



ZIMBABWE EXILES FORUM (ZEF)

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The Zimbabwe Exiles Forum Report On Human Rights Violations against Refugees in South Africa

***Highlighting Human Rights Conditions at the Department of Home Affairs,
Marabastad Branch, Pretoria
May – July 2007***

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1. Introduction

The offices of the Zimbabwe Exiles Forum (ZEF) witnessed a significant increase in Zimbabwean visitors seeking asylum in South Africa in May 2007. On a daily basis, asylum seekers from Zimbabwe experience extreme difficulty when attempting to pursue their cases at the Home Affairs Refugee Reception Office (Marabastad, Pretoria); however, due to the national service workers strike taking place in South Africa, Zimbabwean asylum seekers are facing amplified barriers at Marabastad. In addition to complaints of failure to access personnel at the Reception Office, there are serious allegations of incidents of corruption, rape, robbery, exploitation and bribery. In response to these allegations, ZEF undertook a mission to the Marabastad office to investigate. This report presents a detailed account of ZEF's findings and reconciliation of these findings with international and domestic refugee laws and principles. The ten days of research at the Marabastad Home Affairs Office in Pretoria. During the investigation, ZEF conducted a total of 33 interviews. The majority of the interviewees were Zimbabweans (18 Zimbabweans) and the remainder were people originating from Ethiopia, Somalia, the Democratic Republic of Congo and Sudan. All interviewees described acts of discrimination, corruption, robbery and exploitation.

Please refer to page 10 of this report for an updated account of ZEF's findings at the Home Affairs Refugee Reception Office in Marabastad, Pretoria.

2. Refugee Laws: Exploring the United Nations, the African Union, and South Africa

2.1 The UN Convention Relating to the Status of Refugees of 1951

The 1951 Convention defines a refugee as a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail him/herself of the protection of that country. It furthermore states that a refugee is a person who, not having a nationality and being outside the country of his former habitual residence, as a result of such events is unable

or owing to such fear, is unwilling to return to it.¹ Article 3 of the same Convention provides that the contracting parties shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

2.2 The OAU Convention Governing Specific Aspects of Refugee Problems in Africa of 1969

The OAU Convention extended the definition of the term 'refugee' referred to in the 1951 UN Convention. It states that every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his/her place of habitual residence in order to seek refuge in another place outside his/her country of origin or nationality. This definition embraces virtually all victims of man-made disasters. Article 4 of the OAU Convention states that member states are obliged to apply the provisions of this convention to all refugees without discrimination as to race, religion, nationality, and membership of a particular social group or political opinions.

2.3 The South African Refugees Act 130 of 1998

Section 2 of the South African Refugees Act provides that:

No person may be refused entry into the Republic, expelled, extradited or returned to any other country or be subject to any other country or be subject to any similar measure if as a result of such refusal, expulsion, extradition, return or other measure, such person is compelled to return to or remain in a country where:

- a) He/she may be subjected to persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group, or
- b) His or her life, physical safety or freedom would be threatened on account of external aggression disturbing or disrupting public order in either part or the whole of that country.

The South African Refugees Act adopted the provisions of both the UN and the OAU Conventions with additions as highlighted in section 2 of the Act. South Africa relies on these two international instruments and its very own Refugees Act to receive an ever-growing number of asylum seekers in the country. The legal framework is conducive to accommodating asylum seekers in South Africa; however, the reality faced by these men and women upon arrival in the Republic is often anything but accommodating.

¹ Article 1, Convention relating to the status of refugees, 1951, 189 U.N.T.S.150, entered into force April 22, 1954 <http://www.ohchr.org/english/law/refugees.htm>.

3. Findings

The ZEF team traveled to Marabastad to follow up on reports that asylum seekers were failing to gain access to Home Affairs officials. ZEF was particularly interested in investigating the alleged incidents of rape, muggings, robbery, exploitation and bribery.



Asylum seekers outside the Home Affairs Refugee Reception Offices, Marabastad Branch, Pretoria

3.1 Alleged incidents of rape

The first asylum seekers interviewed had been waiting at the Refugee Reception offices for nearly two weeks and confirmed the reports of rape. The ZEF team interviewed two women of roughly 26 years of age and two men in their twenties who described witnessing women sleeping along the Marabastad Home Affairs fence being raped by a group of men at knife-point. The team was unable to meet or interview any of the rape victims who had relocated after the crime. The interviewees alleged that the perpetrators were South African men who prey on the helpless and vulnerable refugee seekers. The victims, who do not possess any form of identification and who by virtue of their entry into the Republic are illegal immigrants, are often ignorant or fearful of the channels available to them to report incidents of rape to the police.

3.2 Alleged incidents of robbery and muggings

There were alleged reports of robbery and muggings amongst the asylum seekers themselves and also by local thugs near Marabastad who prey on refugees. One 40 year old male Zimbabwean interviewed described being robbed of his cell phone the previous night when he ventured to the nearby bushes to relieve himself. Another interviewee, a 25 year old male, confirmed that it is difficult for asylum seekers to trust each other, as some lose their valuables by asking others in good faith to take care for

their belongings as they go to the nearby bush to relieve themselves or travel into town to purchase food. The custodians of the valuables often disappear with their few belongings such as clothes and cell phones, amongst other things.

3.3 Alleged exploitation

The common problem faced by those interviewed is that without any official identification papers, asylum seekers find themselves at the mercy of unscrupulous people, whether they are corrupt Home Affairs officials, police officers and other self-named intermediaries who promise to arrange the asylum seekers with papers but instead collect their money and disappear.



Images from outside the Home Affairs offices in Marabastad, Pretoria

Bribe costs range from R300 to R1 500 to obtain immigration papers, which may in the end be counterfeit, and the same amounts are also demanded by corrupt police officers should illegal immigrants seek to avoid arrest and deportation. This results in the asylum seekers waiting outside the Home Affairs environs for an extended amount of time and exposed to various dangers. Female asylum seekers have become the most vulnerable group, as some have resorted to 'selling their bodies' to intermediaries in exchange for the asylum seeker permits. One woman (45) confirmed that it becomes unbearable for some women to sleep in the open for more than a month and some end up taking the easy way out by resorting to giving sexual favors in exchange for the necessary papers. The women who agree to this form of exploitation are then placed in front of the queue and promptly receive their permits. The dangers associated with this kind of exploitation can have far-reaching consequences such as the contraction of HIV and AIDS and other STDs and STIs (Sexually Transmitted Infections).

The interviewees witnessed immigrants getting injured in a jostling for positions in the queue to enter the Home Affairs office for immigration papers. They also witnessed one immigrant who was beaten by guards for allegedly going to the information desk past the guards' post.

3.4 A hazardous way of life

The hazards that immigrants face include the following:

- Sleeping in the open where women have been raped, robbed and harassed.
- Lack of sanitary facilities – immigrants including vulnerable groups such as women, children and the elderly have been exposed to diseases such as bilharzia, and tuberculosis. It is quite reasonable to deduce that a cholera outbreak is imminent due to the lack of sanitary facilities.



The open veldt where immigrants relieve themselves is dangerous both in the day and in the night.

- Asylum seekers, especially women, are at risk from criminals who rob people of clothes, cell phones, money and other possessions at knife or gunpoint
- Asylum seekers have reported that some of their colleagues have disappeared without trace.
- With the onset of the winter season in South Africa it is feared that asylum seekers will die from the cold. Temperatures have since plummeted to minus 3 degrees in Pretoria, and these immigrants without appropriate winter clothing are at high risk of contracting diseases induced by the severe weather conditions. Last year one immigrant died of pneumonia after sleeping outside the Marabastad offices for a week.

4. Is there a way out?

Is there a way out for the Zimbabwean refugees who flock into South Africa in search of better conditions? Recently President Thabo Mbeki issued a statement that South Africa should accept and live with the fact that Zimbabwean refugees and, by implication, all refugees are here to stay. This endorsement coming from the Head of State is welcomed by many refugees who face xenophobia in addition to the afore-mentioned problems. While the President's statement is a welcome break, the issue of security officials and police personnel remains. These groups have made it clear that they do not tolerate aliens, especially Zimbabweans. Refugees continue to be subjected to verbal insults wherever they go and exploitation and abuse at their places of work, assuming that they are first able to obtain asylum-seeker permits or refugee status that enable them to work in the Republic.

South Africa is a state party to both the UN Convention Relating to the Status of Refugees of 1951 and the OAU Convention Governing Specific Aspects of Refugee Problems of Africa of 1969. Domestic law also exists, including the Refugees Act 130 of 1998. The two conventions and South African legislation provide clear definitions of what a refugee is and outline the criteria that asylum seekers must ascribe to in order to be granted with official refugee status. While there is law in place governing and protecting refugees all over the world, no institution exists that guarantees that these principles are followed by the member states of the Conventions. On paper, South African refugees benefit from one of the most progressive protection regimes in the world. In reality however, they face endless human rights hurdles including forced return to their countries of origin, discrimination, arbitrary arrest and detention, restricted freedom of movement, speech and expression deprivations, and violations of social and economic rights. The Department of Home Affairs in South Africa has been tasked with the duty of granting asylum seeker permits and refugee status to refugees from all over the continent. While this is a step in the right direction, it has presented its own shortfalls. For one, there are not enough refugee reception offices in South Africa to cater for the large numbers of refugees flocking to the country. Also, it is no secret that corruption is rampant at the Home Affairs Department, whereby officials on duty canvass for bribes when processing papers for applicants.

Intimidated by the highlighted occurrences, many immigrants have abandoned their

quest for legitimacy. Organizations such as Lawyers for Human Rights (LHR) and other refugee organizations have been inundated with complaints of lack of access, bribery, exploitation and unfair treatment at the hands of South African Home Affairs officials. In the case of the former, the situation is so dire that immigrants are receiving appointments with LHR lawyers for the 21st of December, which is seven months away and when it is generally known that business offices will be closed. It is imperative to note that the plight of refugees requires urgent attention now, not several months from now, when lawyers and human rights activists who can lobby on their behalf are gearing up for the festive season.



Immigrants seeking assistance at the offices of Lawyers for Human Rights at Prinsloo and Visagie Streets, Pretoria.

5. Recommendations

While South Africa is receptive to and cooperative in the plight of refugees and is willing to assist them in legalizing their stay in the country, a lot more can and must be done to ensure the facilitation and carrying out of this mandate.

5.1 ZEF appeals to the Home Affairs Department to respect universal refugee law and the South African Constitution and promptly process the papers for genuine asylum seekers for their security and peace of mind. This will enable them to live without fear of being arrested and deported, and for them to make an honest living in South Africa.

5.2 ZEF urges the South African Police to uphold their mandate of protecting these vulnerable people by sending undercover detectives to arrest the perpetrators of these crimes at the Home Affairs Refugee Reception Office, Marabastad branch. ZEF believes that genuine asylum seekers are adversely affected by the corruption rampant there as they ordinarily do not possess the R1 500 demanded of them to have their applications

attended to. In addition, ZEF urges the South African Government and the Department of Home Affairs in particular to attend to this crisis as a matter of urgency before it degenerates into a humanitarian disaster.

5.3 To alleviate the strain at Marabastad Home Affairs branch, ZEF urges the South African Home Affairs Department to set up satellite refugee reception offices in other towns and specifically in provinces that serve as points of entry for refugees, especially Musina where most Zimbabwean immigrants enter South Africa. This will inevitably lead to less strain on the centralized Marabastad office.

5.4 ZEF finally urges the South African Government to establish humanitarian support centers at strategic locations across the country in order to respond to the needs of refugees, which include access to clean drinking water, food, shelter, health care and education facilities.

6. Conclusion

In conclusion, ZEF hopes that with the recent appointment of a Director General of Home Affairs and judging by the Home Affairs Minister and the President's pronouncements, there will be a positive development in the situation at the Marabastad Refugee Reception Office. In the same vein, ZEF applauds the efforts of all the organizations and individuals who have the immigrants' plight at heart and have taken positive steps to underline and rectify this urgent problem. Finally, ZEF also appeals to the various media houses to never tire of highlighting the plight of these people who must be heard.

7. July Revision

During the second and third week of July, which followed the end of the national strike, the ZEF team has twice visited the Home Affairs Refugee Reception Office (Marabastad, Pretoria). These subsequent visits have allowed ZEF to assess their preliminary findings, while obtaining further details on the current situation. Through recent interviews at Marabastad, ZEF was able to assess the current living conditions of the hundreds of asylum seekers and also to corroborate most of the preliminary findings with regard to alleged incidents of robbery, muggings, exploitation, violence and bribery.

Alleged incidents of robbery and muggings

The various asylum seekers interviewed all confirmed to have witnessed incidents of robbery and muggings. Interviewed separately, a group of six women confirmed the testimonies of numerous men interviewed, who described regular incidents of robbery. According to the interviewed asylum seekers, these acts of robbery mostly occur at dawn when asylum seekers momentarily leave the gates of the Home Affairs Office. These acts consist of depriving the asylum seekers of their money, mobile phones and clothes at knife or gunpoint. The women interviewed all mentioned the climate of fear in which they constantly live while waiting at the Home Affairs Office. According to the interviewees, the situation is such that they never use their mobile phone, even during daylight, because they fear of becoming victims of robbery.

Alleged exploitation

The interviews conducted during ZEF's most recent visits at the Home Affairs Refugee Reception Office have highlighted that exploitation has become one of the most important challenges faced by asylum seekers.

As observed in May, different actors, including Home Affairs officials, police officers and other self-named intermediaries, take advantage of the vulnerability of asylum seekers to obtain pecuniary profits. The interviews conducted in July 2007 indicate that the major source of exploitation comes in the form of bribes asked by self-named intermediaries. Among the dozens of people met and interviewed, all could confirm that bribes are asked in exchange for access to the "queue", which eventually allows the asylum seeker entrance to the Home Affairs Office. The bribe amounts vary from two to five hundred South African Rand. Since the majority of asylum seekers have already had to pay

bribes to helpers aiding their illegal crossing of the border, some of them first try to find work to earn more money for “queue bribes.” While asylum seekers are already vulnerable, this form of exploitation represents an additional obstacle in their attempts to legalize their stay in South Africa. The situation is aggravated by the disorganization that seems to prevail at the Home Affairs office. Upon arrival at the Marabastad branch, asylum seekers do not benefit from any instructions to follow: there is no registration process or any indication on the waiting time to meet with an official (the average waiting time can last between 2 weeks and three months, according to our interviewees). Zimbabweans, as well as other immigrant communities (such as the Congolese and the Ugandans) have therefore set up their own registration book to keep track of the order in the queue, the responsibility of the book being transferred on a rotational basis. However, due to the bribes system that seems to be strongly instituted, this communal strategy to regulate the queue is compromised.

One significant improvement initiated by the Department of Home Affairs, which the ZEF team has discovered since the mission in May, is that the Marabastad office has now specifically designated every Thursday, Friday and Saturday to receive 90 Zimbabwean applicants per day. ZEF commends Home Affairs for taking this positive step forward but also insists that more progress must be made to solve this current crisis.

3.4 A hazardous way of life

The hazards that immigrants face include the following:

- **Lack of shelter and security**

With no shelter being provided for asylum seekers, the hundreds of people waiting to be received by Home Affairs officials are forced to sleep outside. This situation renders the situation very difficult for asylum seekers, as they have no sources of protection against the cold. In previous months blankets were distributed by donors but with the increase in the number of asylum seekers arriving on site, it appears that asylum seekers no longer benefit from the generosity of these donors. Thus, the majority of immigrants sleep on cardboard boxes. In order to face the cold nights, asylum seekers utilize toxic materials they find around them to light small fires.

Immigrants also confirmed having witnessed violent incidents at night. The majority of

the interviewees alleged that these incidents are not provoked by other immigrants on site, but rather by local gangs arriving by car at night. The anxiety among the asylum seekers was manifest, especially among women, who unanimously expressed their fear of being attacked at night. One can easily imagine the numerous consequences that such conditions can have on the mental and physical health of these immigrants.

- **Limited access to water and sanitary facilities**

Since the ZEF mission in May, the situation in terms of sanitary facilities has deteriorated. Access to water is very limited and at certain times of the day inexistent. While asylum seekers must wait outside the office gates, there is only one tap available within the interior courtyard of the Home Affairs Office. Furthermore, asylum seekers maintain that Home Affairs Officials now often refuse them access to this tap. Consequently, only a small number of people can access water and only during office hours, which closes at 16:30. Asylum seekers have started to use a tap located at a service station close to the site, however, it is becoming more difficult to use this source, as the owners of the station are beginning to turn people away in response to the growing numbers. During the previous months, asylum seekers would also use a nearby river as a source of water. However, it appears that property owners surrounding the river are now warning police officers as soon as asylum seekers approach. Asylum seekers interviewed now admit to being too afraid to leave the periphery of the site to reach the river, out of fear of being arrested and deported.

With regard to toilet facilities, the abandoned lot opposite the Home Affairs Office is the only place where people can urinate and defecate. Yet this area remains highly dangerous, as most of the violent incidents occur here. Women have stated that even going in groups of three or four does not prevent them from being susceptible to physical and verbal abuse. Both female and male interviewees said that one has to avoid going at night. Deprived of all privacy, asylum seekers are therefore left with no access to proper toilet facilities.

Such a lack of sanitary facilities can have severe consequences on the health of the asylum seekers. Among the people interviewed, some have warned the ZEF team of the spreading of diseases among the asylum seekers, such as cholera. ZEF has also been able to assess the blatant lack of facilities by observing the physical appearance of the

asylum seekers. It is also important to stress that such conditions clearly affect the dignity of the asylum seekers, especially women who admit to facing humiliation whilst menstruating.

- **Access to food**

With the increase in the number of asylum seekers arriving at Home Affairs Office, food accessibility has been significantly reduced. In the previous months, individual donors and some religious organizations such as the Methodist Church provided food supplies on a regular basis. However, with the influx of Zimbabweans seeking refuge, food distribution has become insufficient. Initially, out of desperation for food, the arrival of these food services led to sporadic violent incidents. Thus, only individual donors now come and on a less frequent basis. One of these generous donors is the Nkunas, a Christian family who have been providing food for over 200 asylum seekers at Marabastad twice a week for three weeks now. Being on site for the distribution of a meal and through a discussion with one member of the Nkuna family, the ZEF team can confirm that the tensions among asylum seekers is improving and asylum seekers are working together to form organized queues. Unfortunately, there are some asylum seekers who suffer from injuries (swollen feet, broken limbs, etc.) or whose health condition is too frail to stand in the queue and cannot benefit from food donations.

Concluding Remarks

The situation at the Department of Home Affairs Refugee Reception Office in Marabastad, Pretoria has become dire for the hundreds of asylum seekers who wait outdoors for weeks on end in the hope of legalizing their stay in South Africa. With the recent influx of Zimbabwean immigrants (both legal and illegal) in the country, conditions at the Marabastad office are quickly deteriorating and are largely going unnoticed. Every day asylum seekers (some of which have recently experienced political persecution and torture in their home country) face robbery, muggings, bribery, verbal and physical abuse as well as a serious lack of access to basic human rights. The Zimbabwe Exiles Forum calls on the South African Government, the Department of Home Affairs, local human rights and humanitarian aid organizations and the general public to take notice of this grave situation and to work together to find practical solutions to this problem urgently.

For more information on the Zimbabwe Exiles Forum please visit our website at www.zimexilesforum.org.