
Zimbabwe Exiles Forum (ZEF)

PRESENTATION TO THE PORTFOLIO COMMITTEE ON HOME AFFAIRS-
PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA- CAPE TOWN

30 August 2005

ASYLUM SEEKERS AND REFUGEES

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PRESENTATION TO THE PORTFOLIO COMMITTEE ON HOME AFFAIRS-
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(A) EXECUTIVE SUMMARY

"South Africa must not only be proudly South African, but deservedly must be proud to be host to potential victims of genocide, torture and crimes against humanity, not only in Africa but in the world as a whole" quote of Mr Gabriel Shumba, the Executive

Director of Zimbabwe Exiles Forum.

The Zimbabwe Exiles Forum (ZEF) submits to the Parliament of South Africa through the Portfolio Committee on Home Affairs issues regarding refugees and asylum seekers that need urgent attention.

ZEF has possession of irrefutable evidence of past and ongoing human rights violations bedeviling asylum seekers and refugees seeking sanctuary in South Africa. Issues of concern include, asylum seeking procedural hurdles (queues, bribery, time



that it take to reach final determination of status) [1], ill-treatment of asylum seekers and refugees (discrimination and exploitation at the work places, lack of medical support) [2], gruelling repatriation process (no clear time frame for time of detention and deportation, payment of bribes as a requirement for freedom and to be released when papers are maliciously destroyed by police [3], torture, inhuman and

degrading conditions- assaults, lack of sanitary facilities and general abuse, lack of timeous medical attention, deaths and allegations of sexual molestation) [4], legal framework (inconsistencies of national Refugee Act and its regulation to regional and international refugee rights obligations [5] and lack of humanitarian support (No shelter is provided, No food and No free education) [6].

[Picture taken by ZEF at Marabastad Home Affairs Reception Office in Pretoria on the 24th day of August 2005 at 0205 hours showing Zimbabweans sleeping overnight waiting for service]

In line with the above, ZEF is strongly recommending that,

- The Government of South Africa takes measures to strengthen the security of asylum seekers and refugees.
- In terms of humanitarian assistance, the government of South Africa is urged to consider providing humanitarian assistance to asylum seekers and refugees such as shelter, food, medication, free education among others.
- The Government of South Africa should as a matter of urgency establish adequately staffed Refugee Reception Offices country-wide¹, including the provision of qualified interpreters.
- The Government is humbly called upon to educate Home Affairs Personnel on the rights and obligations of asylum seekers.
- The government is further urged to immediately commission a study on the extent to which the Refugees Act complies with regional and international norms and standards.
- The government is requested to urgently consider placing Lindela Repatriation Centre under its direct control and administration instead of outsourcing it to the private sector.
- South Africa, as a power broker is urged to consider how best they can help resolve the Zimbabwean crisis without delay.

(B) INTRODUCTION

The purpose of this presentation is to lobby the Parliament of South Africa to address teething problems facing asylum seekers and refugees. To this end, ZEF, which is an NGO registered in South Africa to help victims of torture and other abuses who have fled Zimbabwe for fear of political persecution, will present its findings. An endeavour will be made to give credible evidence on each of the concerns facing not only Zimbabweans but the whole gamut of asylum seekers and refugees in South Africa.

(C) KEY ISSUES

(1) First Key Point

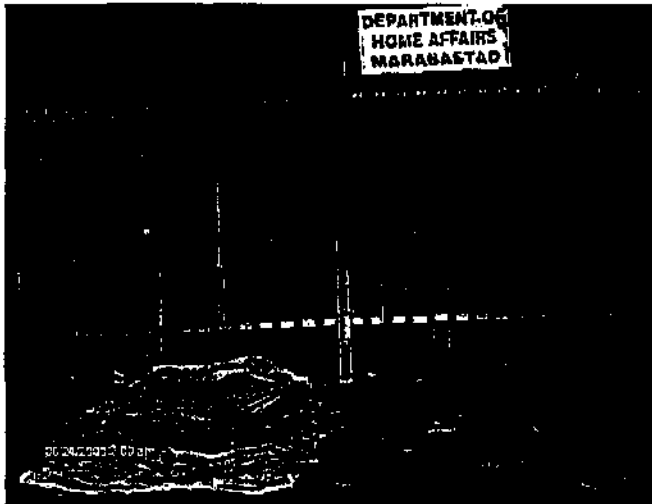
Asylum seeking procedural hurdles

- Queues (some sleeping at Reception Offices)
- Bribery
- Time that it takes to obtain final determination of status

¹ To comply with Section 21 (1) of the Refugees Act.

- Unskilled Home Affairs officials

ZEF received testimonies from Zimbabwean asylum seekers who are finding it increasingly difficult to access documents at Refugee Reception Offices country-wide. In extreme cases,



asylum seekers wait for at least two years before obtaining papers, if they are lucky not to be deported during the waiting period. In the face of these difficulties, a great number find it an insurmountable exercise to legalise their stay in South Africa. These are the victims who constitute the majority of inmates at Lindela Repatriation Centre. Most of them have confessed to bribing Home Affairs officers in order to get

papers.

(A picture depicting asylum seekers sleeping outside the Department of Home Affairs Marabastad offices)

Some resort to buying South African documents in order to remain in the country. A classic example documented by ZEF is the case of Mucheri Malope otherwise known as Mucheri Moyo who bought South African documents.

University of Cape Town Legal Aid Clinic² confirmed in September 2002 that cases of corruption are rampant at the Department of Home Affairs.

"It is a task bordering on the impossible to get into the Refugee Reception Office, let alone obtain a date for an interview. Numerous refugees have stated that a way of entry is bribery. Asylum seekers without asylum seeker permits are vulnerable to arrest and detention. Repeated visits force refugees to miss a number of activities, including work and school" reads Lee Anne de la Hunt's report.

Even the Director of ZEF Mr Gabriel Shumba was forced to stay in South Africa on a student visa than as an asylum seeker because of the prohibitive asylum seeking process, yet his case of persecution and torture is well documented internationally.

² Lee Anne de la Hunt (2002) *Tracking progress- Initial Experience with the Refugees Act, 130 of 1998- Foundation for Human Rights.*

ZEF has documented many cases of corruption involving Home Affairs officials and asylum



seekers, that it is prepared to share in confidence with this August house. For example, on the 24th of August 2005, ZEF received a complaint from a Zimbabwean woman who paid R300-00 to an officer based at Pretoria Marabastad office in order to obtain Asylum Seeker temporary permit. The Officer in question is known as Sam. On the same day ZEF phoned the officer on his mobile

number and he confessed having received 'motivation' and was working flat out to give the lady in question her papers.

The above picture taken by ZEF on 24 August 2005 at 0204 hours at Marabastad in Pretoria is a graphic sad testimony of the plight of more than 300 asylum seekers, who had no option but to sleep outside the Home Affairs offices. In most cases, the Department of Home Affairs summons security agents who whip and arrest asylees.

Vulnerable groups such as women, children, the disabled and others are not immune to this inhumanity. Lee Anne de la Hunt (2002) *Tracking progress- Initial Experience with the Refugees Act, 130 of 1998*- Foundation for Human Rights reports that

"Women and children are supposed to get a priority, but in some instances, they also have to bribe"

Files of torture victims from Zimbabwe are also mysteriously disappearing. A case in point is that of Onest Rimal³ (Onest and others assured ZEF that they are prepared to testify to this August House).

Zimbabweans are raising concerns that the government of Zimbabwe security agents could have infiltrated the Department of Home Affairs in South Africa. To this end, ZEF confirms

³ interviewed by ZEF on the 17th day of August 2005.

receiving reports from some asylum seekers who claim that they are being followed by people whom they suspect to be in the employe of the government of Zimbabwe.

Recently Zimbabweans in South Africa were shocked when three supporters of the opposition Movement for Democratic Change (MDC) were abducted at gun point. Two of them were discovered burnt beyond recognition. In spite of leads having been given to the South African security agents of the suspects involved in these murders, to date no arrests have been made.

(2) **Second Key Point**

Ill-treatment of asylum seekers and refugees

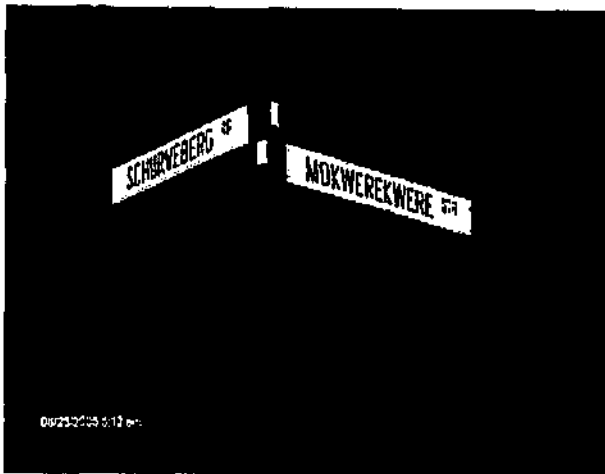
- Discrimination and exploitation.
- Lack of adequate medical support.
- Xenophobic attitudes of South Africans at all levels.

ZEF has possession of reports of qualified personnel from Zimbabwe who are being exploited by their employers in South Africa. For example, there are cases of qualified teachers who are being paid as little as R1000 a month, which is not enough to pay for accommodation.

Those who fall victim to sicknesses are not given adequate medical attention. ZEF visited William Makubela who is presently in Santa Hospital suffering from tuberculosis (TB). William complained that the employer refused to pay him because he was in hospital. ZEF has been reliably advised that South African nationals in a similar position are paid more than foreigners.

On the question of ill-treatment, a classic example is that of two Zimbabweans who died recently in Lindela because of lack of adequate medical attention. (Refer to the case of a pregnant woman known as Alice Tshuma and Mcabangeli Mlambo who died on the 5th of July 2005)

Officials from ZEF also witnessed members of South African Police Service who refused to intervene in scuffles between Zimbabweans declaring that "let the makwerekwere kill



7
themselves". Some of them declared. The situation has reached alarming levels to the extent that some roads in Atteridgeville⁴ have been named 'Mukwerekere Street')

(3) Third Key Point

Repatriation Process

- No clear time frame for time of detention and deportation.
- Payment of bribes as a requirement for freedom and to be released when papers are maliciously destroyed by police.
- Torture, Inhuman and degrading conditions- assaults, lack of sanitary facilities and general abuse
- Lack of timeous medical attention
- Deaths
- Allegations of sexual molestation

For many of us who have first hand information on the repatriation process, the process itself constitutes an act of torture. We know cases of individuals who waited for months at Lindela whilst waiting for deportation. One such case is that of Qhubani Ncube. We are also aware of cases of Zimbabweans who bribed known officers within the South African government in order to be released at Lindela. Lindela has become synonymous with acts of torture, cruel, inhuman and degrading treatment of foreigners. Inmates are habitually physically assaulted, raped among other evils before being deported. We are also reliably advised by our clients at Lindela that they are not given proper medication when its needed most. Sanitary facilities and general medical attention is lacking. ZEF would want to sadly draw the attention of this August house to the fact that Lindela has also become an abattoir, where corpses are made. Zimbabwe lost two innocent souls at Lindela. We respectfully refer you to an article Published in the Star of 25 August 2005, which we are using as Case Study herein

⁴ Situated - West of Pretoria

(4) Fourth Key Point**Legal Framework**

- Refugees Act
- OAU Convention Governing the Specific Aspects of Refugee Rights in Africa
- United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Geneva, 2-25 July 1951

First and foremost there is a general misconception and misinterpretation of the international obligations that legally bind South Africa. There are many instances in which asylum seekers fail to get status because the officers invariably inform them that Zimbabwe is not facing a civil war. There are inconsistencies between the domestic Refugee Act and its Regulations and regional and international refugee rights obligations. To this end, we have noted that the South African legal framework does not provide for humane treatment of asylum seekers and refugees.

(5) Fifth Key Point**Lack of Humanitarian Support**

- No shelter is provided to vulnerable groups such as women, children, the disabled and others
- No food
- No free education

The video filmed by the Solidarity Peace Trust titled 'No War in Zimbabwe'- graphically captures the plight of 13 blind Zimbabweans who are sharing a single room in Johannesburg. In contrast to the to practice in other countries such as the United Kingdom, United States of America,



Canada, refugees in this country are not given shelter, free education and monthly allowances to cater for incidentals. Instead, the South African government dumps refugees and asylum seekers onto the streets. As a result some of them end up as vagabonds because of their extreme conditions. In consequence, others embark on morally decadent activities such as crime, prostitution

and other evils.

(The above picture shows William Makubela whose salary has been withheld because he is in hospital.) Below are some of ZEF's recommendations;

(D) RECOMMENDATIONS

ZEF recommends that;

- 1 The Government of South Africa takes measures to strengthen the security of asylum seekers and refugees.
- 2 In terms of humanitarian assistance, the government of South Africa is urged to consider providing humanitarian assistance to asylum seekers and refugees such as shelter, food, medication, free education among others.
- 3 The Government of South Africa should as a matter of urgency establish adequately staffed Refugee Reception Offices country-wide⁵, including the provision of qualified interpreters.
- 4 The Government is humbly called upon to educate Home Affairs Personnel on the rights and obligations of asylum seekers.
- 5 The government is further urged to immediately commission a study on the extent to which the Refugees Act complies with regional and international norms and standards.
- 6 The government is requested to urgently consider placing Lindela Repatriation Centre under its direct control and administration instead of outsourcing it to the private sector.
- 7 South Africa, as a power broker is urged to consider how best they can help resolve the Zimbabwean crisis without delay.

(E) THE STAR -ARTICLE – 24 August 2005 (front page)

The Star

Lindela shake-up

Minister takes action against top officials over the deaths of detainees

⁵ To comply with Section 21 (1) of the Refugees Act.

August 24, 2005

By Penny Sukhraj

A cabinet minister's brother has been suspended along with two other senior immigration officials after two illegal immigrants died at the Lindela Repatriation Centre.

At least seven people have died at Lindela, outside Krugersdorp, this year, while a further 21 detainees died at neighbouring Leratong Hospital, where they were taken for treatment.

Home Affairs Minister Nosiviwe Mapisa-Nqakula is believed to have personally ordered the suspension of Lindela's deputy director-general, Arthur Fraser (brother of Minister of Public Service and Administration Geraldine Fraser-Moleketi); director of deportations Ricardo Abrahams; and the chief director of the inspectorate, GcInumzi Ntlakana.

She acted after two Zimbabweans awaiting deportation died at the centre.

Pregnant Alice Chumba (18) died of complications on July 5, while Mcabangeli Mlambo (22) died the next day after vomiting blood.

Home Affairs Department communications director Leslie Mashokwe confirmed yesterday that the officials had been suspended on full pay pending an employee-relations investigation.

It is understood that Mapisa-Nqakula was furious that the deaths had not been reported to her.

Bosasa, a privately owned security and risk management company that is contracted to manage Lindela, has been widely condemned by human rights groups for the conditions to which detainees are subjected as well as for the lack of procedures for refugees to seek asylum.

News of the suspensions come during Roll Back Xenophobia Week and in the wake of reports from a delegation of prominent Zimbabwean clergymen who visited the deportation centre.

They were outraged at the tales of sexual harassment of female detainees and other abuses.

The clerics called for an immediate review of the centre's deportation processes.

They claimed Zimbabweans who fled the turmoil of their own country had moved "from the frying pan into the fire".

However, Bosasa director Papa Lashebane has denied all allegations of abuse.

"Everyone is entitled to their own opinion. We have opened the facility for inspection and we have nothing to hide. We are confident that we meet the requirements that the department has set."

The department's investigation into the two recent deaths will examine what medical protocol was followed so as to establish who exactly failed to act responsibly.

When asked about the cause of the deaths, Bosasa company director Johannes Gumede said autopsies could not be done without a relative's consent - and the relatives of immigrants were nearly always difficult to locate.

He said the deaths of detainees at Leratong Hospital were assumed to be due to natural causes unless a postmortem was requested.

Lindela can accommodate 4 000 occupants and the government pays it R59 a day for each detainee. The annual turnover is R400-million, with a R40-million operating profit.

Its contract is up for review this month.

In addition to the departmental probe, an independent ministerial committee of inquiry will also investigate the recent deaths at Lindela and report back to the ministry within a month.

The committee has been asked to make recommendations on the implementation of systems and protocols to deal with unwell illegal foreigners who are awaiting deportation.

Kaajal Ramjathan-Keogh, of Lawyers for Human Rights, said there had been reports of sexual abuse, violence and bribery within Lindela from detainees and staff.

"There are still allegations of corruption and bribery during monitoring activities at the centre. This is according to asylum seekers who have escaped unlawful arrest," she said.

There was also evidence that Lindela had inadequate procedures for dealing with detainees suffering from depression or mental illness.

Ramjathan-Keogh said: "In February, there were three suicide attempts by immigrants. Two were placed in isolation and charged with attempting to destroy Lindela property by voicing their

dissatisfaction over their continuous and prolonged confinement."

The SA Human Rights Commission (SAHRC) has also severely criticised the centre and acknowledged the disturbing reports of gross violations of human rights over the years, with people being apprehended, arrested and detained despite having valid documentation.

Two years ago the commission set out to establish a permanent monitoring presence at Lindela to ensure no person would be detained or deported unlawfully.

However, SAHRC chairperson Jody Kollapen admitted this week that no office had been set up.

"We opted instead for an ongoing monitoring presence, which meant visits from time to time."

The person responsible for this monitoring was his deputy, Zonke Majodina.

"My understanding is that these (monitoring) visits are supposed to take place twice a month. I would get report-backs from time to time. I got such a report-back about a month ago," said Kollapen.

In the meantime, however, he said he was not aware of any crises at the centre and defended the commission's efforts. He maintained that the SAHRC should be credited with its recommendations two years ago and its court victory.

"We were granted an order that made it illegal for anyone to be detained for longer than 30 days."

Majodina said the situation at Lindela was "not as it should be".

"Unfortunately we cannot monitor on a regular basis. We have only a few legal officers and it is virtually impossible for one officer to go on a regular basis," she said.

Earlier this month, conditions at the facility were hotly debated at a parliamentary home affairs portfolio committee meeting