

**THE DOCUMENTED EXPERIENCES OF REFUGEES,  
DEPORTEES AND ASYLUM SEEKERS IN SOUTH AFRICA:  
A ZIMBABWEAN CASE STUDY**

**A WRITTEN SUBMISSION PREPARED BY CIVIL SOCIETY  
ORGANISATIONS WORKING ON THE REFUGEE AND ASYLUM  
SEEKERS' HUMAN RIGHTS ISSUES IN SOUTH AFRICA**

**FOR PRESENTATION TO THE MINISTER OF HOME AFFAIRS**

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The above pictures were taken in the morning of Saturday, 8 April 2006, outside the Rosettenville Refugee Reception Office.

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This survey was conducted by Wozani Prominence Moyo, attorney of Zimbabwe Lawyers for Human Rights. Additional writing and editing was done by Elinor Sisulu and Adv Jacob van Garderen of the Refugee and Migrant Rights Project of Lawyers for Human Rights (LHR).

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<sup>2</sup> Some individuals requested to remain anonymous for security reasons and their names are not mentioned herein.

## Abbreviations Used

|         |   |
|---------|---|
| AU      | African Union                                       |
| ACHPR   | African Commission for Human and Peoples Rights     |
| CIO     | Central Intelligence Organisation                   |
| CSVR    | Centre for the Study of Violence and Reconciliation |
| CSO(s)  | Civil Society Organisation(s)                       |
| DHA     | Department of Home Affairs                          |
| ICD     | Independent Complaints Directorate                  |
| IDPs    | Internally Displaced Persons                        |
| GoZ     | Government of Zimbabwe                              |
| HRW     | Human Rights Watch                                  |
| IOM     | International Organisation for Migration            |
| INGO(s) | International Non-Governmental Organisation(s)      |
| LHR     | Lawyers for Human Rights                            |
| NGO(s)  | Non Governmental Organisation(s)                    |
| MDC     | Movement for Democratic Change                      |
| SA      | South Africa  |
| SADC    | Southern African Development Community              |
| SAHRC   | South African Human Rights Commission               |
| SAPS    | South Africa Police Service                         |
| UN      | United Nations                                      |
| UNHCR   | United Nations High Commissioner for Refugees       |
| RRO     | Refugee Reception Office                            |
| RRO(s)  | Refugee Reception Officer(s)                        |
| RSDO(s) | Refugee Status Determination Officer(s)             |
| ZANU PF | Zimbabwe African National Union - Patriotic Front   |
| ZLHR    | Zimbabwe Lawyers for Human Rights                   |
| ZRP     | Zimbabwe Republic Police                            |

## **Executive Summary**

**The opening years of the 21st century have seen millions of Zimbabweans leaving the country of their birth as a result of a series of interlocking crises – political, socio-economic and environmental. Zimbabweans have dispersed far and wide – to the UK, Canada, Australia, New Zealand and to neighbouring African countries. The major destination of Zimbabwean migrants has undoubtedly been to South Africa and the massive influx of Zimbabweans into South Africa in the past five years and their status in South Africa is clearly a burning issue. It is impossible for an influx of such magnitude not to have an impact on the host country and responses within South African communities have ranged from sympathetic and compassionate to downright hostile and xenophobic.**

There have been numerous reports of the hostile reception that Zimbabwean exiles experience in South Africa. They include unlawful detention, arrest and extortion of asylum seekers (with and without legal papers entitling them to be in South Africa); assaults and ill treatment of arrested persons and serious overcrowding, lack of timely medical attention and unsanitary conditions at the Lindela deportation facility as well as the inability of the Department of Home Affairs to process applications in a timely fashion.

The concerns of organisations representing Zimbabwean refugees and those organisations providing refugee assistance have not fallen on deaf ears. The deaths in July 2005 of two Zimbabwean detainees in Lindela, prompted a Committee of Enquiry into conditions at Lindela by the Minister of Home Affairs, Mrs Nosiviwe Mapisa Nqakula. The Minister must be commended for unreservedly publishing the report and acknowledging that the situation in Lindela left a lot to be desired. Immediately after the publication of the report the management of Lindela started implementing the recommendations. The Minister is also to be recommended for her willingness to engage stakeholders on the burning issues and to seek ways to address them. This report is indeed a direct result of that engagement.

In the press conference following the release of the report on Lindela the Minister expressed concern about reports that genuine Zimbabwean asylum seekers and refugees were among those detained in Lindela and deported to Zimbabwe. She was adamant that the South African government is extremely conscious of its national and international obligations to respect and protect the rights of asylum seekers and refugees within its territorial borders. Consequently the South Africa government would not detain or deport people who have a right to asylum. She insisted that the only people detained in Lindela and deported to their countries of origin were

people declared as illegal foreigners in terms of the Immigration Act. She challenged Zimbabwean organisations to prove otherwise.

Lawyers for Human Rights (LHR), together with several interested organisations responded by commissioning a study of Zimbabwean asylum seekers and refugees living in South Africa. The aim of the study was to make a submission to the Minister of Home Affairs to provide a platform for meaningful engagement with the DHA and national institutions such as the South African Human Rights Commission, in order to raise critical awareness and make practical recommendations on specific human rights problems faced by the asylum and the refugee community in South Africa.

The survey, carried out in January to March 2006, demonstrates that although there is a fairly acceptable measure of legal and policy protective mechanisms for the protection of refugees and asylum seekers in South Africa, there is a serious lack of coherence in the government's implementation of these policies. Ineffectiveness can be attributed to negative social attitudes towards the influx of Zimbabweans, which has caused inconsistency and general insensitivity amongst SAPS and DHA officials in dealing with foreigners in general and Zimbabweans in particular seeking refuge in South Africa

The survey provides evidence that Zimbabwean asylum seekers and refugees have been detained illegally at Lindela repatriation centre and at other similar facilities, deported (and in the case of refugees *refouled* back to Zimbabwe. Further, the report confirms that asylum seekers and refugees who have been ill-treated are also subjected to corrupt practices such as the payment of bribes to the SAPS and to the DHA officials, in dealing with foreigners in general and Zimbabweans in particular those seeking refuge in South Africa.

The survey revealed a strongly held perception among asylum-seekers that corruption is endemic and deeply embedded in the asylum system itself. As a consequence of this belief, specific cases of corruption are not likely to be reported. The general feeling among respondents was: "who will police the police?"

The survey provides evidence to suggest that Zimbabwean refugees and asylum seekers are especially vulnerable to abuse by various government departments, more particularly at the hands of the DHA and SAPS officials than other groups. Furthermore, lack of coordination by the various government departments further victimises Zimbabwean asylum seekers. Most Zimbabweans apply for asylum through the Johannesburg Refugee Reception Office. However,

claims are processed very slowly and, although they are supposed to be finalised within 6 months according to the Refugee Act, asylum seeker permits frequently take longer than three years.

The survey revealed a perception among the SAPS officers that there is “no war in Zimbabwe”, therefore Zimbabweans could not possibly have a right to political asylum or refugee status.<sup>3</sup>

This submission acknowledges DHA’s demonstrated commitment address corruption and correct shortcomings of the system. These include the initiative to reduce the backlog to expedite the determination of refugee status and efforts to increase the capacity of the Refugee Directorate. It is submitted in this report that, while efforts are being taken by the government to reduce the backlog in asylum applications there are still doubts as to whether measures taken by the SA government to promote and protect the rights of asylum seekers are sufficient.

The survey revealed a perception among those interviewed that the United Nations High Commission for Refugees (UNHCR) is not committed to protecting Zimbabwean asylum seekers in South Africa. Some civil society and faith based organisations hosting large numbers of refugees complained that UNHCR in South Africa does not appear to acknowledge the scale of the problem in Zimbabwe.<sup>4</sup> A representative of the Zimbabwe Action Support Group (ZASG) further complained that there appears to be lack of sufficient coordination between the DHA and the UNHCR as “they constantly refer people to each other without any resolution”.<sup>5</sup> The study recommends further investigation of this issue.

This submission ends with specific recommendations to relevant institutions/organisations on problems of access to the asylum-seeking process, improvements in the conduct of the police, increased cohesion between government departments on refugee issues, improvements in conditions of detention and repatriation facilities and the role of independent institutions and NGO.

The submission makes long-term recommendations on the need for a complete, genuine and in-depth look by the South African administration into the reasons why Zimbabweans are fleeing their country to seek refuge in South Africa. Adopting a holistic approach both in its domestic and foreign policy in dealing with the influx from Zimbabwe would be desirable, as an alternative to judicially imposed innovations by the DHA to improve access to the asylum system.

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<sup>3</sup> LHR interview , 3 February 2006, Pretoria : Insights shared by a human rights NGO practitioner working on refugees service providers in South Africa

<sup>4</sup> Interview with Bishop Paul Verryn, Central Methodist Church,7 February 2006 , Meeting with some refugee service providers, Methodist House,3 February 2006

<sup>5</sup> LHR interview, 14 February 2006, Braamfontein

An integrated national strategy furthermore seeks to take into account both the inherently vulnerable position that refugees and asylum seekers face in South Africa as well as their potential to positively and richly contribute to the South African economy and culture. Such a strategy also takes into account that the Zimbabweans in South Africa are more likely to return to the land of their birth than Zimbabweans in other parts of the world. Educational and civic programmes could be put into place to prepare Zimbabweans, especially the youth, to return home and contribute to the rebuilding of their country.

In conclusion, it is important to acknowledge that the principles which guided the conduct of this survey are given expression in South Africa's supreme law, the Constitution.<sup>6</sup> This is the right of all people in South Africa to live a life of dignity, equality and freedom and for rights enshrined in the bill of rights to be respected, protected, promoted and fulfilled.

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<sup>6</sup> See Chapter 2 Sections 7,8,9 and 10 of the South Africa's Bill of Rights

## Introduction

In the past five years ever-increasing numbers of Zimbabweans have come into South Africa illegally. So desperate is the need to escape the political and economic crisis in their own country that the beleaguered Zimbabweans risk their lives going through electric fences, dodging army guards and crossing the crocodile-infested Limpopo. They are assisted by informal transporters at huge cost. There are anecdotes of villagers on the South African side of the Limpopo charging “landing fees” to receive Zimbabweans who have crossed the river.

The most favoured destination of the exiles is Johannesburg but many seek employment on farms in Limpopo province. Many of those who reach Gauteng apply for asylum status but few are afforded the opportunity. Out of 8000 applications received by 2005, only 90 Zimbabweans had been granted refugee status. The vast majority maintain a precarious existence in South Africa as undocumented illegal aliens.

For many of these exiles, migration to South African is like jumping from the frying pan into the fire. They are sometimes the victims of xenophobic attacks by South Africans incensed by what is perceived as foreigners appropriation of scarce resources. An example of this was the conflict over housing allocation in Olivierhoutbosch settlement near Pretoria in January 2006 in which two Zimbabweans were killed.

The experience of Zimbabweans who cross the Limpopo to seek refuge and sustenance in South Africa is poignantly expressed in the song *Lindela* by Zimbabwean a capella group Abanqobi Bomhlaba. The words *Sibalekel'emnyameni, South Africa isihlangabeza ngendugu, basithata basifaka eLindela, Thabo Mbeki ngabe sikwenzeni na?* appeals to President Mbeki to understand the predicament of Zimbabwean exiles who are running away from terror only to be met by arrest and imprisonment when they arrive in South Africa.

The massive influx of Zimbabweans into South Africa in the past five years and their status in South Africa is clearly a burning issue. Migration of Zimbabweans to South Africa is not a new phenomenon. Migrations across the Limpopo in both directions date back to precolonial times. The migration of the Zulu king Shaka's general, Mzilikazi and the subsequent establishment of the Ndebele kingdom across the Limpopo in the 1950s and the northerly scramble by white settlers in search of mineral riches set the foundation for enduring cultural, linguistic and social ties between South Africans, both black and white, and its northern neighbour. Labour migration further consolidated these ties. The labour needs of the South African mining industry ensured

that in the first half of the 20th century, it was virtually a rite of passage for young men from colonial Rhodesia to have a stint working in South African mines.

Since Zimbabwean's independence in 1980, there have been three main waves of migration of Zimbabweans to South Africa. The first wave consisted of whites who left Zimbabwe after the victory of the Zimbabwe African National Union (ZANU) PF's victory in the 1980 elections. The ascendancy of the much-feared guerilla leader, Robert Mugabe, to the highest office in the land resulted in the emigration of large numbers of whites to other parts of the world, mainly the UK, Australia and South Africa.

The second wave of migrants were the Ndebele refugees who fled the Gukurahundi massacres that took place in the Matabeleland and Midlands provinces of Zimbabwe between 1983 and 1987. These refugees entered South Africa furtively so there is little documentation of numbers. Their cultural and linguistic affinity with the Zulu nation enabled them to settle unnoticed in South African society and many took on South African identities.

Finally the current wave of migration is that of Zimbabweans who have been forced to leave their homeland as a result of a series of interlocking crises that Zimbabwe is now experiencing. Zimbabwe faces a political and constitutional crisis characterised by the government's unconstitutional assault on the independence of the media, judiciary, and civil society sector and its disregard for the rule of law and basic human rights; an economic crisis of staggering proportions, characterised by de-industrialisation, mass unemployment, chaotically-administered and incomplete land reform and a social/humanitarian crisis in which state-sanctioned political violence and violence against women have become endemic. This is exacerbated by high HIV infection rates and AIDS-related morbidity and mortality and a dramatic increase in mortality rates as a result of the collapsing health system and a rise in other social problems related to the crisis (such as gender-based violence).

Far from resolving the political crisis, the parliamentary elections held on 31 March 2005 deepened it. In the wake of the controversial parliamentary elections, which secured a two-thirds parliamentary victory for ZANU PF, the humanitarian and social crisis was exacerbated by the extraordinary actions of the government. On 18 May 2005, the government launched "Operation Murambatsvina." Referred to "the Zimbabwean tsunami", the operation resulted in 700 000 people in cities across Zimbabwe lost either their homes, their source of livelihood or both with a further 2.4 million were affected in varying degrees. Many of these people have found their way to South Africa to join the ranks of the Zimbabwean exile population whose size has been increasing in leaps and bounds since the deepening of the Zimbabwean crisis in 2000.

Numerous studies have shown that Zimbabwean exiles live under constant threat of arrest at the hands of sometimes corrupt police who demand bribes for their release. Even those who hold asylum papers are not immune from arrest and there are reports of police tearing up the documents of asylum-seekers. The fate of those arrested is detention at Lindela Repatriation Centre and deportation to Zimbabwe. There has been a catalogue of complaints about overcrowding and ill-treatment at Lindela. The deaths in July 2005 of two Zimbabwean detainees in Lindela, prompted a Committee of Enquiry into conditions at Lindela by the Minister of Home Affairs. The Report produced by the Committee acknowledged that conditions of Lindela, especially regarding medical care, were not as they should be. The Minister declared the report "an indictment on our Department (Home Affairs)". She refused however to accept allegations that Zimbabweans holding asylum seekers and refugees were among those detained in Lindela and deported to Zimbabwe. She was adamant that only people detained in Lindela and deported to their countries of origin were people who were illegally in the country. She challenged Zimbabwean organisations to prove otherwise.

Organisations such as Lawyers for Human Rights (LHR) welcomed this report and its accompanying recommendations as a breakthrough. Concerned organisations acknowledge the courage of the Minister in unreservedly publishing the report and accepting the recommendations. Immediately after the publication of the report the management of Lindela started implementing the recommendations. The Minister is also to be recommended for her willingness to engage stakeholders on the burning issues and to seek ways to address them. This report is indeed a direct result of that engagement.

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Human Rights Commission, in order to raise critical awareness and make practical recommendations on specific human rights problems faced by the asylum and the refugee community in South Africa.

This submission aims to provide a platform for meaningful engagement with the DHA and national institutions such as the South African Human Rights Commission, in order to raise critical awareness and make practical recommendations on specific human rights problems faced by the asylum and the refugee community in South Africa.

### **1.1 Background to the Survey**

A survey was conducted in preparation of this report. While some of the persons approached for interviews were clearly economic refugees/migrants, and fell outside the scope of the study, most of the respondents stated that they were political refugees who left Zimbabwe fleeing violence and persecution, mainly at the hands of the ruling ZANU PF militias, war veterans, Central Intelligence Officers and the army. One interviewee who fled Zimbabwe in February 2005 stated that he had to run away from the Youth Militia Training Camp “as we were forced to join the Border Gezi Camp”.<sup>7</sup>

Some refugees interviewed in the survey may also have been motivated to leave Zimbabwe due to the economic crisis in the country in addition to their political motivations, targeted by the government due to their political persuasions. A smaller number of respondents left for South Africa from mid-2005 because of the political situation that led to the destruction of their houses, livelihoods and families in the wake of *Operation Murambasvina*, a state of affairs that may well constitute events seriously disturbing or disrupting public order in either part or whole of Zimbabwe and threatening the lives of the poor vulnerable and often-times the chronically ill and internally displaced groups.

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<sup>7</sup> Youth militia is an armed wing of the ZANU PF party. Conscripted youths' well-documented actions have resulted in violence and some serious atrocities, committed under the guise of 'nationalism': LHR interview 15/2/2006, Durban

## Summary of Interviews<sup>8</sup> held in January and February 2006

| WEEK                         | AREA                           | MALE  | FEMALE | TOTAL |
|------------------------------|--------------------------------|-------|--------|-------|
| One : 5 -11 January 2006     | Harare (Zimbabwe) <sup>9</sup> | ----- | 2      | 2     |
| Two : 24 - 30 January 2006   | Johannesburg (and outskirts)   | 6     | 3      | 9     |
| Three : 31 Jan - 6 Feb 2006  | Johannesburg                   | 14    | 3      | 17    |
| Four : 7 –13 February 2006   | Johannesburg                   | 26    | 7      | 33    |
| Five : 14 - 20 February 2006 | Durban                         | 10    | 1      | 11    |
|                              | Johannesburg                   | 10    | 2      | 12    |
| TOTAL                        |                                | 66    | 18     | 84    |

Four of the respondents held high risk jobs as security officers within the main opposition party, the Movement for Democratic Change (MDC), while a further five were within the executive structures of the MDC, either as campaign managers or part of the executive team of MDC leadership including Members of Parliament. One was the Director of Intelligence within the opposition party and a former officer in the Zimbabwe National Army (ZNA).

18 of the 84 respondents were female (6 married), though as with other groups of asylum seekers and refugees in South Africa, a higher percentage (79%) were male. The group had an average of age of 31 years; the youngest asylum seeker was a teenager of 19 years and the oldest adult was 50 years old. 32 stated that they were married and 48 had children. Over 71% of the respondents (just 10 out of 84 persons had not gone beyond primary level education) said that they had completed a secondary (matric) school education and 25% held a degree or diploma in the fields of education, nursing, journalism and justice. Others had served in the army. 56 respondents reported that they were gainfully employed in various jobs before they were forced to flee to South Africa.

### 1.2 Scope of the Survey

This report is primarily based on an analysis of collected data, the bulk of the material having been obtained through face-to-face interviews with over eighty respondents/interviewees who completed an in-depth, structured questionnaire (Annex A) covering key issues of concern. All those interviewed were briefed about the aim of the survey and were assured of utmost

<sup>8</sup> These interviews were exclusively held with aspirant asylum seekers in Zimbabwe (Harare), in Pretoria CBD, Marabastad RRO vicinity, Durban (CBD and the RRO vicinity) and in the following areas in Johannesburg: Hillbrow, Yeoville, Braamfontein, Germiston, Hammanskraal, Mabopane, Boksburg, Orange Farm, Soweto, Rosssetenville, Berea and Alexandra.

<sup>9</sup> It was exceedingly difficult to identify persons to interview. Those who were interviewed declined any form of written documentation, primarily out of fear, due to a perception by the ZANU PF led government that most deportees are MDC supporters and are reported to be interrogated upon return, once identified.

confidentiality as it became clear early into the process that very little cooperation would be forthcoming if they did not receive an assurance that they would not be exposed.

Consultations were made with refugee service providers in and around Johannesburg and Pretoria. This included a consultative meeting with organisations working on various aspects of the refugee issue in South Africa in January 2006. Data was also collected from reputable human rights literature. A sizeable amount of background material was obtained from the writings of leading immigration and refugee practitioners and specialists.

The scope of the survey was informed by well-documented allegations. These included: harassment, arbitrary arrests and detention of asylum seekers and refugees, including those in possession of legitimate papers entitling them to be in South Africa. In addition, the survey addressed the pervasive and highly disturbing practice of some SAPS officials to tear or destroy Section 22<sup>10</sup> permits belonging to recognised asylum seekers and then deporting them. It is alleged that such actions, or the threat of such actions, are often done in order to induce the payment of a bribe. Further, the survey addressed assaults and ill-treatment of those arrested and detained, overcrowding and the general unhealthy state of the holding and detention facilities. Some individuals were held for longer than the 30-day period established by law.<sup>11</sup>

The survey compiled for the purposes of this report thus focused on the following, key issues affecting asylum seekers and refugees:

1. Inaccessibility, delay and inefficiency of the asylum status determination procedures
2. Arbitrary arrest, ill-treatment intimidation and corruption
3. Conditions of Detention at Lindela and other holding facilities
4. Deportations

These areas are examined in further detail below, following a brief overview of the political and social conditions in Zimbabwe that have led to it becoming a “refugee producing country” and the legal framework in South Africa for the reception of refugees.

## **2 Overview of Zimbabwe and the South African Legal Framework for Refugees**

### **2.1 Political and Social Overview: Zimbabwe as a Refugee Producing Country**

For some time, but especially during the past six years, Zimbabwean society has faced a myriad

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<sup>10</sup> Documents issued in terms of section 22 of the Refugee Act to asylum seekers who have formally lodged an application for refugee status in RSA and await an official response, also referred to as an ‘asylum permit’ in this report.

<sup>11</sup> See Section 29 of the Refugees Act, No. 130 of 1998 (thereafter referred to herein as the ‘Refugees Act’)

of crises on the economic, social, humanitarian and political fronts. While it's economic and social crises have received careful analysis,<sup>12</sup> numerous human rights abuses have also taken place. There are credible and verifiable reports of torture, intimidation, harassment and violent (sometimes fatal) attacks on human rights defenders, political opponents and other dissenting voices opposed to the Government of Zimbabwe (GoZ).<sup>13</sup>

Further, state institutions are politicised and have lost their professionalism, especially within the army, police, prison department, national intelligence agencies, some courts, the Registrar General's office and election management bodies. This has resulted in selective application of the law and denial of fair trial to countless victims of political violence.

The ZANU PF controlled government violently reacts to collective civil action such as demonstrations. Zimbabwe Lawyers for Human Rights (ZLHR) have recorded numerous cases of arbitrary arrests and detentions every time the Zimbabwe public participates in mass civic actions.<sup>14</sup> A culture of fear has pervaded Zimbabwean society based on a real perception by the government of their impunity. There is also a loss of confidence of the judiciary and the justice delivery process. This, in turn, has exacerbated a situation of increasing lawlessness. Of very serious concern is the increased use of torture by the state (especially from 2003) as a means of dealing with dissent. There is little indication that the situation will improve in the near future.<sup>15</sup>

In May 2005, the GoZ launched a military-style Operation against its own people. Known as Operation '*Murambatsvina*' (translated as Operation Remove / Drive-out-the-Filth), and also known as Operation 'Restore Order', it was justified by the GoZ to enforce by-laws that prohibit all forms of alleged "illegal activities in areas such as vending, illegal structures and illegal cultivation, among others".<sup>16</sup> Operation *Murambatsvina* cost some 700,000 Zimbabweans their homes or their livelihoods. It affected nearly a fifth (2.4 million) of the country's population, according to a damning report released by the United Nations (UN) in July 2005 after a two-week fact finding mission in Zimbabwe.<sup>17</sup> In the report, the UN Special envoy described destructions, demolitions, evictions and subsequent internal forced displacement. The report

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<sup>12</sup> See for example: Patrick Bond and Masimba Manyanya, *Zimbabwe's Plunge*, 2002.

<sup>13</sup> See Nova (SA newspaper) headline on 31/01/2006 at [www.novalive.co.za](http://www.novalive.co.za), The Herald: 30/01/2006, [www.herald.co.zw](http://www.herald.co.zw); Human Rights NGO Forum in Zimbabwe, especially reports from 2000 to 2006, [www.hrforumzim.com](http://www.hrforumzim.com); Human Rights Watch reports, [www.hrw.org/reports/Zimbabwe](http://www.hrw.org/reports/Zimbabwe) and Amnesty International, [www.amnesty.org](http://www.amnesty.org)

<sup>14</sup> The first six weeks of 2006 saw incidents of arbitrary and at times violent arrests and other politically motivated harassment and persecution of +/- 100 media and human rights activists, see ZLHR press releases: [www.zlhr.org.zw](http://www.zlhr.org.zw)

<sup>15</sup> Zimbabwe Human Rights Bulletin excerpts at: [www.zlhr.org.zw](http://www.zlhr.org.zw) Also, see Issues 11 and 12 of the Human Rights Bulletin (2005), produced by the Zimbabwe Lawyers for Human Rights (ZLHR).

<sup>16</sup> City of Harare Enforcement Order, published in the Herald on the 26<sup>th</sup> of May 2005, [www.theherald.co.zw](http://www.theherald.co.zw)

<sup>17</sup> Mission headed by Mrs. Anna Kajumulo Tibaijuka (UN Habitat Director), "Report of the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe", 18 July 2005, available at [www.unhabitat.org/documents/ZimbabweReport.pdf](http://www.unhabitat.org/documents/ZimbabweReport.pdf).

further described possible migrations of hundreds of thousands of poor urbanites as a “man-made disaster”, precipitating “a humanitarian crisis of immense proportions”.<sup>18</sup>

The social and political upheaval in Zimbabwe has resulted a massive migration<sup>19</sup> of Zimbabweans to other countries, especially South Africa, but also Zambia, Botswana, Mozambique and the United Kingdom<sup>20</sup>. The reasons for their seeking asylum in South Africa are varied.<sup>21</sup> By October 2004, it was estimated that 25 to 30 percent of Zimbabwe’s population had left the country. According to 2005 statistics of the DHA, 114 Zimbabweans had been granted refugee status and 15,978 applications for asylum were pending.<sup>22</sup>

## **2.2 Legal and Human Rights Framework for the Protection of Refugees in South Africa**

Since the enactment of the South African Refugees Act, reports and research conducted by local and international human rights NGOs and researchers have suggested that, for some, the legislation has been ineffective as many of the potential beneficiaries have not been aware of it.<sup>23</sup>

The Refugees Act defines a refugee as a person who:

has a well-founded fear of being persecuted on account of his or her race, religion, political opinion or membership to a particular social group, or whose life, physical safety or freedom is threatened on account of external aggression, occupation, foreign domination, or other events seriously disturbing or disrupting public order in either part or whole of that country.

This composite definition reflects the wording contained in the 1951 Convention Relating to the Status of Refugees (and 1967 Protocol) and the 1969 OAU Convention Governing Specific Refugee Problems in Africa, both international convention which were ratified by South Africa.

Given the multiplicity of criteria used to determine who a refugee is, the definition of a refugee is open to broad interpretation and can be problematic. Refugee Status Determination Officers

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<sup>18</sup> See page 9 of UN Report, *ibid*

<sup>19</sup> LHR received complaints that interviewees who arrived in South Africa after June 2005 reported having fled the effects of Operation Murambasvina: e.g. interview with asylum seeker T C, on the 17/02/2006, Durban

<sup>20</sup> South African Migration Project [www.queensu.ca/samp/press\\_statement](http://www.queensu.ca/samp/press_statement) issued by ZASG: 2005/09/30

<sup>21</sup> “No War in Zimbabwe – An Account of the Exodus of a Nation’s People”, Solidarity Peace Trust, November 2004, available at: [www.solidaritypeacetrust.org.za](http://www.solidaritypeacetrust.org.za) documents reports by human rights organisations that a minimum of 300,000 people have become victims of human rights violations over the previous four years in Zimbabwe. Violations include torture, destruction of homesteads and massive displacement of persons fleeing political persecution or farm invasions. Further violations include the denial of food to those perceived to support the opposition. Around 300 have been murdered for political reasons and youths have fled to avoid militia training.

<sup>22</sup> Source: DHA

<sup>23</sup> See “Living on the Margins: Inadequate protection of refugees and asylum seekers in Johannesburg, HRW report, Volume 17, No. 15 (A): [www.hrw.org](http://www.hrw.org)

(RSDOs) have all over the world have different levels of experience and qualifications and South Africa is no exception. Depending on these factors, and possible bias, RSDOs may arbitrarily adopt a broad or narrow approach towards this definition.

In addition to the Refugees Act, South Africa's constitution grants refugees and asylum seekers most of the rights set out in chapter two, with the possible exception of certain rights where citizens are expressly mentioned. Some of the rights particularly relevant to asylum seekers include: the right to non-discrimination, protection of the law and access to legal services, freedom and security of the person, privacy, the right to seek employment, receive basic health services, shelter, access to education and freedom of movement (i.e. asylum seekers have a right to live anywhere in South Africa and are not confined to a particular town, where for instance they obtained their asylum papers). Asylum seekers also have a right to just administrative action, which ensures that the government's actions, through its lawful agents such as the SAPS and DHA officials are lawful, fair and just.

Other laws that apply to control the movement of foreigners into South Africa include the Immigration Act 19 of 2004 (as amended) and accompanying Regulations (June 2005). These provide a legal framework regulating the capacity and conduct of the Immigration section of the DHA to enforce provisions dealing with, among other issues, the legal status, reception and expulsion of foreigners. This legislation should ideally translate into making sure that asylum seekers have a right to remain in South Africa while their applications for refugee status are determined and a right to have their asylum application processed and decided in a speedy, fair and transparent manner.

Despite the enactment of these statutes regulating the reception, treatment, protection and integration of asylum seekers and refugees in South Africa, various difficulties are encountered by asylum seekers and refugees in accessing the asylum process.

### **3 Lack of Access, Unreasonable Delays and Inefficiency in Asylum Procedures**

In terms of the Refugees Act, no person may be denied the opportunity to apply for asylum. Once the application has been submitted to the RRO, the individual has the right to remain in South Africa until a final decision on the application has been made.

Until recently, Zimbabwean asylum seekers were refused to be allowed to apply for asylum based on the departmental understanding that the political situation in Zimbabwe does not warrant any serious consideration of any asylum application originating from that country. In June 2002, the Wits Law Clinic tested the legality of this practice/policy in a case involving five Zimbabwean

exiles. In the end the case was settled when the DHA conceded that any Zimbabwean had a right to apply for asylum. The attitude before then has been that “there is no war in Zimbabwe” and therefore no right to asylum for its people. Despite a change in policy, some of the interviewees experienced a similar attitude expressed when the visit DHA offices.

However, many interviewees reported that they found it extremely difficult to get access to the refugee reception offices, which are struggling to assist the long queues of new arrivals every day. A 29 year old asylum seeker had this to say about the process: “It was very difficult. I had to sleep at the refugee offices for three days and some personnel from the offices asked me to pay R400 so that I can be given the paper”.<sup>24</sup>

The RRO office at Rossettenville is not a conducive environment for servicing asylum seekers and refugees. The following incidents point to a lack of efficiency at the RRO offices at Rossettenville.

Week after week, persons numbering up to 900 stand in a queue that snakes outside the reception offices. At the end of a day, it is not unusual for the majority of people still standing in the queue waiting for attention..

Those wishing to extend the validity of their permits face a similar frustration. One interviewee revealed that he arrived at 8am and left the RRO offices at 5.30pm, simply waiting for the extension of his permit. Permits are normally extended for a period of a month, sometimes even less. The short extension period causes problems with their employers, because it compels asylum seekers to be frequently away from work. Another asylum seeker revealed that he has been interviewed six times for refugee status determination after a period of four years holding a section 22 permit. On each occasion, he was told that his file got lost or that it was his last interview. According to DHA policy, an applicant should only be interviewed twice for status determination within a period of six months

The quality of decision-making by the refugee status determination officers seems to be lacking. Concern was raised by a number of legal service providers and community representatives about the fast track procedures introduced recently at the Marabastad and Rossettenville Refugee Reception Offices. In their observation the new fast track procedure applicants are not interviewed by RSDOs and decisions to reject their applications as manifestly unfounded are given without any reasons or explanations for the decision. On at least two occasions in March/April it was observed how people were verbally informed that their asylum applications

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<sup>24</sup> Lawyers for Human Rights interview, asylum seeker 9 February 2006, Johannesburg Central

were manifestly unfounded. According to observers this procedure is mainly designed to flush out applicants from neighbouring countries. This is obviously *ultra vires* the Refugees and the Promotion of Administrative Justice Acts.

One of the respondents who was fortunate to have gone through the process to get the asylum seeker temporary permit and summoned for a second interview was subsequently denied refugee status, despite being widely documented, locally and internationally, as being a high ranking official in the opposition party, targeted for 'elimination' and even having appeared on the Zimbabwean national television station (ZTV) as a 'wanted dangerous criminal'. The news report suggested that it may be appropriate to 'gun him down on sight'.<sup>25</sup> This particular applicant was found to be *unfounded* and has since launched an appeal to the Refugee Appeal Board. The matter remains pending.

Until an *asylum seeker* obtains a Section 22 Permit (a temporary permit), he/she is not allowed to work in South Africa. If his/her application is approved, a Section 24 Permit is granted, according formal recognition of his/her legal status as a *refugee*. It is commonplace that certain refugees wait up to six years to receive their formal recognition. Because of difficulties encountered with asylum seeker permits, the failure to confirm formal recognition in a timely manner results in poor living conditions for the refugees.

#### **A Long Road to Attaining Refugee Status**

XP<sup>26</sup> is a 34 year-old male who was granted full refugee status in October 2005 and is yet to receive the recognised refugee status papers/smart card. He recounted to an LHR interviewer incidences of harassment, violence and inefficiency characterizing his three-year fight to finally be recognised as a person in need of refugee protection. The interviewee narrated that, as an active member of the MDC, he became a victim of violence at the hands of War Veterans in Zimbabwe when he narrowly escaped being burnt alive in his house after a tip-off. Owing to constant harassment of his family and threats to his life, he fled to South Africa on the 14<sup>th</sup> of December 2002. Having braved the process of getting a permit over a year later, in 2004 a SAPS officer threatened to tear his asylum permit when he visited Hillbrow police station to get a copy of the same certified. He states that he had to pay R50 to avert the loss of his permit. A few months later, Hillbrow police officers arrested him for having an asylum permit claiming that "the permit is not issued to Zimbabweans". A further bribe of R100 had to be paid to stop the police from destroying the permit. In 2004 again DHA officials at Rossettenville RRO harassed him when he requested to have a meeting with a senior official after his file disappeared mysteriously for the fifth time in 2 and a half years, causing him to be interviewed four times instead of the required two times. He stated that he believed that it was a deliberate ploy to frustrate him and cause him to offer a bribe in order to persuade an official at the RRO to "find" it. In 2005 police officers stationed at Jeppe police station threatened to shoot him after an altercation "with them over my being a Zimbabwean and having an asylum permit".

<sup>25</sup> See: [www.zimbabwesituation.com/sep27/2000/html](http://www.zimbabwesituation.com/sep27/2000/html)

<sup>26</sup> Lawyers for Human Rights interview with refugee who requested anonymity, 7 February 2006, Braamfontein

Statements made by the Minister of Home Affairs have confirmed that there are problems in the Department.<sup>27</sup> This recognition is commendable, raising much optimism that the DHA will adopt a more efficient, speedier and holistic approach towards restoring trust in the asylum process.

#### **4 Arbitrary arrest, ill-treatment, intimidation and corruption**

The survey showed that Zimbabwean asylum seekers and refugees in Johannesburg, Pretoria and other areas visited (as explained earlier on in the report) often face harassment, mistreatment, extortion, arrest and detention by police. Ten of the 59 interviewees reported having been arrested at least once at any point while in South Africa, even though they held asylum papers at the time of the arrest. Most (65%) of them were told to pay a bribe to secure their release, otherwise their papers would be torn and they would be deported. 25% reported that they had been harassed, verbally abused or threatened; the usual derogatory term used in insulting Zimbabweans was ‘amakwerekwere’.<sup>28</sup>

While all but three<sup>29</sup> of the respondents reported harassment and having been arrested and detained, 14 persons were deported. The money (bribe) factor decided whether they, in fact, got deported. Most paid bribe money at the police station where they were detained, at Lindela or en route to Zimbabwe before reaching the Zimbabwe/South Africa border. The bribe money is anything between R30 and R1000 depending on who solicits it and how high the stakes leading to a deportation are, as being at Lindela itself means that one needs to fork out at least R450 before being released.

The survey found that asylum seekers are persistently intimidated to pay bribes for ‘favours’. The practice is reported to be especially prevalent at reception offices, the Musina border post; Hillbrow, Yeoville, Jeppe and John Vorster police stations and at Lindela Repatriation Centre. Research undertaken by *Refugees International* found that Zimbabweans face more of this kind of harassment than other asylum seekers.<sup>30</sup>

One 35 year old asylum seeker permit holder, a married mother of four children had this to say about corruption and abuse of women asylum seekers:

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<sup>27</sup> See Parliamentary Debates: August 2005 [www.dha.gov.za](http://www.dha.gov.za) and [www.pmg.org.za](http://www.pmg.org.za)

<sup>28</sup> Lawyers for Human Rights interviews, Johannesburg, 31 January and Durban, 13 February 2006.

<sup>29</sup> One MDC political victim whose case of arrest and torture was widely publicized was assisted by a Pretoria Central police station captain with accommodation and food during his first days in SA and reports that he has not faced ill-treatment. LHR interview – 7 February 2006, Braamfontein.

<sup>30</sup> See Refugees International: [www.refugeesinternational.org/homepage](http://www.refugeesinternational.org/homepage)

Barely two weeks upon arrival in South Africa, in November 2004, I was harassed and detained by two Germiston police officials who demanded I pay a bribe to secure my release. One of these officers stated that it's either I pay a bribe or grant him sexual favours in exchange for my release. When I refused to sell my body I was locked up for two nights, and was only released after I made arrangements to secure the bribe of R150 and paid it to them. To date and in spite of the fact that I now hold a permit, they continue to demand a bribe every time they stop me.

She further alleged that the Department of Home Affairs officials were no better and had harassed her at least four times at the RRO; in December 2004, January and March 2005. They told her to "go back to Zimbabwe because there is no war". She stated that she has had to sleep outside the Rossettenville RRO for several days on three separate occasions until she was able to obtain a section 22 permit a year and a month later.<sup>31</sup>

Problems of access, corruption, bribery and sexual abuse were echoed by other respondents.<sup>32</sup> One woman said that at the Hillbrow police station, an unknown, but identifiable officer demanded sex and harassed her: "They accused me of prostitution in South Africa and poked my pregnant stomach."

#### Types of Violations Reported by 84 Respondents

| Type of Treatment   | Respondents Affected | Responsible Authority/Perpetrator(s)/Persons Dealt With                            |
|---|----------------------|--|
| 1. Arrested / detained at least once  | 59                   | SAPS,DHA, Lindela officials  |
| 2. Arrested/detained with valid section 22 permit at time of arrest                           | 10                   | SA Police, Lindela officials   |
| 3. Exposed to extortion (i.e. bribe solicited to stop having permit torn / being deported/)   | 55                   | SA Beitbridge border police, Lindela Police, DHA staff, Johannesburg & Durban SAPS |
| 4. Bribe solicited and paid   | 45                   | DHA stuff, SAPS  |
| 5. Deported(undocumented asylum seekers)  | 14                   | Lindela and Musina (Makhado) DHA officials   |
| 6. Unprovoked physical assault  | 12                   | SAPS officials, security guards at RRO, metro police,                              |
| 7. Harassed/verbally abused / threatened  | 21                   | SAPS,DHA officials, security guards at RRO and Lindela                             |
| 8. Threatened that Section 22 permit will be torn if bribe is not forthcoming                 | 6                    | SAPS officials   |
| 9. Asylum paper torn/confiscated <sup>33</sup> (Section 22 permit)                            | 3                    | SAPS in Johannesburg and Durban  |
| 10. Protection letter destroyed (issued by recognised refugee service provider) <sup>34</sup> | 2                    | SAPS in Johannesburg   |

<sup>31</sup> Lawyers for Human Rights interview with asylum seeker, Johannesburg Central, 10 February 2006

<sup>32</sup> Lawyers for Human Rights interview in Braamfontein with a section 22 asylum permit holder, a 23 year old woman who reported being forced to give in to the sexual demands to be released from detention, 10 February 2006

<sup>33</sup> Three interviewees were threatened by SAPS that if they fail to pay the bribe their asylum permit will be torn

<sup>34</sup> Organisations issuing 'protection letters' include SAWIMA and Wits Law Clinic

|  |    |  |
|--|----|--|
| 11. Holders of Section 22 permits  | 51 | Refugee Reception Officers             |
| 12. Holders of protection letters  | 8  | -----                                  |
| 13. Fell ill while at Lindela, Setshego etc.,  | 12 | Lindela and Seshego(Musina) officials  |
| 14. Denied basic rights upon detention (e.g. food, right to inform relatives/lawyers of arrest, over-detention, inhuman living conditions, right to appeal decision to be deported ) | 9  | Lindela and Setshego(Musina) officials |
| 15. Sexual favours solicited to secure release   | 2  | SAPS police in Johannesburg            |
| 16. Attempt on life ( e.g. being shot at )   | 2  | SA Army , SA Police                    |
| 17. File missing or lost at DHA  | 2  | DHA RRO & RSDO                         |
| 18. Undocumented asylum seekers  | 29 | DHA RRO                                |
| 19. Issued with Section 24 refugee recognition status <sup>35</sup>  | 3  | DHA RRO                                |
| 20. Issued with actual refugees ID papers  | 1  | DHA RSDO                               |
| 21. In possession of appointment letters issued by DHA   | 1  | DHA RRO                                |

In October 2005 a 31-year-old female with a section 22 permit was arrested by Yeoville SAPS officers who threatened her with deportation, telling her that “there is no war in Zimbabwe”. They further asked for sexual favours. While it is unclear how she responded, she was released 45 minutes later before other police officers arrived at the police station. She told LHR that she was “now afraid to visit friends and relatives in Johannesburg” as she feared arrest in spite of the fact that she was a legally recognised asylum seeker.<sup>36</sup>

In June 2003 a 26-year-old MDC activist who was arrested by the SAPS had his permit (which took him a year to obtain) confiscated and torn because he did not have money on him at the time a bribe was solicited. He was subsequently taken to Lindela where he was detained for two weeks until MDC party officials in South Africa intervened.<sup>37</sup> Another asylum seeker was threatened by the police that his asylum permit would be torn because he had delayed renewing it. A further section 22 permit holder was threatened with the same fate after producing a partially unclear permit with folds and creases (the result of carrying the same paper for over a year and a half in his pocket every day), impatiently waiting for his second interview<sup>38</sup>

One asylum seeker who held a “protection letter”<sup>39</sup> from an NGO refugee service provider was arrested and forced to pay R1000 in return for her freedom. During her detention, she was given the name and phone number of the person to whom the money was supposed to be paid as well as the number plate of the person who was to receive the money.<sup>40</sup> The reason why NGOs issue such “protection letters” is due to the DHA’s refusal to issue asylum seeker permits from the

<sup>35</sup> One has an Identity Document (smart card), while the others applied for them in January & October 2005. The documents are yet to be made available to them

<sup>36</sup> Lawyers for Human Rights interview with asylum seeker, Mabopane, 12 February 2006

<sup>37</sup> Lawyers for Human Rights interview with asylum seeker, Lindela, Krugersdorp, 30 January 2006

<sup>38</sup> Lawyers for Human Rights interviews with asylum seekers, 8 and 16 February 2006, Johannesburg and Durban respectively

<sup>39</sup> Letter usually confirms that bearer is an asylum seeker and requests authorities not to deport her/ him until she/he has had an opportunity to submit an asylum application with a RRO.

<sup>40</sup> Lawyers for Human Rights Interview with asylum seeker, Berea, Johannesburg, 10 February 2006. Information about the identity of the police officer and number plate is known to LHR.

moment an asylum seeker applies for political asylum until the applicant's initial interview, which can easily be several months later, leaving the asylum seeker without any legal means of verifying their status in the country. While LHR does not believe it is good practice for NGOs to issue such "protection letters", one cannot condone DHA's refusal to issue asylum seeker permits from the moment of application, nor police abuse in demanding a bribe in return for a person's release.

Some interviewees reported that plain clothes SAPS officers were the most notorious as they even offered their cell phones for clients to contact their relatives to bring in the bribe money should the victim be found roaming the streets without money on her/him.

Abuse of asylum seekers by the DHA often go unreported due to lack of information available to affected asylum seekers of their rights in South African law. A further reason for non-reporting is that refugees and asylum seekers are afraid to report because of their lack of faith in the South African authorities, in particular the police.

Additionally, there is evidence that Zimbabwean asylum seekers are a particular target of the police. A Southern African journalist (CAJ News Services) monitoring and documenting refugee developments in South Africa recounted to LHR that, on 1 February 2006 at Marabastad refugee reception office, he observed that only Zimbabweans were being requested to produce passports and metal national identity cards. This was corroborated by Zimbabweans in Durban.<sup>41</sup>

Sadly, the police service has failed to hold police officers accountable. As LHR argued in 2001:

foreigners are often easy targets for unscrupulous and corrupt police officers, who would target them for illicit bribes. These practices are unacceptable and undermine the integrity and the police and its efforts to foster good relations with all the communities in South Africa. LHR has also on a number of occasions drawn Police's attention to the fact that arrested foreigners are not properly registered in the cell registers of the police stations. The legal effect of this is that large numbers of people are being detained extra judicially and are effectively abducted by agents of the state. This is contrary to the most basic notions of police practice.<sup>42</sup>

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<sup>41</sup> Policy of demanding passports from Zimbabweans only was collaborated by a Durban based asylum seeker interviewed by LHR on the 17<sup>th</sup> of February 2006

<sup>42</sup> Jacob van Garderen and Emma Algotsson, "Towards a Responsible Framework for the Arrest, Detention and Repatriation of Illegal Foreigners: A Human Rights Perspective on the Immigration Bill", LHR, Presented at SARNP Conference, Pretoria, 2001.

To date, LHR's Johannesburg office has recorded 20 complaints filed with the Independent Complaints Directorate by refugee clients against SAPS officials. Of those only 3 were resolved, the other 17 are still pending.

## **5 Inadequate Conditions of Detention (Focus on Lindela)**

Most deportees are held at Lindela Repatriation Centre in Krugersdorp in the outskirts of Johannesburg, while those arrested close to Musina (close to the Zimbabwean-South African border) are held at the Setshego detention centre.<sup>43</sup> Minimum standards for the detention of undocumented migrants at repatriation facilities in South Africa are set out in section 34(1)(e) of the Immigration Act (2004) and its 2005 Regulations, section 28(5). The law obliges the DHA to ensure that detainees are provided with adequate accommodation and nutrition and that acceptable hygienic standards be maintained. This implies that it is the responsibility of DHA officials<sup>44</sup> to ensure that there are adequate space, ventilation, sanitary installations, balanced diet, clean living space, health facilities and a clean bed, mattress and blanket for every detainee.

There is a general prohibition on detention of unaccompanied minors and separate detention of males and females is a requirement, except in cases where spouses and children are accompanied by parents or guardians. LHR was informed by social workers that it often happens that unaccompanied minors are simply left outside the Lindela gates by the police after Lindela refuses to detain them.

The survey documented the experiences of persons who found themselves detained at Lindela for any length of time, ranging from a few hours (3 hours) to 41 days. Seven detainees interviewed complained about overcrowded conditions in cells at the time they were detained at Lindela. For example, a cell meant for 15 persons held double the figure. 12 out of 14 detainees fell sick while in detention, representing over 85% of detainees in this survey. Common ailments were diarrhoea, stomach pains, flu, headache and a persistent cough, a condition commonly known among detainees as "Lindela fever".

Detainees who fell sick reported that the medical attention they received from the clinic was not adequate. Panado, a mild painkiller, was apparently prescribed for most ailments complained of

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<sup>43</sup> In December 2005, one interviewee was flown directly to Harare and consequently he did not experience being detained at Lindela.

<sup>44</sup> A private company called *Busasa* was contracted by DHA to provide services at Lindela. *Busasa's* track record has seen a lot foreigners and most notably Zimbabweans dying at the facility. In early August 2005, the Parliamentary Portfolio Committee was informed that at least seven people had died at Lindela in 2005, including two young Zimbabweans, while a further 21 detainees died at the neighbouring Leratong Hospital, where they were taken for treatment. Zimbabweans account for the highest number of immigrants arrested and deported via the centre monthly.

above. Complaints about the hostility of the clinic staff were also reported. One interviewee reported that he told a Lindela official he was suffering from a “terrible headache”, but was ignored. In Musina, there was reported to be complete lack of medical facilities, where only the critically ill were referred to the nearest hospital.

The survey also established that while food at Lindela is available, the quality and quantity was erratic. A major complaint was that the tea had a white residue that caused the inmates to suspect they were being poisoned or drugged.<sup>45</sup>

Interviewees also complained that hygienic standards could be higher. Overcrowding, they complained, automatically led to a marked drop in hygienic standards. One asylum seeker who fled Zimbabwe after being dismissed from public service and victimised as a result of his MDC membership and trade union activism was detained at Lindela for two weeks in February 2002. He alleged that the sanitary facilities were inadequate, explaining that at one point an estimated 60 people (others put it at 40) shared one toilet and there was a permanent queue to use it. As a result, the toilets were always dirty, emitting a foul odour most of the time and were only cleaned after two days. Further, he states that he shared a single bed with another detainee and the blankets were dirty.

Two asylum seekers interviewed in Durban alleged that they had been unlawfully detained for periods in excess of the 30 day maximum period (40 and 51 days respectively, including weekends) owing to what Lindela authorities said was a “holiday”, which precluded them from conducting repatriations.<sup>46</sup>

Some NGOs have mentioned that, although the detention conditions have improved since the establishment of the centre, improvements were often erratic and short term following pressure from DHA or media exposure.

## **6 Deportations without due process**

The survey found that, out of the 18 detainees, 14 were successfully deported to Zimbabwean territory. Four of them admitted to bribing Lindela officials to be released before being loaded onto the train/truck or returning with the immigration driver after, he too, had been paid a bribe. Most of them were simply taken across the border on the Zimbabwean side (Beitbridge), and left there.

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<sup>45</sup> This specific allegation could warrant further investigation as four interviewees who made such allegations suffered from either a dizzy weak spell or from diarrhoea after the meal.

<sup>46</sup> LHR interview ,asylum seeker, 14 February 2006, Durban: Alleges detention from 4/07/2005 to 15/08/2005 and 30/12/2003 to 20/02/2004

Some were stranded and hungry for days, without money to get to their hometowns, some as far as Harare (600 kilometres away).

Prior to being deported, very few were permitted to gather even the barest belongings they possessed. Some returned illegally within hours or days, via the crocodile infested Limpopo river, where they were also exposed to further extortion at the hands of the border police and unscrupulous 'agents'.

In terms of the Immigration Act, a detained foreigner awaiting repatriation has the right to appeal a decision by the Department of Home Affairs to deport her/him within ten days of being served with a deportation notice.<sup>47</sup> He or she also reserves the right to have the decision to detain him or her at a detention facility, pending his or her deportation, reviewed by a magistrate. The detainee has to lodge the appeal within ten days of being notified of the decision to deport them. Nine respondents remember having completed and signed the Notification of Deportation Form (No. 29), agreeing to waive any rights to appeal the decision to deport them. Six of them did not. Either they were given insufficient time and information to consider what they were signing or they simply did not sign it.

A random visit made by LHR to the Lindela facility on 31 of January 2006 established that after a "street sweep" in and around Johannesburg the previous weekend, a total of 270 Zimbabweans had been deported the following Wednesday 25 January 2006.<sup>48</sup> On Monday, 30 January 2006, 1,000 Zimbabweans had been picked up over a four-day period and again deported by train, some within hours of being booked into detention. Effectively this meant that no opportunity was given to the deportees to challenge the decision of the Minister to deport them. Furthermore, deportees (including asylum seekers) were not given sufficient time to inform relatives of their whereabouts, let alone find and consult legal counsel about possible ways of averting deportation.

The Wits Law Clinic complained about the difficulties they experience when consulting with clients at the Lindela Repatriation Centre. Off late, their legal representatives are not allowed to take pens with them to their consultations.

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<sup>47</sup> Section 7 ( 1 ) (g) as read with 34(1) ( a ) and the attendant Regulations , section 28 (2)

<sup>48</sup> LHR verbal communication with Official –in-Charge on the day in question - 31/01/2006

### **An Asylum Seeker's Plight at Lindela: The Case of Tony**

While on a routine visit to Lindela on 31 January 2006, LHR had the opportunity to speak with clients who had been detained at Lindela Repatriation Centre. It was established that one of the detainees, an MDC security officer for the Matabeleland region, was arrested on 25 January 2006 and transferred to Lindela on 27 January to await a deportation train back to Zimbabwe. This, he stated, occurred before he was afforded an opportunity to lodge his application for asylum. He had arrived in December 2005 after enduring constant harassment from Central Intelligence Officers (CIO), a secret branch of the president's security forces in Zimbabwe. He claimed that an immigration officer solicited a bribe of R800, in order to secure his release. He did not have the money and so he remained detained. Upon gaining knowledge of this, LHR quickly lodged a request with Lindela authorities to prevent his being returned by deportation, which could have amounted to refoulment. LHR requested that he be released from Lindela in order to access the Johannesburg refugee reception office and apply for asylum. It took a second letter dispatched to Lindela a week later and a further week after that for the authorities to release him. The authorities claimed they had instructions to hold him for screening by immigration officials, a claim that could not stand scrutiny, as screening is only conducted at the RRO by designated officials.

## 7 Recommendations

In light of the above findings and conclusions, we offer the following recommendations for consideration to: the Government of South Africa (in particular the Department of Home Affairs and South African Police Services), South African Parliamentarians and Independent National Human Rights Monitoring Bodies.

### 7.1 On Access to the Refugee Reception Offices

**Recommendation 1:** The DHA must urgently address the problem of inaccessibility to the asylum system by progressively and substantially increasing the number of appropriately trained staff and facilities at refugee reception offices, to facilitate more efficient processing of asylum applications, the determination of status, and the issuing of refugee identity documents.

**Recommendation 2:** The DHA should as a matter of utmost urgency strengthen its anti-corruption unit and guarantee adequate resources, so as to adequately investigate allegations of corruption in the refugee status determination system. Any of its officials found to be involved in unethical, corrupt and or illegal conduct ought to be prosecuted. There is also need for dialogue between DHA and NGOs on how corruption allegations can be reported without exposing asylum seekers to further insecurity.

**Recommendation 3:** The DHA should refrain from using unlawful fast track procedures, especially where it deprives asylum seekers from having proper interviews with RSDOs and being given written reasons for being refused.

**Recommendation 4:** The DHA should establish an information desk at all refugee reception offices to assist with the orientation of asylum seekers and refugees as well as attend to their queries. Adequately trained officials and interpreters at the information desk should be able to explain to refugees and asylum seekers their rights and obligations, and assist with providing information about local service providers.

**Recommendation 4:** The DHA is urged to establish a straightforward complaints mechanism for asylum seekers to register complaints. Assurances should be made that complaints will be considered without prejudice to refugee status claims and that the staff member about whom a complaint is directed is not involved in receiving or processing the complaint.

**Recommendation 5:** Signs should be prominently displayed at refugee reception offices in the main languages of asylum seekers that clearly state all services are to be provided free of charge and that any request by reception office personnel for money, sexual or other favours should be reported immediately.

**Recommendation 6:** DHA is urged to put measures in place to ensure that asylum seekers are immediately issued with permits when they attend on the office for the first time to prevent the current situation where asylum seekers stay for months without after being given an appointment for their first interview, which is often 5-6 months in advance.

## **7.2 Building an Accountable, Credible and Professional SAPS**

**Recommendation 7:** The Independent Complaints Directorate (ICD) is urged to conduct a comprehensive investigation into the police handling of foreign nationals in South Africa and to publish its findings.

**Recommendation 8:** South African Police Services (SAPS) are urged to conduct training on issues of xenophobia and the role of the police in protecting the rights and interests of foreigners. South African police, particularly those working at refugee reception offices and immigration points should receive training on the validity and availability of section 22 permits held by Zimbabweans.

**Recommendation 9:** The Department of Community Safety and the SAPS are urged to investigate, take disciplinary steps and institute criminal charges against police officers implicated in corruption. Police officers are urged to display their service badges at all times in order that they be clearly identifiable to the public and not to arrest newly arrived asylum seekers who obtain 14 day permits.

## **7.3 On Increased Cohesion between Government Departments on Refugee Issues**

**Recommendation 10:** Administrative procedures must be simplified and coordination and cooperation between the DHA and other relevant government departments must be enhanced to facilitate access to essential services for refugees and asylum seekers.

## **7.4 On Lindela and the State of Detention/Repatriation Facilities**

**Recommendation 11:** The Judicial Inspectorate of Prisons' mandate should be broadened to monitor the treatment of detained foreigners, particularly at Lindela. This would require making the necessary additions to the regulations to the Immigration Act.

**Recommendation:** All undocumented unaccompanied minors must be referred to social workers and the Children’s Court when so identified by authorities, in particular by the police.

**Recommendation:** An independent evaluation reporting on the implementation of the Lindela committee of inquiry’s recommendations

**Recommendation:** Legal service providers must be given unhindered access to detainees at Lindela and other detention facilities

### 7.5 On the Role of National Independent Institutions and NGOs

**Recommendation 12:** Zimbabweans, together with other foreigners should be educated of their rights and the implications of holding section 22 permits in South Africa.

**Recommendation 13:** The South African Human Rights Commission (SAHRC), UNHCR, RBX Campaign and human rights organisations are urged to intensify its public awareness strategy on the definition of refugees, their plight, their rights, the differences between refugees and undocumented economic migrants and the different legal regimes that apply.

**Recommendation 14:** In partnership with the DHA Anti-Xenophobia Unit, SAHRC, RBX Campaign should offer anti-xenophobia training courses to the SAPS and DHA officials.

### 7.6. Long term recommendations

**Recommendation 15:** South African parliamentarians are urged to consider legislative changes and policies that would promote the legalisation of undocumented migrants in South Africa, in particular the following categories:

- ~~undocumented migrants who have been resident in South Africa for a~~ considerable period; and
- forced migrants who fall outside the strict confines of the Refugees Act but who have compelling reasons to remain in the country;
- Migrant workers and their families, employed/self-employed in the informal sector.

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**Recommendation 16:** Parliamentarians are urged to interrogate the South African government’s foreign policy towards Zimbabwe, in order to begin to deal with the root causes of the Zimbabwe influx into South Africa.

**Recommendation 17:** The South African Government to consider ratifying the 1990 International Convention on the Protection of All Migrant Workers and Members of their Families.

## References

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14. The National Action Plan for the Promotion and Protection of Human Rights, September 1998
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**Annexure**

**Annex A: Questionnaire**

Used to collect data from Refugees and Asylum Seekers between the 25<sup>th</sup> of January to the 17<sup>th</sup> of February 2006

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Questionnaire to be completed by a Zimbabwean Asylum Seeker/ Refugee and or Immigrant in South Africa

*THIS INFORMATION IS STRICTLY CONFIDENTIAL AND MUST AND WILL NOT BE DISCLOSED TO ANYONE*

**General Personal Information**

|                            |       |
|----------------------------|-------|
| <b>Date of interview</b>   | ----- |
| <b>Place and Time</b>      | ----- |
| <b>Name of Interviewer</b> | ----- |

|                                    |                |
|------------------------------------|----------------|
| <b>Name of Interviewee</b>         | -----          |
| <b>Date of Birth</b>               | -----          |
| <b>Place of Birth</b>              | -----          |
| <b>Address in South Africa</b>     | -----<br>----- |
| <b>Other contact details</b>       | -----          |
| <i>(e.g. phone numbers, email)</i> |                |

Age  S  No. of children (if any) -----

No. of dependants in your family: -----

Marital Status: -----

Did you live in the rural/urban centre in Zimbabwe? Yes ....No.....(tick where applicable)

Name of Rural/Urban Area -----

**State your Educational Level**

Primary Education ----- Secondary Education -----  
-----

High School ----- College/University -----  
-----

**What work/job (if any) did you have prior to your immigration/visit to South Africa?**

-----

**When did you depart Zimbabwe for South Africa?**

-----

**Were you alone?** -----

**If not, who else accompanied you?** (e.g. family members, friend, children, wife)

-----

**Which port of entry did you use to enter the Republic (RSA)?**

-----

**Did you use normal immigration channels? -----**

**If yes, how did you enter South Africa? (e.g. by road, rail and by air)**

-----

-----

**If the answer is no, give reasons why and include the reasons you left Zimbabwe**

-----

-----

-----

-----

-----

**How long have you been living in South Africa? Please state the date, month and year you arrived**

-----

-----

-----

-----

**Were you ever detained, harassed, assaulted, arrested and or deported at any point while in South Africa? Please indicate which of the various treatments mentioned you were subjected to as follows:**

| Treatment<br>many times?                         | By whom? | When? | How   |
|--|----------|-------|-------|
| Detained<br>-----                                | -----    | ----- | ----- |
| Harassed<br>-----                                | -----    | ----- | ----- |
| Assaulted<br>-----                               | -----    | ----- | ----- |
| Arrested<br>-----                                | -----    | ----- | ----- |
| Deported<br>-----                                | -----    | ----- | ----- |
| Any other<br>---objectionable treatment<br>----- | -----    | ----- | ----- |

**If the answer above is yes to any of the above, please explain. Include any attempts to solicit a bribe by anyone and indicate if you ended up paying the bribe or granting other favours in order to avert arrest or detention**

-----  
-----  
-----  
-----

**Which police station were you booked at pending transfer to Lindela?**

-----

**For how long were you detained at the police station? -----**

-----

**How did the South African Police Authorities treat you when they apprehended you?**

-----  
-----  
-----

**When were you taken into detention at Lindela?**

-----  
-----

**For how long did you remain detained at Lindela? Explain**

-----

**Before being deported, did you sign the Notification of deportation form (29)? If so, what date was this?**

-----

**Did you suffer from any illness while detained at Lindela? Explain**

-----

**If so, did you receive any medical attention? (Attach documentation if possible)**

-----  
-----

**Describe the medical facilities available for the use of detainees**

-----  
-----

**Describe the conditions under which you were detained at Lindela (*comment on the quality and quantity of:***

**Food offered** -----  
-----  
-----

**Medical care**-----  
-----  
-----

**Sanitary facilities** -----  
-----  
-----  
-----  
-----

**Bedding** -----

**Any other issue you wish to comment on about Lindela** -----  
-----

**Did you have any permit or visa or papers that allowed you to be in South Africa?**

-----

**If the answer is yes, how long did it take you to obtain them ?**

-----  
-----

**If the answer is no, how did you intend to continue to stay in South Africa?**

-----  
-----

**Are you gainfully employed and where are you employed? (Specify if part time or full time)**

-----

**If not , how are you surviving?(means of survival)**

-----  
-----  
-----

**Any other information**

-----  
-----  
-----

Thus Done At ----- South Africa on this -----Day Of ----- 2006

Signed by -----  
*Names of interviewee*

*Signature*

Signed by -----

WOZANI P MOYO (PASSPORT NO: AN 197 600)

*Signature*

LAWYERS FOR HUMAN RIGHTS (RSA)

## Annex B: Monthly human rights violations

Period: 1 Jan - 31 Dec 2005 (Ref: Zimbabwe Human Rights NGO Forum, Annual Report, 2006)

|   | Jan | Feb | Mar                 | Apr | May  | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Total |
|---|-----|-----|---------------------|-----|------|-----|-----|-----|-----|-----|-----|-----|-------|
| Assault   | 17  | 54  | 259                 | 59  | 34   | 16  | 12  | 10  | 6   | 43  | 12  | 8   | 530   |
| Abduction/ kidnapping                                 | 2   | 3   | 6                   | 2   | 3    | 1   | 0   | 1   | 0   | 0   | 0   | 0   | 18    |
| Attempted murder                                      | 0   | 0   | 0                   | 0   | 0    | 0   | 0   | 0   | 1   | 0   | 0   | 0   | 1     |
| Death threats   | 1   | 0   | 1                   | 3   | 2    | 0   | 0   | 0   | 0   | 2   | 0   | 0   | 9     |
| Disappearance   | 0   | 0   | 0                   | 0   | 0    | 0   | 0   | 0   | 0   | 0   | 0   | 0   | 0     |
| Displacement  | 17  | 1   | 3                   | 55  | 27   | 0   | 1   | 500 | 4   | 1   | 0   | 0   | 609   |
| Freedom of expression, association, movement          | 31  | 57  | 268                 | 112 | 349  | 36  | 15  | 8   | 21  | 43  | 88  | 8   | 1036  |
| Murder  | 0   | 0   | 1                   | 2   | 1    | 0   | 0   | 0   | 0   | 0   | 0   | 0   | 4     |
| Political Discrimination, victimization, intimidation | 31  | 49  | 128                 | 113 | 41   | 7   | 11  | 6   | 6   | 5   | 87  | 4   | 488   |
| Property related                                      | 0   | 0   | 0                   | 18  | 2    | 1   | 1   | 50  | 4   | 0   | 2   | 1   | 79    |
| Rape  | 0   | 0   | 0                   | 4   | 0    | 0   | 0   | 0   | 0   | 0   | 0   | 0   | 4     |
| School closure  | 0   | 0   | 0                   | 0   | 0    | 0   | 0   | 0   | 0   | 0   | 0   | 0   | 0     |
| Torture   | 1   | 5   | 1(97) <sup>49</sup> | 16  | 7    | 4   | 1   | 1   | 0   | 0   | 2   | 1   | 136   |
| Unlawful arrest                                       | 8   | 63  | 86                  | 16  | 315  | 30  | 9   | 0   | 16  | 30  | 78  | 7   | 658   |
| Unlawful detention                                    | 8   | 63  | 57                  | 15  | 315  | 30  | 9   | 0   | 16  | 30  | 78  | 7   | 628   |
| Total   | 116 | 295 | 907                 | 415 | 1096 | 125 | 59  | 576 | 74  | 154 | 347 | 36  | 4200  |

<sup>49</sup> The 97 torture cases reported relate to WOZA women who held a vigil in Harare's Africa Unity Square on the night of the 2005 Parliamentary Election on 31 March 2005. It was only established after publication of the March 2005 Report, after expert advice from medical practitioners, that the level of the assaults was sufficiently severe to constitute torture. Accordingly the 97 are included in the statistics of torture as well as assault since they were also assaulted in the process.

## **Annex C: ACHPR Resolution on the Situation of Human Rights in Zimbabwe**

The African Commission on Human and Peoples' Rights meeting at its 38<sup>th</sup> Ordinary Session in Banjul, The Gambia from 21 November to 5 December 2005;

*Considering* that Zimbabwe is a Party to the *African Charter on Human and Peoples' Rights* and other international human rights instruments;

*Recalling* the recommendations to the government of Zimbabwe contained in the African Commission Report of the Fact-Finding Mission to Zimbabwe in June 2002;

*Further recalling* the recommendations to the government of Zimbabwe by the United Nations Special Envoy on Human Settlement Issues in Zimbabwe contained in her Report published on 22 July 2005;

*Deeply concerned* by the continued undermining of the independence of the judiciary through defiance of court orders, harassment and intimidation of independent judges and the executive ouster of the jurisdiction of the courts;

*Further concerned* by the continuing human rights violations and the deterioration of the human rights situation in Zimbabwe, the lack of respect for the rule of law and the growing culture of impunity;

*Alarmed* by the number of internally displaced persons and the violations of fundamental individual and collective rights resulting from the forced evictions being carried out by the government of Zimbabwe;

1. Condemns the human rights violations currently being perpetrated in Zimbabwe;
2. Urges the government of Zimbabwe to cease the practice of forced evictions throughout the country, and to adhere to its obligations under the *African Charter on Human and Peoples' Rights* and other international human rights instruments to which Zimbabwe is a party;
3. Urges the government of Zimbabwe to implement without further delay the recommendations contained in the African Commission Report of the 2002 Fact-Finding Mission to Zimbabwe and the recommendations in the July 2005 Report of the UN Special Envoy on Human Settlement Issues, in particular to ensure full and unimpeded access for the provision of aid and protection to the victims of the forced evictions and demolitions by impartial national and international humanitarian agencies and human

rights monitors, and to ensure that those responsible for the violations are brought to justice without delay;

4. Calls on the government of Zimbabwe to respect the fundamental rights and freedoms of expression, association and assembly by repealing or amending repressive legislation, such as the *Access to Information and Protection of Privacy Act*, the *Broadcasting Services Act* and the *Public Order and Security Act*;
5. Calls on the government of Zimbabwe to uphold the principle of separation of powers and the independence of the judiciary and urges the government of Zimbabwe to repeal or amend Constitutional Amendment (No.17) and provide an environment conducive to constitutional reform based on fundamental rights;
6. Calls on the government of Zimbabwe to cooperate with the African Commission Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa and other African Commission Special Mechanisms, including allowing a Fact-Finding Mission to investigate the current situation of internally displaced persons in Zimbabwe;
7. Urges the African Union to renew the mandate of the African Union Envoy to Zimbabwe to investigate the human rights implications and humanitarian consequences of the mass evictions and demolitions.

***Done at Banjul, 5<sup>th</sup> December 2005***

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**Annex D: Court Order on Access to Refugee Reception Offices**

(see attached pdf file named

**Annex E: Lawyers for Human Rights Press Statement**

On the Pretoria High Court judgment ordering DHA to make the refugee asylum procedures accessible

( find attached pdf file named ref 0511)