
PUBLIC PROTECTOR
SOUTH AFRICA

REPORT NUMBER 3 OF 2020/2021

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY BY THE STANDING COMMITTEE FOR REFUGEE AFFAIRS IN FINALISING THE ADJUDICATION PROCESS OF CERTIFICATION APPLICATIONS
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Executive Summary

(i) This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 23 of 1994 (the Public Protector Act).

(ii) This report communicates my findings and appropriate remedial action that I am taking in terms of section 182(1)(c) of the Constitution, following an investigation into a complaint lodged by Mr Said Mohamed Omar (Mr Omar) and others (the Complainants). The dates on which the complaints were reported to my office differ.

(iii) In the main, the complaint was that the Standing Committee for Refugee Affairs (the SCRA) had unduly delayed to adjudicate the certification applications of the Complainants done in terms of section 27(c) of the Refugees Act 130 of 1998.

(iv) Based on an analysis of the allegations, the following issues were identified to inform and focus the investigation:

(aa) Whether the SCRA unduly delayed the processing and adjudication of the Complainants’ applications made in terms of section 27(c) of the Refugees Act 130 of 1998 and its Regulations; and

(bb) Whether the Complainants were improperly prejudiced by the conduct of the SCRA as envisaged by section 6(4)(a)(v) of the Public Protector Act.

(v) Key laws taken into account to help me determine if there had been improper conduct and maladministration by the DHA were principally the Constitution and Refugees Act 130 of 1998 and the Refugees Regulations, 2018.
(vi) During the investigation process, I issued a notice in terms of section 7(9)(a) of the Public Protector Act (Notice) on 06 February 2020 to afford the Chairperson of the SCRA, (the Chairperson), the Minister (the Minister) of Home Affairs (the DHA) as well as the Acting Director-General in the DHA (ADG) the opportunity to respond to my provisional findings.

(vii) Having considered the evidence uncovered during the investigation of the complainants as against the relevant regulatory framework, I make the following findings:

(a) **Regarding whether the SCRA unduly delayed the processing and adjudication of the Complainants' applications made in terms of section 27(c) of the Refugees Act 130 of 1998 and its Regulations:**

(aa) The allegation that SCRA unduly delayed the processing and adjudication of the Complainants' applications made in terms of section 27(c) of the Refugees Act 130 of 1998 and its Regulations is substantiated.

(bb) My investigation revealed that the SCRA has systemic administrative deficiencies in processing and adjudicating the Complainants' applications made in terms of section 27(c) of the Refugees Act 130 of 1998 and its Regulations.

(cc) The SCRA is not sufficiently resourced and funded to handle the volume of work it is currently dealing with.

(dd) It takes very long for the DHA to respond to the request from the SCRA to be furnished with the file contents of the applicants. The archives and Registry where the refugee files are kept is far and this adds on to the constraints that the SCRA has, for an example, the SMT referred to one case where it requested file contents...
from the Refugee Office in 2010, and they had not received the file contents by 03 August 2018.

(ee) The SCRA, supported by the Minister, conceded to my findings as follows, amongst others:

(ee1) The SCRA needs to be capacitated with regard to increasing by four (4), the number of members;

(ee2) The SCRA needs to be capacitated with regard to increasing the number of administrative support staff;

(ee3) The ADG has currently contracted for a period of one (1) year, three (3) interns to give administrative support to the SCRA; and

(ee4) The current SCRA members together with the Chairperson (the backlog team), are to operate at the SCRA’s Head Office to finalise all the outstanding certification, litigation and withdrawal of status applications.

(ff) The conduct of the SCRA is in contravention of sections 195 and 237 of the Constitution.

(gg) The conduct by the SCRA also constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration and undue delay as envisaged in section 6(4)(a)(i) and (ii) of the Public Protector Act.
(b) Regarding the Complainants were improperly prejudiced by the conduct of the SCRA as envisaged by section 6(4)(a)(v) of the Public Protector Act:

(aa) The allegation that the Complainants were improperly prejudiced by the conduct of the SCRA is substantiated.

(bb) Had the SCRA adjudicated the applications of the Complainants timeously, they would have qualified to immediately apply for the PRP.

(cc) After five (5) years of being issued with PRPs, the Complainants would probably have been eligible to apply for naturalisation in terms of section 5(1)(c) of the Citizenship Act No. 88 of 1995.

(dd) In terms of section 19(3) of the Constitution, every citizen has the right to vote in the elections. The Complainants who would have been naturalized South Africans, would have been eligible to participate in both the Local Government as well as the National Elections.

(ee) The conduct of the SCRA amounted to improper prejudice as envisaged in section 6(4)(a)(v) of the Public Protector Act.

(viii) I am pleased that the Minister, Chairperson and ADG have indicated that they agree with the contents of the Notice and have taken it upon themselves to remedy the situation. However, I have noted that, they had not indicated timelines within which their remedial actions will be implemented.

(ix) The appropriate remedial action that I am taking as contemplated in section 182(1)(c) of the Constitution, with a view to remediying the improper conduct and maladministration referred to in this report, is the following:
Alleged undue delay regarding the adjudication of certification applications

(aa) The Minister and the ADG must, within 21 working days of the issuing of this Report, ensure that the Chairperson of the SCRA and the current two (2) members (the backlog team), commence working on the backlog to finalise all certification, litigation and withdrawal of status applications;

(bb) The Minister must, within 45 working days of the issuing of this Report, capacitate the SCRA with the appointment of an additional four (4) permanent members to enable it to be equal to the amount of work it receives;

(cc) The ADG must, within 60 working days of the issuing of this Report, ensure that all refugee records pre-dating 2016, are loaded onto the NIIS to enable the backlog team to discharge its functions without delay;

(dd) The ADG must; within 45 working days of the issuing of this Report, capacitate the SCRA by appointing additional administrative support staff to enable it to be equal to the amount of work it receives;

(ee) The ADG must, within 30 working days form the date of the issuing of this Report, consider appointing into positions of Refugee Status Determination Officers (RSDO’s), legally qualified officials to ensure that the cases reviewed by the SCRA are minimal;

(ff) The Chairperson of the SCRA must, within 30 working days from the date of this Report, apologise in writing to the Complainants for the delay in adjudicating their matters, and give them the dates upon which their matters will be finalised;

(gg) The Chairperson of the SCRA must ensure that, going forward, all new certification applications are finalised within six (6) months from the date of receipt by the SCRA as undertaken by the SCRA; and
(hh) The Chairperson of the SCRA must ensure that, going forward, all new applicants whose applications are not finalised within six (6) months from the date of receipt by the SCRA, are given full progress reports on the status of their applications every six (6) weeks until their applications are finalised.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY BY THE STANDING COMMITTEE FOR REFUGEE AFFAIRS IN FINALISING THE ADJUDICATION PROCESS OF CERTIFICATION APPLICATIONS

1. INTRODUCTION

1.1. This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996; (the Constitution) and section 8(1) of the Public Protector Act 23 of 1994 (Public Protector Act).

1.2. This report is submitted in terms of section 8(3) of the Public Protector Act to the following people to note the outcome of this investigation and implementation of the remedial action:

1.2.1. Dr Pakishe Aaron Motsoaledi, Minister of Home Affairs;

1.2.2. Ms Jane Mugwena, the Chairperson of the Standing Committee for Refugee Affairs;

1.2.3. Mr Thulani Mavuso, the Acting Director-General of the Department of Home Affairs; and

1.2.4. The Complainant, Mr Said Mohamed Omar.

1.2.5. This report relates to my investigation into allegations of an undue delay by the Standing Committee for Refugee Affairs (the SCRA) in finalising the adjudication process of certification applications.
2. THE COMPLAINT

2.1 My office embarked upon a systemic investigation after receiving numerous complaints relating to the alleged undue delay by the SCRA to process and adjudicate on the certification applications.

2.2 I received the complaints of Mr Said Mohamed Omar (Mr Omar), and similar complaints from others (the Complainants) as outlined in Table A below:

<table>
<thead>
<tr>
<th>3</th>
<th>PPSSA FILE REFERENCE</th>
<th>SCRA FILE REFERENCE</th>
<th>NAME OF COMPLAINT</th>
<th>Date of application</th>
</tr>
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<tbody>
<tr>
<td>004775/18</td>
<td>SCRA: 370/14A</td>
<td>Abdullahi Madaliil Ahmed</td>
<td>2014-02-26</td>
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<tr>
<td>004906/18</td>
<td>SCRA: 263/15</td>
<td>Abdu Rahman Fara</td>
<td>2015-02-03</td>
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<tr>
<td>006584/18</td>
<td>SCRA: 40/12</td>
<td>Hashi Mohamud Ali</td>
<td>2012-01-16</td>
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<tr>
<td>004289/18</td>
<td>SCRA: 912/14</td>
<td>Feysal Ali Mohammed</td>
<td>2014-06-20</td>
<td></td>
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<tr>
<td>004737/17</td>
<td>SCRA:443/13</td>
<td>Abdi Abdullahi Abdulle</td>
<td>2012-03-29</td>
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<tr>
<td>005534/18</td>
<td>SCRA: 984/15</td>
<td>Faiza Abdirirazak Jama</td>
<td>2015-08-14</td>
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</tr>
<tr>
<td>012551/18</td>
<td>SCRA: 137/15</td>
<td>Habiba Ali Abdirakman</td>
<td>2015-01-15</td>
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<tr>
<td>012406/18</td>
<td>SCRA: 1156/13</td>
<td>MITANTA Malangu</td>
<td>2016-06-19</td>
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</tr>
<tr>
<td>013686/17</td>
<td>SCRA: 761/13</td>
<td>Abdulkadir Hassan Hashi</td>
<td>2013-07-08</td>
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<tr>
<td>004056/19</td>
<td>SCRA: 166/16</td>
<td>Biniam Teczyiorgeti Eyakem</td>
<td>2015-11-12</td>
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<tr>
<td>003958/19</td>
<td>SCRA: 396/14</td>
<td>Kasongo Lukeke</td>
<td>2014-03-12</td>
<td></td>
</tr>
<tr>
<td>012404/18</td>
<td>SCRA: 1156/13</td>
<td>Vincent Depaul Lubamba Phuabu</td>
<td>2013-11-28</td>
<td></td>
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<td>010003/18</td>
<td>SCRA: 644/15</td>
<td>Bostea Jama</td>
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<tr>
<td>010660/18</td>
<td>SCRA: 270/15</td>
<td>Abdi Noor Adan</td>
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<td>010348/18</td>
<td>SCRA: 1073/13</td>
<td>Shirwac Ali Ahmed</td>
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<td>011333/18</td>
<td>SCRA: 554/16</td>
<td>Hassan Farah Adow</td>
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<td>010647/18</td>
<td>SCRA: 55/12</td>
<td>Farhan Ahmed Roble</td>
<td>2012-01-19</td>
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<td>012289/18</td>
<td>SCRA: 1324/14</td>
<td>Steve Ntamb Murumb</td>
<td>2014-08-19</td>
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<td>003966/18</td>
<td>SCRA: 206/15</td>
<td>Mugove Murisa</td>
<td>2014-12-04</td>
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<td>013186/17</td>
<td>SCRA: 410/15</td>
<td>Safiya Ali Hirsy</td>
<td>2015-03-25</td>
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<td>008298/18</td>
<td>SCRA: 1053/14</td>
<td>Mohamed Abdi Isak</td>
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<td>003986/18</td>
<td>SCRA: 9/15</td>
<td>Lema Mulugeta Dabese</td>
<td>2014-10-10</td>
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<td>003964/18</td>
<td>SCRA: 645/16</td>
<td>Abdi Mohamed Elmi</td>
<td>2016-04-29</td>
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<tr>
<td>003996/18</td>
<td>CTR/009797/06</td>
<td>Hashi Mohamud Ali</td>
<td>2012-01-06</td>
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### Alleged undue delay regarding the adjudication of certification applications

<table>
<thead>
<tr>
<th>SCRA</th>
<th>Case Number</th>
<th>Applicant Name</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>SCRA: 768/15</td>
<td>007463/17</td>
<td>Nadine Kapinga</td>
<td>2015-11-06</td>
</tr>
<tr>
<td>SCRA: 1010/14</td>
<td>007991/17</td>
<td>Fesha Tewelde Mengesha</td>
<td>2014-06-27</td>
</tr>
<tr>
<td>SCRA: 55/12</td>
<td>007240/18</td>
<td>Said Mohamed Omar</td>
<td>2012-01-20</td>
</tr>
<tr>
<td>SCRA: 894/15</td>
<td>007445/18</td>
<td>Ismael Salad Mohamed</td>
<td>2015-07-31</td>
</tr>
<tr>
<td>SCRA: 115/15</td>
<td>003863/17</td>
<td>Hassan Mahamed Sharif</td>
<td>2014-10-30</td>
</tr>
<tr>
<td>SCRA: 621/15</td>
<td>010127/18</td>
<td>Kabwe Mathieu Mukengeshay</td>
<td>2015-06-01</td>
</tr>
<tr>
<td>SCRA: 935/13</td>
<td>006958/18</td>
<td>Abdullahi Ahmed Yusuf</td>
<td>2013-10-07</td>
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<td>SCRA: 1155/13</td>
<td>009560/18</td>
<td>Mafuta Lusawu</td>
<td>2013-11-28</td>
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<tr>
<td>SCRA: 866/13</td>
<td>007419/18</td>
<td>Mohamed Moalim Ahmadei</td>
<td>2013-09-16</td>
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<td>SCRA: 209/16</td>
<td>007442/18</td>
<td>Kidu Zemarian Meless</td>
<td>2016-01-28</td>
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<td>SCRA: 664/13</td>
<td>008282/18</td>
<td>Cabdi Muse Maxamed</td>
<td>2013-07-25</td>
</tr>
</tbody>
</table>

#### 2.3
The issues raised by the Complainants are similar in nature as they all relate to the alleged undue delay by the SCRA to process and adjudicate on their applications for certification. The only variance in the complaints is the different dates of application by the Complainants. The outcome of the certification applications will entitle the Complainants to apply for a Permanent Residence Permit (PRP) and later, naturalisation.

#### 2.4
Mr Omar indicated that since he applied on 20 January 2012, his file reference number is CTR/004704/05; SCRA: 55/12, he has never received progress report on his application, neither has he received and explanation why his application could not be finalised within a reasonable time.

#### 2.5
Some of the Complainants reported that they had visited the SCRA office to obtain progress report on their applications, but were chased away by the security at the SCRA offices. Others indicated that further to visiting the SCRA, they visited the Department of Home Affairs (the DHA), but would be turned back without any explanation. That is when Mr Omar and others decided to approach my office for intervention.

#### 2.6
I was concerned about the time period taken by the SCRA to process and adjudicate the applications for certification, as a result thereof, I decided to take a
closer look at the applications handling systems currently in place at the SCRA and determine if there are any challenges and deficiencies that attribute to the delays.

2.7 The investigation focused only on complaints which were received and handled by my office at the Head Office. It must be noted that my office continued to receive similar complaints beyond the drafting of this report.

2.8 It is very important for the Complainants that their certification applications are adjudicated timeously as the outcome thereof, entitles them to apply for a PRP and subsequently, naturalisation.

3. POWER AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional body established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2 Section 182(1) of the Constitution provides that:

"The Public Protector has power as regulated by national legislation –

(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice,
(b) to report on that conduct; and
(c) to take appropriate remedial action."

3.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by legislation.
3.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.5 In the constitutional court, in the matter of Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016), Chief Justice Mogoeng stated the following with own emphasis, when confirming the powers of the Public Protector:

3.5.1 The remedial action taken by the Public Protector has a binding effect, “When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences” (para 73);

3.5.2 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (para 65);

3.5.3 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (para 67);

3.5.4 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally
empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (para 68);

3.5.5 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their **nature, context and language**, to determine what course to follow (para 69);

3.5.6 Every complaint requires a **practical or effective remedy** that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (para 70);

3.5.7 The Public Protector's power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the **subject-matter of investigation** and the **type of findings made** (para 71);

3.5.8 Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence (para 71(c));

3.5.9 **She has the power to determine the appropriate remedy and prescribe the manner of its implementation** (para 71(d));

3.5.10 “Appropriate” means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (para 71(e));
3.6 In the matter of the President of the Republic of South Africa v Office of the Public Protector and Others, Case no 91139/2016 (13 December 2017), the Court held as follows:

3.6.1 The Public Protector has power to take remedial action, which include instructing the Members of the Executive including the President to exercise powers entrusted on them under the constitution where that is required to remedy the harm in question (para 82);

3.6.2 The Public Protector, in appropriate circumstances, has the power to direct the president to appoint a commission of enquiry and to direct the manner of its implementation. Any contrary interpretation will be unconstitutional as it will render the power to take remedial action meaningless or ineffective (para 85 and 152);

3.6.3 There is nothing in the Public Protector Act or Ethics Act that prohibit the Public Protector from instructing another entity to conduct further investigation, as she is empowered by section 6(4)(c)(ii) of the Public Protector Act (para 91 and 92);

3.6.4 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) affords the Public Protector with the following three separate powers (para 100 and 101):

(a) Conduct an investigation;
(b) Report on that conduct; and
(c) To take remedial action.

3.6.5 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or prima facie findings (para 104);
3.6.6 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court (para 105).

3.6.7 The fact that there are no firm findings on the wrong doing, this does not prohibit the Public Protector from taking remedial action. The Public Protector’s observations constitute prima facie findings that point to serious misconduct (para 107 and 108);

3.6.8 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action (para 112);

3.7 Regarding the exercise of my discretion in terms of section 6(9) to entertain matters which arose more than two (2) years from the occurrence of the incident, and in deciding what constitute ‘special circumstances’, some of the special circumstances that I took into account to exercise my discretion favourably to accept this complaint, includes the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether I would be able to successfully investigate the matter with due consideration to the availability of evidence and/or records relating to the incident(s); whether there are any competent alternative remedies available to the Complainant and the overall impact of the investigation; whether the prejudice suffered by the complainants persists; whether my refusal to investigate perpetuates the violation of section 195 of Constitution; whether my remedial action will redress the imbalances of the past. What constitutes as ‘special circumstances’ depends on the merits of each case.

3.8 The SCRA as well as the DHA are organs of state and their conduct amounts to conduct in state affairs, as a result the complaints falls within the ambit of the Public Protector’s mandate. Accordingly, the Public Protector has the power and
jurisdiction to investigate and take appropriate remedial action in the matter under investigation.

3.9 The Public Protector’s power and jurisdiction to investigate and take appropriate remedial action was not disputed by the SCRA as well as the DHA in this investigation.

4. THE INVESTIGATION

4.1 Methodology

4.1.1. The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

4.1.2. The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.2 Approach to the investigation

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?
4.2.1.2 What should have happened?
4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amounts to maladministration?
4.2.1.4 In the event of improper conduct or maladministration what would it take to remedy the wrong or to place the Complainants as close as possible to where he would have been but for the maladministration or improper conduct?
4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on the roles played by the SCRA when processing the certification applications of the Complainants.

4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the SCRA when processing the certification applications of the Complainants.

4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration and systemic administrative deficiencies. Where the Complainants have suffered prejudice, the idea is to place them as close as possible to where they would have been had the SCRA complied with the regulatory framework setting the applicable standards for good administration.

4.3 Notices issued in terms of section 7(9)(a) of the Public Protector Act:

4.3.1 During the investigation process, I issued notices in terms of section 7(9)(a) of the Public Protector Act (Notices) to Ms Mugwena, the Chairperson of the SCRA, the Minister of Home Affairs (the Minister) as well as the Acting Director-General (ADG) of the DHA on 06 February 2020 to afford them an opportunity to respond to my provisional findings.

4.4 Based on analysis of the allegations, I identified the following issues to inform and focus this investigation:

4.4.1 Whether the SCRA unduly delayed the processing and adjudication of the Complainants’ applications made in terms of section 27(c) of the Refugees Act 130 of 1998 and its Regulations; and
4.4.2 Whether the Complainants were improperly prejudiced by the conduct of the SCRA as envisaged by section 6(4)(a)(v) of the Public Protector Act.

4.5 The Key Sources of information

4.5.1 Documents

4.5.1.1 The key sources of information regarding this investigation are the complaint forms of Mr Omar and the other complainants as listed on Table A (Annexure A).

4.5.1.2 The supporting documents provided during the investigation by the Complainant to the Public Protector are their proof of applications (Annexure B).

4.5.1.3 The report presented to my investigation team by the SCRA at the meeting held on 03 August 2018 between my team and the officials and members of the SCRA.

4.5.1.4 The copies of e-mail correspondence between my investigation team and the SCRA Office Manager dated 02 August 2019 and 05 August 2019 respectively.

4.5.1.5 The informal notes of the meeting held on 14 November 2019 between my investigating team and the officials and members of the SCRA.

4.5.1.6 The Notices that I issued to the Minister, the Chairperson of the SCRA, and the ADG on 13 February 2020.

4.5.1.7 The responses to the Notices by the Minister, the Chairperson of the SCRA and the ADG dated 19 March 2020, 28 February 2020, and 06 March 2020 respectively.
4.5.2 Legislation and other prescripts

4.5.2.1 The Constitution

4.5.2.2 The Public Protector Act

4.5.2.3 The Refugees Act 130 of 1998 and the Refugees Regulations, 2018 (the Regulations) which came into operation on 01 January 2020.

5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1 Regarding whether the SCRA unduly delayed the processing and adjudication of the Complainants’ applications made in terms of section 27(c) of the Refugees Act 130 of 1998 and its Regulations:

Common cause issues

5.1.1. It is common cause that the Complainants listed in Table A above lodged their certification applications with the DHA and others with the SCRA on different dates as indicated thereon.

5.1.2 The outcome of all the applications of the Complainants as listed in Table A were still outstanding at the date of this Report.

5.1.4 The main issue for my determination is whether the SCRA unduly delayed the processing and adjudication of the Complainants’ applications made in terms of section 27(c) of the Refugees Act 130 of 1998 and its Regulations.
5.1.5 During the investigation, my investigation team attended a meeting with the SCRA team on 3 August 2018 at the SCRA offices in Pretoria Central. The purpose of the meeting was to establish the cause of the undue delay by the SCRA in processing and adjudicating upon the applications of the Complainants, and to also ascertain if there were any challenges and deficiencies in the applications handling process. I refer to the delay as undue delay because Table B below here, illustrates just that:

<table>
<thead>
<tr>
<th>PPSA FILE REFERENCE</th>
<th>SCRA FILE REFERENCE</th>
<th>NAME OF COMPLAINANT</th>
<th>DATE OF APPLICATION</th>
<th>No. of Months</th>
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<tr>
<td>00477/18</td>
<td>SCRA: 370/14A</td>
<td>Abdullahi Madalili Ahmed</td>
<td>2014-02-26</td>
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<td>004906/18</td>
<td>SCRA: 263/15</td>
<td>Abdu Rahman Fara</td>
<td>2015-02-03</td>
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<tr>
<td>006584/18</td>
<td>SCRA: 40/12</td>
<td>Hashi Mohamud Ali</td>
<td>2012-01-16</td>
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<td>004269/18</td>
<td>SCRA: 912/14</td>
<td>Feyesal Ali Mohammed</td>
<td>2014-06-20</td>
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</tr>
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<td>004730/17</td>
<td>SCRA: 443/13</td>
<td>Abdi Abdullahi Abdulle</td>
<td>2012-03-29</td>
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</tr>
<tr>
<td>005534/18</td>
<td>SCRA: 791/15</td>
<td>Faiza Abdirazak Jama</td>
<td>2015-08-14</td>
<td>51</td>
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<td>012551/18</td>
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<td>Habiba Ali Abdirakman</td>
<td>2015-01-01</td>
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<td>012406/18</td>
<td>SCRA: 1156/13</td>
<td>Mitanta Malangu</td>
<td>2016-06-19</td>
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<tr>
<td>013686/17</td>
<td>SCRA: 761/13</td>
<td>Abdulkadir Hassan Hashi</td>
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<tr>
<td>004056/19</td>
<td>SCRA: 166/16</td>
<td>Biniam Teclegiorgis Eyakem</td>
<td>2015-11-12</td>
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<tr>
<td>003958/19</td>
<td>SCRA: 396/14</td>
<td>Kasongo Lukeke</td>
<td>2014-03-12</td>
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<td>012404/18</td>
<td>SCRA: 1156/13</td>
<td>Vincent Depaul Lubamba Phuabu</td>
<td>2013-11-28</td>
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<td>010003/18</td>
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<td>010660/18</td>
<td>SCRA: 270/15</td>
<td>Abdi Noor Adan</td>
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<td>011333/18</td>
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<td>010647/18</td>
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<td>012289/18</td>
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<td>Steve Ntamb Murumb</td>
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<td>SCRA: 206/15</td>
<td>Mugove Murisa</td>
<td>2014-12-04</td>
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<td>013186/17</td>
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<td>Safiyi Ali Hirsi</td>
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<td>008298/18</td>
<td>SCRA: 1053/14</td>
<td>Mohamed Abdi Isak</td>
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<td>SCRA: 9/15</td>
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<td>SCRA: 645/16</td>
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<td>2012-01-06</td>
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</tr>
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<td>Application No</td>
<td>SCRA:</td>
<td>Name</td>
<td>Date of Application</td>
<td>Date of Decision</td>
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<tr>
<td>007463/17</td>
<td>768/15</td>
<td>Nadine Kapinga</td>
<td>2015-11-06</td>
<td>2019-12-03</td>
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<td>007991/17</td>
<td>1010/14</td>
<td>Fesha Tewelde Mengesha</td>
<td>2014-06-27</td>
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<td>Said Mohamed Omar</td>
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<td>007445/18</td>
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<td>Ismael Salad Mohamed</td>
<td>2015-07-31</td>
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<td>006958/18</td>
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<td>Abdullahi Ahmed Yusuf</td>
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<td>009560/18</td>
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<td>008282/18</td>
<td>664/13</td>
<td>Cabdi Muse Maxamed</td>
<td>2013-07-25</td>
<td>2019-12-03</td>
</tr>
</tbody>
</table>

5.1.6 According to Table B above, the SCRA took between 41 and 94 months to deal with the applications, and as at the date of this Report, the applications had not been adjudicated upon.

5.1.7 In its response, the SCRA Management Team comprising of all the 3 members and the support staff (the SMT) made a detailed presentation to my team about their legislative and other challenges that they encounter when discharging their mandate. The challenges highlighted by the SMT, amongst others, include:

**The staff complement of the SCRA**

5.1.7.1 The SMT presented to my investigation team that the SCRA comprises of three (3) members, namely the Chairperson and two (2) members, assisted by twelve (12) officials, two (2) of whom are seconded to the SCRA from the DHA.

**The work load**

5.1.7.2 According to the SMT, as at 31 December 2017, the SCRA had a total of 227,635 decisions of the Refugee Reception Officers (RRO) to be reviewed.
The SCRA managed to review a total of 41 882 RRO decisions between the period January 2017 to March 2018.

5.1.7.3 From 01 April 2017 to 31 March 2018, the SCRA dealt with 2403 withdrawals of status cases (section 36 of the Refugees Act cases) and had a backlog of 1187 as at 31 March 2018.

5.1.7.4 The SMT indicated that with regard to certification application (section 27(c) of the Refugees Act), the SCRA had received 780 applications in 2017, 388 in 2018 and as at 01 April 2019, they had a backlog of 844, plus a backlog of 11 504 cases accumulated over the years preceding 2017.

5.1.7.5 Regarding enquiries from my office, the Ministry of Home Affairs, the Presidential Hotline, the ADG, Universities' Law Clinics, and the Law Firms, the SMT indicated that the SCRA was dealing with about 6800 cases.

**Litigation and budgetary constraints**

5.1.7.6 The SMT indicated that certain law firms are well aware of its capacity constraints and as a result thereof, they are utilizing it to their advantage in litigating against the SCRA and the DHA. As a result, the SCRA gives priority to certain law firms and this means that other cases including those from my office do suffer in the process. According to the SMT, legal fees consume a large amount of the budget.

5.1.7.7 Litigation puts enormous amount of pressure on the SCRA, thereby requiring it to direct most of its efforts towards it. As a result thereof, the enquiries from my office and other institutions suffer because the SCRA gives priority to litigation matters against it. According to the presentation by the SMT, the bulk of the SCRA budget and time, are spent on litigation matters.
Availing of file contents by the DHA to the SCRA

5.1.7.8 The SMT indicated that when asylum seekers arrive in the country, their first point of contact is the DHA, as a result thereof, the DHA is the custodian of all files of the asylum seekers and refugees.

5.1.7.9 In order for the SCRA to adjudicate upon an application, the SCRA must have the file of the applicant with all the supporting documents therein. According to the SMT, the biggest challenge that the SCRA faces is when it requests file contents from the DHA in order to deal with the applications, be it the section 36, section 27(c) or any other matter involving the asylum seekers or refugees.

5.1.7.10 According to the SCRA, the DHA takes time to avail the file contents to the SCRA. The SMT made an example of one case where it requested file contents from the Refugee Office in 2010, and they had not received the file contents by 03 August 2018.

Archives

5.1.7.11 The SMT indicated that the archives containing the files of the asylum seekers and refugees are located far away from its office, and that also contributes to the delays in dealing with matters. It also has a bearing on its budget because they need transport to fetch the files from the archives.

Duplicated complaints

5.1.7.12 The SMT indicated that they have a problem of duplicated complaints, according to the records at the SCRA, similar complainants lodge complaints with the SCRA, the DHA, the Ministry of Home Affairs, the ADG’s office, the Universities’ Law Clinics, the Law Firms and my office. The SMT indicated that
duplicated matters create a serious challenge for the SCRA as they find themselves accounting on similar matters to all the mentioned institutions that constrain their budget, time and service delivery.

**Power of attorney**

5.1.7.13 The SMT raised another concern that applicants sign power of attorney (POA) with their respective attorneys and still refer their complaints to my office. They reported that the attorneys have in the past challenged them for providing other parties with the outcome of the applications because they have the sole legal powers to represent those particular clients. I have also noted from SCRA’s responses to our enquiries that most of the Complainants have signed POA with immigration practitioners, law clinics, etc.

5.1.7.14 The SMT has indicated that once a person has signed off his rights regarding a particular issue to his/her attorney, he loses the legal right to represent himself in that particular matter. According to the SMT, legally, the Complainants who have signed the POA, do not have the legal right to complain to my office unless they have proof that they have withdrawn such in writing.

**Legislative, structural and financial challenges**

5.1.7.15 Sections 9(2) and 12(3) of the Refugees Act make specific reference that the SCRA and the Refugee Appeals Board (the RAB) must function without any bias and must be independent. The SMT has during its presentation to my team, referred them to a decided, *Harerimana v Chairperson of the Refugee Appeal Board and Others* (10972/2013 [2013] ZAWCHC 209; 2014 (5) SA 550 (WCC) (11 December 2013) herein referred to as the *Harerimana* case. This case involves the RAB which is a sister organisation to the SCRA.
5.1.7.16 In terms of the Harerimana case, the court held that the RAB is not entirely independent as required by the law in terms of section 9(2) of the Refugees Act. The court held further that, not only must the RAB be impartial in decision-making, it must also be structurally independent.

5.1.7.17 According to the SMT, the judgment was never fully implemented because neither the SCRA nor RAB have their own litigation budget, independent from the DHA. According to the SMT, the amount provided to it is limited and constrains its functioning in an independent and unbiased manner. Most importantly, the budget and structure of SCRA do not make provision for legal services as neither DHA nor the State Attorney can act on SCRA's behalf and this impedes its impartiality.

5.1.7.18 Section 15 of the Refugees Act provides that in terms of the meetings of the SCRA and the RAB:

"(a) Meetings must be convened by the chairperson;
(b) The majority of members constitutes a quorum;
(c) Decisions must be taken by a majority of votes, and in the case of an equality of votes, the chairperson has a casting vote."

5.1.7.19 The argument by the SMT as flowing from section 15 by the SCRA is that even though the SCRA may have more members, the output will be the same because of the requirement of section 15 of the Refugees Act, as a result, the SMT members believe that the Refugees Act must be amended to allow the SCRA members to function effectively.

5.1.7.20 The legislative requirement for the formation of a quorum by the SCRA members when sitting and adjudicating upon matters, was also an issue in the
Harerimana case discussed above and the court found that it impacted on the effective functioning of the members.

5.1.7.21 According to the SMT, legislatively, structurally and financially, the SCRA is not independent as it depends on the DHA for support to perform its functions.

The SCRA's response to my section 7(9)(a) notice

5.1.8 I issued Notices to the Chairperson of the SCRA, the Minister as well as the ADG of the Department of Home Affairs (the trio) dated 13 February 2020.

5.1.9 The Chairperson of the SCRA responded to the Notices on 28 February 2020, a response which I was made to believe by the Chairperson that it was a joint report between the trio. However, on 06 March 2020 and 19 March 2020, I received responses to the Notices from the ADG and the Minister respectively.

5.1.10 In his response to the Notice, the Minister indicated that "the Department is in agreement with the report", referring to the Notice that I had issued.

5.1.11 The agreement/concession by the Minister to my Notice amounts to an admission that the SCRA indeed delayed to adjudicate upon the certification applications of the Complainants.

5.1.12 The responses by the trio were similar. All indicated that the SCRA has:

5.1.12.1 A backlog of about 7841 litigation matters. By its nature, litigation is often involved and consumes a lot of financial resources and also requires dedicated legal practitioners to handle it;
5.1.12.2 A backlog of 41471 reviews that are referred to the SCRA by the DHA in terms of section 24(3)(B) of the Refugees Act;

5.1.12.3 A backlog of 7505 certification applications;

5.1.12.4 A backlog of 2000 applications whereby it has to withdraw the status of applicants in terms of section 36 of the Refugees Act;

5.1.12.5 A total number of 40148 inactive cases that may be referred to it for withdrawal in terms of section 36 of the Refugees Act;

5.1.12.6 A total of 737315 abandoned cases that will be referred by the DHA to it for consideration and possible withdrawal of status in terms of section 36 of the Refugees Act;

5.1.12.7 A total of 91 enquiries from my office that were not included on Table A and B of the Notice and are still pending; and

5.1.12.8 From the 45 cases that were on the Notice, a total of 16 had been finalised as the date of this Report.

5.1.13 The responses also highlighted that the amendment of the recent Refugees Act has brought some important changes such as:

5.1.13.1 The SCRA may now review and substitute the decisions of the Refugee Status Determination Officers (RSDOs);

5.1.13.2 In terms of section 9D(1) of the Refugees Act, a member of the SCRA is appointed for any period not exceeding five (5) years at a time and may be
reappointed for any number of additional periods, any of which may not exceed five (5) years; and

5.1.13.3 A member of the SCRA may sit alone and adjudicate cases. This, therefore, means that they are no longer required to form a quorum when adjudicating the applications.

5.1.14 The responses indicated further that the SCRA is independent as envisaged by the Refugees Act. They further highlighted the intervention measures that the Minister and the ADG would bring about in addressing the problems facing the SCRA as follows:

5.1.14.1 The Minister shall, in the financial year 2020/21, appoint four (4) additional SCRA members, two (2) of whom shall be based at the Desmond Tutu Refugee Centre (Marabastad), one (1) will serve both the Cape Town and Port Elizabeth RRO, and the other one (1) will serve the Durban RRO;

5.1.14.2 The existing SCRA members together with the Chairperson (the backlog team) will deal with and finalise the current backlog of all the certification, litigation and withdrawal of status applications at the SCRA’s Head Office;

5.1.14.3 The ADG is committed to increasing the number of administrative support staff of the SCRA because currently, the numbers are not commensurate with the workload at hand;

5.1.14.4 The ADG has currently contracted three (3) interns who will render administrative support services to the SCRA for a period of one (1) year; and

5.1.14.5 The SCRA relies on the DHA for file contents of refugees who have applied for certification. The report indicated that from 2016 onwards, the records of the
refugees are loaded onto the National Immigration Information System (NIIS) and that makes it easier for the SCRA to obtain the file contents of the applicants without having to request them from the Refugee Reception Centres (RRO).

5.1.15 The responses indicated that, the DHA is in a process of transitioning to a completely paperless system, therefore, systems have been put in place to ensure that all documents are electronically saved. The DHA shall also ensure that file records requested by the SCRA are electronically transmitted to it without delay.

5.1.16 The responses, however, did not provide the time lines within which all the intervention measures would be finalised.

Application of the relevant legal framework

5.1.17 The legal framework regulating this issue is section 195(1) (d) of the Constitution which provides that services must be provided impartially, fairly, and equitably and without delay. In addition, section 195(1)(f) requires that public administration must be accountable. In terms of section 195(1)(g), transparency must be fostered by providing the public with timely, accessible and accurate information.

5.1.18 Section 237 of the Constitution provides that all constitutional obligations must be performed diligently and without delay. The SCRA is required in terms of section 237 of the Constitution to perform its obligations diligently and without delay. I have already established in Table B that the SCRA has not met this constitutional requirement as it took between 41 and 94 months to finalise processing the applications.

5.1.19 Our courts have also emphasized that administrative decision-making should reach finality without delay. In *Wolgroeiers Afslaers (Edms) Bpk v*
**Munusipaliteit van Kaapstad** 1 the court held that "[i]t is desirable and important that finality should be arrived at within a reasonable time in relation to judicial and administrative decisions or acts. It can be contrary to the administration of justice and the public interest to allow such decisions or acts to be set aside after unreasonable long period of time has elapsed – […] ." 2

5.1.20 In Vumazonke and Others v MEC for Social Development and Welfare for Eastern Cape Province, EC [050]/2004 [2004] ZAECHC 40 (25 November 2004): 39, there was no law that prescribed the time period within which a social grant had to be finalised by the Department. The Department had delayed to take a decision and the Judge held that in the absence of special circumstances, the delay **beyond three months** was unreasonable.

5.1.21 Similarly in the decided case of Mbanga v MEC for Welfare, Eastern Cape and Another, [2002] (1) SA 359 (SE) 369B-G, the court held that **three months was a reasonable time** for which the social grant recipient should wait. Judge Leah stated that while "patience is a virtue, I venture to suggest that even the patience of Job would have been tested by the inefficiency of the officialdom in this case, as notwithstanding regular enquiries being made to the Department in Port Elizabeth, time passed without any indication whether the applicant’s application had been granted or refused."

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1 1978 (1) All SA 369 (A). This case was reported in Afrikaans, and the translation of the relevant portion of the judgment was taken from Gqwetha v Transkei Development Corporations Ltd & Others [2005] ZASCA 51; 2006 (2) SA 603 (SCA) paragraph [22], in which the relevant portion was quoted by Nugent JA in delivering the majority judgment. In this judgment the court dealt with the question whether the court should grant an application to set aside a decision by an administrator if the application was brought three and a half years after the Administrator gave permission for the subdivision of a property, upon certain conditions.

2 Page 386.
5.1.22 In terms of the decided cases quoted above, the standard that the SCRA should have complied with when dealing with the Complainants’ certification applications, was not adhered to because the applications were not finalised in three (3) months.

Conclusion

5.1.23 Based on the concessions of the three offices above, it can be concluded that the SCRA did not comply with the legal prescripts regulating the adjudication of the Complainants’ certification applications.

5.2 Regarding whether the Complainants were improperly prejudiced by the conduct of the SCRA as envisaged by section 6(4)(a)(v) of the Public Protector Act:

5.2.1 It is common cause that the Complainants must first apply for certification before they apply for permanent residence of South Africa unless they are next in kinship to South African nationals or PRP holders. It, therefore, means that the continued delay by the SCRA to adjudicate on the applications impacts on the Complainants’ and their next of kin’s rights to apply for the PRP.

5.2.2 It is also common cause that only after a refugee is a holder of the PRP, would she/he be able to apply for a green bar coded identity document and with that, he/she would easily open a bank account.

5.2.3 It is also common cause that the Complainants would be eligible to apply for citizenship of South Africa in terms of section 5 of the Citizenship Act 17 of 2010 after five (5) years from the date they obtained a PRP. It is, therefore, common cause that the delay to finalise their certification applications would impact on this process as well.
5.2.4 Mr Omar argued that once he is a PRP holder, he would be able to apply for a
green bar coded identity document and with that, he would open a bank account.
He argued that he kept his money on his person and that makes him vulnerable to
criminals. He indicated that had the SCRA adjudicated his application on time, he
probably would now be a national of South Africa.

5.2.5 Another Complainant, Mr Mohamed Hassan, who indicated that as a Somali
national who is formally recognized as a refugee in South Africa, needed a visa to
travel to Southern African Development Community countries whereas if he was a
naturalized South African, he would not be required to have a visa.

*Application of the relevant legal framework*

5.2.6 Whereas many sections in the Constitution, particularly the Bill of Rights which
afford rights to “everyone”, the rights included in sections 19, 20, 21(3) & (4) and
22 are only reserved for South African citizens. In this regard, the Complainants
whose applications were delayed are not able to enjoy any of the rights reserved
for citizens.

5.2.7 To be more specific, section 19(3)(a) of the Constitution provides that every citizen
has the right to vote. However, most of the Complainants have not been able to
exercise this right because their applications for naturalisation had not been
finalised.

5.2.8 Mr Omar applied for certification on 20 January 2012. The courts have already
determined that the reasonable time within which to finalise applications is three
(3) months. This, therefore, means that in April 2012, the SCRA should have
finalised the application for certification.

5.2.9 Assuming that the certification application outcome was positive, Mr Omar would
have been eligible to apply for PRP in terms of the Immigration Act in April 2017.
His application for PRP would have been adjudicated in July 2017 if it was adjudicated timeously and without delay.

5.2.10 Section 195(1)(f) of the Constitution enjoins the SCRA to be accountable to the people whose applications are pending before it. Currently, the SCRA does not account to the Complainants regarding why their applications are not adjudicated timeously. The SCRA also refuses the Complainants entry to its premises when they want to make enquiries about their applications. This conduct is contrary to the provisions of section 195(1)(f) as discussed above.

**Conclusion**

5.2.11 Based on the evidence above it can be concluded that the Complainants are improperly prejudiced by the conduct of the DHA.

6. **FINDINGS**

6.1 Having considered the evidence uncovered during the investigation against the regulatory framework, I make the following findings:

6.1.1 Regarding whether the SCRA unduly delayed the processing and adjudication of the Complainants' applications made in terms of section 27(c) of the Refugees Act 130 of 1998 and its Regulations:

6.1.1.1 The allegation that the SCRA unduly delayed the processing and adjudication of the Complainants’ applications made in terms of section 27(c) of the Refugees Act 130 of 1998 and its Regulations is substantiated.

6.1.1.2 My investigation revealed that the SCRA has systemic administrative deficiencies in processing and adjudicating the Complainants’ applications
made in terms of section 27(c) of the Refugees Act 130 of 1998 and its Regulations.

6.1.1.3 The SCRA is not sufficiently resourced and funded to handle the volume of work it is currently dealing with.

6.1.1.4 It takes very long for the DHA to respond to the request from the SCRA to be furnished with the file contents of the applicants. The archives and Registry where the refugee files are kept is far and this adds on to the constraints that the SCRA has, for an example, the SMT referred to one case where it requested file contents from the Refugee Office in 2010, and they had not received the file contents by 03 August 2018.

6.1.1.5 The SCRA, supported by the Minister, conceded to my findings as follows, amongst others:

(a) The SCRA needs to be capacitated with regard to increasing by four (4), the number of members;

(b) The SCRA needs to be capacitated with regard to increasing the number of administrative support staff;

(c) The ADG has currently contracted for a period of one (1) year, three (3) interns to give administrative support to the SCRA; and

(d) The current SCRA members together with the Chairperson (the backlog team), are to operate at the SCRA’s Head Office to finalise all the outstanding certification, litigation and withdrawal of status applications.
6.1.1.6 The conduct of the SCRA is in contravention of sections 195 and 237 of the Constitution.

6.1.1.7 The conduct by the SCRA also constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration and undue delay as envisaged in section 6(4)(a)(i) and (ii) of the Public Protector Act.

6.1.2 Regarding whether the Complainants were improperly prejudiced by the conduct of the SCRA as envisaged by section 6(4)(a)(v) of the Public Protector Act:

6.1.2.1 The allegation that the Complainants were improperly prejudiced by the conduct of the SCRA is substantiated.

6.1.2.2 Had the SCRA adjudicated the applications of the Complainants timeously, they would have qualified to immediately apply for the PRP.

6.1.2.3 After five (5) years of being issued with PRPs, the Complainants would probably have been eligible to apply for naturalisation in terms of section 5(1)(c) of the Citizenship Act No. 88 of 1995.

6.1.2.4 In terms of section 19(3) of the Constitution, every citizen has the right to vote in the elections. The Complainants who would have been naturalized South Africans, would have been eligible to participate in both the Local Government as well as the National Elections.

6.1.2.5 The conduct of the SCRA amounted to improper prejudice as envisaged in section 6(4)(a)(v) of the Public Protector Act.
7. REMEDIAL ACTION

7.1 The appropriate remedial action that I am taking as contemplated in section 182(1)(c) of the Constitution, with a view to remedying the improper conduct and maladministration referred to in this Report, is the following:

7.1.1 The Minister and the ADG must, within 21 working days of the issuing of this Report, ensure that the Chairperson of the SCRA and the current two (2) members (the backlog team), commence working on the backlog to finalise all certification, litigation and withdrawal of status applications;

7.1.2 The Minister must, within 45 working days of the issuing of this Report, capacitate the SCRA with the appointment of an additional four (4) permanent members to enable it to be equal to the amount of work it receives;

7.1.3 The ADG must, within 60 working days of the issuing of this Report, ensure that all refugee records pre-dating 2016, are loaded onto the NIIS to enable the backlog team to discharge its functions without delay;

7.1.4 The ADG must; within 45 working days of the issuing of this Report, capacitate the SCRA by appointing additional administrative support staff to enable it to be equal to the amount of work it receives;

7.1.5 The ADG must, within 30 working days from the date of the issuing of this Report, consider appointing into positions of Refugee Status Determination Officers (RSDO's), legally qualified officials to ensure that the cases reviewed by the SCRA are minimal;
7.1.6 The Chairperson of the SCRA must, within 30 working days from the date of this Report, apologise in writing to the Complainants for the delay in adjudicating their matters, and give them the dates upon which their matters will be finalised;

7.1.7 The Chairperson of the SCRA must ensure that, going forward, all new certification applications are finalised within six (6) months from the date of receipt by the SCRA as undertaken by the SCRA; and

7.1.8 The Chairperson of the SCRA must ensure that, going forward, all new applicants whose applications are not finalised within six (6) months from the date of receipt by the SCRA, are given full progress reports on the status of their applications every six (6) weeks until their applications are finalised.

8. MONITORING

8.1 The Chairperson of the SCRA and the ADG of the DHA must submit to my office, an action plan, within fifteen (15) working days of issuing this Report, indicating how the remedial action mentioned in paragraph 7 above will be implemented.

8.2 The submission of the implementation plan and the implementation of my remedial action shall, in the absence of a court order directing otherwise, be complied with within the period prescribed in my Report.

ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 28/05/2020