

CHAPTER FIVE

WEST AFRICANS AND THEIR INTERACTION WITH THE STATE: *THE DEPARTMENT OF HOME AFFAIRS*

INTRODUCTION

The Department of Home affairs (DHA) is amongst the first government institutions that West African immigrants come in contact with in South Africa. The DHA plays a crucial role in the lives of these immigrants in many ways. The decisions arrived at, the attitude of some officials, and the manner in which the Department operates in many ways affect the lives, activities and identity of West African immigrants in South Africa. It is this Department that decides immigrants' legitimacy in the country: It decides whether or not to grant asylum or refugee status to immigrants. Although in terms of its own definition of its mission, the Department is supposed to welcome and treat immigrants in the country with respect; my research showed that this was far from being the case. Interviews conducted with West African immigrants showed that this Department treats them with disrespect, and its procedures are expensive and time-consuming. An asylum seeker made the following comments about this Department: *"I often feel bad one week before I go for my renewal, because of the way they treat people in that office. You spend the whole day, sometimes you even spend money, but what I hate most is the 'you must leave' they often give to people"*. The 'You must leave' document discussed later in this Chapter, is a document commonly issued by the DHA to West African immigrants particularly, Nigerians and Cameroonians, instructing them to leave South Africa.

On arrival, immigrants must report to this Department. After that they are instructed to report to the department at apparently arbitrarily decided periods: some weekly, others monthly, yet others every two to three months. How immigration policies and the xenophobic sentiments of immigration officials construct the lives of Cameroonians and Nigerians in South Africa will be the main focus of this Chapter. After a critical review of how immigration policies affects the lives of West Africans in South Africa, the Chapter will focus on the Braamfontein DHA office, looking at its operations, and how officials in this Department treat West Africans immigrants.

Why the Braamfontein Department of Home Affairs?

The Braamfontein Department of Home Affairs is used as the case study for this Chapter for two main reasons. First, it is the only refugee reception office in Johannesburg, and one amongst the five³⁴ refugees reception offices in the country. In addition, West African immigrants who enter South Africa often settle in Johannesburg because of the city's commercial and economic attraction. Hence, the Braamfontein DHA office is often the most convenient and nearest Home Affairs office for immigrants to process their documentation. The Human Rights Committee of South Africa observed that, of all the five offices dealing with asylum seekers and refugees affairs: *"The Braamfontein office in the heart of Gauteng is by far the busiest"* (HRC, 2000: 13). Second it is the closest Home Affairs office to Hillbrow, the study area for this research. Interviews conducted with Cameroonian and Nigerian immigrants for this study showed that, the majority of these immigrants are registered with the Braamfontein DHA office. Where these immigrants process their documentation is presented in Table 3 Below.

Table 3: DHA office for processing and renewal of documentation

| DHA Offices | Cameroonians (N=72) % | Nigerians (N=40) % | Total (N=112) % |
|--------------------------------|--------------------------------------|-----------------------------------|--------------------------------|
| Braamfontein | 72.2 | 50 | 64.3 |
| Alexandra | - | 03 | 0.9 |
| Ranburg | - | 03 | 0.9 |
| Bedfordview | 4.2 | - | 2.7 |
| Pretoria | 1.4 | 03 | 1.8 |
| Market Street JHB | 18 | 36 | 25 |
| Non of the above ³⁵ | 4.2 | 05 | 4.4 |
| Total | 100 | 100 | 100 |

³⁴ The other four refugee reception offices in the country are in Cape Town, Pretoria, Durban and Port Elizabeth.

³⁵ Based on the research conducted with Cameroonians and Nigerian immigrants in Hillbrow, the 4.4% of immigrants who said 'none of the above' in Table 3 above were illegal immigrants at the time this research instrument was administered.

Using the Braamfontein DHA office as a case study for this Chapter will enable me to analyse immigrants' interactions with the Department of Home Affairs, including how these immigrants are treated in this office, and the impact of the department on immigrants' lives in the country. The Braamfontein DHA office, closer to the West African stronghold of Hillbrow, and the only immigrant reception office dealing with refugees and asylum seekers in the city is obviously the best choice for discussion in this Chapter³⁶. Up to 72.2% of Cameroonians and 50% of Nigerians, amounting to 64.3% of the total number of immigrants interviewed for this dissertation acquire and/or process their documentation in the Braamfontein Home Affairs Office.

The Chapter will first, critically examine immigration policies and its changing trends in South Africa, looking at the implications for West African immigrants in the country. Second, a critical examination of the operations of the Braamfontein Home Affairs office will follow, focusing on the treatment of West African immigrants, particularly Cameroonians and Nigerians by officials of Braamfontein DHA office, and how such treatments construct their lives and identity in the country.

Changing immigration policy: Implications for West African immigrants

Until 1998, the Aliens Control Act (ACA) No. 96 of 1991 laid down the legal framework-governing immigrants in South Africa. This Act has been progressively amended under the Aliens Control Amendment Act No. 3 of 1993, and the Aliens Control Amendment Act No. 76 of 1995 (Peberdy, 1999). The Aliens Control Act aimed: *"To provide for the control of the admission of persons to, their residence in, and their departure from, the Republic; and for matters connected therewith"* (ACA, No. 96 of 1991). According to the Act, all non-South African residents in the country were considered as aliens and prohibited persons. Such policy consideration had negative implications for West African immigrants who came to South Africa before 1998. They were regarded and perhaps still regarded by the state as aliens and prohibited persons. This pattern of attitudes persisted even after the Act was amended in 1998, and this

³⁶Apart from the Braamfontein DHA office, which receives refugees and asylum seekers, the rest of the offices deal with marriages, work and study permits.

appears to affect popular attitudes to the immigrants. This explains the rationale behind the negative treatment West African immigrants receive from DHA officials when they need assistance in processing their documentation. While the definition of prohibited persons is provided in Section 39 of the ACA, section 41 of the ACA, 1991 stipulates the conditions for which temporary permits may be issued to prohibited persons in the country.

It is stated in section 41 subsections 1 to 6 that, the minister may issue to prohibited persons a temporary permit if they provide a guarantee deposit, which may be refunded or cancelled on the departure of the person concerned from the republic. This deposit can be forfeited to the state if the minister deems it necessary, and the permit may from time to time be renewed, and shall lapse when the person concerned departs from the republic. Holders of this permit shall be guilty of an offence if they failed to depart from the republic before or on the date on which the permit expires, or failed to observe the purpose for which, or to comply with the conditions subject to which that permit was issued. It is only then that an immigration officer may arrest such person or caused him to be arrested on the basis of his or her permit (ACA, Section 41, 1991). However, this research showed that Cameroonian and Nigerian immigrants in possession of this permit are arrested arbitrarily irrespective of the expiring dates of their permits.

Before 1998, the section 41 Document of 1991 was the main policy document governing the lives of immigrants in the country. West African immigrants who came to South Africa before 1998 were issued with a Temporary Permit to Prohibited Persons (TPPP) under Section 41 of the ACA of 1991. Immigrants who applied after this date were issued with an Asylum Seekers Temporary Permit (ASTP) under Section 22 of the new Refugee Act of December 1998, which only became operational in April 2000. Section 41 of the old document was an apartheid policy still operating in a democratic South Africa. Although apparently part of the new political order, Section 22 of the new document was in fact rooted in the old approach and operates in tandem with the old apartheid legislation. The new Refugee Act of 1998 was in theory an attempt by government to synchronize national legislation with international law, laying the ground for a comprehensive refugee

policy, and a fair impartial and effective refugee status determination process (HRC, 2000). The difference between the new and the old Act rest in terms of regulation 3 (3) of the new Act, which bars asylum seekers from working or studying within 180 days from the day of filing an asylum application. The Regulation states:

If the Department fails to adjudicate a case within 180 days, excepting delays caused by the applicant without just cause, the applicant will be permitted to apply to the Standing Committee for work or study authorization or relief from other conditions that may have been imposed by the Standing committee (Regulation of the Refugee Act, 2000: 3).

While the old Act allowed asylum seekers to study or take up employment in the country, the new Act entertains such privileges only after the decision to grant refugee status has been reached. If the case is not adjudicated within the stipulated 180 days, the asylum seeker can apply for a work or study permit, which is usually not easy to get. Consequently, most immigrants end up staying and surviving for the rest of their stay in the country with their asylum seeker's permit. The HRC observed some of the problems facing the DHA concerning the old and the new act as follows:

One of the problems currently experienced by DHA is that both previous and current systems are running concurrently. Under the aliens control Act, Section 41 an asylum seeker's permit which granted the right to work and study remains valid for those applicants who applied before April 2000. For those who applied after this date Section 22 of the new Refugee Act provides for the asylum seekers permit (HRC, 2000: 18).

The HRC also reports that: *“Despite the introduction of the new Act, there are no clear guidelines on how decisions to confer refugee status are made. The impact of having an unclear policy is evident at the level of the Status Determination Officer (SDO)”* (HRC, 2000: 5). The SDOs are Home Affairs officials who determine whether to grant an asylum status to an immigrant or not. The SDO study the case of the immigrant, and conduct interviews with immigrants who are seeking asylum in the country.

For many Cameroonian and Nigerian immigrants in the country, to acquire and or renew the Asylum Seekers Permit (ASP), be it under the old or the new Act, is a stressful, cumbersome and a humiliating ordeal. The whole process of seeking asylum is discussed in details later in this Chapter. Research conducted by the HRC of South Africa reported

the following examples of how immigrants, especially West Africans, are treated in the Braamfontein Home Affairs office:

In the Braamfontein DHA office one female SDO, forced a woman from Cameroon, to get down on her knees and beg for forgiveness for some minor infraction. It was then that she was assisted. A young mother and child from Sierra-Leone were forced to return to the office everyday for two weeks and beg for forgiveness because the young woman was allegedly cheeky. A Somali asylum seeker was forced to sing the Somali national anthem down the telephone to an official in Pretoria because an SDO at the Braamfontein office suspected he was not Somali because of his fluency in English (HRC, 2000, 17-18).

In addition, though the ASP in principle allows aliens and prohibited persons in the country, in practical situation, it is used by police, home affairs officers and members of the public as a pretext for arrests, harassments, discrimination, assaults and insults. Immigrants, especially Cameroonians and Nigerians, have sometimes been arrested instantly on presenting their ASP to police officials as their identification papers. A Cameroonian immigrant recounted the following during the ‘Operation Crack Down’ in 2000: *“When I met them, they asked me to show them my ID, when I remove my asylum paper, one of the police man said; ‘my friend you are the people we have been looking for’. Then they took me and locked me up in Hillbrow”*. Another immigrant observed that even though he has a genuine Asylum Seekers Permit (ASP), he runs away from police people each time he comes across them. The reason appears to be the fact that, holders of this document (ASP) are often branded as criminals.

Interviews conducted for this dissertation demonstrated that, in most cases when immigrants present their ASP to prospective employers, their applications are often rejected on the pretext of their asylum seeker’s status. Holders of the ASP appear to be stigmatised as unwanted people in South Africa. Malkki (1992) observed a similar prejudice with World War II refugees, noting that due to the loss of bodily connection with their national homelands, they were considered as ‘refugees’ loss of moral bearings’: *“Rootless, they were no longer trustworthy as honest citizens”* (Malkki, 1992: 32). Ironically, section C subsection 7 of the Temporary Permit to Prohibited Person of the ACA of 1991 states that immigrants: *“May take up employment in the Republic of*

South Africa". Even in the Asylum Seekers Temporary Permit of the new Refugee Act, Section B subsection 9, 'other conditions' include: "*May take up employment in the RSA*". These clauses are hardly respected by prospective employers in the country. In effect, they are only there in principle and not in practice. If immigrants cannot use their ASP to work in the country, their survival is at stake, and this can force some of these immigrants to resort to illegal methods of survival. A French translator who is desperate to work in South Africa told me: "*I have spent over Rands 14,000 just to get a work permit, but each time it's a fake. My passport is now spoiled and I need to get a new one from home*". The translator described how he lost a job opportunity as a translator in an international non-governmental organization:

Early 2000 I applied for a job and was called for an interview. At first I was reluctant because I knew the outcome. They will reject me because of my status. They called me several times and I decided show up, every thing went on fine with the interview until I was asked for a work permit. When I presented my asylum permit peoples faces changed. They promised to get back to me. Until today, I have not heard from them. Each time I called them they said I should hold on.

Another Nigerian immigrant, a Chartered accountant recounts a story of one of his job seeking experiences. According to this immigrant, he was called up for a job interview, which went on well until he mentioned that he is an asylum seeker in the country. The immigrant reported that, after the interview, one of the interviewers asked him: "*How do you expect us to employ you with an asylum seeker's permit*". It is rather ironical that the ASP issued to immigrants stating that '*may take up employment in RSA*', in fact leads to discrimination in the job market and elsewhere in society. The writings which influence state policy on refugees often locate refugees as a problem rather than conditions that led to their displacement. Perhaps this explains why refugees often suffer from prejudice in their new locations. In South Africa, because the study immigrants are often seen as a major cause of South Africa's socio-economic problems, they often suffer from discrimination and xenophobia. Malkki observed that:

They are not ordinary people, but represent, rather, an anomaly requiring specialized correctives and therapeutic intervention. It is striking how often the abundant literature claiming refugees as its object of study locates 'the problem' not in the political conditions or processes that produce massive territorial displacements of people, but, rather, within the bodies and minds (and even souls) of people categorized as refugees (Malkki, 1992: 33).

Policy analysts have pointed on the fact that the Alien Control Act, which governs immigrants' stay in the country up to 1998, was passed in the apartheid years (Crush, 1998; MacDonald *et al* 1999; Peberdy, 1999; Reitzes, 1994). The Act has been described as: '*a draconian apartheid throwback*' and '*the apartheid last act*' (Crush, 1998: 2). Other policy analysts have criticized the Act, pointing out its exclusionist characteristics which was based on control and deportation rather than facilitation and management (MacDonald *et al* 1999; Peberdy, 1999; Reitzes, 1994). The Act's name, '*Aliens Control*' is also suggestive of a regime which because of her worldwide condemnation for its policies and human rights records, considered outsiders as aliens threatening the national security of the state. Even though the Act was passed during the apartheid era, it still dominates immigration affairs in the country after 1994. Some critics have labelled it as a negative piece of legislation, which promotes the high level of xenophobia in the country (Peberdy, 1999; Peberdy and Crush, 1998).

The Aliens Control Act: A key cause of xenophobia

Peberdy and Crush (1998) observed that the Aliens Control Act of 1991 was rooted in racism, and a government's racist instrument used in determining who was to be allowed or disallowed in the country. In their words, they defined the legislation as "*Discriminatory, drawing boundaries between 'us' and 'them' between 'insiders' and 'outsiders'*" (Peberdy and Crush, 1998: 18). The implications of such policy for West African immigrants is that they were and are still considered as 'outsiders', who should be discriminated against in South Africa. This appears to explain the negative attitude of some DHA officials for Cameroonians and Nigerians, which has intensified with the increasing influx of people of these nationalities into South Africa.

The discriminatory nature of immigration legislation in South Africa, especially on other black Africans, could be traced as far back in the early 20th century when apartheid ideology dominated state policies. Peberdy and Crush (1998: 19) traced this long history and commented as follows:

Throughout the 20th century, immigration legislation has discriminated between people on such grounds as national origin, class, gender and, particularly race. The record of previous South African regimes on the treatment of its primarily black ‘outsiders’ is extremely poor.

The Human Rights Commission (2000) argued along similar lines, arguing that, such apartheid legislation is the root cause of the high levels of xenophobia in the country. Although this legislation has been progressively amended³⁷, Peberdy (1999: 3) pointed out that it still challenges the rights of immigrants, and remains: *“a negative piece of legislation”*. This apartheid legislation continued to govern the lives of immigrants in the country even after the democratic elections of 1994. Against this background, Peberdy and Crush, (1998: 19) argue: *“The bulk of the act is an inheritance from South Africa’s racist past, and raises troubling questions about its legitimacy and appropriateness for governing immigration in a democratic South Africa”*. I found that, the majority of West Africans only started entering South Africa after the first democratic elections in 1994 (reference Appendix 1, Table 5). This notwithstanding, legislation rooted in the years of apartheid, segregation and discrimination, continued to govern the lives post-1994 immigrants in South Africa. Immigrants, particularly Cameroonians and Nigerians are still considered as ‘aliens’, a term rooted from the 1937 Aliens Control Act. Peberdy and Crush (1998) observed about the 1937 ACA that for the first time, the word “alien” was entrenched in legislation and public discourse to describe unwanted immigrants. It is against this background, that black immigrants in general and West Africans in particular are viewed by some South Africans as unwanted illegal aliens who should be deprived of their social, political and civil entitlements in the country.

³⁷ The Alien Control Act of 1995 amends the 1991 Act, and the 1991 Act consolidated the 1913 Immigration Regulation and the 1937 Aliens Acts and subsequently amend both of them (Peberdy, 1999).

The Aliens Control Act of 1991 (ACA)

In Section one of the ACA ‘aliens’, are defined as persons who are not South Africans, and also applies to:

...In so far as they can be applied, in respect of all conveyances other than ships, and in respect of persons entering or seeking to enter or who have entered or are being brought into or have been brought into the Republic by means of such conveyances or on foot (ACA, Section 2).

Aliens are further qualified in section 39 of the Act as prohibited persons. They include:

“Any of the persons referred to in subsection (2) who enters or has entered the Republic, shall be a prohibited person” (Section 39 subsection 1). In subsection 2 (a), *“any person who is likely to become a public charge by reason of infirmity of mind or body, or because he is not in possession of sufficient means to support himself and his dependants that he brings or has brought with him into the Republic”*. Also, any person deemed by the minister to be an undesirable inhabitant of or visitor to the republic, and in subsections 2 (c), *“any person who lives or has lived on the earnings of prostitution or receives or has received any part of such earnings or procures or has procured persons for immoral purposes”*. Subsection 2(e) considered as prohibited persons:

A mentally ill person, or any person who is deaf and dumb, deaf and blind, or dumb and blind, or is otherwise physically afflicted, unless in such case the person concerned or the person accompanying him or another person gives security, to the satisfaction of the Minister, for his permanent support in the Republic or for his removal there from when required by the Minister.

While in subsection 2(f), a prohibited person is equally: *“any person who is afflicted with any such contagious, communicable or other disease, or who is a carrier of such a virus, as may be prescribed”*. It is doubtful if the definition of aliens as stipulated in the ACA of 1991 could be justified. First, because the legislation considered any form of entering into the country except conveyance by ship as illegal. The calculation was, African immigrants most of whom can only enter the country by air or land would be illegal the moment they are in South Africa. This calculated attempt placed immigrants who were in the country before and after 1994 under the category of prohibited persons. Second, the ACA of 1991 equally lacks any moral considerations, as the criteria for selection were

overtly discriminatory and racist. Earlier in 1939, the passing of the Aliens Registration Act of 1939 was to extend state's control, surveillance and to provide the state with more knowledge about the movement, control and the whereabouts of immigrants in the country. Peberdy and Crush (1998: 27) point out that: "...*there was no way they could be legally there under existing legislation*". This dissertation found out that, the implication for West African immigrants who came to South Africa before 1998 was that, they were already prohibited and illegal aliens from the first day they entered the country. It is from this stand point that Klaaren (1998) observes that, prohibited persons do not have any rights at all, but only privileges extended to them by the state. Notwithstanding, some DHA and police officials often compound the problems facing such persons with bribery, corruption, discrimination and xenophobic hostility.

Observations conducted in the Braamfontein Home Affairs Office, found that immigrants, particularly West Africans, are treated with disrespect and hostility. They are expected to pay for the services of DHA officials, they treated with hostility and addressed with derogatory terms. Observations further showed that, fighting with, or whipping of immigrants both in and out of the office, and sending immigrants out of the office, were amongst the most common xenophobic forms of hostility manifested by some Home Affairs Officials. A more detailed examination of how West African immigrants are treated in the Braamfontein Home Affairs Office will be examined later in this Chapter. Section 39 subsections 2(a) of the ACA, states that:

Any person who is likely to become a public charge by reason of infirmity of mind or body, or because he is not in possession of sufficient means to support himself and his dependants that he brings or has brought with him into the Republic.

This section manifests traces of social and economic discrimination, as it favours only those who are in possession of sufficient means to support themselves. The section did not take into consideration the fact that immigrants escaping persecution might not have sufficient means to support themselves and/or their dependents as their decision to emigrate might have been abrupt. This explains why most immigrants on arrival in their new destinations have as a major objective the need for economic survival. This

dissertation found that, West African immigrants particularly Nigerians and Cameroonians in South Africa are no exception to this rule. A newly arrived Cameroonian immigrant in South Africa observed as follows: *“I wasn’t sure I was going to make it. When my visa came I had just that night to get ready, so I left with just my cloths. I couldn’t come with anything because there was just no time for me to prepare my self”*. Another Nigerian immigrant observed that he came to South Africa with nothing hence he needs to do something to survive.

Section 39 subsection (2)(e) states that:

A mentally ill person, or any person who is deaf and dumb, deaf and blind, or dumb and blind, or is otherwise physically afflicted, unless in such case the person concerned or the person accompanying him or another person gives security, to the satisfaction of the Minister, for his permanent support in the Republic or for his removal there from when required by the Minister.

Providing for exclusion of certain categories of disable people, may violate the constitution’s prohibition of discrimination on the grounds of disability, while declaring persons prohibited in terms of prostitution as stated in subsection (2) (c) would indirectly violate equality on the grounds of gender (Klaaren, 1998). Klaaren argued that, persons deemed to be undesirable by the minister should at least have some protection on the grounds of constitutional rights of freedom of expression (Klaaren, 1998). From a more realistic point of view, these rights are basically absent in the lives of West African immigrants who are still considered by many South Africans as prohibited illegal aliens. During the apartheid days, all non-South Africans (prohibited persons) were considered undesirable and regarded as a threat to the socio-economic stability of the state. This notion continues even after the democratic elections in 1994, and is manifested in the ways immigrants particularly Cameroonians and Nigerians are treated by DHA officials. This group of immigrants are treated with disrespect, are discriminated against, their monies extorted from them, are address with derogatory terms, and some officials overtly xenophobic, and wilfully discriminatory.

Section 41 of the 1991 ACA state the conditions required for prohibited persons to obtain the Temporary Permit to Prohibited Persons (TPPP). Subsection (3) of the 1991 Act

states: *“The Minister may from time to time extend the period for which a permit has been issued under subsection (1)”*. Immigrants, particularly asylum seekers, are often granted a three-month period after which they have to renew the TPPP. This is not the case with most Cameroonians and Nigerians visiting the Home Affairs office. This dissertation found that more often than not, West African immigrants are granted with an extension period of less than three months. Cases were observed where Cameroonian and Nigerian immigrants were given extension periods of two weeks and even less. According to a Cameroonian immigrant: *“because I didn’t have money to pay the interpreters, the officials kept on asking me to come back the following week”*. One Nigerian immigrant said: *“For the past two months I have been coming here only to get a two weeks extension”* Such decisions based on corruption by Home Affairs officials who have been delegated with powers contravenes section 4 (1) of the Act, which states that persons delegated powers upon by the Director-General: *“shall not be divested of any power so delegated and may set aside or amend any decision of the delegate made in the exercise of such a power”*. To take upon them to decide on the extension period of documentation submitted by Cameroonians and Nigerians depending on the amount of money they have paid the interpreters is discriminatory, and a contravention of the law. How officials of Home Affairs department treat Cameroonian and Nigerian immigrants will be examined in subsequent sections of this Chapter. In addition, the role of the Braamfontein Home Affairs Office in precipitating xenophobia towards West African immigrants, and the consequent impact on their identity, and activities in the country will also be examined. The following section will examine the new Refugee Act of December 1998, bringing out its relevance to the present study.

The new Refugee Act of December 1998

The new Refugee Act No. 130 of 2nd December 1998 was passed with good intentions, aiming to recognise refugees and asylum seekers in South Africa, and synchronise the country’s legislation with international law. Such good intentions are reflected in the aims of the Act:

To give effect within the Republic of South Africa to the relevant international legal instruments, principles and standards relating to refugees; to provide for the reception into South Africa of asylum seekers; to regulate applications for and recognition of refugee status; to provide for the rights and obligations flowing from such status; and to provide for matters connected therewith (Refugee Act, 1998: 1).

It further states in the preamble of the act:

Whereas the Republic of South Africa has acceded to the 1951 convention relating to status of refugees, the 1967 protocol relating to the status of refugees and the 1969 Organisation of African Unity Convention governing the specific aspects of refugees problems in Africa as well as other human rights instruments, and has in so doing, assumed certain obligations to receive and treat in its territory refugees in accordance with the standards and principle established in international law (Refugee Act, 1998: 1).

Even though the Act has its own problems, some DHA and police officials abuse its good intentions. In many ways, the aim of the Act has been undermined. Most immigrants particularly Cameroonians and Nigerians are not welcome in the Department of Home Affairs office. How these immigrants are treated in the DHA office is discussed later in this Chapter. Additionally, since the passing of the new Refugee Act, the application procedure for processing immigrants' documentation has not change from the old procedure. Finally, the rights of asylum seekers and refugees are in many ways undermined and marginalized in the country. Some political analysts hold that, the state and not the people maintain the sole responsibility of determining political identity within its territorial boundaries. However, recent trends in migration, and other factors undermine this static notion of citizenship and political sovereignty. Conventions governing international laws, human rights organizations such UNHCR, the ways people define and conceptualise themselves, interactions between groups, and citizens' reaction towards outsiders are all influential factors undermining state hegemony over citizen determination and identity formation (Agnew, 1999; Conversi, 1999). Although the new Refugee Act was passed in December 1998, it only became operational in 2000. As a result, before this period, the Aliens Control Act of 1991 governed immigration affairs in the country. Cases have been reported in the country where other African immigrants particularly West African immigrants have been treated with gross hostility and

discrimination. Such treatments play an important role in determining immigrants' identity in their new country of residence (Agnew, 1999; Conversi, 1999). Furthermore, while the new Act cut down on the number of offices dealing with asylum seekers and refugees affairs, it did not create any provision for official interpreters; neither did it consider the number of refugees or asylum seekers in the country. This situation was described by the HRC (2000: 16) in the following words:

In the meantime a very unsatisfactory situation has developed. Interpreters act in many instances as gatekeepers to DHA officials. Asylum seekers are forced to use interpreters who frequent the department despite a notice saying that they can bring an interpreter of their choice. Many asylum seekers have alleged that interpreters fail to interpret an asylum-seekers case accurately or with care, and that asylum is denied on that basis.

Cutting down on the number of DHA offices dealing with refugees and asylum seekers has led to heavy congestion, corruption, and discrimination against immigrants especially West Africans. It seems that the implementation of the Act does not take account of its provision that:

The Director-General must, in consultation with the standing committee, take such steps as to ensure the appropriate training of any person to whom powers are delegated in terms of this Act; or who is appointed in any capacity in terms of this Act (Refugee Act Section 39, 1998).

There are no clear procedures in appointing interpreters in the Braamfontein DHA office. It usually depends on personal relationships between the officials and immigrants, and on how often the appointee will bring bribes from immigrants to the official. These appointees are not in any way trained or educated about immigration and refugees affairs, neither do they attend any training workshops to be told how to treat immigrants visiting the Braamfontein Home Affairs office.

Other shortcomings of the new Refugee Act relate to the fact that, from its inception the implementation had been very problematic, because the law did not spell out any implementation strategies. Different Home Affairs Departments have different strategies, giving new immigrants the choice of selecting which Home-Affairs office to process their

documents. According to a senior researcher³⁸ for Refugees Affairs in the Centre for the Study of Violence and Reconciliation (CSVR), a major problem of the new Act is the fact that there was a lack of a concomitant budgetary allocation that would ensure effective allocation of resources and proper implementation. The 1998 Refugee Act also lacks gender sensitivity, with services for women and children largely undermined. In the Braamfontein Home Affairs office for example, men as well as females have been observed fighting in the queue outside the office, and women humiliated in front of their children inside the office. There are no special offices or officials set aside to provide services to females and children. Men, women and children can be attended to by any official, depending on how much bribe has been paid to the official through the interpreters. In relation to asylum seekers, the whole issue around the Section 22 document is very problematic. Unlike the Section 41 document of the Aliens Control Act of 1991, which gives asylum seekers the right to work and study, the Section 22 document of the new Act does not entrench the right to work and study for asylum seekers. This however is a violation of immigrants' social rights, and challenges the basic human rights of asylum seekers in the country.

Arguments in support of Section 22 of the 1998 Refugee Act rest on the premise that, asylum seekers may work and study in the Republic only after six months from the day the application was filed in. It is assumed that within six months time, the status of the applicant must have been determined. This is usually not the case. The reality is, it takes some asylum seekers years before their status is being determined. Several immigrants interviewed in this research who entered South Africa in the early 1990s were still asylum seekers when this research was been conducted. A Nigerian immigrant responded as follows when asked if he would like to get a formal job in South Africa: *"Getting a formal job is out of the question. We came here as asylum seekers and remain like that for years. You can't get a job with a refugee paper. I came here in 1998 and up till today I am still an asylum seekers"*. For most Cameroonians and Nigerians, after waiting for this long, they end up getting a 'you must leave' document, requesting them to leave the country. The majority of Cameroonians and Nigerians interviewed for this research have

³⁸ Personal communication with Bea Abraham senior research and head of refugee affairs in CSVR.

been in the country for more than two years yet they were still carrying the asylum seekers permit waiting for their status to be determined. The psychological effects arising from prolong asylum and/or refugees' status are well established (Stoessinger, 1956; Malkki, 1992). Malkki (1992: 33) observed that: "*such psychological probing constitutes an excursion into what is still largely terra-incognita*³⁹". Such observation is very little research in the case of West Africans in South Africa, and it is open for further research.

The Department of Home Affairs

West African immigrants, on entering South Africa at an official port of entry, are issued with a temporary permit allowing them not more than 14 days to present themselves to the nearest DHA office. The intention is to control and reduce the rising number of illegal immigrants entering South Africa. In practice, it takes the DHA much longer to subject immigrants to initial processing of their documentation. Cases have been observed that have taken up to 24 days before immigrants' documents were being processed (HRC, 2000). According to one Cameroonian immigrant, it took him one month from the day he entered South Africa in 1999, before he could gain access into the Braamfontein DHA office. The office was over-crowded and he did not have enough money to bribe the interpreters. Such bribery, he said was essential in order to get a better position on the queue and/or, to gain access into the SDO's office. The problem of overcrowding in the Braamfontein office was made worse in 1998 when the new refugee legislation cut down on the number of offices dealing with asylum seekers and refugees. The number of offices in Gauteng province dealing with asylum seekers and refugee affairs were reduced to just one in Pretoria and one in Johannesburg, the Braamfontein DHA office. The offices operating in Boksburg and Garankuwa were closed down, and immigrants' files in those offices were transferred to Braamfontein. Cases of missing transferred-files in the Braamfontein office were common. A Cameroonian immigrant recounted that:

³⁹ A new and unexplored field of knowledge, in the world of refugee (Malkki, 1992).

When I came here in 1998 I was advised to go to the Boksburg office because it was easier and cheaper to get the asylum permit. After three months I was told our files have been transferred to the Braamfontein office. When I went there, I was told my file is missing and I had to start the whole process of seeking asylum all over again.

Repeating the whole process all over again can be very costly and time consuming. The same interviewee commented that: *“I don’t like the overcrowding in that office, and how those immigration people treat us”*.

Immigrants, who are fortunate enough to gain access into the DHA office, will declare their names, and their passport details are recorded. A Status Determination Officer (SDO) will conduct an interview and the immigrants’ fingerprints will be taken, after which, the immigrant will be issued with an asylum seekers permit. Before 2000, a ‘Temporary Permit to Prohibited Persons⁴⁰’ [Section 41(1) of Act No.96 of 1991: Regulation 22(1)] was issued to immigrants. Since 2000, with the new Refugee Act in place, immigrants were issued with ‘Asylum Seeker’s Temporary Permit Section 22’ of the Refugee Act No. 130 of 1998 (ASTP), renewable every three months from the date it was first issued. This apparently simple process is in fact long, expensive and complicated.

The night walk to Braamfontein Home Affairs office

Immigrants who have just entered the country, or who already have the Temporary Permit to Prohibited Persons⁴¹ under Section 41 of the 1991 Act, or the Asylum Seeker Temporary Permit⁴² under Section 22 of the 1998 Act, have to renew their permits every three months in the nearest DHA, or in the office, which first issued it. Hence, every working day of the week, immigrants go to the Braamfontein DHA to renew their permits. Due to the large number of immigrants visiting this office, the SDOs treat only a small number of cases daily. How the SDOs determine the number of cases to be treated is very unclear, but it usually depends on the commitments of the SDO on duty. This has

⁴⁰ It is variously called such as Temporary Residence Permit, Asylum Seekers permit, and Asylum Permit

⁴¹ For those immigrants who came to South Africa before 1998.

⁴² For those immigrants who came to South Africa after 1998. In 2000 all those with the Temporary permit to prohibited persons of the old Act were converted to Asylum seeker temporary permit under the new Act.

implications for West African immigrants who visit this office daily to renew their permits. Some immigrants either spent the whole night a day before their permits expire outside this office, or they leave their flats/apartments in the early hours of the mornings, some as early as midnight just to gain a better position in the queue. If they do not do this, the immigrants stand little chance of being attended to by DHA officials. Failure to re-new document leads to a high chance of being arrested by the police who are always on the lookout for black illegal immigrants. The period when immigrants are trying to re-new their documents is in fact one when they are particularly vulnerable to all forms of harassment. A Nigerian asylum seeker gives the following account of his experiences:

When I came for my second renewal the whole place was full with people. I spent the whole day outside the office yet there was no way I could get in. I was scared because police people were all over Hillbrow and I hate to be arrested by police people. The following day I decided to be the first person in the office so I left my flat at around midnight. Just before I enter Esselen Street, three guys came out of nowhere and surrounded me. I noticed that one of them was carrying a gun so I stood still. They asked me to give them my cell phone, and the money I was carrying. I gave them my phone and they took Rands 200 from me. They promised to shot me the next time they meet me, if I am not carrying enough money with me. After moving some few steps away from me, one of them came back to me and asked me to give him my jacket, which I gave without complaining.

Another immigrant from Cameroon recounts how he was robbed at gunpoint in front of the Braamfontein Home Affairs Office:

It was during the 'Operation Crack down' in 2000 when police people were arresting foreigners. The Home Affairs was often full during this time so I had to sleep outside the office in order to get a good position in the morning. Other guys from Somali and Ethiopia later on joined me and we were like six of us. It was raining heavily and we had nowhere to go so we had to wait outside under the rain. Around 2 am some four guys joined us and were speaking in Zulu, trying to find out what we were doing outside the office. They suddenly took out guns and asked us to give them all what we had. They took our cell phones, money, and a jacket from one of the Ethiopians and left.

An immigrant from Sierra Leone described how the police arrested him on his way from Hillbrow to the Braamfontein Home Affairs office:

My permit was to expire the following day so I decided to go for renewal. On my way approaching the Civic Theatre a police car approach me and stopped next to me. The driver asked me where I was going and I told him, I am going to renew my permit. He asked to see the permit and when I showed him, he said it is expired. He came out of the car and handcuffed me, put me in the car and drove to the Yeoville police station where I was locked up. I was released after two days when my friends intervened and bribed the police officials.

In many occasions, immigrants have arrived at the Home Affairs office in Braamfontein with stories of how they have been robbed and/or attacked on their way to the office. Others tell stories of how they were almost arrested by the police because their ASP was about to expire. The Weekly Mail and Guardian reported similarly in 2000 that: *“Refugees Trying to renew their permits risk not only being picked up by the police, but also the possibility of detention by the Department of Home Affairs”*. The next section will examine how immigrants are treated in this office.

The Braamfontein Department of Home Affairs Office

Due to the large number of asylum seekers visiting this office daily, queues are often very long, with as many as 500 or more immigrants in and outside the office. Cameroonian and Nigerian immigrants have to be present as early as midnight, if they are to get one of the first 20 positions in the queue. There are often sporadic fights and struggles amongst immigrants for a better position in the queue. On one occasions, Nigerians were asked by officials to form their own separate line before they could gain access into the Office. The HRC reported that:

Many asylum seekers queue overnight, although being first in the queue when the doors open in the morning does not automatically guarantee entry. Trying to secure a place in the queue can also have dangerous consequences (HRC, 2000: 14).

The office opens at 7.30 am but only starts working by 8.30am. The chances of access to DHA officials for those in the queue depends on a number of factors such as, the number of cases the SDOs decide to treat for that particular day, the immigrant's nationality and gender, and whether he or she has a passport. SDOs will often ask applicants to sing their

national anthem as proof of their nationality and refuse to attend to them if they cannot do so. The willingness of the immigrants to bribe the interpreters also affects access.

Treatment of asylum seekers from particular countries is often adversely affected by the reluctance of the South African authorities to recognise the severity of the political problems in those countries. A Cameroonian immigrant, for example, was kicked out of the line on grounds that Cameroon is a peaceful country and need not seek asylum in South Africa. Other cases of discrimination against Cameroonians were reported by Magardie (2000: 1) in the *Mail and Guardian*: *“Two asylum seekers from Cameroon had to be escorted this week to the refugee affairs office in Braamfontein by representatives from the Black Sash and Lawyers for Human Rights to avoid arrest”*. The HRC (2000) also observed in many instances when asylum seekers from Cameroon, Nigeria, Senegal and Uganda were told they are not welcome in the Home Affairs Office.

Problems of this nature have led to some immigrants changing their nationality to that of a war torn country, just to acquire the asylum seekers permit. I interviewed a Cameroonian immigrant and found that he changed his nationality to that of a Congolese because his application for asylum was rejected in the Braamfontein Home Affairs office. The immigrant recounted as follows: *“When I came here in 2000 my application was rejected and police people were all over the place looking for foreigners. I had no choice but to change my names and pretend I am a Congolese. If I didn’t do this, there was no way I could have had the asylum permit”*. Webster *et al* (2001) observed that people’s lives are shaped by many organisations that are part of a constellation of organisations called ‘the state’. The decision of this immigrant to change his nationality to a Congolese reflects his resilience to survive in South Africa. Lemert (2002: 3) described such action as sociological competence, noting that: *“without it social life would be impossible”*. From a Weberian point of view, such decision can be considered meaningful because the immigrant did so in order to avoid repatriation (Weber, 1978).

Inside the office, asylum seekers often suffer from derogatory and xenophobic challenges. In the Braamfontein office I was frequently subjected to remarks from

officials such as: ‘*you must go back to your country*’, ‘*Nigerians go home*’, ‘*Cameroonians go home*’, ‘*Kwerekwere (foreigners) stop making noise*’, ‘*Why did you come here?*’ ‘*When are you going back?*’ and, ‘*we don’t want you here*’. Such remarks clearly impinge on the rights and dignity of asylum seekers in South Africa (HRC, 2000). Asylum seekers often wait patiently in an overcrowded hall, waiting for the SDOs to call them in and process their documentation. A further arbitrary practice is that of officials calling applicants from particular countries to the front, apparently at random. The HRC reports:

As the queue does not operate on a first come first serve basis it is not uncommon for late arrivals getting preferential treatment, apparently for no particular reason. The system of calling countries is ad hoc and seems to be dependent on whether the particular official responsible for specific countries is sick, on leave or otherwise engaged. The selection process appears to be random. Three asylum seekers per country or region are allowed into the offices for processing per day...there seems to be no system in regards to which countries are called out. Some interpreters seem to have more access to DHA officials and can facilitates in some cases the entry of their nationals (HRC, 2000: 15).

The behaviour of DHA officials often reflects particular prejudice towards Cameroonians and Nigerians. The case of *Isaac Nguetchue and Nicholas Tchiegue versus the Department of Home Affairs*’ is suggestive. In early 2000, Nguetchue and Tchiegue, brothers from Cameroon were on loggerheads with the Department of Home Affairs, which was refusing to renew their asylum permits. After a series of detention and arrests by the police and the Department of Home Affairs they decided to take the Department to court, with the assistance of the United Nations High Commission for Refugee (UNHCR) and lawyers of Human Rights (LHR). The case was settled and the Cameroonians issued with their permits. I interviewed the brothers, who recounted the following story.

The whole problem started when Tchiegue, the elder brother of Nguetchue, lost his valid Section 41 Temporary Permit to Prohibited Persons. Shortly after, he was arrested in

Pretoria and locked up for not having his identification documents with him. When Nguetchue, a valid Section 41 holder of the 1991 ACA went there with the photocopy of Tchiegue Section 41 Temporary Permit to Prohibited Persons to free his brother, his own permit was seized from him by the station police and was arrested as well. They were later transferred to the Lindela repatriation Centre in Krugersdorp where they spent more than a month before their released.

The two brothers were on a request list to renew their permits since July 1999. The Braamfontein DHA office refused their request on grounds that they obtained their permits in a Home Affairs office, which was closed down and under investigation for fraud. Further reasons advanced by the DHA were that they had entered the country with a study and visitors permit and hence not qualify for asylum. This was a direct violation of international protocol, which states clearly that, anyone regardless of how he/she entered a country has the right to apply for asylum. Interviews conducted with these brothers showed that they were active members of the Social Democratic Front (SDF) in Cameroon, and had applied for asylum on grounds of fear of arrest and persecution. According to the Weekly Mail and Guardian of May 24th 2000, they are in possession of an SDF document which states that: *“The pair have been involved in several political demonstrations”*, and the document, which was also presented at the home affairs states: *“the deportation of these gentlemen will surely cost their lives”*. Notwithstanding, this document was ignored by DHA officials, who insisted on their arrest in preparation for their subsequent deportation.

Another Cameroonian immigrant decided to videotape the manner in which Home Affairs officials treat immigrants, but unfortunately for him he was arrested locked up and latter sent to the Lindela repatriation Centre. The Weekly Mail and Guardian of 24 May 2000 reported the predicaments of immigrants visiting this office as follows: *“Nearly all the refugees and asylum seekers outside the office have similar complaints: of police tearing up permits and arresting them, or of officials refusing to renew permits and constantly telling them to come back tomorrow”*. The Weekly Mail and Guardian further pointed out that asylum seekers and refugees live in fear of being arrested on the

streets because, *“police do not bother to listen to explanations that they had been queuing fruitlessly outside the refugee affairs office”*.

The role of interpreters in the Home Affairs office

The Braamfontein office is often full of immigrants from all over Africa, with different language backgrounds. Amongst these languages, French, Arabic, Chinese, Portuguese, Spanish Swahili are the commonly heard in and outside the building. On the other hand, most Home Affairs officials in the Braamfontein office can only speak English and the other South African languages. Observations made in this office, and discussions held with some of the officials showed that only one official could speak a second international Language, which was French. In many occasions, discussions held with this official in French, I found out that although he speaks French, he was not very fluent and lack familiarity with the language. It is as a result of this language handicap in the Department that prompted the office to look for people who could help interpret these different languages for the DHA officials. Of vital importance, in the Regulations to the South African Refugees Act, No. R366, Section 5(1-3), the conditions for interpretation, when and how interpreters should operate are well documented in the Act (Regulation of the Refugee Act, 2000).

There are more than ten interpreters in the Braamfontein office, all of them male. These interpreters are asylum seekers who speak English, and come from countries that speak a different language other than English. The word ‘interpreter’ is a misleading description of the role they play in the DHA. Although in theory they are appointed to their position to help interpret and facilitate the acquisition of documents, in reality, they play the role of intermediaries between immigrants and officials, taking bribes in order to facilitate the processing of documents. When asked to describe his job in Home Affairs an interpreter replied as follows: *“My job in this office is to help immigrants especially French speaking immigrants to get their papers. Well, in actual fact, we do the direct opposite of what we should do; because we use this opportunity to extort money from asylum seekers which in most cases they cannot afford”*. According to the same interpreter, there is no fixed price for immigrants visiting this office:

It varies and depends on whether you have money or not. From the way you are dressed, whether you came with a car or not, we can tell if you have money or not. We look at you and we can say if you are rich or not from that we charge you accordingly. It also depends on the period. There are low and peak periods. During low periods we charge up to Rands 400 from immigrants but during peak periods, we charge Chinese Rand 1000, and West Africans between Rands 500 and 800.

This interpreter found that Chinese immigrants were willing to pay high sums because: *“They believe that when they pay more they get priority and are treated with respect”*. According to this respondent of the money extorted from immigrants, a fixed amount goes to the SDO with whom the interpreter is collaborating. For every Rand 1000 collected from Chinese immigrants, the SDO gets Rand 600, while for every black immigrant the SDO gets between Rands 300 to 400. The interpreter claimed how officials deliberately withhold documents at certain periods in order to drive up the going rate for bribes: *“Home Affairs Officials intentionally refuse to give papers to immigrants so that their services will be in high demand”*. This they achieve by either telling immigrant that the SDOs in charge of immigrants’ files are not available, or, the computers are not working, and/or immigrants’ files could not be traced. Sometimes, specific days are allocated for particular countries, asking immigrants to come back only on their allocated days. The resulting overcrowding on the allocated day creates the need for immigrants to bribe the SDOs through the interpreters to get their documents processed. Another interpreter was even clearer on this point: *“Allocating specific days to particular countries are just a strategy of getting money from people. When they come on their allocated days, there is competition and they want their papers signed fast for them, so they bribe officials through interpreters”*. A Congolese woman recounts how when she went to the Braamfontein Home Affairs office with her six months old baby for two weeks because she could not afford to bribe the interpreter:

I was going to that office for almost one week. Each time, they asked me to come on a different day because that was the day set aside for Congolese. What surprises me most is that, for all the days I went there, Congolese and people from other countries came and renewed their papers without problems. When I asked them, they told me they used money. That I should also use money because that’s the only way I can have my problem solve in this office.

Becoming an asylum seeker

Once inside the Braamfontein office it may take hours before an immigrant is allocated to an SDO, and/or call for a brief interview. The fact that one gets access into the office is no guarantee that one will be called for an interview. Cameroonians and Nigerians interviewed in the course of this research complained that they spent whole days waiting in the office, only for the officials to tell them at the end of the day, that computers are not working, or their files could not be traced. In such a situation, immigrants have no alternative but to start the whole process all over again. Having obtained access to the office on one day does not guarantee access on the next day. A similar observation was made by the HRC (2000: 15):

Asylum seekers who do not manage to enter the Braamfontein office are told to return the next day, are not offered appointments or provided with any other proof that they have been at the office. This can and does result in bona fide asylum seekers being arrested and taken to the Lindela Repatriation facility. It is not unusual for asylum seekers to spend up to six weeks in the queue before receiving assistance (HRC, 2000:15).

After interviewing the immigrant with his or her fingerprints taken, the decision to grant asylum or not rest on the SDO. Many of the Cameroonians and Nigerians interviewed in my research had their applications for asylum rejected by the SDOs. SDOs often base their decision on the argument that Cameroon and Nigeria are peaceful countries, which are not involved in any wars. Those Cameroonians and Nigerians, who had earlier been fortunate enough to be granted with the asylum seekers status, often, find it difficult to renew their status in the country. If the asylum seeker's application is denied the applicant is instructed to leave South Africa. They can then either comply or go underground. Observations and interviews conducted with asylum seekers applying at the Braamfontein Home Affairs office show that the procedures of this office fall short of any clear-cut and defined method. The questions asked, and the decisions taken on whether or not asylum should be granted are often prejudice. The case depends on the discretion of the SDO, how informed the SDO is about the country from which the immigrant is coming, and the attitude of the SDO that particular day. One asylum seeker from Nigeria recounted that he had never been asked any questions at all: "*They only*

took my picture and my finger prints and asked me to wait outside". This immigrant bribed the SDO through the interpreter with a sum of Rands 500, which ensured that his case was promptly attended to by the SDO. In other cases questioning was casual or hostile: *"The man asked me why I have come to South Africa, and when I am going back to my country"*.

According to Max Weber, bureaucracy is a distinct feature of modern society, and a means of administering the affairs of society (Gerth and Mills, 1946). From a purely technical point of view, a bureaucracy is capable of attaining the highest degree of efficiency, and is in this sense formally the most rational known means of exercising authority over human beings. But, Weber argued that, rationalisation is a form of bureaucracy, which leads to alienation. Weber's theory of modern society defines bureaucracy with some distinct features (Gerth and Mills, 1946; Webster *et al*, 2001; Weber, 1978). However, I found in this dissertation that, though the procedure of becoming an asylum seeker in the Braamfontein office is theoretically one of a fair and rational bureaucracy, my research shows a chaotic and inefficient kind of bureaucracy. This dissertation demonstrated that common features of bureaucracy such as division of labour, rules and regulations and professionalism were missing in the Braamfontein DHA offices (Gerth and Mills, 1946; Webster *et al*, 2001; Weber, 1978). This kind of bureaucracy, leads to: *"arbitrariness and lordly discretion"* (Weber, 1978: 976).

The relevant South African legislation does recognise in Sections 2 and 3 of the 1998 Refugee Act that, there might be people who are subjected to persecution in their home countries despite an exiting democratically elected government, where there is a real fear of physical harm or of persecution based on a wide range of criteria. Thus the DHA's practice of rejecting applications from Cameroonians or Nigerians on the basis that they come from countries with elected governments is not necessarily in conformity with the South African legislation. The link between environmental changes and forced

migration⁴³ certainly appear to be an important theme at this juncture (Castles, 2001), which requires mentioning rather than a detailed discussion.

In terms of the South African legislation, it is proper that asylum be granted to immigrants as long as they have well founded fear of being persecuted, or their physical safety and freedom threatened in some way, in their home countries. The political state of affairs in both Nigeria and Cameroon the study countries of this research; have been examined in Chapter Four of this thesis. It appears beyond reasonable doubt, that some of these immigrants, most of whom come from minority groups, have strong grounds to express fear of political persecution in their home countries. Whereas the South African legislation clearly envisages that decisions on asylum should be made on an individual basis, my research demonstrated that the DHA Braamfontein often makes collective decisions on particular grounds of nationality. I also found that applications for asylum were rejected in particular periods of the year. For example, during the months of April, May and June in 2000, the Braamfontein Home Affairs office rejected all application from West African immigrants seeking asylum in South Africa. This group of immigrants risk being arrested and detained by the police. The decision to reject asylum applications from individuals of particular counties was observed and reported in the Weekly Mail and Guardian as follows:

All Cameroonians' previous attempts to renew their permits resulted in their arrest...from the queue outside the office. The incident is just the tip of the iceberg in a series of bungled attempts by the department to renew expired permits, resulting in refugees and asylum-seekers being arrested and detained by police (Magardie, 2000: 1).

⁴³ Some researchers have used the term environmental refugees, to mean people who can no longer gain a secure livelihood in their home land because of environmental problems, and feel the need to seek sanctuary elsewhere (Castles, 2001; Myers, 1997; Myers and Kent, 1995). However, some researchers seem to disagree with the notion of environmental refugees. Black (1998) for example feels that the concept of environmental refugees is a myth, and a misleading, highly politicised, and potentially damaging.

In my research, I also equally observed that most rejection letters dished out to asylum seekers from Cameroon have the same format, content, and reasoning, giving the impression that cases are not carefully studied, or are not dealt with on an individual bases. Amongst West African immigrants' seeking asylum in the country, this rejection letter is popularly known as the, '*you must leave*' document, because it stresses on immigrants lack of well founded fear of persecution in their home countries, and so they must leave South Africa within fourteen days from the date the letter was issued.

In the course of my research, I studied several rejection letters⁴⁴ issued to asylum seekers from Cameroon. All the rejection letters studied for this research had six paragraphs, each carrying the same content and reasons for rejecting the immigrant's claim for asylum. The introductory and the first paragraph states: "*I hereby wish to inform you that as your fear of persecution is not well founded and refugee status cannot be granted to you, your application for asylum has been rejected by the Standing Committee for Refugee Affairs*". The second paragraph of the rejection letter is based on the fact that, the immigrant has entered the country on a holiday visa but later decided to apply for asylum hence: "*This shows clearly that you fouled your credibility by changing the purpose of your visit therefore do not have a well founded fear but you are clearly abusing the asylum procedure*". What the Standing committee fails to understand is that, for security reasons, some potential immigrants would use a tourist visa, or a visitor permit, as an excuse to move out of their countries in search for asylum elsewhere. Paragraph three of the letter ('*you must leave*' document) states:

⁴⁴ A copy of such rejection letter (you must leave) has been included in the appendix of this thesis.

Cameroon is a unitary and a multi-democracy, which has held presidential, municipal and legislative election in the last five years...Although there were irregularities in the elections, this does not discredit the government of President Paul Biya because in 1998, the SDF engaged talks with the RDPC⁴⁵ however, it declined the invitation to join the government because the two sides remained divided over opposition calls for revised electoral laws and an independent electoral commission...The fact that some members of the SDF's National Executive Committee are not pleased with their party leader Mr. Fru Ndi decision to discontinue talks with the RDPC, is a sign to show that the RDPC government is accommodating opposition parties and is ready to continue talks with them in order to resolve their differences amicably. Again, the government of Cameroon does not arrest or persecute opposition party members. There are more than 140 political parties operating in Cameroon and there are no reports of harassments or persecution by the government to these opposition parties.

Many Cameroonian asylum seekers would dispute that this is an accurate account of the situation in their country. They contend that the opposition is persecuted there. They would see the analysis in the letter as ignoring the major political disturbances in the country since the early 1990s, most notable the 'operation ghost town'. The 'Operation Ghost Town' occurred in 1992 when Biya's CPDM party won the legislative and presidential elections leading to wide spread accusations of elections irregularities and fraud. The main opposition party the SDF, campaigned for a massive sit-down strike and rioting, leading to massive killings, physical and human rights abuses, and an economic standstill in the country (Cameroon-Politics, 2002).

Since the introduction of multiparty democracy in 1990, the country has never been politically stable as shown in Chapter Four. University students supporting opposition parties have been arrested, others disappeared, and some killed. Political activists in the country are always on the run until they get an opportunity to leave the country. There have been many violent strikes, state of emergencies, military and police harassments of opposition members, leading to the physical abuse and death of many Cameroonians. It has become a common occurrence for opposition members especially the youths to disappear, die mysteriously or arrested without course. Civil society institutions such as

⁴⁵ Rassemblement Democratique du Peuple Camerounais (RDPC). Cameroon People's Democratic Movement (CPDM) in English

universities also collaborate in the persecution of political dissidents. A student activist seeking asylum in South Africa stated: *“Police people were chasing me from 1990 until 1997 when I managed to escaped to Zambia. Even when I was in Zambia I applied for a job as an accountant. They inquired from my former university in Buea if I was a student in that university and the university disowned me”*. As in many other African countries, the unstable political situation in Cameroon is a factor in emigration.

The fourth paragraph of the rejection letter makes reference to Cameroon’s unification in the 1961 plebiscite, when the English-speaking minority united with the French-speaking majority. The conflict in Cameroon is one where the French-speaking majority dominates and marginalizes the English-speaking minority in all domains of life. Elsewhere in the world, differences between majority and minority ethnic groups have led to some of the most devastating wars and killings of innocent people: for example Rwanda (Mamdani, 1999) and the former Yugoslavia (Conversi, 1999). Hence, claims of persecution because of belonging to a different ethnicity or a minority group need to be considered seriously, including the case of Cameroonians who are being marginalized because they come from the minority English speaking part of the country. The DHA needs to properly investigate the ongoing situation in Cameroon as far as the minority/majority problem is concern. The problem in Cameroon appears to entwine with the French/English problem as well as the ruling and opposition parties in the country. To reject their application simply on grounds that: *“...the issue of the Francophone and the Anglophone Cameroon is something of the past”* is an understatement, which ignores a growing problem in the country. Ignoring this problem might with time, develop to more catastrophic consequences.

The Anglophone/Francophone problem (the minority/majority issue) in Cameroon has always been the major political division in the country, and still continues up till date. The formation of some political parties in Cameroon is based on cultural and language differences, which often result to political conflicts and insecurity. Such differences have also triggered the emergence and the development of secessionist organizations like the Southern Cameroon National Council (SCNC). The SCNC organization feels that

English-speaking Cameroonians are being marginalised, so, they have sued the government in the International Court of Justice for human rights abuses. In paragraph five of the rejection letter, immigrants' claims for asylum are often rejected because as stated: *"You have submitted insufficient evidence of proof of persecution and in the absence of such, it is deduced that there was no serious threat to life and limb or freedom. Therefore you cannot support a claim for well-founded fear of persecution"*. Finally, the last paragraph of the rejection letter described the political history of Cameroon, stating how the country is a unitary and a multiparty democracy, which has held presidential, municipal and legislative elections in the past years. The letter also states when the next legislative and presidential elections would take place, and conclude as follows: *"As aliens cannot reside in the country on a temporary basis indefinitely you will have to make the necessary arrangements to leave the country within 30 days after receipt of this letter. Failure to do so may render you liable to prosecution"*. This is in contravention of Section 2 of the 1998 Refugee Act, which states that:

Notwithstanding any provision of this Act or any other law to the contrary, no person may be refused entry into the republic, expelled, extradited or returned to any other country or be subjected to similar measure, if as a result of such refusal, expulsion, extradition, return or other measures, such person is compelled to return to or remain in a country where he or she may be subjected to persecution...his or her life, physical safety or freedom would be threatened... (Refugee Act, 1998: 6).

This document appears to be a pre-prepared letter for all Cameroonians entering the country, as each one of them gets this letter at some stage in the asylum seeking process. The only time the SDOs look at Cameroonians cases on an individual basis is when the immigrants appealed for reconsideration. The letter does however give the Cameroonians the opportunity to appeal against their exclusion from the country, which seems to indicate an awareness on the part of the DHA that the issues may be more complicated than they admit: *"Should you wish to appeal against the decision of the Standing Committee for Refugee Affairs, your reasons, written in English medium, must reach this office or the regional office within 30 days of receipt of this letter"*.

I found out that asylum seekers are often discouraged by the SDOs soliciting legal advice. In most cases, asylum seekers are asked to write the appeal letter in the presence of the SDO. If the SDO is bribed, an interpreter will be asked to assist the immigrant write an appeal letter. Interviews conducted with immigrants for this dissertation show that, if the applicant cannot speak or write English they have to pay the interpreters, as well as giving bribes to the SDO. The interpreters often act as legal advisers to asylum seekers whose applications have been rejected. Despite the lack of experience and formal training on immigration affairs, the interpreters advise immigrant on what to do, and how to write the appeal letter. An interview with a Cameroonian interpreter demonstrated how limited their qualifications for their role tends to be. Though a Cameroonian, this interpreter learned French only after he was employed as an interpreter in the Braamfontein Home Affairs office. He had no prior legal background. According to the interpreter: *“My qualification for working here is QBE”* (Qualification by Experience). The immigrant further explained: *“I have been working here since 1998 so I know the in and out of this office”*. When asked how he got the job as an interpreter, he narrated the following experience:

When I came here in 1998, there were no jobs for foreigners so I decided to be selling tea and coffee every day to refugees coming to this office to renew their papers. So I knew so many refugees and even some of the officials come to my business place to drink tea or a cool drink. One day I was called in the office to come and help a Congolese woman who could not speak or understand English. From there on each time they need some one to interpret for them, they will call me. Then I decided to close my business and act as an interpreter because I was making more money.

The Human Rights Committee of South Africa commented on the unprofessional nature of the management of the Braamfontein Home Affairs office as follows:

Many asylum seekers perceive the attitudes and demeanour of SDO's as negative, xenophobic and unprofessional. Whether this is intended or not, (and examples given strongly infer that in many instances it is calculated), the frequency of complains received raises the need to provide interpersonal and services delivery skills training to staff dealing with asylum seekers (HRC, 2000: 16).

In case of an appeal, this goes to a Standing Committee. Notwithstanding, the asylum seeker has no opportunity to offer any more evidence at this stage, even if the reasons

lodged by the SDO in the rejection letter are inaccurate. During this period, the asylum seeker is given 30 days after which, the asylum seeker returns to the Home Affairs office for a second letter, which either confirms or rejects the decision of the SDO. The HRC (2000: 18) observed that: *“To date all the letters seen by the HRC have shown a trend by the Standing Committee to confirm the decision of the SDO”*. If the Standing Committee supports the rejection letter, the applicant is given 14 days to leave the country. The implications can be devastating both for the state and for the immigrant. First, because immigrants have come a long way, and have spent quite substantial amounts of money to immigrate into South Africa, it becomes very difficult for them to return to their home countries. Second, since they are unemployed, and cannot afford the cost of returning to their home countries, they have no other choice but to go underground and operate clandestinely. Such clandestine activities and those out side the margins of the law are discussed in Chapter Seven of this thesis. Each time immigrant’s applications are rejected due to discriminatory tendencies of some DHA officials they join the criminal class.

If on the other hand, the Standing Committee rejects the decision of the SDO and supports the application for asylum, which is not a common occurrence for Cameroonian and Nigerian immigrants in the country, the immigrant will be granted refugee status for two years. This entitles the refugee to a South African identity, a travelling document, and the right to work and education in the country. In actual situation, this is only plausible.

CONCLUSION

West African immigrants entering South Africa need the services of the DHA to legitimise their stay in the country. They also need to renew their permits periodically as requested by the DHA. The majority of immigrants in Johannesburg visit the Braamfontein DHA to process their documentation because it is the only Home Affairs office dealing with asylum and refugees affairs in Johannesburg, in this office; they suffer from xenophobic hostility, are discriminated against, and are faced with corruption and nepotism.

In South Africa, the Aliens Control Act of 1991 had dominated immigration policy in the country until in 1998 when a new Refugee Act was passed. West African immigrants, who came to South Africa before 1998, were treated as aliens and prohibited persons under the Aliens Control Act of 1991. This apartheid policy dominated and influences the attitude of some DHA officials to West African immigrants especially Cameroonians and Nigerians. However, in 1998, a new Refugee Act was passed.

Even though the new Refugee Act was passed in 1998, it was only enforced in December 2000. Notwithstanding, West African immigrants particularly Cameroonians and Nigerians are still regarded by many in this office as aliens who have come to distort the socio-economic stability of their country. The new Refugee Act of 1998 did little to change popular attitudes, and the negative sentiments of some DHA officials to West African immigrants in the country. Perhaps this perception makes taking bribes from asylum seekers more acceptable to officials. I found that the working in the Braamfontein DHA does not resemble a bureaucracy, as the term is normally understood sociologically.

Before 1998 immigrants were issued with a Temporary Permit to Prohibited Persons under section 41 of Act No 96 of 1991. From 2000, immigrants were issued with Asylum Seeker Temporary Permit under section 22 of the Refugees Act No. 130 of 1998. For most West Africans, particularly Cameroonians and Nigerians, to acquire this document is a stressful, humiliating and a costly ordeal. It appears that, those fortunate immigrants to get the document are not in any better situation than those whose applications have been rejected. I have demonstrated that, in many occasions, this document creates more problems than it solves especially for West Africans immigrants in the country. Though it is supposed to prove their legal status in the country, more often than not, law enforcing officials ignore this fact, employers discriminate against it, and the civil society sees it as a stigma signifying illegality and/or criminality.

The Temporary Permit to Prohibited person issued to immigrants who entered the country before 1998 was rooted in the years of racism and apartheid in South Africa. It distinguished between South Africans and non-South Africans, thus creating a boundary,

which laid the foundation for the high levels of xenophobia towards non-South Africans in the country. The document was therefore a discriminatory weapon acting to the disadvantage of black immigrants in South Africa. Most South Africans hold the notion that holders of this document are illegal and/or criminals in the country, hence, even after the passing of the new refugee Act of 1998 the negative sentiments of some South Africans were hardly altered. They still see West Africans as illegal aliens who are out to disrupt the socio-economic and even the political stability of South Africa.

The new Refugee Act of 1998 is not without problems. First, it did not spell out any implementation strategy in the whole refugee process. Different officials adopt different strategies, and lack gender sensitivity. Second, it did not provide any provision for official interpreters, allowing the DHA and/or immigrants to bring their own untrained and unqualified interpreters. This has led to serious corruption in the Braamfontein DHA office. Furthermore, cutting down on the numbers of Home Affairs office dealing with asylum and refugees affairs has led to the heavy congestion in the Braamfontein Department of Home Affairs. Finally, the section 22 document of the new Refugee Act of 1998 does not entrench the right to work or study until after the refugee status has been determined. This dissertation demonstrated that it takes longer than the time stipulated for the determination process to be completed. Hence, most asylum seekers, particularly Cameroonians and Nigerians, stay in the country for months and even years without working or studying. In this condition they are forced into a criminal class, and operate in business activities outside the margins of the law as shown in Chapter Seven.

Immigrants, asylum seekers and refugees not only suffer from xenophobic hostility and attitudes from the DHA officials, but also from the general public especially on their night walk to the Braamfontein DHA office. They are often attacked, robbed of their property, and arrested by police officials on their way to the DHA office. In the Braamfontein Home Affairs office the situation is chaotic, with long queues of immigrants struggling to enter the office. Entry tickets into the office depend on certain factors like nationality, sex, where you come from and whether or not you can sing your national anthem. It also very much depends on the amount of money immigrants have

bribed the interpreters to gain access into the office. In practice, the interpreters working in this office actually do not perform their duties, but connive with the SDOs to extort money from immigrants. My research found that other ways of extorting money from immigrants visiting this office include, allocating specific days for particular countries to create peak periods, complaining of missing files, and/or the mal-functioning of computers. I found out that, the inefficient functioning of the Braamfontein DHA is due to its kind of bureaucracy, which does not bear a resemblance to bureaucracy as the term is normally understood sociologically (Gerth and Mills, 1946; Webster *et al*, 2001; Weber, 1978).

From an overall perspective, the whole asylum process itself is not free and fair, and is biased in relation to certain countries. Cameroonians and Nigerians are unfairly treated, with no consideration given to application for asylum on grounds of insufficient evidence of well-founded fears of persecution in their countries. They are issued with a '*you must leave*' document which has the same format, content and reasoning giving the impression that immigrants cases are not considered on an individual bases. Although provisions are provided for immigrants to appeal the '*you must leave*' document, immigrants are discouraged from seeking specialist legal advice from outside. Rather, they are encouraged to write their own appeal letter in the presence of the SDO irrespective of their educational background. This dissertation showed that such moves strategies to increase the demand of the services of those working in the department, so that they can extort money from immigrants. Even though the appeal goes to a Standing Committee, there is no other provision for further evidence from the immigrant. The HRC of South Africa observed that for most cases the Standing Committee often support the rejection letter issued out to West African immigrants in the country.

I found that, procedures in the Braamfontein Department of Home Affairs are not based on rational, formal bureaucracy (Gerth and Mills, 1946; Webster *et al*, 2001; Weber, 1978) and international legal norms. These norms are often violated because of, the weak bureaucratic structures, failure of officials to treat problems according common

standards, adopting unrealistic principles, prejudice, discriminatory and xenophobic attitudes of some officials, and the devolution of powers to interpreters.