Practice's clients have had to bear the brunt of the CTRRO's continued closure. By way of example, an asylum application must be made in person to a refugee reception officer at a refugee reception office. The relevant officer is then required to submit the application to a refugee status determination officer. Applications to renew section 22 permits also have to be made in person at a refugee reception office. The closure of the CTRRO has made it virtually impossible for asylum seekers and refugees in the Western Cape to apply for or renew permits. This has resulted in a further backlog of these and other applications, and, most importantly, extraordinary vulnerability for members of the Cape Town refugee population who seek to uphold or enforce their rights.

Where does all this leave refugees in Cape Town? The United Nations High Commissioner for Refugees (UNHCR) recently signed an agreement with the

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DHA in an attempt to eliminate delays and backlogs in asylum seeker applications across the country. Over the next four years, the UNHCR plans to make available R147 million to the Refugee Appeal Authority of South Africa. The UNHCR aims to improve the case management system in order to manage the backlog project centrally as well as the appointment of additional staff and to introduce new status determination procedures for refugees. This marks the clear intention by government to seek ways of alleviating the burden resting on RRO's across the country.

It is clear that our courts and government recognise the need to carefully and meaningfully address the management of refugee affairs in order to uphold statutory and constitutionally enshrined rights. There is a clear recognition that years of improper management of refugee affairs must be widely addressed if basic human rights are to be upheld. The mechanisms are being put in place, but it remains to be seen whether the key component of success will rear its head: accountability.

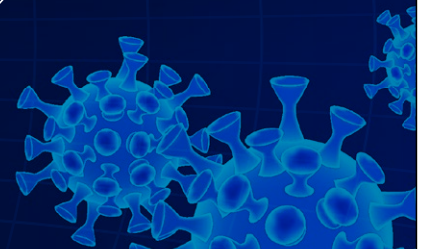
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*Brigitta Mangale and Sivuyile Mpateni*

A dark blue banner with a grid pattern and a virus illustration on the right. The text 'CDH'S COVID-19 RESOURCE HUB' is in large white letters, with 'Click here for more information' and a hand cursor icon below it.

# CDH'S COVID-19 RESOURCE HUB

Click here for more information 

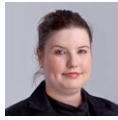


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### **BBBEE STATUS: LEVEL TWO CONTRIBUTOR**

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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