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**AUDITOR - GENERAL
SOUTH AFRICA**

**REPORT OF THE AUDITOR-GENERAL ON A
FOLLOW-UP PERFORMANCE AUDIT OF THE
IMMIGRATION PROCESS FOR ILLEGAL
IMMIGRANTS AT THE DEPARTMENT OF HOME
AFFAIRS**

Portfolio Committee on Home Affairs
Briefing

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BRIEFING DOCUMENT FOR THE PORTFOLIO COMMITTEE ON HOME AFFAIRS

1. BACKGROUND

The objective of this 2018 follow-up performance audit was to evaluate the Department of Home Affairs' (the department) measures since the 2000 and 2007 audits on immigration, to assess the economical use of available resources. It also evaluated the department's efficiency and effectiveness in managing the immigration process, including transporting, housing and deporting illegal immigrants.

The first audit was performed in 2000 and identified a significant number of major findings. The follow-up audit performed in 2007 identified some improvements on a number of findings. The focus areas in 2007 included:

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

A follow-up audit was performed in 2018 to evaluate the progress made by the department since 2007 to determine whether the findings in previous reports still existed, and it also evaluated the transportation of illegal immigrants as an additional focus area. This audit identified major regressions in most of the areas previously reported.

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

2. KEY FINDINGS

A summary of key findings is presented below.

Report reference

2.1 Border management and port control

- (a) There is currently no single national policy on integrated border management in South Africa. 1.1.1

The Border Management Agency (BMA), established by Cabinet in **2013**, was to be responsible for integrating all border law enforcement functions. By July 2019, the **BMA Bill had not been passed** and the new minister called for urgent finalisation of the bill. The delay in finalising the bill resulted in organs of state that perform the functions of their individual mandates at ports of entry, not being coordinated effectively. 1.1.2

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

- (b) **Outstanding fines**¹ owed by airline companies increased from R4,2 million to almost R17 million between the 2000 and 2007 audits. In 2018, the system administered by the department had deteriorated and the value of the outstanding fines was not available. 1.2.1

¹ In accordance with the Immigration Act, section 50(3), fines are issued to any owner or person in charge of a conveyance who, through negligence, conveys a person (foreigner) who is not in possession of a valid passport or visa. The fine is R15 000 per person in respect of a conveyance used in the course of a business to convey persons.

Fines in terms of section 50(4) of the Immigration Act, are issued by the airports to airlines when there was a contravention of the Advance Passenger Processing policies and the nature of the transgression can be:

- Failure to comply with the boarding advice section 35(2)(c) and the fine is R50 000
- Failure to transmit information within the prescribed period section 35(2)(b) and the fine is R5 000 per person
- Failure to enable airline systems in terms of section 35(2)(a) and the fine is R10 000

The department imposes section 50(3) and 50(4) fines on conveyors where a transgression in terms of the Immigration Act has occurred.

**Report
reference**

- (c) The Immigration Act was amended and, in 2016-17, this amendment scrapped fines to individuals overstaying their visa requirements. This was replaced by declaring a person undesirable. Departmental officials at OR Tambo International Airport indicated that the change from the fine payment system to the five-year undesirable status did not deter travellers from overstaying their visas. **The number of persons declared undesirable due to overstaying increased** by 129% from 2015-16 to 2016-17 and by 8% from 2016-17 to 2017-18, respectively. These numbers are not inclusive of all travellers that have overstayed. These numbers only represent the travellers that aimed to exit the country and who were detected through the systems.

1.2.3

For example, a foreign national entered South Africa on 1 January 1991 and was only detected when he attempted to travel to Portugal through OR Tambo International Airport in January 2017. On his arrest, the individual was found to have overstayed for 26 years. He was declared undesirable for five years.

2.2 Transportation

- (a) The department **did not have an approved policy**, directives, procedures or guidelines on transporting illegal immigrants from detention centres to the holding facility, and again from the holding facility to the country of origin. 2.1
- (b) A **three-quotation system** was used to procure buses to deport or transport illegal immigrants to/and from the holding facility, as the road transport contracts had lapsed in March 2018. However, securing service providers through the three-quote system **delayed the transport** of individuals by up to nine . 2.2.1
- Delays in the transportation of illegal immigrants has led to the following: 2.2.2
- Individuals being housed/ accommodated for longer periods than necessary at the detention facilities,
 - Detention facilities exceeding the agreed number of illegal immigrants,

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reference**

- Detainees having to be released because courts and magistrates did not always approve a further extension of detention,
- Busses being overloaded in contravention of legislation, and
- Illegal immigrants being housed at places of detention awaiting transportation, while the capacity at the holding facility was below the threshold.

For 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 880,48.

- (c) In certain circumstances, orders to leave the country were issued, however there were inadequate controls in place to monitor the execution of these orders. 4.1.5

Some of the identified control weaknesses included the following:

- The department did not know how many orders to leave had been issued at any given time,
- There was no system in place to record orders issued (except for some isolated manual registers), and
- There was no monitoring or verification that foreigners left the country.

4.2.2

2.3 Holding facility

- (a) The department 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 effective average daily **cost per person by 454%** compared to the actual cost.

3.1.2

**Report
reference**

- (b) The pricing annexure of the contract could not be provided by the department for audit purposes. 3.1.3
- (c) Detainees were **released** from the facility, some of these relating to detention that did not comply with the requirements of admission at the facility, and others had been released due to their detention period exceeding 120 days as stipulated in the legislation. 3.2.3

2.4 Asylum regime

- (a) New asylum seekers must report to a refugee reception office to be registered. The **backlog** in registering new asylum seekers after their original arrival at the refugee reception office was mainly due to the interpretation services being unavailable. In some cases, the backlog was up to seven months. 6.2.1
6.2.2
- (b) The automated booking system was only available at the Desmond Tutu refugee reception office, and new asylum seekers manipulated the system as it allowed appointments to register as an asylum seeker 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. 6.2.3
- (c) Section 22 permits (legal document permitting stay whilst the status is determined), 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 seekers stay in the country. It allows the asylum applicants to legally work and study in South Africa during their status determination process. 6.4.3

The **department 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**. 6.3.1
6.3.2

In some cases, courts issued minimal fines to illegal immigrants brought before court where their section 22 permits had expired and this effective as a deterrent. 6.4.3

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reference**

For example, an individual whose asylum application's status was indicated by the department 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.

Another example is an individual that registered as an asylum seeker in 2006. He had never extended his section 22 permit and was arrested in 2018 for being an illegal foreigner. Although he was undocumented in the country and undetected for almost 12 years, his fine was R1 000. He also remained in South Africa.

- (d) Two independent bodies were established in terms of the Refugees Act, namely the Standing Committee for Refugee Affairs and the Refugee Appeals Board. Some decisions on "status determination" are referred to the Standing Committee for Refugee Affairs for mandatory review. An unsuccessful asylum seeker may approach the Refugee Appeals Board to appeal the decision.

Backlogs were experienced by these two bodies, as the system for seeking asylum is a lengthy process due to numerous appeals, and these bodies further experienced capacity challenges.

The Standing Committee for Refugee Affairs experienced **backlogs of 40 326** (compared to 475 during the 2007 audit) and the Refugee Appeals Board **147 794** (compared to 893 during the 2007 audit) **cases** respectively. With their current capacity, the Standing Committee for Refugee Affairs would take just over **one year** and the Refugee Appeals Board **68 years to clear the backlog** without taking new cases.

6.5.1

6.6.1

2.5 Information systems

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, namely port control, transportation, the holding facility, detention centres, deportation and the asylum regime.

**Report
reference**

Port control

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|-----|--|----------------|
| (a) | The Movement Control System was last updated with the movement of travellers on 15 January 2017. The file server crashed and consultants that developed and maintained the application had left, and the department did not have the necessary in-house skills. The current service provider does not have resources to assist. | 1.4.2
1.4.3 |
|-----|--|----------------|

Interim processes were in place, however this contributed to an inefficient process that was time-consuming.

- | | | |
|-----|---|-------|
| (b) | Outstanding fines owed by airline companies increased from R4,2 million to almost R17 million between the 2000 and 2007 audits. In 2018, the system administered by the department had deteriorated and the value of the outstanding fines was not available for the 2018 audit. | 1.2.1 |
|-----|---|-------|

Penalty registers for conveyors were in Excel. 1.2.2

- The department did not have an accounting system for fines and maintained a register of fines issued on a spreadsheet, and
- In the absence of an accounting system to manage the fines, the department was unable to send monthly statements to the conveyors, and did not perform reconciliations over the years.

Transportation and detention

- | | | |
|-----|--|-------|
| (c) | The department had no central recording system to keep track of the number of detainees at the detention facilities. The case management system implemented in 2018 was not fully utilised. | 2.4.2 |
|-----|--|-------|

Holding facility

- | | | |
|-----|--|----------------|
| (d) | The department did not have its own information system on the detainees at the holding facility and the service provider's information had noticeable errors. | 3.3.1
3.3.3 |
| (e) | Furthermore, the system only retained occupancy data for three months after the release of a detainee. Hardcopy documents were filed in a | 3.3.2 |

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reference**

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.

Asylum regime

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|-----|--|----------------|
| (f) | During the 2000 audit we found that asylum seekers did not always apply for asylum within the prescribed period (some were in the country for up to 11 months before applying for asylum). In 2007 the department did not know how long it took for an asylum seeker to make an application at a refugee reception office after entering the country. In 2018, the department still did not know how long it took for asylum seekers to apply for asylum after entering the country, or whether all such persons presented themselves to the refugee reception offices where registration took place. In addition, the department did not verify the purpose of entry of a new asylum seeker against the Movement Control System as the department's systems were not integrated. | 6.1 |
| (g) | The department did not know how many of the 946 314 inactive applicants were still in the country as various systems, such as the Movement Control System, the national population register and the National Immigration Information System were not integrated. | 6.3.2 |
| (h) | The National Immigration Information System was also not updated in time as a number of cases were not captured on the when the system was introduced in 2008. A large number of asylum documents at OR Tambo International Airport was in storage and had not been processed on the system. There were also no standard operating procedures. | 6.3.3
6.3.4 |

2.6 Intragovernmental and other coordination

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

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|-----|---|-------|
| (a) | The department did not always know when the Department of Correctional Services released illegal immigrants, so could not effectively | 2.4.1 |
|-----|---|-------|

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reference**

plan and coordinate their deportation. This was due to the absence of a service level agreement or memorandum of understanding between the two departments.

(b) The department 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. 6.7

(c) Only a few MoUs were in place to negotiate recovering deportation costs from other countries. In certain instances, the country of origin denied the deportee's return to their country. 4.1.4

For 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.

(d) There was only one MoU with an airline carrier to combat the irregular movement of persons. 1.2.2

3. RESPONSES FROM THE RELEVANT ROLE PLAYERS

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 commitment to address the findings and recommendations identified in this report.

A number of initiatives have been implemented by the department. The acting director-general of the department's comments were received on 18 March 2019.

This report was discussed with the previous minister of home Affairs on 2 April 2019, and during this meeting he also 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.

The report was discussed with the Chairperson of the Portfolio Committee on Home Affairs on 3 October 2019.

4. CONCLUSION

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.

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; and
- poor intergovernmental coordination on strategic and operational levels.

The overall effects of the above findings include the following:

- 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.