



**An account of the exodus of a nation's people**

**Solidarity Peace Trust  
November 2004**

*“Any democracy is only as strong as its weakest link. Refugees are South Africa’s weakest link and if we collude on impunity of our own officials, and allow corruption, and deny refugees their rights, then South Africa is not a country to be proud of.”*

**[Abeda Bhamjee, Lawyer, Wits Law Clinic, October 2003]**

*“The Zimbabwean situation of starvation and malnutrition, wilful political violence and intimidation, and the immoral use of food aid by the Zimbabwean government demands stronger and transparent intervention by African governments through the AU. With more than three million people displaced as a result of the crisis in Zimbabwe, a generation of exiles and refugees has been created. This situation cannot be allowed to continue. The Government of Zimbabwe must care for its own people.”*

**[South African Catholic Bishops Conference, August 2004]**

*“We would be better off with only six million people, with our own people who support the liberation struggle. We don’t want all these extra people”.*

**[Didymus Mutasa: Zanu-PF Organising Secretary,  
August 2002]**

*“60% to 70% of Zimbabwean adults who should constitute the productive population are living abroad.”*

**[Herbert Nkala, Publicity Committee Chairman for Zimbabwe Reserve Bank’s “Homelink”, September 2004]**

*“There is no civil war in Zimbabwe, so there is no reason to apply [for asylum]...”*

**[Home Affairs official, Johannesburg  
Refugee Reception Office, July 2004]**

## CONTENTS

	<b>Page</b>
Executive summary	7
Recommendations	14
Background	17
Method of compiling the report: data sources	19
<b>PART ONE: Zimbabwe’s biggest export: its people</b>	<b>21</b>
1. The breakdown of law and order: torture with impunity	22
Youth militia	24
The “land revolution”	24
2. The humanitarian crisis	26
Political abuse of food	26
Maize and election 2005	27
3. Collapse of social services and the economy	29
4. Zimbabwe’s biggest export: its people	31
Pre-existing cross border movement	32
Internal loss of professional skills	32
Impact on essential services	33
“Harvesting” the exiles: Homelink	33
Implications of the exodus for democracy	34
Summary	34
<b>PART TWO: Destination: South Africa: Legal, administrative and social issues     Involving refugees</b>	<b>35</b>
1. “Asylum seekers” and “Refugees”: South Africa’s legal obligations	36
“Asylum seekers”	36
Work and Study	37
“Refugees”	37
Refugee status – a future based decision	37
Political denial of food – a threat to physical safety?	38
2. The battle for Zimbabwean refugee rights	39
Victimisation: a repeated experience in Zimbabwe	40
3. Attitude to Zimbabweans within Home Affairs RROs	42
4. Refugee Reception Office, Johannesburg: observation of current authors	43
Identification papers	45
Time taken for processing of asylum seeker claim	47
Lack of capacity in RROs	48
Length of permits: renewal stamps	49
Asylum seekers – a cash cow	49
Home Affairs – impunity in the system	50
Response of Home Affairs on corruption and capacity	50
5. Attitude of UNHCR to Zimbabweans	51
UNHCR and issues of resettlement.	52
6. Quiet diplomacy: at odds with acknowledging political refugees?	54
7. Perceptions of Zimbabweans: “Makwerekwere”	55
Zimbabweans and crime	55
Zimbabweans: victims of crime	57

8.	South Africans: a history of exile	57
<b>PART THREE: THE REVOLVING DOOR</b>		<b>58</b>
1.	Crossing the border	59
	The river – crocodiles and floods	59
	Human predators: “maguma guma” and the SANDF	60
2.	Life in the big cities: Johannesburg and Durban	61
	Johannesburg: political exiles	61
	Johannesburg: a community of the blind	62
	Cross border traders	63
3.	Musina: life in a small border town	64
	Farm workers	64
	Unaccompanied minors	64
	Sex workers	65
4.	Access to health services	66
	Johannesburg: access based on anecdotal evidence	66
	Musina: access based on anecdotal evidence	67
	Summary of findings of health questionnaires	68
5.	Deportation	70
	Asylum seekers	70
	Bribes	71
	Conditions in Lindela	71
	Deaths in Lindela – detaining of the very ill	72
	The deportation train	73
	Deportation from Musina – holding conditions	73
	Police approach to deportees in Musina	75
	Deportation of unaccompanied minors	76
	Deportation of parents without their children	77
6.	Back in Zimbabwe: the deportees on arrival	77
	Zimbabwe police	77
	The revolving door	78
7.	Problems of the repatriated in Beitbridge	78
	The ill	78
	Deaths	79
	Political exiles: risks on deportation	79
8.	The Dead: a problem for the future?	80
	Orphans in a foreign land	81
	Help for the dying and the dead	81
9.	Conclusion	82
10	Recommendations	83

## APPENDICES

Appendix One:	Case examples of Zimbabweans in South Africa	86
Appendix Two:	Botswana and the Zimbabweans	94
Appendix Three:	Surveys	95
Appendix Four:	Recommendations: CASE National Baseline Refugee Survey	100
Appendix Five:	Bibliography	105

## PHOTOGRAPHS

	Page
<i>Cover photo:</i>	<i>Razor wire on the border between Zimbabwe and South Africa</i>
<i>Photos 2 and 3:</i>	<i>Woman and man brutally assaulted by army in Zimbabwe during the mass stay away called by the MDC in March 2003.</i>
<i>Photo 4:</i>	<i>Tonderai Machiridza, an MDC activist tortured in the custody of Zimbabwean police. He died of his injuries the day after this picture was taken, on Independence Day, 18 April 2003. Nobody has ever been held accountable for his murder.</i>
<i>Photos 5 and 6:</i>	<i>Supporters of MDC assaulted with knives, screw drivers and barbed wire on 17 January 2002, ahead of the Presidential election.</i>
<i>Photo 7:</i>	<i>Samuel Khumalo, a trade unionist, seeks medical assistance after being tortured in police custody, in November 2003. This same unionist was arrested again in October 2004.</i>
<i>Photo 8:</i>	<i>An estimated 500 Zimbabweans wait outside the Johannesburg refugee reception office on a Tuesday in October 2003, hoping for asylum seeker papers. Only 5 accessed the office on this Tuesday, a fairly normal weekly intake of Zimbabweans.</i>
<i>Photo 9:</i>	<i>Minutes after the previous picture was taken, Home Affairs guards started an unprovoked attack on the Zimbabweans, whipping them with sjamboks.</i>
<i>Photo 10:</i>	<i>October 2004 - a year later in Rosettenville: the RRO is now accessed down an un-signposted alley. The same long queues of Zimbabweans are there, still mostly failing to access the office.</i>
<i>Photo 11:</i>	<i>Zimbabweans join other vagrants on the streets of Johannesburg in the bitter cold of a winter's night. Here a woman is roused for a cup of soup from the Methodist church, July 2004.</i>
<i>Photo 12:</i>	<i>A Zimbabwean exile with two children receives food aid from the Methodist church in Johannesburg: July 2004.</i>
<i>Photo 13:</i>	<i>A Zimbabwean deportee escapes from the shadow of the deportation train that he has just leapt from: destination for him is now no longer Beitbridge, but Johannesburg.</i>
<i>Photo 14:</i>	<i>Photograph 14: a blind Zimbabwean child feels the face of Archbishop Pius Ncube of Bulawayo</i>
<i>Photo 15:</i>	<i>This Zimbabwean was one of four who died after being detained in Lindela in October this year.</i>
<i>Photos 16 and 17:</i>	<i>Zimbabwean deportees are herded on to a deportation train in Johannesburg, September 2003.</i>
<i>Back cover:</i>	<i>Zimbabweans wait to be deported at Lindela</i>

## ACRONYMS

AI	Amnesty International
ANC	African National Congress
ASP	Asylum Seeker Permit
CASE:	Community Agency for Social Enquiry
CIO	Central Intelligence Organisation (Zimbabwe)
CPC	Centre for Positive Care
GMB	Grain Marketing Board
Home Affairs	Department of Home Affairs
ICESCR	International Covenant on Economic, Social and Cultural Rights
LHR	Lawyers for Human Rights, Johannesburg
MDC	Movement for Democratic Change
MK	MKhontu we sizwe
NGO	non governmental organisation
PHR-DK	Physicians for Human Rights, Denmark
RI	Refugees International
RRO	Refugee Reception Office
SADC	Southern African Development Community
SANDF	South African National Defence Force
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
WFP	World Food Programme
SAWIMA	Southern African Women in Migratory Affairs
ZANU PF	Zimbabwe African National Union, Patriotic Front
ZAPU	Zimbabwe African People's Union
ZHRNGO Forum	Zimbabwe Human Rights NGO Forum

# Executive Summary

## Background

Zimbabweans are now the second biggest group of foreign Africans in South Africa. Yet there is little formal information available on their situation. Very few are being officially recorded as political refugees. Some Zimbabweans claim that it is hard to access asylum seeker status. It was the intention of the authors to investigate these allegations, as well as to establish other problems and issues of relevance to Zimbabweans in South Africa.

South Africa needs to brace itself for ever-greater numbers of Zimbabweans unless a lasting political solution is found to the current crisis. At both government and NGO level, there is a need to devise policies to deal humanely with the influx, and particularly to provide services on the ground. For this, more information is needed.

## Method: data sources

Data for this report was collected between September 2003 and October 2004. Sources of data included: a desk study of media, human rights reports and refugee laws; more than two hundred interviews with Zimbabweans in South Africa; 7 field visits to the Johannesburg RRO; 10 field visits to places of residence; two surveys involving a further 211 Zimbabweans; interviews with key informants; 4 field visits to Musina; 3 field visits to Beitbridge.

## **PART ONE: Zimbabwe's biggest export: its people**

Part One of the report looks at: the crisis of governance in Zimbabwe; the humanitarian crisis; the economic crisis. It examines numbers of Zimbabweans in the diaspora and the implications of this.

### **1. The breakdown of law and order: torture with impunity**

Human rights organisations estimate that a minimum of 300,000 people have been victims of human rights violations of various kinds over the last four years. Such violations include torture, destruction of homesteads, massive displacement of persons fleeing political persecution or farm invasions, and the denial of food to those perceived to support the opposition. Around 300 have been murdered for political reasons. The cumulative impact on life in Zimbabwe is harrowing. Recording and publicising the problem is close to impossible because of laws restricting freedom of association, expression and movement. Government agents have impunity and very few cases of violation result in charges being laid against perpetrators.

Two hundred and fifty thousand school leavers each year have little or no prospect of formal training or employment; further training and jobs in the civil service now require youth to undergo the politically biased and brutalising national youth service training. Some youths flee Zimbabwe to avoid militia training.

None has doubted the need for land redistribution, including civil society and the political opposition, but the well orchestrated abuse of a much needed programme by the government has resulted in new injustices.

## **2. The Humanitarian crisis**

The land invasions have resulted in a dramatic drop in Zimbabwe's capacity to feed itself. The government has at times in the last three years, used the food deficit situation to politically manipulate access to food, denying opposition supporters the right to buy it from GMB. AI has documented that Zimbabwe is in contravention of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which enshrines the right to food, and to which Zimbabwe is signatory. The government has consistently throughout 2004, claimed a bumper harvest, and has informed WFP that they do not need food aid during 2004/5. Yet UN agents predict a 50% food deficit. The GMB reports having purchased from farmers only 288,000 tonnes of maize, a shortfall of 2,000,000 tonnes. Commentators fear the probability of food becoming a political weapon ahead of the 2005 elections is great, in a situation where the ruling party now effectively controls all food in the country.

**Some Zimbabweans who have fled the country fear political victimisation resulting in being denied the right to food. There is a need to recognise this group of persons, which may become quite sizeable in the year ahead.**

## **3. Collapse of social services and the economy**

Social indicators in Zimbabwe have fallen dramatically over the last four years. There is 70% unemployment, 80% below the poverty datum line, 27% of adults HIV positive. As a result of political decisions, around a million farm workers and their families have been deliberately deprived of their livelihoods, homes and infrastructure. Health, education and delivery of services in municipal areas are collapsing under economic and skills constraints. Economic collapse is the result of poor governance. The government orchestrated farm invasions have led to the collapse of commercial agriculture, which has had a knock on effect for other industries. Key industries have contracted by between 40% and 60% in the last three years. The mining industry has been destabilised by recent plans by government to indigenise 50% of this sector.

## **4. Zimbabwe's biggest export: its people**

An estimated 25% to 30% of Zimbabwe's population has left the nation. Government's own analysts put the number at 3,4 million. Out of a population of 12 million, around half is under the age of 15, and out of the remaining 6 million adults, 1 million is retired. Out of 5 million potentially productive adults, 3,4 million are outside Zimbabwe. This is a staggering 60% to 70% of productive adults.

The current exodus is not part of the long established cross border movement between Matabeleland and South Africa. Around 500,000 are estimated to have regularly migrated to South Africa for work, but there is an estimate of an additional 1,200,000 now in South Africa.

The loss of skills has impacted on health and education in Zimbabwe. Many Zimbabwean have left their professions, either to go into more lucrative careers, for example in the black market in Zimbabwe, or for higher salaries abroad. Many professionals such as teachers, nurses, policemen, artisans, have been driven out by political events and are living like vagrants in South Africa.

The government's "Homelink" scheme is official acknowledgement that our biggest export is our people. Around US\$ 300 million is returned monthly to Zimbabwe from nationals in the



diaspora, 98% of this via black market channels. “Homelink” attempts to increase the return of foreign earnings via the Reserve Bank.

With possibly 50% of voting age adults outside Zimbabwe, the implications for democracy are dire. Half the population will be deprived of its vote in next year’s election.

## **PART TWO: Destination - South Africa: Legal, administrative and social issues involving refugees**

Part Two is an overview of South Africa’s legal obligations to refugees, together with the authors’ own findings relating to the Johannesburg RRO. Issues of quiet diplomacy and xenophobia are briefly raised.

### **1. “Asylum seekers” and “refugees”: South Africa’s legal obligations**

South Africa is signatory to various international conventions and has had a Refugee Act since 1998. In terms of the Act, asylum seekers need to approach a Refugee Reception Office and receive an asylum seeker’s permit. This should entitle them to work and study, but not all RROs are ensuring this. ASPs have to be renewed monthly. If applicants get refugee status, it entitles them to remain in South Africa for two years and to have improved access to social services.

The decision of refugee status is future based. It is an assessment of whether returning to your home country is likely to result in persecution. The authors suggest there is a need for a test case in South Africa to establish whether being denied food on political grounds is a “threat to physical safety”, and whether Zimbabweans fleeing politically induced famine or outright discrimination of access to food should be given asylum.

### **2. The Battle for Zimbabwean refugee rights**

It is only since June 2002, when the Wits Law Clinic prepared a test case involving 5 Zimbabwean exiles for the Courts, that the Department of Home Affairs conceded that *any* Zimbabwean had a right to asylum. The attitude before then – and very often since – is that “there is no war in Zimbabwe” and therefore no right to asylum for its people. However, Zimbabweans who entered South Africa prior to the test case ruling are still on occasion being denied the right to seek asylum, although June 2002 is not the time at which human rights violations began.

Victimisation is a repeated experience in Zimbabwe. This is significant in terms of eligibility for asylum, and also as Zimbabwe heads into another election phase. Those persecuted before may well be persecuted again and may flee to South Africa.

### **3. Attitude to Zimbabweans within Home Affairs RROs**

Refugees International found that Zimbabweans *do* face more barriers than other asylum seekers, in spite of denials by Home Affairs. A study by Themba Lesizwe reported that only 4 out of 34 tortured Zimbabweans who had tried to access asylum seeker status had managed to do so. RI noted that Home Affairs officials, when interviewed, said that “there is no civil war in Zimbabwe, so there is no reason to apply [for asylum]”.

#### **4. Refugee Reception Office, Johannesburg: Observations of current authors**

Most Zimbabweans apply for asylum through the Johannesburg RRO. We therefore observed events at this RRO on 7 occasions and two different locations in the last year.

We noted many irregularities that indicate that Zimbabweans have serious problems acquiring ASPs. Corruption, assaults by guards at the RRO, and fewer than 10 Zimbabweans a week being processed were a few observations we made. We noted that would be asylum seekers from the “Horn of Africa” who queue on the same day had fewer problems in accessing the RRO.

We further noted that all asylum claims are being processed very slowly. In terms of the Regulations to the Refugee Act, they are supposed to be finalised within 6 months. However, ASPs from any country frequently take longer than 3 years. Even so, Zimbabwean claims seem to take longer still, with only 1% of claims having been finalised positively in the last two and a half years.

RROs have problems with capacity. The Director General assured us that this will improve shortly, with 69 more refugee determination officers entering the system.

It was suggested by human rights lawyers that asylum seekers are a “cash cow”, and that it suits Home Affairs officials to obstruct access to the RROs; desperate people are then prepared to pay bribes to get an ASP. However, as some people still get ASPs through the normal route, it is hard to prove bribery and inefficiency. Many potential asylum seekers do not attempt to gain ASPs because they know they do not have the money to bribe. Home Affairs Director General acknowledged the system was full of corruption, and said there was a new “Counter corruption and security” department now being set up.

#### **5. Attitude of UNHCR to Zimbabweans**

RI observed that the UNHCR showed a lack of commitment to protecting Zimbabwean asylum seekers in South Africa. They made “appallingly cynical” comments to RI about Zimbabweans, and had failed to visit the border area for one year, or the Johannesburg RRO for 8 months. Human rights lawyers noted that UNHCR is very reluctant to facilitate resettlement of Zimbabweans outside of southern Africa.

#### **6. Quiet diplomacy: at odds with acknowledging political refugees?**

SADC nations including South Africa have been reluctant to condemn human rights abuses in Zimbabwe and have accepted, publicly at least, ZANU PF’s claim that abuses are all linked to land reform and to the need to resist “recolonisation” by British agents. There is a clash between the policy of “quiet diplomacy” which plays down the crisis of governance and simultaneously acknowledging that citizens of Zimbabwe have genuine reasons to fear persecution and to run away in their thousands.

#### **7. Perceptions of Zimbabweans: “Makwerekwere”**

It is common for refugees anywhere to attract negative perceptions and this is true in South Africa as well. South Africa has 42% unemployment and migrants compete with South Africans for unskilled work. This drives down wages and causes resentment. Xenophobic attacks on Zimbabweans and other foreigners occur regularly. There is a perception that Zimbabweans are involved in criminal activities. There is some evidence in the media for this, although precise figures could not be sourced from officials. Zimbabweans report criminal acts against them,

including rape, assaults, theft and having to bribe police in order not to be deported. They have no right of redress as they fear reporting these incidents.

## **8. South Africans: a history of exile**

South Africa was hosted in the sub region during their own struggle for freedom. Zimbabwean exiles have expressed disappointment that their own struggle for democracy is not being recognised as legitimate.

## **PART THREE: The revolving door**

Part Three covers the experiences of Zimbabweans themselves and the process of going into exile. This includes: crossing the border; life in South Africa; access to health care; deportation; repatriation. It also raises the issue of Zimbabwean deaths in South Africa.

### **1. Crossing the border**

Zimbabweans face the hazards of the Limpopo in flood, crocodiles and human predators such as the “Maguma guma” and SANDF when entering South Africa illegally. Nonetheless hundreds do so every week.

### **2. Life in the big cities: Johannesburg and Durban**

This section describes the every day lives of: 26 political exiles living in one two-bedroomed apartment: a group of 31 blind Zimbabweans who live in one room; cross border traders in Durban. The very hard living conditions, lack of privacy and lack of security is apparent. It is astonishing that such lives are considered preferable to life in Zimbabwe, an indicator of both how afraid and how deprived people in Zimbabwe now are.

### **3. Musina: life in a small border town**

Most Zimbabweans pass quickly through Musina to other places. Those who remain are usually farm workers or unaccompanied minors. Some migrant workers have been working in this area for generations, but are now joined by politically displaced farm workers from parts of Zimbabwe that have not traditionally had farm labourers going to Musina Children aged 12 to 17 have formed informal groups here. They are hard to access, and very prone to deportation and wage exploitation. Many girls this age and older end up as sex workers. Girls also commonly report having to offer regular free sex to police and army in order not to be deported.

### **4. Access to health care**

A survey of 111 Zimbabweans conducted in August 2004 found that out of 55 who reported having needed public health care since they arrived in South Africa:

29 had accessed the public health care system

26 had not accessed it

Out of the 26 who had not, 17 had been denied health care by a clinic or hospital, and 7 had reported they were too afraid of deportation to even approach a health centre; 2 had reported they were too poor to afford fees.

Johannesburg hospital was the most likely to turn people away, and receptionists were the category of employee most likely to turn people away, for not having acceptable ID.

3 people reported verbal abuse from nursing staff, being called a “makwerekwere”.

Although the sample was small, these findings coincide to a large degree with the findings of a larger refugee report released in November 2003. Additional anecdotal evidence supports the survey findings that some Zimbabweans have problems accessing health services, including torture victims.

## **5. Deportation**

Around 45,000 Zimbabweans a year are deported. Deportees are held at Lindela detention centre and are then deported on a once-weekly or fortnightly train. Deporting Zimbabweans costs South Africa approximately R 720,000,000 a year. Most deportees are back in South Africa within a few hours or days of deportation.

Police and Home Affairs are not issuing 15 day permits to people picked up without papers who ask at that point for asylum, and is rather going ahead and deporting them. This is illegal, and also in defiance of the principle of “non refoulement”: people at risk of torture are being returned to Zimbabwe. They are being deported without ever seeing an immigration officer and having the chance to claim refuge. Considering how hard it is to get an ASP, this puts political exiles at risk of deportation. Corruption is a problem. Police commonly bribe Zimbabweans R200 in order not to send them for deportation. Home Affairs officials charge R800 to release people from Lindela before deportation.

People who are very ill are also being picked up, held in Lindela and deported. This is in contravention of Lindela’s stated policy and basic humanitarian law, yet in one week in October this year, 11 deportees died in Lindela. Others have died on the deportation train, or soon after arrival back in Beitbridge.

In Musina, there is no RRO, and all Zimbabweans are deported without the opportunity to claim ASPs. Police do not have the resources to cope with the numbers of detainees and are holding them in poor conditions. They report deporting the same people three times in one week. In the opinion of the police in Musina, this cycle of deportations is not constructive.

Unaccompanied minors have been regularly deported and this is illegal. There was a test case ruling in September of this year confirming this, and saying foreign children have the same rights as South African children in terms of the Child Care Act. From time to time, parents get deported without their children, who remain in South Africa until the parents come back.

## **6. Back in Zimbabwe: the deportees on arrival**

Police in Beitbridge do not have the capacity to hold detainees, and so release them within minutes of repatriation. The authors witnessed that within an hour of being dismissed by the police, most deportees are on their way back in the direction of the border, by taxi or on foot.

## **7. Problems of the repatriated in Beitbridge**

While most deportees head south again, some end up stranded without money or too ill to continue their journey. Neither the police nor NGOs here provide bus passes or any other support for deportees. Deportees reportedly die on a weekly basis in Beitbridge hospital. We were shown orphans whose mothers had died in this hospital, leaving small children stranded far away from families. Human remains washed up on the banks of the Limpopo also end up in

mass paupers' graves here. Human remains, which are assumed to be of border jumpers, are picked up fairly regularly in the bush around the border area.

There is a risk of being picked up by the Zimbabwean police and tortured again, in the case of political deportees.

## **8. The dead: a problem for the future?**

Zimbabweans are dying in South Africa, possibly in large numbers, and not all of the dead are being repatriated for a variety of reasons. They end up in paupers' graves, either in South Africa or in Beitbridge, depending where they die. These dead are undocumented and do not have death certificates in their names. This may cause practical problems for their Zimbabwean families in the years ahead. Single parents sometimes die and leave stateless, undocumented orphans, who may have relatives in Zimbabwe, but who these may be and how to reach them is not known. Families also need to know the fate of their loved ones abroad, yet the dead are sometimes becoming "disappeared persons", without death certificates or known places of burial. This may cause emotional problems for families, who are left with unanswered questions about the fate of their relatives. There is a need to address this problem and find ways of ensuring that trusted persons or NGOs have ways of contacting relatives in Zimbabwe in such situations.

## **9. Conclusion**

Zimbabweans are fleeing their nation in their millions. There is no indication that this is going to change in the near future. Three major reasons for the exodus have been identified: the breakdown of law and order, including torture with impunity; the humanitarian crisis, including political abuse of food; the collapse of the economy. Going into exile is a difficult choice: living as a "makwerekwe" in South Africa involves living with a very real threat of xenophobia, of having to bribe police in order not to be deported, or of being deported. It means being vulnerable to crime and exploitation without redress. It means living in appallingly overcrowded and unsafe conditions, and not always having access to basic facilities including health. It means that productive people who once held respectable jobs have to adjust to being beggars.

That so many opt nonetheless to live a hard life in exile, is an indicator of the severity of life in Zimbabwe; however tough things are in South Africa, it is better and safer than being in Zimbabwe. For this reason, would-be asylum seekers are prepared to spend weeks and months in fruitless queues in the hope of ASPs. For this reason, young men are prepared to leap out of deportation trains – risking death on the tracks is better than being forced to go home.

Zimbabweans in exile appear to face a lack of political will in South Africa. While the laws to protect their rights are in place, these are being undermined by the "politics of denial" practised by government officials in relation to the nature of the crisis in Zimbabwe; this results in victimisation at many levels. Zimbabwean exiles have become a "cash cow" – the very government they have fled is trying to harvest returns from them, and corrupt Army, Police and Home Affairs officials in South Africa take bribes from them and other refugees in exchange for another precarious day of not being deported. It is apparent that the current inefficiency in the Home Affairs system plays into the hands of corrupt officials, who are making significant sums of money from bribes. It is not in their interests for the system to become efficient.

The needs of Zimbabweans in exile are those of refugees everywhere – they need recognition and acceptance, and access to essential services. In addition, Zimbabweans need greater understanding of why they have left their nation, particularly from South African officials. The

nature of Zimbabwe's struggle for democracy and of the persecution of democratic forces in Zimbabwe needs to be discussed and acknowledged, particularly among government officials and departments. Zimbabweans need practical assistance. They need greater access to health care, to ASPs, to education and skills training for their exiled youth. Those who are very ill and those who are dead need to have this information reliably conveyed to their relatives back home, through secure and confidential channels.

## Recommendations

There have been several studies of general refugee issues in South Africa in recent years. CASE has produced two major reports, one in 2001 and one in 2003.<sup>1</sup> Both of these reports were accompanied by extensive recommendations that were very thorough and consultative. There is little to be gained by yet again reframing the good work that others have done in this regard. *The National Refugee Baseline Survey: Final Report*, released a year ago in November 2003 made recommendations to the South African Government, the National Departments of Home Affairs, Health and Education; also to the UNHCR and Service Providers, including NGOs and churches. Their recommendations are attached as Appendix Four to this report.

The Solidarity Peace Trust would reinforce certain of the *CASE recommendations*, 2003, summarised here:<sup>2</sup>

To the Department of Home Affairs:

- They should investigate bribery within the department.
- They should issue ASPs that are valid for six months instead of one month
- ASPs should be more formal and should be laminated with anti forgery marks to make their recognition by various service providers more likely.
- Such changes should be combined with a massive campaign to promote recognition of the documents in government departments and with other service providers.

**In addition the Trust recommends that:**

- There is a need to promote greater awareness and debate in South Africa, including at the level of service providers, of the nature of the crisis in Zimbabwe, the scale and type of human rights abuses that are taking place, and the policies that are needed in South Africa to deal with the numbers of Zimbabweans in their nation.

*Refugee reception offices*

- *The Department of Home Affairs* should take action to issue greater numbers of Zimbabweans and others with ASPs each week, as the backlog is causing real hardship to many, among them victims of torture who are at real risk if they are deported.
- *The Police* need to be reminded of their legal obligation to give 15 day permits to any person they pick up for deportation who states that they want to apply for asylum, particularly bearing in mind the fact that gaining an ASP can be so problematic.

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<sup>1</sup> Community Agency for Social Enquiry (CASE), *Realising Rights: the development of health and welfare policies for asylum seekers and refugees in South Africa*, researched for UNHCR, May 2001; CASE, *National Refugee Baseline Survey: Final Report*, November 2003, researched for Japan International Cooperation Agency, United Nations High Commissioner for Refugees. .

<sup>2</sup> CASE, 2003, *ibid*, pp 204.

- *Civil society* should be monitoring access to RROs on a systematic basis. Personnel should stand incognito outside RROs and observe whether:
  - Home Affairs officials are giving out helpful information to those waiting
  - Home Affairs officials are illegally insisting on passports
  - There is brutality towards those waiting
  - Bribery is taking place

They should further note how many people from which nations are being issued ASPs each day, and what proportion this represents of those waiting each day.

#### *Health care*

- Further investigations into how best to provide health care to Zimbabweans who may not be accessing the public health services must be addressed. Some are not accessing it because they do not have ASPs. If the above recommendations are acted upon, then much of this problem will resolve itself.
- Until national service providers including the Ministry of Health consistently recognise the rights of asylum seekers, refugees and their documentation, as they are required to by local and international law, there is a need to build a network of support via civil society to ensure that asylum seekers and refugees, in particular those with torture related injuries, have safe access to medical care.
- Civil society should monitor access to medical care, particularly at hospitals, and document instances of denial of the right to services for further action.

#### *Denial of the right to food*

- There is a need for a test case resolving the issue of whether denial of the right to food on political grounds constitutes a “threat to physical safety”. Any civil society group that knows of Zimbabweans in South Africa that have reported political abuse of food, should consider taking the issue to Court.

#### *Deportations*

- The endless cycle of deportations should be reconsidered: this is an expensive and not very effective policy. In particular, urgently:
  - Very ill foreigners should not be detained for deportation
  - Independent health professionals should do an assessment of health conditions at Lindela and on the deportation trains, to facilitate formation of a policy that will prevent communication of diseases, protect the rights of the ill, and monitor deaths of deportees in state custody.
- The UNHCR should be playing a more active role to ensure that minors, and political asylum seekers who may not have ASPs, are not being deported.
- There should be opportunity for deportees at Lindela to put on record crimes against themselves including bribery by South African Police, SANDF, and Home Affairs officials paid for both in cash and in sex. Civil society would be in the best position to document such claims and lay charges.

#### *Repatriation*

- There is a need to protect the rights of deportees on the Zimbabwean side of the border. Among those currently deported, are unaccompanied minors, victims of sexual exploitation, the very ill, and those who have no resources to return to their homes in Zimbabwe and who end up stranded. Also among those deported, may be political asylum seekers who fled Zimbabwe in the first instance for reasons of persecution.

- In view of the fact that the Zimbabwe government is about to force through Parliament an Act that will undermine activities of human rights NGOs and churches, it is not obvious who is supposed to deal with this sensitive issue, and protect the rights of these groups of deportees once they are back in Zimbabwe.
- **If there was better screening of deportees on the South African side, these problems would be reduced in the first place.**

*The dead*

- Zimbabweans are dying in South Africa and are ending up as undocumented deaths in mass paupers' graves. This may create problems in the future as relatives back in Zimbabwe do not know where their dead are buried, and do not have death certificates. There is a need to facilitate ways of keeping safe, confidential records of how to contact relatives back in Zimbabwe, in the event of exiles becoming very ill or dying.



## Background

The Solidarity Peace Trust has as part of its mission, the role of providing assistance to Zimbabwean victims of torture and human rights abuses. The Trust has documented the torture of many Zimbabweans who have fled to South Africa as a result of persecution. It has an interest in how these and other Zimbabwean torture victims are faring in their country of refuge - in particular whether tortured political exiles are receiving refugee status and access to health care. We are concerned about their living conditions in South Africa, and their experiences at the hands of South African officials. It is clear that Zimbabweans in South Africa are not readily perceived as having a legitimate right to seek asylum there: the assumption is that there is “no war in Zimbabwe”, and that therefore all migrants from Zimbabwe to South Africa are there for economic reasons, and should be deported.

The intention of this report is to raise awareness of why Zimbabweans are pouring into South Africa and the region in their millions, and of the difficulties they are facing, both formal and informal, in the hope that groups including government, non governmental organisations (NGOs) and churches will start developing more coherent policies to deal with the needs and problems of this influx. The only official strategy at this stage seems to be an endless revolving door of deportations at huge expense to the South African public that in any case barely scratches the surface of the numbers of Zimbabweans in South Africa. Support to Zimbabwean exiles is small scale and ad hoc, consisting of a handful of NGOs and churches who are trying to offer basic resources to a few hundred individuals or families.

This report does not claim to cover the issue of Zimbabwe’s exiles in exhaustive scientific detail. By their very definition, Zimbabweans exiled in South Africa are fugitives. The vast majority are illegal, without status or papers, subject to deportation. It is difficult to access people who spend much of their time trying to avoid detection, trying to be invisible. Over the last year, the authors of this report have managed to interact with several hundred Zimbabweans in South Africa and their stories of torture and persecution have provided a tragic background against which other sources of information, including previous refugee studies and media reports, have been situated. Exiles have been visited in their places of abode, observed in the streets, and interviewed in the context of church feeding programmes. To build trust has taken months of work and all those who have come forward with their stories are kept anonymous to protect them, unless they have specifically agreed to having their identities revealed, for example in photographs.

Even those who would be considered to be in South Africa for primarily economic reasons by officials, view their decision to leave as political. In their own eyes, **the collapse of the economy and the loss of livelihoods in Zimbabwe is the result of political mismanagement; with good governance in Zimbabwe, they would not be in South Africa.** While this will not win them refugee status with officials in terms of international criteria for what makes a refugee, it should be noted that individuals do see it this way - **political decisions made in the last four years in Zimbabwe are what have driven them over the border to take up tough lives in a foreign land.**

The Trust wishes to draw attention to the fact that lack of access to food by any Zimbabwean may not be a simple matter of poverty and/or crop failure. **The current Zimbabwe government has in the last four years used food as a political weapon; the government controls access to maize, particularly in rural areas, and has been documented refusing to allow those perceived to support the political opposition from purchasing maize.** The government and its agents have also at times in the last four years interfered with donor feeding programmes for

political reasons, often before or after elections of one kind or another. There is an urgent need for greater awareness among South African authorities of this reality, and possibly for a court ruling on whether political denial of access to food constitutes a “threat to physical safety” and is grounds for asylum.

The authors acknowledge that many groups apart from Zimbabweans are claiming refuge in South Africa: since 1994, there has been a steady influx of people from all over Africa, including Rwanda, Angola, the Democratic Republic of Congo, Somalia, Burundi, Uganda, Cameroon, Sudan and elsewhere. Many of the problems raised as affecting Zimbabweans in this report are common to all refugees.<sup>3</sup>

In the opinion of the authors, there are good reasons for focusing exclusively on Zimbabweans in this report.

- Going by the number of deportees, Zimbabweans are now the second biggest group of foreign Africans in South Africa.<sup>4</sup> Yet there is little formal information available on their situation. For example, the most recent and major study of asylum seekers and refugees released in November 2003, excluded Zimbabweans altogether.<sup>5</sup> Their exclusion from this report and others is a consequence of how recently and rapidly the influx of Zimbabweans has occurred; since 2000, they have gone from being a negligible group to a formidable presence in South Africa. There have been cross border traders from Zimbabwe for the last twenty years, but their visibility was close to nil.<sup>6</sup>
- While numbers of Zimbabwean have escalated, very few are being officially recorded as political refugees. The Department of Home Affairs (Home Affairs) claim that very few Zimbabweans apply for asylum seeker status, using this as evidence that the vast majority of Zimbabweans are here for economic reasons and do not consider themselves as having left for political reasons.<sup>7</sup> Others have claimed that Zimbabweans are finding it hard to access asylum seeker status and that Home Affairs’ assessment of the numbers of asylum seekers is therefore unrealistically low. It was the intention of the authors to investigate these allegations and counter-allegations for ourselves.
- Finally, it is the perception of the Solidarity Peace Trust that South Africa needs to brace itself for ever-greater numbers of Zimbabweans in their midst unless a lasting political solution is found to the current crisis in Zimbabwe.
  - The government of South Africa therefore needs to devise new policies to deal with the problems, which could include greater efforts to mediate in Zimbabwe itself to promote a return to peace, prosperity and human rights, as well as more humane and comprehensive policies on how to treat the mass of Zimbabweans in their nation.
  - While there is growing awareness of the plight of Zimbabweans among churches and the NGO sector in South Africa, there is a need for more developed services and support to be put in place for exiles from all nations, including improved

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<sup>3</sup> According to Barry Gilder, Director General of the Department of Home Affairs in South Africa, Zimbabweans do not even make the top ten countries producing asylum seekers, but the authors of this report believe there are many reasons why it is difficult for Zimbabweans to claim asylum, and that if access to asylum was unhindered, there would be thousands more Zimbabweans who would claim this.

<sup>4</sup> The largest group are Mozambicans.

<sup>5</sup> Community Agency for Social Enquiry (CASE), *National Refugee Baseline Survey: Final Report*, November 2003, researched for Japan International Cooperation Agency, United Nations High Commissioner for Refugees.

<sup>6</sup> The issue of historical migration patterns is raised ahead in this report.

<sup>7</sup> By mid 2004, around 5,000 Zimbabweans had been given asylum seeker status by Home Affairs. This is NOT the same as being recognised as a refugee with the full benefits that this entails. Approximately 20 Zimbabweans have *full* refugee status – Home Affairs was unable to give us more exact figures when asked in October 2004. See ahead in this report for full discussion of the refugee laws and different status categories.

access to health care. While many organizations seem to be involved in raising awareness around the Zimbabwean crisis through workshops, papers and research, there is an urgent need to supplement this with **services on the ground** to help those on the receiving end of the crisis.

## **Method of compiling the report: data sources**

### **Data collection: relevant issues**

The vast majority of Zimbabweans who have arrived in South Africa in the last four years are considered illegal immigrants.<sup>8</sup> Very few have any official status. Working with a community that is both hugely diverse and living underground, limits the nature of the investigations that are possible. For example, it is not easy in such a situation to work with randomized samples of people in order to arrive at statistically sound conclusions based on structured questionnaires. Zimbabweans in South Africa have an unknown demographic profile and are of an unknown number. It is our experience that this group is very mobile. Individuals mostly have no fixed address for any length of time, which makes follow up interviews difficult, and the circumstances in which people find themselves change rapidly.

Issues of confidentiality are of particular importance when dealing with persons who feel insecure and at risk of deportation. There are also ethical issues in working with a very underprivileged group that has limited access to essential services such as health. It is problematic to identify people who need rehabilitative services and merely to note the problem. Some individuals who came forward to be interviewed are living in situations of severe deprivation and even under threat.<sup>9</sup> Wherever possible, individuals with specific needs have been passed on to local NGOs and health professionals.

The information in this report has been compiled over the course of one year from:

- A desk study of media and human rights reports on the causes of the mass exodus of Zimbabweans since 2000, including available information on the number of Zimbabweans in the diaspora, and the impact of this mass emigration both in Zimbabwe and in the region.
- A review of the laws and international obligations in relation to refugees in South Africa.
- More than two hundred interviews by the authors with Zimbabwean refugees, mainly in Johannesburg but also in Durban and Musina. We interviewed a range of Zimbabweans who claim to have left for political reasons; political abuses including torture, forced conscription into the youth militia, property destruction, displacement. In some cases, individuals were followed up over time.
- Six field visits to observe the refugee reception offices in Braamfontein, Johannesburg, during late 2003 and then one visit to Rosettenville, Johannesburg, in October 2004, in

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<sup>8</sup> There is a large group of Zimbabweans who have been resident or semi resident migrant workers in South Africa for the last twenty years: this group is dealt with as a separate entity ahead in this report.

<sup>9</sup> For example, one eighteen year old girl reported she was in an abusive relationship and dealing with daily rape by a South African man she depended on for a roof over her head, having no other family or friends in South Africa. She is ineligible for help from any social services in South Africa as she is illegally in the country, and if she goes to the police, she will be deported.

order to assess on site the access of Zimbabweans to the offices granting asylum seeker status, and general treatment by South African officials.

- Ten field visits to apartments/rooms/spaces where refugees reside in Johannesburg, Durban and Musina to raise our awareness of living conditions.
- Key informant interviews with two South African Home Affairs officials, and with South African human rights lawyers, church leaders and personnel in NGOs that have been working with Zimbabwean refugees.
- Two surveys of Zimbabwean refugees, which are in addition to the 200 hundred interviews mentioned previously;<sup>10</sup>
  - A survey conducted in October 2003, of 100 Zimbabweans who were among those in the queue outside Home Affairs in Johannesburg on the same morning in October 2003, trying to access the building for asylum seeker status.
  - A survey conducted in August 2004, of 111 Zimbabweans who are informally registered with two different NGO refugee organizations in Johannesburg. This involved in-depth structured interviews with each interviewee, of around one hour each, and focused on reasons for leaving Zimbabwe, access to asylum seeker permits and access to health care.
- Interviews with lawyers and refugees, and a desk study to establish the process of deportation, including conditions in Lindela detention centre, on the deportation train, and on arrival at Beitbridge in Zimbabwe. The deportation of unaccompanied minors was of particular interest.
- Four field visits and key informant interviews with NGOs operating in the Musina area to investigate conditions of Zimbabweans arriving there, in particular unaccompanied minors; interviews on holding and deportation conditions in Musina.
- Three field visits and interviews with health personnel and police in Beitbridge, Zimbabwe, to gain insight into what happens to migrants forcibly returned from South Africa.

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<sup>10</sup> See appendices for questionnaires. As indicated above, these questionnaires provide insights into issues rather than anything statistically profound. Their findings are therefore not discussed and presented in a detailed way, but have rather informed general discussion by the authors.

# PART ONE

## Zimbabwe's biggest export: its people

### 1. The breakdown of law and order: torture with impunity

*Zimbabweans ordinarily live in fear, it is what I would call a normal state of life in Zimbabwe today...it progresses into being captured. Once you are captured, it transforms itself into terror...*

[Gabriel Shumba, Human Rights Lawyer]<sup>11</sup>

The crisis in Zimbabwe has not produced rivers of blood and mountains of dead. In global terms, events there cannot compete with the horrors of Iraq, Palestine or Dafur in Sudan. Yet, the precipitous decline of Zimbabwe on political, legal, social and economic fronts in the last five years has created a problem that has spilled across neighbouring southern African nations, as an estimated 25% of its population has fled the political and humanitarian crisis at home.<sup>12</sup> Zimbabwe's democratic space has closed in the face of an upsurge in state organised political violence, the implementation of repressive laws and the collapse of the judiciary.<sup>13</sup> Whenever there is a threat that people may exercise their democratic rights, there is a flare up of state orchestrated violence. The crisis of governance has impacted socially, as Zimbabwe's economy has become the fastest contracting economy in the world.

The crisis in Zimbabwe has been referred to as a crisis of governance, which has arisen out of a profound intolerance for political diversity.<sup>14</sup> It is no coincidence that land invasions began within weeks of ZANU PF's first ever defeat at the polls in February 2000, in a referendum in which the government's revised constitution, which would have entrenched the powers of the President, was rejected by Zimbabweans. The referendum defeat was the result of campaigning by the first national opposition political party of any standing in the last 24 years, the MDC, together with civil society forces. It is the MDC and those perceived to support the MDC, including civil society movements such as trade unions, which have borne the brunt of human rights violations and state oppression since 2000 till the present. Zimbabweans live in a state of oppression in which they have been forced to flee their homes for fear of persecution, in a

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<sup>11</sup> Shumba is now in exile in South Africa after being horrifically tortured by the Zimbabwean police. His full affidavit is in Appendix One, and parts of his testimony are included in the video accompaniment of this report.

<sup>12</sup> See further ahead in this report for estimates and implications of this enormous relocation of Zimbabweans.

<sup>13</sup> See Appendix Four to this report for a general listing of the many reports both national and international, documenting aspects of this decline. Comprehensive information on the causes of the current crisis of governance in Zimbabwe and its status are well covered in other reports. The current report does not seek to duplicate in detail this information available elsewhere. UN agencies including their Relief and Recovery Unit release regular situational update reports. The NGO Food Security Network, FOSENET, an alliance of 24 Zimbabwean NGOs, releases monthly updates summarising their collective information on the national food situation, entitled *Community assessment of the food situation in Zimbabwe*. The International Crisis Group, Amnesty International, Lawyers Committee for Human Rights, New York, the Zimbabwe Human Rights NGO Forum (ZHRNGOForum) are among the organizations who have websites with systematic and detailed commentary on events in Zimbabwe. Laws passed severely undermining freedoms of movement, association and expression include the Public Order and Security Act, the Access to Information and Protection of Privacy Act, the looming NGO Act, various electoral reforms and presidential powers amendments.

<sup>14</sup> Themba Lesizwe, *Civil Society and Justice in Zimbabwe: proceedings of a symposium held in Johannesburg, August 2003*, has a selection of essays that explore the crisis of governance and breakdown of law and order.

country where the police and army can detain, torture and even murder perceived government opponents with total impunity.<sup>15</sup>

While the death toll due to political violence remains small, at around 300, there have been thousands of other human casualties of the situation. Human rights organisations in Zimbabwe have estimated that around 300,000 people have been victims of human rights violations of



*Photographs 2 and 3: woman and man brutally assaulted by army in Zimbabwe during the mass stay away called by the MDC in March 2003*



*Photograph 4: Tonderai Machiridza, an MDC activist tortured in the custody of Zimbabwean police. He died of his injuries the day after this picture was taken, on Independence Day, 18 April 2003. Nobody has ever been held accountable for his murder*

various kinds over the last four years. Torture, destruction of homesteads, massive displacement of persons fleeing political persecution, and the denial of food to those perceived to support the opposition are among the violations that have been widespread, systematic and well documented.<sup>16</sup>

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<sup>15</sup> There are numerous accounts documenting both such torture and its impunity. For example, see Zimbabwe Human Rights NGO Forum (ZHRNGOForum), *Who was responsible*, 2000, and *Are they accountable?* 2002.

<sup>16</sup> See appendix for listing of such documents, and further ahead in this report.

Not many of the individual incidents of abuse are headline catching in world terms, and the vast majority go entirely unrecorded, but the cumulative impact on life in Zimbabwe is harrowing. Recording and publicising the problem has been made close to impossible because of draconian laws that have shut down the only independent daily newspaper and thrown all foreign correspondents out of the country. Yet the scars being left by state sponsored violence are undeniable.

### **Youth militia**

Three hundred thousand school leavers each year have little or no prospect of formal training or employment, and this problem is exacerbated for children who are not prepared to undergo the politically biased and brutalising national youth service training; youth militia training is now a prerequisite for entering employment in the civil service, among the biggest employers left in Zimbabwe.<sup>17</sup> Many youths, both male and female, who have entered the youth militia programme since its inception in 2001 have emerged traumatised and have fled the country. Those whose training has coincided with election periods have been used by the ruling party to conduct a brutal campaign. In some rural areas, youths who refuse to volunteer for the training are victimised; young people have fled to avoid both the training and the persecution/lack of opportunities that accompany not having completed it.<sup>18</sup>

Elinor Sisulu of the Crisis in Zimbabwe office in Johannesburg made the following comment on the prospects for Zimbabwe's youth:

*Zimbabwe is not a place for young people at this time. It really is not, whether they are MDC or whether they are ZANU PF. If they are MDC, then they are victims of violence, if they are ZANU PF they are in the "Green Bombers" [youth militia] and they are victims because they are forced to become perpetrators of violence. This needs recognition and there must be concrete programmes for young people [in South Africa].*

### **The "land revolution"**

The Zimbabwe government has portrayed the repressive clamp down in Zimbabwe as being part of a legitimate "land revolution", and all human rights violations as somehow linked to white farmers; the Movement for Democratic Change (MDC), a grassroots trade unionist-led opposition party has been portrayed as "British sponsored", and the repression of the ordinary people of Zimbabwe is portrayed as a noble revolution against recolonisation.<sup>19</sup> None has doubted or disagreed that there has been a need for land redistribution, including the MDC, but the well orchestrated abuse of a much needed programme by the government has resulted in new injustices.

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<sup>17</sup> The Solidarity Peace Trust, *National youth service training – "Shaping youths in a truly Zimbabwean manner"*, September 2003, for details of this programme. See Appendix One, Case One, for testimony of a school girl abducted into a youth militia camp and raped for three days.

<sup>18</sup> Numerous interviewees in the compilation of this report cited avoiding or deserting youth militia training as their reasons for having fled Zimbabwe; also Solidarity Peace Trust, Sept 2003, *ibid*; see also media reports: IRIN (UN), "Green bombers deserting poor conditions in camps", 23 Jan 2004; Panorama BBC TV, 2 March 2004; Cape Argus, (SA), 5 September 2004, SA Police "as cruel as Mugabe's militia"; Zim Online (SA), *Teachers in Zimbabwe: "we are very afraid"*, 19 August 2004.

<sup>19</sup> Election 2005 is being contested by ZANU PF as an "anti-[Tony] Blair election", for example. This total denial of the reality, ie, that many millions of Zimbabweans have consistently voted for the MDC for 5 years, is typical of the ZANU PF claim that there is no real internal opposition to its rule.

The fact that most of the international media attention has focused on the issue of farm invasions, has fed the misperception that the state violence is part of a black-white struggle for land ownership. Without doubt, many human rights violations have occurred and are still occurring in the context of the land invasions: but very few of these violations involve white farmers, with poor rural Zimbabweans being the victims in more than 95% of cases.<sup>20</sup>

The government's own land audit recently revealed huge failings in the process. The government originally claimed around 350,000 families had been resettled. In fact, around 70% of families of farm labourers were displaced, representing more than a million people, with only 140,000 families nationwide benefiting from resettlement, most of them not from the displaced farm labourer group.<sup>21</sup>

During late 2004, there has been a new phase in the land resettlement – that of throwing off some of the newly resettled farms, those who have been on them since the farm invasions. Thousands of the newly resettled have been tear-gassed and burnt out of their homes by police, resulting in some instances in deaths.<sup>22</sup>

In 2004, with the land redistribution programme officially over, Zimbabweans still live under draconian laws that control the media, prevent any form of civilian gathering, and most recently, laws aimed at shutting down non governmental organisations, in particular those that document human rights abuses and centre their activities on civic education and issues of governance. The majority of human rights violations continue to take place not in or near commercial farms, but in rural or urban areas where support for the opposition MDC is strongest. Where the ruling party is strongest, the MDC population is virtually under siege; in some districts, people are only allowed to get past ZANU PF activists if they know the secret password. Torture, harassment and state control at every level continue.

## 2. The Humanitarian crisis

*"Why do I get the impression that I have to beg you to feed your people?"*<sup>23</sup>

The deliberate destruction of the agricultural sector has contributed to three consecutive years of famine.<sup>24</sup> Once more in 2004/5, despite earlier assurances by government, the nation has an estimated 50% maize shortfall, which seems certain at this stage to result in widespread hunger.<sup>25</sup>

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<sup>20</sup> VOA News, *Families of former Zimbabwean farm workers face difficulties*, 7 October 2004; The Mail and Guardian, (SA), *The new betrayal*, 7 October, 2004; Zim Online, *Riot police descend on evicted settlers*, 5 October 2004; SAPA, *Police confirm eviction of Zimbabwe settlers*, 3 October 2004. See also ZHRNGO Forum reports for details of who has been victimised in last four years.

<sup>21</sup> Amnesty International (AI), *Zimbabwe: power and hunger – violations of the right to food*, October 2004, for a recent and detailed analysis of land resettlement.

<sup>22</sup> AI, *Another death at Porta Farm*, 1 October 2004; VOA News, *Families of former Zimbabwean farm workers face difficulties*, 7 October 2004; The Mail and Guardian, (SA), *The new betrayal*, 7 October, 2004; The Daily Mirror, *Showdown looms over evictions*, 5 October 2004; Zim Online, *Riot police descend on evicted settlers*, 5 October 2004; SAPA, *Police confirm eviction of Zimbabwe settlers*, 3 October 2004.

<sup>23</sup> Tony Hall, the special US Ambassador to the World Food Program stated that he had asked July Moyo, the Minister responsible for the food aid program in Zimbabwe, this question in mid-October 2002.

<sup>24</sup> AI, *Zimbabwe: power and hunger – violations of the right to food*, October 2004, for a detailed analysis of the contribution of the land redistribution programme to food shortages in Zimbabwe and to the suffering of farm workers. The important issue of land reform, its motives and its impact have been dealt with in detail in many other reports. See appendix for some examples. Refugees International Bulletin, 23 July 2004, *Zimbabwe: Humanitarian access denied to increasingly vulnerable former farm workers*; Norwegian Refugee Council, July 2003

<sup>25</sup> AI, October 2004, *ibid.*



## Political abuse of food

Amnesty International (AI) released a substantial report on food abuse in Zimbabwe in October 2004, which illustrates systematic manipulation of access to food by the government, and patterns of food abuse linked to elections.<sup>26</sup> This report points out that the Zimbabwean government is in serious contravention of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which enshrines the right to food, and to which Zimbabwe is signatory. In terms of the ICESCR, States must ensure *availability* and *accessibility* of adequate food. Any discrimination in access to food on political grounds is a violation of the Covenant.

The Zimbabwe government has decreed that it is almost the sole distributor and marketer of maize, through its parastatal the Grain Marketing Board (GMB); all maize producers are obliged to sell only to the GMB. During the last five years there has been repeated concern raised and some well-documented incidents of ZANU PF using GMB maize as a political weapon, denying the basic right to food to those who support the opposition party, the MDC.<sup>27</sup>

Sales through the GMB have been reduced during the last two years; the nation has produced less than half the maize needed to feed itself. The WFP has run a massive feeding programme throughout the country, which has kept the threat of starvation at bay. This has meant the majority of very vulnerable people have had access to food through the politically neutral WFP. At times, the government has interfered with donor food distribution, although donors have made every effort to prevent this and have taken action when this has been brought to their attention. A few examples of abuse of donor food and of GMB sales follow:

- In mid-October 2002, the WFP had to suspend its feeding programme in the rural district of Insiza, citing political interference with WFP food ahead of a parliamentary by-election. The WFP reported that ZANU PF activists had seized 3 tonnes of maize being

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<sup>26</sup> AI, *Zimbabwe: power and hunger – violations of the right to food*, October 2004.

<sup>27</sup> Human Rights Watch, Briefing paper on Zimbabwe, 12 August 2004. Africa Confidential, *The government may turn away food aid as part of its ruthless election strategy* May 2004; 2003 Amnesty International Annual Report, London, 2004, section on Zimbabwe: "*The authorities and state-sponsored militia continued to deny people access to food aid based on real or perceived political affiliation, and used food aid to buy votes during parliamentary by-elections.... Political manipulation of food aid by officials and supporters of the ruling Zanu PF continued. The food situation remained critical.*" Physicians for Human Rights, Denmark (PHR-DK), *Vote ZANU PF or starve – Zimbabwe: August to October 2002*, November 2002;

Also media reports: The Zimbabwe Standard, *War veterans stop Chipinge retailers from selling maize*, 26 September 2004; The Daily News Online Edition, *Government keeps UN agencies guessing on food security*, 26 September 2004; IPS, *Mixing politics with food*, 27 September 2004; VOA News, *Zimbabwe says it needs no international food aid*, 22 September 2004; The Zimbabwe Independent, *GMB fails to prove claims of bumper harvest*, 10 September 2004; Zim Online (SA), *National youth service trainees recruited for food distribution*, 25 August 2004; The Zimbabwe Standard, *Hunger claims more lives - children worst victims of malnutrition*, 8 August 2004; SAPA, *Famine kills 152 people in Bulawayo*, 8 August 2004; The Zimbabwe Standard, *Food crisis looms*, 15 August 2004; Comment from The International Herald Tribune, *Zimbabwe's despot watches his people starve*, 16 August 2004; Associated Press, *Southern Africa faces humanitarian crisis*, 22 June 2004; The Daily Mirror, *Govt in massive maize imports...amidst claims of bumper harvest this season*, 2 June 2004; The Guardian (UK), *Zimbabwe ejects UN crop survey team*, 10 May 2004; The Guardian (UK), *Mugabe says he will refuse food aid*, 24 May 2004; The Times (UK), *Harare shuns aid in face of famine alert*, 12 May 2004; Africa Confidential, *Fast buck, slow famine*, 28 May 2004; IRIN (UN), *Household access to food a major problem*, 26 May 2004; IRIN (UN), *Commercial land lies fallow*, 31 May 2004; VOA News, *Opposition, analysts fear Zimbabwe may use food distribution as political tool*, 23 April 2004; The Mail & Guardian (SA), *Zim faces famine*, 28 April 2004; Time Magazine, *Against the grain*, 26 Jan 2004; IRIN, *GMB defends its hold on maize stocks*, 26 Jan 2004.

distributed by the Organisation of Rural Associations for Progress (ORAP) and had distributed it solely to ZANU PF supporters, “in an unauthorised manner”.<sup>28</sup>

- In October 2002, in the rural district of Binga that had just voted strongly for MDC in the Rural District Council elections, the government suspended all donor food to starving school children. Officials were quoted as saying this was to punish the region for its strong MDC vote. The Catholic Church was ordered to stop its feeding, as were “Save the Children” and “Oxfam Great Britain”. Feeding programmes were effectively prevented for around 2 months, and it was 40,000 school children who suffered.<sup>29</sup>
- In Lupane in April 2004, in the context of a parliamentary by-election, government officials used sales of GMB food to manipulate voters. GMB sold maize at a reduced rate - on days that coincided with opposition party rallies so that people had to choose between getting a scarce and essential commodity, or attending the rally. These sales were accompanied by threats that there would be no more food in this impoverished and starving area if people did not vote for ZANU PF.

The government’s political abuse of GMB sales in Lupane is typical of their “carrot and stick” approach to food and elections.<sup>30</sup>

### **Maize and election 2005**

Concern has escalated during 2004, as it is apparent that the government is blurring the issue of food security in Zimbabwe. The government indicated early in the year that it would not be applying to the WFP to source any donor food for distribution during the 2004/2005 season. The government is determined to portray the land resettlement programme as a productive success, hence its claims that Zimbabwe will grow enough food to feed itself. President Mugabe said in a television interview in May that Zimbabwe was expecting a “bumper harvest” and that they did not want to “choke” on too much food, so they would not be extending WFP’s programme into 2005.<sup>31</sup> However, UN and other sources were in April 2004 predicting a lower yield than that of the 2003/4 season, in which 5 million people had required food aid.<sup>32</sup>

In September this year, the GMB itself admitted to a parliamentary committee that it had only received 288,000 tonnes of maize deliveries from farmers, a massive shortfall on the 2,4 million tonnes that the nation needs, and that government predicted would be harvested locally.<sup>33</sup> The government nonetheless continues to obfuscate, and to deny a looming food shortage. As recently as 10 October 2004, Mugabe stated in Maputo that there was no need for donor food this year.<sup>34</sup> During 2004, the WFP has been forced by the Zimbabwe government to scale down dramatically its operations, so that it is now feeding around 500,000 recipients, mainly children. Previously, WFP was feeding 5,000,000 people.

Members of government including the President, have insisted that government would not be purchasing and importing any food this year. But it has in the meantime secretly been importing food while denying it is doing so, with another 300,000 tonnes having allegedly been brought in

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<sup>28</sup> PHR-DK, *Vote ZANU PF or starve*, November 2002, page 15.

<sup>29</sup> Ibid, page 14.

<sup>30</sup> Zimbabwe Electoral Supervisory Network, a local NGO, produced an election report on Lupane that documented this.

<sup>31</sup> Sky News, 22 May 2004.

<sup>32</sup> AI, op cit, October 2004, cites Food and Agricultural Organisation/ WFP Special Report, 5 July 2004.

<sup>33</sup> The Zimbabwe Independent, *GMB fails to prove claims of bumper harvest*, 10 September 2004.

<sup>34</sup> Zim Online (SA), *Mugabe spurns food aid again*, 12 October 2004.

recently.<sup>35</sup> Fears are, that the reason the government is shutting the WFP out of some of the most vulnerable areas in need of food, and importing food rather than accepting donor support, is so that it can have total control of all food in the country. Then it can manipulate a hungry populace in a food deficit situation, ahead of the 2005 election.<sup>36</sup> At the very least:

*The Zimbabwean government's lack of transparency on grain availability in the country could jeopardise access to food for millions of Zimbabweans in the coming months... [the government] is gambling with its citizens' rights to food.*<sup>37</sup>

The time of greatest hunger in Zimbabwe is in the first few months of any year: by then those households that may have produced some food in the previous season are likely to have run out, and the next harvest is due only from April onwards. The government has scheduled next year's election for March – the height of the hungry time.

The food situation looks set to continue being a cause for deep concern. The latest reports indicate a serious shortage of both seed and fertiliser ahead of the 2004/5 growing season, and only 32% of arable land has been tilled ready for planting, with less than a month to go before farmers should plant next year's crops.<sup>38</sup> The food deficit will clearly continue for the foreseeable future – as will the corresponding opportunity to manipulate supplies.

Some Zimbabweans who have fled the country have done so as they fear political victimisation resulting in their being denied the right to food. There is a need to recognise this group of persons, which may become quite sizeable in the year ahead. These people fleeing hunger do not fit the usual refugee profile, and are easily dismissed as so called economic migrants. There is a need for countries where Zimbabweans flee to be aware that the hunger of some would be asylum seekers at least, is the product of politicians denying them food because of their presumed support for the MDC.

### **3. Collapse of social services and economy**

*"The longer the problems of Zimbabwe remain unresolved, the more entrenched poverty will become. The longer this persists, the greater will be the degree of social instability, as the poor try to respond to the pains of hunger. The more protracted this instability, the greater will be the degree of polarisation and generalised social and political conflict. To respond to this, the state will inevitably have to emphasise issues of law and order, even as it has ever fewer means to address the needs of the people. As it responds in this manner, the less will it have the possibility to address anything else other than the issue of law and order. The more it does this, the greater will be the degree of the absence of order and stability."*

*[President Thabo Mbeki: ANC letter, May 2003]*

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<sup>35</sup> Zim Online (SA), *Government to import another 300,000 tonnes of maize*, 13 October 2004.

<sup>36</sup> Human Rights Watch, Briefing paper on Zimbabwe, 12 August 2004. Africa Confidential, May 2004, *The government may turn away food aid as part of its ruthless election strategy*; 2003 Amnesty International Annual Report, London, 2004; section on Zimbabwe: *"The authorities and state-sponsored militia continued to deny people access to food aid based on real or perceived political affiliation, and used food aid to buy votes during parliamentary by-elections.... Political manipulation of food aid by officials and supporters of the ruling Zanu PF continued. The food situation remained critical."*

<sup>37</sup> Human Rights Watch, Briefing paper on Zimbabwe, 12 August 2004.

<sup>38</sup> Zimbabwe Independent, *Only 32% of land ready for planting*, 8 October 2004; Zim Online (SA), *Maize seed, fertiliser shortages, hit country*, 12 October 2004.

Apart from political persecution and related hardship, there is untold human misery among the citizens of Zimbabwe, 70% of whom are formally unemployed, 80% of whom live below the poverty datum line, and 50% of whom end 2004 without assured access to food. Social services are collapsing as city councils cannot keep up with inflation and loss of expertise. In Harare, water shortages are now a daily occurrence, and breakdowns in the sewerage system are becoming a serious health risk in overcrowded suburbs. Inflation rates of over 400% have reduced people to a daily battle for basic survival. Zimbabwe has one of the world's highest HIV infection levels, with an estimated 27% of adults being HIV+. Simultaneously, the health system is collapsing under the loss of human and financial resources; Zimbabweans have the lowest access to anti-retroviral drugs in southern Africa. Life expectancy in Zimbabwe has sunk from 52 years in 1980, to 35 years. One in twelve Zimbabweans is an Aids orphan.<sup>39</sup>

The economic collapse is the product of poor governance. The government orchestrated farm invasions led to the almost total destruction of the commercial agricultural sector, which used to be directly responsible for 18% of Zimbabwe's GDP. The indirect downstream contribution of agriculture in the form of spending of agricultural profits and wages amounted to a further 18% of GDP.<sup>40</sup>

Information released from *Zimbabwe's Central Statistical Office (CSO)* in June 2004 has revealed the calamitous decline not only of farming, but of industry in Zimbabwe in the last four years. From 1990 to 1998, the industrial sector showed a small but steady growth; however, there has been a precipitous collapse since then, particularly in the last two years:<sup>41</sup>

Transport industry has shrunk by	62%
Textiles industry has shrunk by	59%
Non-metals industry has shrunk by	52%
Wood industry has shrunk by	52%
Drink and tobacco industry by	44%
Chemicals industry has shrunk by	43%
Food industry has shrunk by	42%
Clothing industry has shrunk by	9%

This collapse of industry has been a knock-on effect of the collapse of agriculture: as agriculture diminished, so did consumer spending on industrial outputs; as some industries consequently produced less, the demand by these industries on others diminished. Run away inflation combined with unviable price controls, poor fiscal policies and an artificial foreign exchange rate have also crippled industry. Government statements of intention to seize industries and a few ad hoc "invasions" of companies have reduced confidence of potential investors.

The IMF closed its Harare office in September 2004, after releasing a report that noted that the fall in Zimbabwe's GDP of 30% in the last five years, with a further fall of 4,5% forecast for 2004, was the result of "inadequate economic policies".<sup>42</sup> It noted that "disorderly implementation" of the land reform programme has "sharply reduced" agricultural production. According to the IMF, the economic decline has had "dire social consequences"; unemployment is high and increasing, social indicators have deteriorated and the HIV/Aids pandemic remains

<sup>39</sup> Numbers of Aids orphans are estimated to be around one million.

<sup>40</sup> Zimbabwe Independent, *The Eric Bloch Column: Steady decline of Zimbabwean manufacturing*, 2 July 2004

<sup>41</sup> The Zimbabwe Independent, 2 July 2004, for the summary of the CSO report used here.

<sup>42</sup> The Financial Mail, (SA), *IMF's strange mouthings hit Bob*, 1 October 2004, for all references to the IMF report in this paragraph.

"largely unchecked". "Severe food shortages" have caused a "vicious cycle of malnourishment and disease".

The IMF cites issues of governance, the rule of law, human rights and property rights that have "severely damaged confidence, discouraged investment and promoted capital flight and emigration". Citing the "disruptive effects" of land reform, the IMF quotes an official report that found that actual resettlement of 134 452 families and 6,4m ha fell far short of government's claimed 350 000 families and 11m ha. Independent reports estimate unemployed farm workers and their families at more than 1m people, or about 9% of the population.<sup>43</sup>

The government has recently expressed an intention to indigenise 50% of all mining ventures, sending insecurity through this sector. The President of the Mining Association has warned that statements from government are jeopardising six projects that would involve substantial investment and job creation. Aquarius Platinum, a major investor in Zimbabwe has warned shareholders of the intended government grab. It is unlikely that major companies will continue with investment in new projects, in the wake of the land invasions, and in the face of looming nationalisation or forced giving of shares to indigenous Zimbabweans.<sup>44</sup>

The government intends to force through parliament before the end of 2004, an NGO Act that will force all NGOs to register with a government council. This Act bans foreign funding for NGOs involved in human rights and governance, and forbids NGOs with any foreigner on their Board from registering. Apart from the serious implications of this for democracy, around 10,000 jobs in the NGO sector hang in the balance.

It is usual in the definition of who should be given refugee status, to exclude those considered "economic refugees". ZANU PF blames the economic collapse on Tony Blair and external forces, yet this is a position that does not stand up to scrutiny. It is ZANU PF's economic choices in the last five years that are primarily responsible for the dramatic demise of Zimbabwe's economy. The economic crisis in Zimbabwe is interlinked with the crisis of governance. As such, clear cut distinctions between economic and political motives for fleeing Zimbabwe are not possible. This is discussed more later in this report in the context of who should be eligible for asylum.

#### 4. **Zimbabwe's biggest export: its people**

*"The time has come for African leaders to stand up and express their concern over the deteriorating human rights abuses in Zimbabwe. If human rights abuses continue to worsen, the political and economic crisis in Zimbabwe will be difficult to heal.... The Zimbabwe crisis has affected the entire Southern Africa region and there is need for African leaders to find quick solutions..."*

*[Archbishop Desmond Tutu, October 2003]*

From the regional perspective, the most obvious outcome of the deepening humanitarian and human rights crisis in Zimbabwe has been the mass migration of its citizens. There are no clear figures on how many Zimbabweans have left in the last three to four years, but estimates are that between 25% and 30% of Zimbabweans are now outside their nation. President Thabo Mbeki has said that around 3 million Zimbabweans are in South Africa; estimates by Zimbabwean

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<sup>43</sup> Ibid.

<sup>44</sup> IDEX (USA), *Zimbabwe aiming for 50% black ownership of mines*, 4 October 2004; Mineweb, (SA), *Aquarius warns of Zim mine grab*, 6 October 2004.

business analysts put the figure who have left for South Africa in the last four years at around 1,2 million, but there may be in addition around half a million Zimbabweans who have lived in or commuted to South Africa for more than a decade.<sup>45</sup> Mozambique allegedly has 400,000 Zimbabweans and Botswana around 200,000. An additional 300,000 are estimated to be in England, with a further scattering of hundreds of thousands around the globe. All in all, an estimated 3,4 million Zimbabweans out of a total population of 12 million are generally assumed to have left their homeland in the last three years.<sup>46</sup>

These figures become more significant when it is taken into account that of Zimbabwe's estimated population of 12 million, more than 50% is under the age of 15, and around a million is over retirement age.<sup>47</sup> As those who have left the country are predominantly young adults, this means that out of the potentially productive population of around 5 million adults, 3,4 million or approximately 68% are now outside Zimbabwe.<sup>48</sup> A Government analyst speaking on behalf of the Zimbabwe Reserve Bank's "Homelink" scheme in September 2004, estimated that:

*"60% to 70% of Zimbabwean adults who should constitute the productive population are living abroad."*<sup>49</sup>

### **Pre-existing cross border movement**

*When is a Zimbabwe immigrant a refugee, when we have a long history of economic immigrants from Zimbabwe?*

[Barry Gilder, Director General, Dept of Home Affairs:  
Interview, October 2004<sup>50</sup>]

The point needs to be made that this exodus since 2000 is *different* from the long-standing cross border movement of Zimbabweans, particularly from Matabeleland, which borders South Africa. There are strong historical and cultural ties between the Ndebele of Zimbabwe and the Zulu in South Africa. Their languages are nearly identical and they have a common cultural ancestry. There were also strong political ties between ZAPU, a Zimbabwean liberation political party that existed until 1987 and the ANC of South Africa.

During the 1980s massacres in Matabeleland, when an estimated 20,000 Ndebele were murdered and thousands more tortured and persecuted by the current Zimbabwean government, there was a large wave of refugees who fled to South Africa from Matabeleland. Many of these never returned; they now have permanent residence and are fully integrated in South Africa.

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<sup>45</sup> News 24 SA, 16 October 2003 cites President Mbeki's figure of 3 million, while Zimbabwe's "Homelink" estimates cite 1,2 million. Associated Press,; *One fourth of Zimbabwe's population has emigrated*, 15 February 2004. These long established migrants are dealt with in the section following.

<sup>46</sup> AP, 15 February 2004. The Zimbabwean Census of 2002 arrived at a figure of 11,5 million Zimbabweans in the country at that point, since when millions have left. The assumed figure for Zimbabwe's population prior to the census was around 12,5 million, suggesting a million may already have left by 2002.

<sup>47</sup> Zimbabwe census, 2002.

<sup>48</sup> Some Zimbabweans aged under 18 who are therefore legally unaccompanied minors have left Zimbabwe, and their treatment and experiences are dealt with separately ahead in this report.

<sup>49</sup> Herbert Nkala, Publicity Committee Chairman for "Homelink", cited in *Zimbabwe Independent*, Editor's Memo, page 8, 24 September 2004. See following section in this report for more on "Homelink". These estimates would also be in some accordance with predictions made by the South African Migration Project in 2001, which found that 55% of Zimbabwean professionals were at that point wanting to emigrate.

<sup>50</sup> All quotes attributed to Barry Gilder in this report are from a videoed interview with the authors on the 18 October 2004.

There has also always been a large group of migrant workers from Matabeleland working as gardeners and in other jobs where their status may not have been regularised, but who have nonetheless made homes in South Africa. Zimbabweans who were well established provided a network and a safety net for others coming and going for shorter periods of time. SiNdebele-speaking Zimbabweans are very hard to distinguish from South Africans and until the more recent influx of Zimbabweans, who now for the first time include many Shona-speakers, not much attention was paid to Zimbabweans by the authorities. The old safety nets are however now no longer enough as the influx has soared, and many of those fleeing to South Africa now, are not from parts of the country that have produced migrants in the past, but are from all corners of Zimbabwe. The old extended cross border family system cannot cope, or is entirely non-existent for many exiles, which is why thousands of Zimbabweans now arrive in South Africa with nowhere to go.

There are no clear figures on how large the group of naturalised and semi-naturalised Zimbabweans might be, but some key informants have put the number at possibly half a million. This 500,000 is **not** taken into consideration in the estimate of 3,4 million who have left in the past four years, or the 1,2 million estimated to have newly arrived in South Africa.

### **Internal loss of professional skills**

Within Zimbabwe, many of the few highly qualified people who remain in the country have left their formal professions for the informal sector, as salaries fail to keep pace with soaring inflation. It is possible to make more money buying and selling black market commodities than to earn a salary as a teacher, nurse, lawyer or engineer.<sup>51</sup> Furthermore, many rural teachers and nurses left their professions and headed into the towns to take other jobs after political persecution linked to elections.

### **Impact on essential services**

Essential services in Zimbabwe have been severely hit by this external and internal exodus of skills. Teachers and nurses in rural areas were among the most targeted groups ahead of elections 2000 and 2002; they were accused of being pro-MDC and hundreds of rural schools were forced to close by war veterans. Teachers were beaten and threatened by state agents, and many fled into exile at this time. Political attacks against health personnel were also documented during 2002, mainly against rural nurses, but also against doctors.<sup>52</sup>

More than 80% of doctors, nurses and therapists who have trained since 1980 have left. The country has fewer than half the doctors needed to staff its hospitals; the University of Zimbabwe has so few qualified lecturers that it has reduced its yearly intake of medical students from 120 to 70. President Mugabe has accused Britain and other western nations of “stealing” Zimbabwean skills, but those who leave cite political persecution, poor salaries and appalling conditions in hospitals, which are without resources including essential drugs.<sup>53</sup>

During the compilation of this report, the authors spoke to dozens of highly qualified Zimbabweans who have left their nation as the result of political persecution. They have left

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<sup>51</sup> IRIN, *Skills lost in “internal” brain drain*, 13 August 2003.

<sup>52</sup> ZHRNGOForum, *Teaching them a lesson*, 2002, documents attacks on schools and teachers around the Presidential election; Solidarity Peace Trust, September 2003, has sections relating youth militia attacks on health professionals, people in clinic queues, teachers, school buildings (pp46-49).

<sup>53</sup> The Observer (UK), “*Mugabe says we are being stolen – all we want is better pay*”, 10 August 2003.

well-paid professional jobs, and find themselves “living like rats” in Johannesburg, without asylum status and without formal employment.<sup>54</sup>

### **“Harvesting” the exiles: Homelink**

The Zimbabwe government itself has poured enormous publicity into launching an international programme called “Homelink” that aims to persuade Zimbabweans abroad to send home their foreign earnings through official banking channels, as opposed to selling them on the black market; by so doing it has acknowledged that Zimbabwe’s greatest expanding export at this time is its skilled personnel. With the agricultural and tourist sectors reduced to a fraction of their previous foreign exchange potential, it is from the hard lives of Zimbabweans in exile that the government now actively seeks to get a return.<sup>55</sup>

In September 2004, it was possible to sell US\$ 1 for around Z\$ 5,600 in a Zimbabwean bank, but on the “black” market, the US\$ was selling for Z\$ 7,700. This means it is more attractive for foreign earnings coming back to Zimbabwe to change hands illegally. The Homelink policy has clearly not done as well as government projected: Zimbabweans abroad are estimated to send home in excess of US\$ 300 million per month. Yet the Reserve Bank announced in September that their total returns via Homelink between 1 January and 1 September 2004 were US\$ 36 million.<sup>56</sup> Most of this was returned in the early months of the system, when Zimbabweans received their overseas payments in foreign exchange; they are now paid in Z\$ at the controlled rate. Returns via Homelink equal 1,5% of the estimated monthly foreign returns from exiles, indicating a reluctance by Zimbabweans in the diaspora to use this system.

### **Implication of the exodus for democracy**

*The absence from Zimbabwe of possibly 50% of its adult population has dire implications for democracy and the outcome of elections in Zimbabwe.* Zimbabweans in exile are denied the right to postal ballots, yet it can be assumed that many of the most politically alienated and dissatisfied Zimbabweans are those who have made the choice to leave the country. By denying this half of the population the right to vote, ZANU PF is entrenching its own position. Zimbabweans in England, USA and South Africa were recently canvassed by Zimbabwean government officials to send their money home via official channels, yet many have refused to support the Homelink scheme, stating that they objected to the government wanting their money, but not their vote.<sup>57</sup>

Although it remains embroiled in this seemingly interminable humanitarian and political crisis, Zimbabwe is constitutionally bound to have general parliamentary elections during 2005. Without the participation of that half of the adult population that is now abroad, any election will not be a true reflection of the will of the Zimbabwean people. Yet the vast majority of those we spoke to long to return to their homeland, if only political and humanitarian conditions there would allow them to do so.

### **Summary**

Zimbabweans are leaving their nation in their millions for a variety of reasons:

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<sup>54</sup> Personal interviews; Johannesburg, October 2003, and Durban, March 2004.

<sup>55</sup> The government has sponsored a massive national and international advertising campaign that continues daily.

<sup>56</sup> *The Zimbabwe Independent*, 24 September, op cit, for figures.

<sup>57</sup> SWRadio Africa, *RBZ team mobbed by angry Zimbabweans*, 14 June 2004.



- Political persecution including torture, destruction of property, and harassment
- The humanitarian crisis and food deficit: hunger in Zimbabwe is not a simple socio-economic issue, but a political one. The government has a proven history in the last few years of manipulating access to food on party political lines
- The politically driven economic collapse has driven thousands into the diaspora, seeking jobs.

## PART TWO

### Destination - South Africa:

#### Legal, administrative and social issues involving refugees

##### 1. “Asylum seekers” and “Refugees”: South Africa’s legal obligations

All nations have the right to control the movement of people across the borders. All governments have to protect the rights of their own citizens and tax-payers, and to ensure that people entering the nation have bona fide reasons for doing so, and means of supporting themselves in legal ways. At the same time, most nations acknowledge a responsibility for protecting the rights of those people who flee persecution in their home country, and the need to recognise refugees. For this reason, there are various international conventions protecting the rights of refugees, and many nations also have their own refugee acts.

South Africa is signatory to the:

- Convention Relating to Status of Refugees (UN, 1951)
- Protocol Relating to Status of Refugees (UN, 1967)
- Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU, 1969)
- Universal Declaration of Human Rights (UN, 1948)

In December 1998, the **Refugees Act** of South Africa became law.<sup>58</sup>

The South African Refugees Act of 1998 prohibits Home Affairs officials from deporting persons in certain circumstances. In 2000, the Regulations or implementing procedures relevant to this Act were published. Procedure by Home Affairs in implementing the Act has to be in accordance with the Regulations.<sup>59</sup>

In terms of the South African Refugees Act, somebody has the right to claim refugee status if, on return to the country of origin -

<sup>58</sup> This replaced the old “Aliens Control Act”, which used to grant refugee status under Section 41.

<sup>59</sup> The Regulations are binding, but not as entirely fixed as the rights given to refugees in terms of the Refugee Act itself. For example, the Regulations indicate that 180 days is a fair length of time for an asylum seeker to wait to have his/her application accepted or refused. However, this time length is almost never adhered to, with refugees from all nations often having to wait years for an application outcome.

- a) he or she may be subjected to persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group
- b) his or her life, physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or other *events seriously disturbing or disrupting public order in either part or the whole of that country*.<sup>60</sup>

[authors' emphasis]

### “Asylum seekers”

In terms of the South African Refugees Act of 1998, persons entering the country and wishing to apply for political asylum, have to present themselves at a Home Affairs Refugee Reception Office (RRO) in the country. RROs are currently located in Johannesburg, Pretoria, Cape Town, Durban and Port Elizabeth. There are plans to open a reception office in Musina, near the border with Zimbabwe but this has not yet happened.

Persons should then have a preliminary interview to assess whether they might be eligible for asylum, and if they are, then they are issued with an *asylum seeker permit (ASP)*. This is NOT refugee status, but indicates that the person is in the process of being considered for refugee status.<sup>61</sup> An ASP entitles the holder to remain in South Africa while their application for asylum is processed. However, the permit is only *valid for one month* at a time, meaning that asylum seekers have to return to the reception office once a month for a renewal stamp. The asylum seeker also has to return to the office of issue, meaning that it is impossible to relocate within South Africa while the application is in process.

### Work and study

Prior to December 2002, ASP holders did not have the right to work or study although they could apply for this after six months of waiting to be processed. In December 2002, the Legal Resources Centre in Cape Town won a challenge in the High Court stating that withholding the right of asylum seekers to work and study was in violation of the South African constitution.<sup>62</sup> However, RROs have not always applied this ruling; the Johannesburg office still allegedly issues ASPs that state that study and work are prohibited, and other offices are reportedly still applying the six month rule, and are not informing asylum seekers of their right to have the prohibition clause lifted.<sup>63</sup>

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<sup>60</sup> Refugees Act 1998, Chapter 1, 2.

<sup>61</sup> In reality, these first interviews are not being done; the very few who manage to access the office are given ASPs without any assessment of how legitimate their claims are. This places into the system many who may not be eligible and these applicants become an extra burden on the system, needing renewal stamps every month for years, before processing and eventual denial of asylum.

<sup>62</sup> Cited in CASE, op cit, page 96 ff.

<sup>63</sup> A lawyer reported in October 2004 that on being questioned about this, the Johannesburg reception office claimed a problem in changing their stationery, as they are using an old stencil to produce asylum seeker permits that still states work and study are prohibited! If asked to do so by refugees, they draw a line with a pen through this prohibition and hand write on to the permit that work is permissible. However, needless to point out, not all asylum seekers know they have a right to work and therefore do not insist on the alteration, and prospective employers have a problem accepting the hand alterations as legitimate.

## “Refugees”

Once an application has been processed and asylum granted, the person is officially a refugee. A refugee permit is issued for two years, and refugees have many of the same rights as full South African citizens, including the right to employment, and to access health care and education. A refugee may also have a UN Convention Travel Document issued by the Government of South Africa and may leave the country without jeopardizing their refugee status. Asylum seekers may not leave the country without being deemed to have given up their claim to asylum. After two years, if the review process deems that the person is likely to remain a refugee indefinitely, he/she may apply for South African citizenship.

### Refugee status – a future based decision

To qualify as a refugee, it is not necessary to prove personal experience of persecution *prior* to having fled your nation, only that events of public disorder are taking place in your home country and that if you are forcibly returned, your “physical safety or freedom may be threatened”.<sup>64</sup> The decision as to whether a person is granted asylum or not, is a *future based* decision, an assessment of whether the home country is safe to return to, rather than whether you were tortured before you left. However, in the opinion of human rights lawyers in South Africa, in the case of those tortured before fleeing, the case for asylum should be unambiguous.<sup>65</sup>

South African officials maintain that only a very few Zimbabweans are eligible for asylum. There is not a general official acknowledgement that “events of public disorder” are taking place on a consistent basis in Zimbabwe. *Barry Gilder, Director General of Home Affairs*, in October 2004, was asked why he thought so many millions of Zimbabweans were leaving their nation:

*...I would imagine a large number of them are [leaving] for economic reasons. It is a well known fact that the Zimbabwe economy has not been healthy of late... It's as straightforward as that...*

An absence of acknowledging there are legitimate political reasons for leaving Zimbabwe is a cause for concern; the same ambivalence is experienced by Zimbabweans when dealing with Home Affairs officers. Gilder consistently told us that RROs are under strict instructions to give ASPs to Zimbabweans, but he himself seems reluctant to acknowledge there are more than a very few genuinely deserving of them.

Paradoxically, the South African government's stance that there is no public disorder is facilitated by the almost total shut down of the independent press and civil society activities, which has meant that there is ever less news in the international forum drawing attention to state repression, including torture and organised violence, in Zimbabwe.

However, there is a very qualified acceptance that some Zimbabweans are deserving of refugee status, although even this limited space has been hard-won through the courts by South African human rights lawyers acting on behalf of Zimbabweans. The general assumption is that the vast majority of Zimbabweans in South Africa are illegal economic migrants, who have not suffered political victimisation and who should be rounded up and deported.<sup>66</sup>

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<sup>64</sup> The Refugees Act 1998, Chapter 1, 2.

<sup>65</sup> Interviews with lawyers at Lawyers for Human Rights and Wits Law Clinic, 2003 and 2004.

<sup>66</sup> The issues of xenophobia and deportation are dealt with separately and in more detail ahead. Legal cases are outlined in section following.

In the words of Barry Gilder, “the UN Convention and our own laws do not allow for economic refuge”.<sup>67</sup> While there are unquestionably many economic migrants, the scale of the political problem and the number of politically displaced persons seems to be underestimated by Home Affairs. Furthermore, the destruction of the economy has been wilful and avoidable and done for the political gain of the ruling party.<sup>68</sup> This, too, makes today’s economic migrant different to yesterday’s – whether or not the laws are capable of distinguishing this.

### **Political denial of food – a threat to physical safety?**

It seems there is an opening for a test case in the South African courts to determine whether or not being denied the right to purchase food because of your presumed political affiliation constitutes a “threat to physical safety”. Home Affairs officials seem not to be aware of the fact that at times who has access to food – and who does not - is a highly politicised business in Zimbabwe and *not* a simple case of poverty and economic collapse.<sup>69</sup> As discussed earlier in this report, the Zimbabwe government is in violation of the ICESCR by having failed to protect food availability and access for its citizens, regardless of their political affiliation. It appears the government has knowingly misrepresented food stocks currently in the country to UN bodies, and has placed its people at risk as a result. Food deficit situations have been repeatedly abused by government on party political lines in the last four years.<sup>70</sup> The collapse of the economy and food security in Zimbabwe cannot be separated from issues of governance: people who flee for so-called economic reasons often see their decision as politically motivated; the arena is blurred. The South African Refugee Act has only been in effect since 2000: there is scope for the Courts and current experiences of political displacement in the region to define how it should be applied, and to consider, for example, whether it is ethical to forcibly return to Zimbabwe, those who have been actively denied food by their government.

## **2. The battle for Zimbabwean refugee rights**

*The situation seems to be the same. There is not a significant increase in Zimbabwean applications for asylum...*

[Barry Gilder, Interview]

*To admit the scale of the crisis, of the refugee situation here, would be to admit the gravity of the situation in Zimbabwe – I feel there is a resistance to admitting just how bad things are.*

[Elinor Sisulu, Crisis in Zimbabwe, Johannesburg, October 2003]

The perception that Zimbabweans are given ASPs only with the greatest reluctance, and are given full refugee status with even greater reluctance, was confirmed by human rights lawyers from both the Johannesburg office of Lawyers for Human Rights and the Wits Law Clinic, both of whom have represented Zimbabwean refugees in the Courts.<sup>71</sup>

For some years after human rights abuses began escalating in Zimbabwe, the South African Home Affairs refused to grant any ASPs to Zimbabweans. Although since April 2000 both

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<sup>67</sup> Interview with Dir Gen of Home Affairs, 18 October, 2004.

<sup>68</sup> AI, October 2004, op cit.

<sup>69</sup> See previous sections and footnote 27 for some of the many documents and media cover of politicisation of food.

<sup>70</sup> AI, October 2004, op cit.

<sup>71</sup> References to “human rights lawyers” in this report from hereon refer to lawyers from the Johannesburg Lawyers for Human Rights and the Wits Law Clinic.

Zimbabwean and international NGOs have been documenting politically motivated torture, murder, massive internal displacement and property destruction, predominantly at the hands of the Zimbabwean State and its agents,<sup>72</sup> it was only in June 2002 that South African authorities began to recognise that Zimbabweans might flee for reasons of political persecution.

Home Affairs only agreed to begin recognising Zimbabweans as asylum seekers after the Wits Law Clinic prepared a test case in June 2002, representing five Zimbabweans who had fled to South Africa. One asylum seeker was a woman who had been displaced from a commercial flower farm as a result of farm invasions, and four were school teachers who had been badly assaulted by war veterans in rural schools; all had been accused of being supporters of the MDC. On the eve of the urgent application being brought before the Court, demanding Home Affairs issue ASPs, Home Affairs settled out of court by agreeing that the five were entitled to seek asylum. This set a legal precedent, and since June 2002, around 5,000 Zimbabweans have been granted ASPs; approximately 20 have been granted full refugee status.<sup>73</sup>

The landmark decision by Home Affairs in June 2002 that Zimbabweans have a right to asylum is one reason that immigration officers in Refugee Reception Offices ask to see passports; lawyers confirmed that if those in line have passports showing they entered South Africa *prior* to June 2002, they are being automatically *denied* the right to claim ASPs, and are considered illegal immigrants subject to deportation. It is only those who entered South Africa *after* the Home Affairs ruling in June 2002 that are even considered for asylum seeker status.<sup>74</sup>

In spite of the Court ruling, and in spite of “strict instructions” from the Director General of Home Affairs to grant asylum to Zimbabweans,<sup>75</sup> the authors were given numerous accounts of these papers being refused, and of would-be Zimbabwean asylum seekers being told by Home Affairs officials that they had no right to asylum, as “there is no civil war in Zimbabwe”. Police who pick Zimbabweans up from the streets reportedly say the same thing - “there is no war in Zimbabwe.”

### **Victimisation: a repeated experience in Zimbabwe**

The experience of the authors and of others documenting the pattern of human rights violations over the last four years, shows that there is a high likelihood of the *same individuals or families* being victimised repeatedly, with assaults, torture, property loss and threats, every time an election looms. It is the same individuals who are likely, on political grounds, to be denied access to food and other resources, including at times health care, schooling for their children and borehole water.<sup>76</sup> A report produced for the *Zimbabwe Institute* in June 2004 summarises the human rights violations suffered by sitting opposition Members of Parliament since 2000. It provides a shocking listing of multiple incidences of violations against persons who in most countries would be offered the full protection of the law, by virtue of their position in

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<sup>72</sup> See appendices for a list of some reports widely available for the period from April 2000 – May 2002.

<sup>73</sup> Refugees International, *Zimbabweans in South Africa: denied access to political asylum*, 14 July 2004.

<sup>74</sup> See Appendix One, Case Two, for example of person denied asylum seeker permit on grounds of entering South Africa prior to June 2002.

<sup>75</sup> Barry Gilder, Director of Home Affairs, told the authors that there was no policy of excluding Zimbabweans from asylum seeking, in an interview in October 2004.

<sup>76</sup> PHR-DK; *Vote ZANU PF or starve – Zimbabwe: August to October 2002*, November 2002, has detailed case histories of political abuse of food, and also of denial of access to health care and other community based resources, in addition to documenting cases of political torture. PHR-DK; *Zimbabwe: Post Presidential election March to May 2002*, May 2002 details political abuse of both government administered and donor food. PHR-DK, *The Presidential election: 44 days to go*, January 2002 reports torture victims being denied treatment at rural clinics on political grounds. [www.solidaritypeacetrust.org.za](http://www.solidaritypeacetrust.org.za) for all these reports.

parliament.<sup>77</sup> If even MPs are treated in the manner documented, surviving multiple assassination attempts, destruction of property, even torture in police cells, with no police action being taken against perpetrators, then it should come as no surprise that ordinary members of civil society or the MDC are also abused multiple times with impunity.

Cases in the current report confirm that threats and assaults against people and families are repeated.<sup>78</sup> *Photograph 5* is of a victim who had his house burnt down in 2000 – and then had his barely reconstructed house burnt down again in 2002, as well as being tortured himself on both occasions. In January 2002, he and his wife were pulled out of bed in the middle of the night, stripped naked and tortured in front of their minor children, who then had to watch their house burning, while their parents lay unconscious. This victim lay outside his local clinic without treatment for 24 hours, because he was an MDC supporter.<sup>79</sup> He eventually accessed private treatment provided by a human rights organisation.



*Photographs 5 and 6: Supporters of MDC assaulted with knives, screw drivers and barbed wire on 17 January 2002, ahead of the Presidential election*<sup>80</sup>

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<sup>77</sup> Zimbabwe Institute, *Playing with Fire*, June 2004. see website [www.solidaritypeacetrust.org.za](http://www.solidaritypeacetrust.org.za) for full report.

<sup>78</sup> Appendix One, cases One to Four are all of political victims where either the individual or the family of the individual has been involved in multiple incidents of threats and abuse.

<sup>79</sup> PHR-DK Jan 2002, for complete case history. The current authors have ascertained that this man has not returned to his rural home; whether he is internally or externally displaced is not known.

<sup>80</sup> PHR –DK; *The Presidential election: 44 days to go*, January 2002 for full case histories.



*Photograph 7: Samuel Khumalo, a trade unionist, seeks medical assistance after being tortured in police custody, in November 2003. This same unionist was arrested again in October 2004*<sup>81</sup>

The person in *photograph 6* was stripped naked and whipped with barbed wire on the same night by the same perpetrators as the previous case. He had one eye poked out with a screwdriver, leaving him blind in this eye. It seems common for the same perpetrators to operate with impunity in a particular area, attacking people again and again without being apprehended.<sup>82</sup>

In a 2003 report, Themba Lesizwe found that among 48 victims of torture who had fled to South Africa and whom they interviewed, the average number of separate experiences of torture was three per person, again indicative of a pattern of the same individuals being targeted on multiple occasions.<sup>83</sup>

As Zimbabwe heads into yet another pre-election phase, with general elections looming in 2005, it is predictable that once more human rights violations of various types will escalate, and that in many instances, those targeted before, will be targeted again – by the same perpetrators. Many of these will no doubt flee as persecution mounts, but will they receive asylum seeker status?

### **3. Attitude to Zimbabweans within Home Affairs Refugee Reception Offices (RROs)**

There have been repeated claims in the last year that the Home Affairs RRO in Johannesburg has an implicit policy of making it difficult for Zimbabweans to gain asylum seeker status. Home Affairs consistently states that very few Zimbabweans are trying to apply for asylum seeker status, referring to the fact that on their records, Zimbabweans do not even make the top ten nationalities seeking refugee status in South Africa. However, others claim that the reason so few Zimbabweans show up on the computer database as asylum seekers, is that they are being denied access to the reception offices and therefore do not enter the official statistics.

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<sup>81</sup> Solidarity Peace Trust, *Disturbing the Peace*, July 2004, for full case history of Khumalo. [www.solidaritypeacetrust.org.za](http://www.solidaritypeacetrust.org.za) for this report.

<sup>82</sup> This man's father was murdered by 5 Brigade during the 1980s massacres at the hands of the current government. People who are known political activists have been targeted repeatedly not only in the last five years, but also in previous eras, such as the 1970s war of liberation, or during the massacres under the Mugabe government that took place in Matabeleland in the 1980s. See PHR-DK, January 2002, op cit, for full case histories including "Previous experience of violence" for these victims.

<sup>83</sup> Tree of Life and Piers Pigou, *Out of the frying pan into the fire: a report on Zimbabwean political refugees in South Africa*, Themba Lesizwe, May 2004.

*Refugees International* (RI) observed in July 2004 that Zimbabweans *do* face more barriers than other nationalities, in spite of denials from Home Affairs that this is the case.<sup>84</sup> In their report, they cite their own observation that Zimbabweans start queueing more than 24 hours before the offices open to Zimbabweans every Tuesday, and that on the day RI were there, the person who was *second in line* failed to access the offices, as Home Affairs only allowed in **one** Zimbabwean that week.<sup>85</sup>

In the 2003 survey conducted by *Themba Lesizwe*, 34 out of 48 Zimbabwean exiles who gave detailed interviews claimed to have tried to get asylum seeker permits, and only 4 had actually succeeded in obtaining one. In the assessment of Themba Lesizwe, all 48 qualify as political asylum seekers, having all been tortured in Zimbabwe prior to fleeing their country.<sup>86</sup>

RI comment that there is some official resistance in Home Affairs to the idea that Zimbabweans have *any right at all* to qualify as refugees, the court ruling notwithstanding. When RI personnel interviewed staff in the RRO in Johannesburg, they informed RI that Zimbabweans were not a priority when issuing ASPs, because “there is no civil war in Zimbabwe, so there is no reason to apply... we do not put them at the top of the list”.<sup>87</sup> If this is the attitude of the very individuals in whose hands the fate of Zimbabweans lie, then it is no surprise that Zimbabweans face an almost insurmountable task in getting asylum seeker permits.

#### **4. Refugee Reception Office, Johannesburg: Observations of current authors**

*“There is no instruction, no policy to disadvantage Zimbabweans”*

[Barry Gilder, interview]

As the vast majority of Zimbabweans are in the greater Johannesburg area, and have to apply via the Johannesburg RRO for asylum, we have centred our own observations at two different Johannesburg RRO locations over one year.<sup>88</sup> We have found that there is a dramatic lack of capacity in the Johannesburg Home Affairs office to cope with the numbers of refugees from any and all nations, and *a clearly discernable lack of good will towards Zimbabwean refugees in particular*.<sup>89</sup> This statement is made based on the following personal observations, key informant interviews, and on comments received from those in the queues.

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<sup>84</sup> RI, 14 July 2004, op cit. Barry Gilder in his interview with the authors was also adamant that asylum seekers from all countries faced the same problems with the system backlog.

<sup>85</sup> RI, 14 July, op cit. The Guardian (UK), *Flails and insults await Mugabe refugees*, 2 January 2003 also claims that there is an obstructionist policy towards Zimbabweans seeking asylum, with guards whipping people in the queue and demanding bribes.

<sup>86</sup> Themba Lesizwe, 2004, op cit.

<sup>87</sup> RI, 14 July 2004, op cit.

<sup>88</sup> Key informant interviews, October 2003. Different sources place Zimbabweans in Johannesburg alone at between 500,000 and 1,000,000. There is no clear data on numbers, as discussed previously.

<sup>89</sup> CASE, *The National Refugee Base Line Survey* of November 2003 noted problems with this same office with regard to refugees of other nationalities, saying “applicants living in Johannesburg and reliant on the Braamfontein Refugee Office were by far the most likely to experience the different barriers [to getting ASPs]”. The Durban office is reported by refugees and NGO staff we interviewed to have a similar attitude to Zimbabweans as the Johannesburg office. No comment can be made on the other RROs in this regard.



- The Johannesburg RRO office has had no fewer than 4 venues in the last 12 months, and for long periods of time, there has been no functioning office at all during the last year. Not only Zimbabweans but asylum seekers of all nationalities have been sorely tested to keep up with the RRO moves in the last year.
- The RRO now in Rosettenville, is not sign-posted in any way, and is accessed down a narrow side passage littered with garbage. It took our team 40 minutes of searching in a motor vehicle and on foot before we found the office.
- Zimbabweans are allowed to apply for asylum only on Tuesdays, along with countries from the “Horn of Africa”.<sup>90</sup> They start queuing on Sunday or Monday for Tuesday’s chance to be processed for asylum seeker papers ie. Zimbabweans queue for up to 24 hours ahead of the office opening to them on Tuesdays. This was also observed by RI.<sup>91</sup>
- On the six Tuesdays of observation in Braamfontein in 2003, the Zimbabwean queue was consistently *between five and ten times longer* than the “Horn of Africa” queue. Yet the other queue moved extremely quickly into the building while the Zimbabweans were kept waiting on the pavement, with a reported average of *between 5 and 10 Zimbabweans being accepted a week* into the RRO. The queue of Zimbabweans numbered hundreds every week – between 300 and 500 on weeks of observation.<sup>92</sup>
- To summarise – despite queuing for 24 hours or more, around 2% of Zimbabweans accessed the office on any Tuesday on the 6 days we observed. On the same days, most or all people in the Horn of Africa queue accessed the office.
- On being questioned why the two queues moved at such different paces, with Horn of Africa countries getting preference over Zimbabweans on entering the RRO, the Head of Immigration in the Braamfontein office said they process Zimbabweans more slowly because “their queue is disorderly”.<sup>93</sup> It was not our observation that the queue was disorderly, although it was considerably longer than the Horn of Africa queue; however by late morning when people who had been queuing for two days could observe the other queue moving in steadily and their own standing absolutely still, they tended to start asking questions of officials, and the queue at this time widened to fill most of the pavement.
- Among those interviewed, it is common to find individuals who have queued *in excess of 15 weeks running*, and who have nonetheless failed to even enter the RRO. Some individuals have been in the country for more than a year and return from time to time to try to access the RRO and fail.
- We spoke to individuals who had made it into the building as far as the first desk, only to be then thrown out altogether for not having a valid passport or ID on them, although this is clearly in contravention of South African refugee law.<sup>94</sup>
- South African officials were personally witnessed going down the queue asking for those who had a valid passport with visa and South African entry stamp, to give them preference in accessing asylum seeker permits. This again is illegal.
- This process of checking passports is also used to identify those who entered South Africa before the June 2002 decision on asylum seeker status for Zimbabweans- see

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<sup>90</sup> The torn piece of A4 half way down the alley, which is the only indication that this is indeed where the RRO lies, tells its own story: the weekly calendar shows that on Tuesdays, people may apply from “Horn of Africa (Zimbabwe)”. Even on the sign the claim to asylum by Zimbabweans is bracketed, implying it is less legitimate!

<sup>91</sup> Refugees International, *South Africa: UNHCR inattention places Zimbabweans in jeopardy*, 11 August 2004.

<sup>92</sup> The relative queues and their movement is well captured in the video produced by Solidarity Peace Trust to coincide with this report, as are other claims in this section.

<sup>93</sup> October 2003, personal interview.

<sup>94</sup> The issue of IDs is dealt with in more detail ahead.

previous section. Such individuals are thrown out of the queue and are in danger of deportation.<sup>95</sup>

- The Home Affairs guards were captured by our team on video beating Zimbabweans with sjamboks (whips) in the queues outside the Braamfontein RRO, in the last week of October 2003. This supports unequivocally the many claims we received from asylum seekers of being assaulted by guards outside this RRO.
- Our video camera person was told to move away from the Braamfontein office in October 2003, by touts who said no more Zimbabweans would be allowed into the RRO until she was gone. We were later informed that as soon as the camera was gone, people who had not been in the queue were led into the RRO by touts. Those in the queue assumed that this group were among the many who bribe to get papers, and the touts had not wanted them caught on camera entering the building without queuing.
- Those in the queue indicated to us those who they knew to be touts, “selling” asylum seeker permits.<sup>96</sup>
- Asylum seekers queuing and human rights lawyers also noted to us that when observers of one sort or another – people with cameras, human rights officials – are outside the RRO, then more people are allowed off the pavement and into the waiting area inside, but we were also informed that this does not mean more people are actually processed on these days. Rather, people can sit inside the building instead of on the pavement for hours, and then be ejected without processing at the end of the day. We could not independently verify this by speaking to somebody that had been through this, but heard it from multiple sources including South African lawyers.
- At the Rosettenville RRO in October 2004, we were informed by those in line that for the previous three weeks running, **no** new claims for ASPs had been issued, with the reason being given that the “computers were down.” By 10.30 am on the day we were there, not a single new ASP had been processed, and the rumour in the queue was that the computers were down again, for the fourth week running, although no Home Affairs official had bothered to clarify this situation by mid morning.
- Human rights lawyers confirmed that the “computers are down” is a constant excuse for not processing ASPs. One lawyer told us that during 2003 there had been several consecutive months when not a single ASP had been issued on Tuesdays, when Zimbabweans are there. Excuses had included the computers being down, and the person with the keys to the safe being out of the office, week after week.

## Identification papers

In order to be given an ASP, refugees do **not** have to produce formal identification. The Refugee Act accepts that if a person is being persecuted and has to flee in adverse conditions, it is not always possible to cross borders with a passport or other form of identification to hand. Nationality and precise identity are subject to confirmation through a process of interviewing by Home Affairs. Of course it simplifies the process of identification if the asylum seeker can produce photo identity of a credible nature, but it is illegal to deny persons the right to even proceed with their claim if they cannot do so.<sup>97</sup>

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<sup>95</sup> See Appendix One, Case Two, for testimony of an asylum seeker arrested when presenting at the RRO in Durban, for having a passport that showed he had entered RSA in November 2001.

<sup>96</sup> For more on bribery and corruption within Home Affairs, see ahead.

<sup>97</sup> Proving identity without a passport can be problematic. Prospective refugees cannot approach their embassy in South Africa for help in establishing nationality, as if they do so this is taken as evidence that they are not afraid of their home government if they can approach its officials. Yet the South African authorities can approach the same potentially hostile embassy officials for proof of identity in order to deport people to the right country, effectively informing these officials that a particular person is about to be deported.

*Yet we were informed by dozens of would-be asylum seekers that they had been turned away from queues outside the reception office in Johannesburg because they could not produce a passport. This is clearly in violation of South Africa’s Refugee Act. The Head of Immigration in Braamfontein denied in an interview in October 2003 that his employees insisted on passports from Zimbabwean refugees, saying they only needed some form of ID, but to insist on ID is also not legal. In spite of this official denial, when the authors were themselves outside reception offices in Johannesburg, Home Affairs officials came down the line saying they were only looking for people with passports.<sup>98</sup>*



*Photograph 8: an estimated 500 Zimbabweans wait outside the Johannesburg refugee reception office on a Tuesday in October 2003, hoping for asylum seeker papers. Only 5 accessed the office on this Tuesday: this is a fairly normal weekly intake of Zimbabweans*



*Photograph 9: minutes after the previous picture was taken, Home Affairs guards started an unprovoked attack on the Zimbabweans, whipping them with sjamboks*

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<sup>98</sup> CASE, November 2003, op cit, reports that asylum seekers from other parts of Africa excluding Zimbabwe reported “not having documents from their home country” as a barrier to receiving ASPs in only 3% of cases. In our observation, the issue of “no documents” is being used to discriminate against Zimbabweans in a higher percentage of cases in the Johannesburg RRO.



*Photograph 10: October 2004 - a year later in Rosettenville: the RRO is now accessed down an un-signposted alley. The same long queues of Zimbabweans are there, still mostly failing to access the office*

The 2003 *National Refugee Base Line Survey*, which deals with refugees from other nations excluding Zimbabwe, noted around 49% of their respondents faced barriers in gaining an ASP. In relation to the Johannesburg/Braamfontein office this study found:

35% of those who reported barriers, claimed problems in accessing the RRO  
 35% “ “ reported paying bribes

While our own observations are not statistically validated, our assessment based on several hundred interviews, 200 questionnaires and 7 mornings of observation at the RRO, have left us with the impression that almost *no* Zimbabwean accesses an ASP without encountering barriers. It is possible to eventually receive an ASP, but the process is invariably problematic.<sup>99</sup>

It is interesting to note that the 2003 *National Refugee Baseline Survey* found that asylum seekers from obviously “refugee producing” countries – ie countries where there is/was a war, such as Angola, Rwanda and DRC - were the *least likely* to experience problems accessing RROs, and asylum seekers from Uganda, Ethiopia, Somalia were *most likely* to experience barriers getting access to RROs, because the officers do not see these countries as genuinely “refugee producing”. This report also noted that the Braamfontein office was the worst in this regard.<sup>100</sup> This finding of the CASE study is consistent with the experience of Zimbabweans, who consistently reported being told - “there is no war in Zimbabwe.”

There is an urgent need to educate officers in these RROs, including the guards at the doors, that it is not their prerogative to decide which countries are refugee producing. There **is** a war in

<sup>99</sup> In a year, we did not speak to a single Zimbabwean who had accessed an ASP without problems. A study by Themba Lesizwe (op cit) found that out of 34 torture victims from Zimbabwe who had tried to access ASPs, only 4 had eventually succeeded to do so. Although this is a small sample, it reflects an 88% total barrier to ASPs, and does not report the problems faced or time taken by the other 4 before they received their ASPs.

<sup>100</sup> CASE, op cit, page 100.

Zimbabwe. It is “not a bloody war: our war is different; it’s a silent, but it’s a cunning war,”<sup>101</sup> - and it is sending thousands of people fleeing into the region.

It is miraculous that hundreds of Zimbabweans and other asylum seekers still turn up every week to queue when this is the quality of service they receive. But when the outcome of being caught without an asylum seeker permit is deportation, people are left with no real options at all but to queue week after week in the face of official obstruction and poor – or no - delivery of service.

### **Time taken for processing of asylum seeker claims**

It is quite clear that the time being taken to process claims by any asylum seeker is far in excess of a reasonable limit. In terms of the **Regulations for the Refugees Act**, gazetted in 2000, reasonable time limits are recommended. Schedule 3 states that:

- applications for asylum will generally be adjudicated by the Department of Home Affairs **within 180 days of filing a completed asylum application** with a Refugee Reception Officer.
- an interview before a Refugee Status Determination Officer should take place on a date specified on the asylum seeker permit, **normally within 30 days** of the asylum application being completed.<sup>102</sup>

While these time limits are not legally binding, it is quite apparent that Home Affairs is both under resourced and inefficient, as around only 20% of applications from asylum seekers from any nation are being processed in the stipulated six months. CASE report that since the 1998 Act came into effect in April 2000, approximately 71% of asylum seekers who have applied, are still awaiting an outcome on their applications. 38% of these have been waiting up to 2 years, and another 33% have been waiting two years or more.<sup>103</sup>

Out of approximately 5,000 ASP holders of Zimbabwean nationality who have applied since June 2002, approximately 20 have been granted asylum<sup>104</sup>; even in the context of the delays experienced by other asylum seekers, this suggests an abnormally slow process:

*0,4 % of asylum claims from Zimbabweans have been positively finalised in the last 2 and a half years!*<sup>105</sup>

This would suggest that Zimbabwean applications are being kept on the bottom of the pile.

### **Lack of capacity in RROs**

In an interview in October 2003, the Head of Immigration of the Braamfontein office indicated that he was dramatically under-staffed. There were only 4 members of staff in his office qualified to finalise asylum applications and grant or deny asylum. This included himself, and he

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<sup>101</sup> Steven Paradza, Zimbabwe Political Victims Association in Johannesburg used this phraseology, July 2004.

<sup>102</sup> Government Gazette 6 April 2000; Regulations for Refugee Act, 1998.

<sup>103</sup> CASE, op cit, pages 92 ff.

<sup>104</sup> Gilder was unable to provide exact figures for either group; figures here are RI's from August 2004 (op cit). .

<sup>105</sup> As the figures for Zimbabweans with ASPs was 2,000 at the end of last year, at least this number have now been waiting up to two years, with the balance waiting up to a year. No figures on numbers of asylum claims rejected have ever been indicated; Gilder did not have the figures to hand.

had many other duties as Head of Immigration. He stated that his aim was to increase finalisations of applications to 8 per qualified staff member per week. This would mean the Braamfontein office could hopefully in the future finalise 32 applications per week. However, with a backlog in South Africa of around 80,000 asylum seeker cases in total, for the largest office in the country to finalise less than 2,000 cases per year would do little to clear the backlog.

In October 2003, Mangosuthu Buthelezi, then Minister of Home Affairs, stated that there were 1,500 vacancies in his ministry, and no money in the treasury to finance these jobs. In such a situation there is clearly insufficient capacity to deal with the workload, and this creates a situation that is then wide open to corruption and bribes.<sup>106</sup>

In October 2004, Barry Gilder, Director General of Home Affairs, indicated to the authors that since he came into office a year ago, he has organised the training of a large group of officers who will be capable of processing and finalising asylum claims. He said that before the end of 2004, an additional staff of 69 refugee determination officers will be deployed in RROs. In Gilder's own words:

*This department is way back in the 19<sup>th</sup> century somewhere...turning it around, it's a bit like trying to turn around the Titanic, perhaps after it's hit the iceberg.*<sup>107</sup>

Gilder is planning to introduce more personnel with better training, and better information technology to improve the department, but says this will take time. In the meantime, we would point out that it is the refugees who have to deal with the fact that there are not enough life-boats, that only those who can bribe will get a life jacket, and the rest will sink without trace in the hostile waters of Johannesburg.

### **Length of permits: renewal stamps**

The fact that asylum seeker permits are usually only valid for one month, means that the approximately 80,000 ASP holders of all nationalities nationwide all have to return once a month to RROs for a renewal stamp.<sup>108</sup> The process of simply keeping existing ASP holders in the system is therefore hugely time and resource consuming. As neither the Act nor the Regulations state a time span for how long an ASP stamp should be valid, a simple way to reduce the backlog and free up staff time to process new asylum applications and finalise old ones, would be to extend the validity of the ASP to six months or one year in the first instance; in reality no ASPs are being assessed and finalised in less than this time period. Increasing the length of validity of the ASP would reduce the number of asylum seeker visits to RROs dramatically<sup>109</sup>

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<sup>106</sup> The Cape Times, *Illegal immigrants are a perpetual problem compounded by corruption, says Buthelezi*, 14 October 2003.

<sup>107</sup> Interview, 18 October 2004.

<sup>108</sup> Some asylum seekers issued permits in terms of the old Aliens Act only return once every three months. This only applies to ASPs issued before April 2000 when the 1998 Act took effect, and therefore does not affect Zimbabweans, all of whom have had permits only since June 2002. Other RROs may offer longer validity on their permits, but the Johannesburg office offers one month stamps.

<sup>109</sup> Supposing 50,000 asylum seekers were all making two visits per year for renewal instead of 12, there would be 100,000 renewal stamps issued instead of 600,000.

## Asylum seekers – a cash cow

*The department has indicated its commitment to stamp out corruption.... These things take time to make happen.... You need to bear in mind that the Department of Home Affairs is eminently corruptible. We provide a service people need desperately....*

[Barry Gilder, interview]

Asylum seeker permits are *free of charge*. Yet the authors were informed that there is a thriving black market in ASPs. The going rate for an ASP is between R300 and R400. We were further informed by human rights lawyers that renewal stamps can also be given without queuing, for a fee of R100 per month.

*The National Refugee Base Line Survey*<sup>110</sup> documents bribery both in relation to receiving ASPs and in receiving renewal stamps. Around 18% of their respondents reported paying bribes for ASPs and 17% bribed for renewal stamps. The Johannesburg office was the worst, with around 33% paying bribes. In a survey conducted by the authors in August 2004, out of 51 Zimbabwean exiles who had ASPs, 15 claimed to have paid bribes in order to get them. One person claimed he paid a bribe of R400 after more than 20 visits to Home Affairs failed to result in him even accessing the office.

Human rights lawyers and other informants suggested that one reason for the reluctance to issue ASPs through the “front door”, and also to finalise asylum seeker applications, is in order not to “kill the cash cow”. If a reasonable proportion of asylum seekers are routinely sufficiently frustrated by the near-impossibility of getting a “legal” ASP, then there will be a steady income from those prepared to pay bribes. Similarly, by insisting that every ASP holder returns every month for an extension, instead of lengthening the validity of the stamp, there will be a steady monthly “return” from those who do not want to queue, or who are employed and cannot take off a day a month to queue. One lawyer estimated that in the region of R20 million could be being paid to corrupt touts and/or Home Affairs officials by asylum seekers each year.

If the system were to become more efficient, the income from bribes would seriously diminish.

The irony is that among Zimbabweans in South Africa, it is likely to be those who come to South Africa with goods to vend, or who get employment, that can afford the bribes, while the genuine political asylum seekers are left standing in endless queues of frustration, end up with no permits, and are therefore more subject to deportation. Many Zimbabweans know about the bribery system, but cannot afford to “buy” permits. Political asylum seekers indicated that they knew about the bribery system, but the few who could afford it, were not prepared to be pragmatic and pay. They were aware of their rights, being highly politicised, and resented being forced to resort to corrupt means to get something they knew was their legal right.

## Home Affairs – impunity in the system

A lawyer commented to us that there was impunity for officials in the way the system operates.<sup>111</sup> Evidence points overwhelmingly to corruption, inefficiency, and to an unofficial policy of being particularly obstructive towards Zimbabweans. However, it is very difficult to prove *male fides*, because some Zimbabweans do undeniably get ASPs through the front door –

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<sup>110</sup> CASE, November 2003, op cit.

<sup>111</sup> LHR and Wits Law Clinic, interviews September 2003, October 2004.

even if this is only a handful a week. The endless claims of computers being down and the keys to the safe being unavailable are also very hard to prove or disprove week after week. By keeping the flow of applications to a trickle and by claiming “technical faults” in the system, the number of ASPs is kept to a minimum while at the same time making it impossible for critics to say categorically that Zimbabweans or others are being denied asylum, or that officers are on a permanent “go slow”.

It is no defence for the department to lay the blame for corruption back on the public, who tempt officials with money because they desperately need the permits. Any act of bribery involves power relations; officials clearly are the ones with the greater power, and to frame would be asylum seekers as the initiators of corruption is to feed into negative images and xenophobia.

### **Response of Home Affairs on corruption and capacity**

Barry Gilder informed the authors that a new department of Counter Corruption and Security has been set up within Home Affairs, as of the end of October 2004, and a Chief Director has begun work in this capacity already. This underlined the intention of Home Affairs to deal with corrupt officials. Gilder pointed out that huge crime syndicates with plenty of money have infiltrated Home Affairs with people in their pay – they are prepared to spend vast amounts of money to get the documents they need for criminal purposes; to get rid of corruption in Home Affairs, it is also necessary to deal with organised crime syndicates, otherwise one corrupt official will be replaced with another equally vulnerable to being bought. Gilder was very willing to admit to, and condemn, corruption in his department.

Gilder repeatedly denied any prejudice against Zimbabweans by his officials. Yet he himself made statements that indicated that he does not believe there has been an increase in political refugees from Zimbabwe. When we suggested to him that he was making this assessment based on Home Affairs computer figures which reflect a handful of Zimbabweans a week, and not on the reality of Zimbabweans on the pavement failing to access his offices and enter the system, he repeatedly commented that he had not seen this for himself. While admitting the system in general does not cope, he then stated – “the influx of Zimbabwean asylum seekers is something we can cope with in the system”. The evidence to the contrary is out there on the pavement every Tuesday.

*In summary, there is ample evidence from multiple sources that many Zimbabweans who wish to have asylum claims processed are failing to access the system through no fault of their own. Inefficiency, corruption and a lack of good will on the part of South African RROs are contributing factors. The official South African figures of how many Zimbabweans consider themselves to have fled for political reasons must therefore be deemed far too low, and should be considered to represent a rather small proportion of those who would have asylum seeker status if they could access it.*

## **5. Attitude of United Nations High Commissioner for Refugees (UNHCR) to Zimbabweans**

The reluctance to recognise Zimbabweans as having a legitimate claim to refugee status is also found within the United Nations High Commission for Refugees (UNHCR) in Johannesburg. RI reported in August 2004 that their office was unable to give a clear answer on whether Zimbabweans qualified as refugees or not, saying they were still waiting for clarification from



Geneva, themselves.<sup>112</sup> In RI's opinion, the UNHCR office is playing down the political crisis in Zimbabwe, and does not consider that Zimbabweans have a legitimate claim to asylum. RI accuses the UNHCR of having "lost sight of its mission", and of making "appallingly cynical comments" about Zimbabweans in South Africa.<sup>113</sup>

For example, UNHCR personnel questioned whether the political situation in Zimbabwe was really so bad when Zimbabwean activist groups in South Africa felt able to speak out, saying, "why would so-called refugees seek publicity when they are afraid?"<sup>114</sup> In the current authors' experience, most Zimbabweans *are* too afraid to speak out, and it is only a handful of the most hardened activists who are prepared to draw attention to themselves by attending protests in Johannesburg, risking deportation or persecution by Zimbabwe government agents active in South Africa by so doing.<sup>115</sup> But if persecuted people are brave enough to speak out, does this disprove or diminish their persecution? Such reasoning ignores, for example, the huge anti-apartheid movement that continued worldwide for decades, including in countries neighbouring South Africa; those who protested against apartheid expected to be recognised as persecuted and to be given asylum – which they were.

Ahead of the Presidential election in March 2002, the UNHCR and the South African Department of Home Affairs prepared for a potentially large influx of Zimbabweans as a result of political persecution, and identified sites for camps in the border area. When the influx did not happen, it seems there was an assumption that claims of persecution had been exaggerated and that the 'genuine refugee moment' was over. The UNHCR has failed to visit the Zimbabwean border area for more than one year, or to visit the Johannesburg RRO for eight months, which in the opinion of RI, epitomizes "the lack of commitment of UNHCR to protecting Zimbabwean asylum seekers in South Africa."<sup>116</sup>

*The authors of the current report would suggest that a massive influx of political refugees has occurred and continues to occur, but in nightly flows of a few hundred people, who for political/economic reasons, cross the border illegally and do not remain in the border area but head largely in the direction of Johannesburg, where they are absorbed into an ever-expanding underground community of Zimbabweans.*

### **UNHCR and issues of resettlement: are Zimbabweans safe in South Africa?**

Some Zimbabwean exiles repeatedly expressed a fear to us that they are not secure in South Africa. Zimbabwean Central Intelligence Organisation (CIO) agents have been reported from multiple sources as being active in the Johannesburg and Pretoria region in particular.<sup>117</sup> Exiles are concerned that their families are insecure in Zimbabwe and are at risk of being tortured if those in exile make claims against the Zimbabwean government or expose their own ill treatment.

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<sup>112</sup> Refugees International, *South Africa: UNHCR inattention places Zimbabweans in jeopardy*, 11 August 2004.

<sup>113</sup> RI, *South Africa: UNHCR inattention places Zimbabweans in jeopardy*, 11 August, 2004.

<sup>114</sup> RI, 11 August, *ibid*.

<sup>115</sup> In October 2004, a Zimbabwean activist who had taken part in demonstrations in South Africa and who returned home because he thought it was safe, was picked up by police, tortured in custody and now has been charged with taking part in activities disrespectful of the President of Zimbabwe while in South Africa.

<sup>116</sup> RI, 11 August, *ibid*. A key informant did mention that UNHCR has trained extra officers for Home Affairs in 2004, resulting in increased numbers of people accessing ASPs. More ASPs have been issued to Zimbabweans this year than previously, but as well documented here, huge problems nonetheless remain with the system and attitude.

<sup>117</sup> We have several detailed Zimbabwean asylum seeker statements on record outlining incidents allegedly involving the CIO in Johannesburg, and human rights lawyers are well aware of these claims too; interviews, October 2003. The media has also reported some incidents.

During 2002, there was an incident involving the CIO that was well publicised in the media. Three Zimbabwean women were allegedly abducted in Johannesburg by CIO operatives. They were bound and gagged in the back of a car, and were allegedly sexually abused. A border patrol near the South African border searched the car and discovered the women. They insisted the women were released, but allowed their kidnappers to proceed to Zimbabwe without arrest!<sup>118</sup>

The UNHCR says that protection is an issue for the South African Police. The Police have made it clear that they would not welcome the CIO being active in their nation, but say they do not have the resources to give local protection to Zimbabweans who feel at risk. At most, they have offered for Zimbabweans to come and sleep at police stations if they are afraid of abduction. But as most Zimbabweans spend most of their time avoiding the police because they do not have asylum seeker permits, this is not an attractive option. Both the Wits Law Clinic and Lawyers for Human Rights state that they have been approached by Zimbabweans afraid of the CIO, asking for resettlement out of South Africa.

However, according to human rights lawyers, it has proved close to impossible to get Zimbabweans resettled overseas – the international world is quick to make political statements on Zimbabwe and slow to accommodate their refugees. What makes it harder for Zimbabweans is the very small number that has formal refugee status at this stage. The UNHCR expects those requesting to be resettled to have already been determined to be genuine refugees by South African Home Affairs. Zimbabweans also have a problem with police clearance; particularly in the post September 11<sup>th</sup> world, people are concerned about world terrorism and it is hard to resettle any refugees from anywhere. Many Zimbabweans from MDC structures have multiple arrests for spurious crimes on their police records, as arrests on false charges have been a deliberate government strategy over the last five years.<sup>119</sup> This has impacted negatively on their likelihood of being resettled. Over the last few years, The Wits law office has forwarded to the Johannesburg UNHCR office, ten requests for resettlement of Zimbabweans outside of southern Africa that they judged to be strong cases. By October 2003, two of these Zimbabweans have been accepted for resettlement processing. The Lawyers for Human Rights office reported no success in the applications they had forwarded to the UNHCR for resettlement. A lawyer there commented, in October 2003: *“Every one of them has been rejected for resettlement... I have seen the reasons, but I cannot understand why they have been rejected by the UNHCR.”*

## **6. Quiet diplomacy: at odds with acknowledging political refugees?**

The ZANU PF justification that the violence in Zimbabwe should be understood as part of a land revolution has not been publicly contradicted by other Southern African Development Community (SADC) nations; while they may be uneasy about the accompanying torture and oppression, there has been a reluctance to condemn a process as important and necessary as land redistribution. The reality is that the vast majority of human rights violations have not occurred in the context of land redistribution, but in those urban and rural areas where support for the MDC is greatest.<sup>120</sup>

The South African government has adopted a policy of “quiet diplomacy” towards Zimbabwe, refusing to publicly condemn actions by the Zimbabwe government. This is impacting on the

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<sup>118</sup> Information from Wits Law Clinic, October 2003.

<sup>119</sup> Solidarity Peace Trust, July 2004, op cit, for more on spurious arrests of Zimbabweans.

<sup>120</sup> See ZHRNGO Forum monthly violence updates and major reports listed in appendix for day by day summaries of where violence has occurred in the last 5 years

official response to Zimbabweans in South Africa.<sup>121</sup> South African officials have portrayed the political reality in Zimbabwe as “normalising”, and their elections as “legitimate”.<sup>122</sup> The sudden economic collapse in Zimbabwe and three years of food deficits are acknowledged,<sup>123</sup> but are not openly linked by other countries in the SADC region to poor governance within Zimbabwe. Against this background, it would be contradictory for the South African government to laud the correction of colonial imbalances in Zimbabwe, and at the same time to officially acknowledge that citizens of Zimbabwe have genuine reasons to run away in their thousands, and to fear persecution at the hands of the Zimbabwe government and its agents.<sup>124</sup> Yet Zimbabweans have run away in their thousands, in particular to South Africa.



*Photograph 11: Zimbabweans join other vagrants on the streets of Johannesburg in the bitter cold of a winter's night. Here a woman is roused for a cup of soup from the Methodist church, July 2004*

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<sup>121</sup> Interviews with lawyers at LHR, Wits Law Clinic, Heal Zimbabwe Trust personnel; also comments from asylum seekers themselves. The South African government has consistently refused to speak out and condemn the behaviour of the Zimbabwean government in the last five years. Whether this is the right or wrong policy is not the issue here, but this policy is clearly at odds with simultaneously acknowledging that Zimbabweans are being politically victimised in their thousands.

<sup>122</sup> The 2002 elections were found not free and fair, but “legitimate” by the official South African election observer team. Most other election observers, including the SADC Parliamentary Forum, the Commonwealth, and the Africa/Carribeia/Pacific – European Union teams, all found the 2002 Zimbabwe election deeply flawed.

<sup>123</sup> For example, President Mbeki’s comment quoted earlier in this report acknowledges a vicious cycle of poverty and social instability, but does not lay direct blame on governance issues.

<sup>124</sup> South African officials have made some astounding comments in support of the insupportable. For example, South Africa’s foreign Minister Zuma, in May 2004 defended the hounding of journalists and the independent press in Zimbabwe, saying as long as these actions were in accordance with Zimbabwe’s own laws it was acceptable; IRIN, 4 May 2004.



*Photograph 12: a Zimbabwean exile with two children receives food aid from the Methodist church in Johannesburg: July 2004*

## **7. Perceptions of Zimbabweans: “Makwerekwere”**

If the predominant perception of Zimbabweans is *not* that of torture victims and genuine refugees, then how are they perceived? There is a general pejorative term in South Africa for all black foreigners, namely “Makwerekwere”. The word has no literal translation, apparently being rather an onomatopoeic description of the sound of foreign African languages to a South African ear.

It is not unusual for nationals in any country to see refugees in a negative light, as a financial and practical burden, as cheap labour undermining local employment opportunities, as criminals, as a foreign culture threatening to swamp local cultural norms. The growing xenophobia in South Africa directed towards all foreign Africans, has been explained as stemming in part from the fact that prior to 1994, very few Africans headed for apartheid-ruled South Africa for refuge. However, once democracy was achieved in South Africa, this changed very rapidly, and from having had very little exposure to other Africans, South Africans now have to cope with an influx of foreigners from all over the continent, fleeing wars and hardship.

In spite of its comparative wealth in the region, South Africa is a country that still faces enormous issues of unemployment and poverty within its own borders. Hundreds of thousands of South African citizens need housing, education and jobs. Unemployment among South Africans is at around 42%, with one in two black South Africans needing work.<sup>125</sup> Migrants are therefore seen as taking away work and resources from poor South Africans, and of driving down payment for part time work. As “illegals”, Zimbabweans and other migrants are prepared to work for a few rand a day, as they have no option but to be exploited. South Africans competing for the same jobs resent this.

Zimbabweans are allegedly the most resented refugee group, because of the sudden increase in their numbers. There are regular xenophobic attacks on non-South Africans; seven foreign Africans have reportedly been killed after being pushed from moving commuter trains, and other

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<sup>125</sup> Reuters Alertnet, *Zimbabweans drift to neighbours as economy ails*, 28 August 2003.

foreign nationals have had acid thrown in their faces, have been shot dead and targeted in various others ways.<sup>126</sup>

## Zimbabweans and Crime

Both the South African and the Botswana authorities have commented on the role of Zimbabweans in crime, both organised and petty, in their respective nations.<sup>127</sup> At one level, virtually all Zimbabweans in South Africa are breaking one law or another. An estimated one million-plus Zimbabweans are in South Africa illegally in the first instance.<sup>128</sup> These Zimbabweans are in a tough position. They cannot find legal work, so are reduced to working illegally. Many young girls and women resort to prostitution. Men and women of all ages vend goods in markets and on the side of the road, without trading licences. Others work for exploitative wages on farms, in back gardens, in restaurants and elsewhere, hiding from authorities and expecting deportation any day.

Interestingly, on 30 October 2004, Mr Maziduma, the Divisional Commander for North Francistown Police, told the BBC that Zimbabweans were *not* responsible for an increase in crime even though this was a common perception among ordinary Botswanans: “We are not experiencing a difference in the crime rate.... Statistics will not say that, we talk from facts”.<sup>129</sup> We were not able to get any figures on Zimbabweans and crime from South African police

In interviews with us, Zimbabweans have commented that if people are officially illegal and living below the visibility line for fear of deportation, they are more likely to resort to illegal ways of surviving; if they are treated as illegals, they will behave like illegals. They also acknowledge that many Zimbabwean refugees are in their teens or twenties and away from the controlling guidance of the extended family; the normal social inhibitors are not there, and there is nobody to report back to the family if they get involved in activities that they would not consider doing at home.

Some Zimbabweans are undoubtedly involved in serious crime, including armed robbery and arms smuggling. Exact figures could not be established from Home Affairs; there are, however, references from time to time in the media. In March this year, 138 illegal immigrants were arrested in a police sweep of Hillbrow in Johannesburg.<sup>130</sup> The police reported they were looking for around 100 Zimbabweans who were suspected to be in organised crime gangs operating across the borders. Of those arrested, 30 were criminals wanted for crimes including murder, rape and armed robbery.

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<sup>126</sup> LHR, and Wits Law Clinic, October 2003 interviews.

<sup>127</sup> Although Botswana is not the major focus of this report, some information on Botswana and Zimbabwean crime has been included in an appendix to this report. SABC News, *Illegal cross border gun smuggling rife in Limpopo*, 17 August 2004; IRIN (UN), *[Botswana] Tensions continue to simmer*, 10 August 2004; The Herald (Zim), *Xenophobia persists in Botswana*, 9 August 2004; The Guardian (UK), *Weary Zimbabweans seek better life*, 18 May 2004; Mmegi, (Botswana), *Zims prefer whip to prison, court president says*, 13 May 2004; IRIN ((UN), *Tetchy cross-border relations with Botswana*, 12 May 2004; AFP, *Zim slams “barbaric” treatment of citizens*, 11 May 2004; Mmegi (Botswana), *No Government intervention in bus rank violence*, 7 May 2004; The Daily News (Botswana), *We have the right to curb influx*, 23 April 2004; BBC News, *Zimbabwe crisis spills across [Botswana]border*, 30 March 2004; City Press (RSA), *Zim suspect nabbed in raid*, 6 March 2004; Mmegi, (Botswana), *Another crack-down against illegal immigrants*, 15 January 2004;

<sup>128</sup> Approximately 3,000 have asylum seeker permits, with possibly 50,000 more wanting asylum but not having the permits, and possibly tens of thousands more who have legitimate visas in legitimate passports. The rest are illegal.

<sup>129</sup> BBC, *Africa Perspective*, 30 October 2004.

<sup>130</sup> City Press, *Zim suspect nabbed in raid*, 6 March 2004.

In the news item covering this raid, the provincial deputy commissioner in Johannesburg is quoted as saying that Zimbabweans were behind a tide of armed cash-in-transit heists and bank robberies: they are referred to as having had “military training”, which would suggest those involved are defected soldiers from the Zimbabwean army.

There are also press reports describing cross border gun smuggling. Again, a police spokesperson said the arms sellers were defected Zimbabwean soldiers desperate for money, who had run away with their weapons and who sold them to raise money for families back home.<sup>131</sup>

A further indication of organised crime along the border was given by the president of the Cross-Border Association of Zimbabwe in January 2004, when he threatened to name top Zimbabwean officials involved in shady deals on the country’s borders. Killer Zivhu, who is also a ZANU PF councillor for Masvingo, indicated there were crime syndicates involving Zimbabwean government officials operating with impunity.<sup>132</sup>

While it is certainly a minority of Zimbabweans who are involved in violent crime or gun trading, media reports on these issues have fed into a perception that all Zimbabweans are likely to be criminals, which has fuelled the xenophobia.

### **Zimbabweans: victims of crime**

On the other side of the coin, illegal immigrants are vulnerable to being victimised without redress. Zimbabweans are at risk on a daily basis of having to pay bribes to South African Police and Home Affairs touts and officials in order to avoid deportation, and of being forced to work at extortionist wages.

Far more serious crimes are also perpetrated against this group, with impunity. Interviewees related incidents of xenophobic assaults, murders, theft, and of rape. One 16 year old girl told of being forcibly held captive for two weeks by a taxi tout who does the Johannesburg-Musina run. She and four other girls were forced to have sex on demand with this man, until he left to collect another taxi load of girls from the border; at this point, they ran away. None of these crimes are ever reported or acted on; the victims would rather suffer in silence than be deported back to Zimbabwe.

## **8. South Africans: a history of exile**

*“My dear brothers, remember when you were fighting in the ANC, you were in Zimbabwe. The MKs – I myself was made to make room for an MK soldier – so I slept down so that the MK could sleep in my bed. We did not ask even a permit, even an ID, only an MK card would do. There is a [Zimbabwean] man sitting there – his father was cooking for the President of this country – and there was no harassment [of South African exiles] – but why are these people doing this to us?”*

[Head of MDC Security, in exile in South Africa, talking at a church service in Braamfontein, March 2004]<sup>133</sup>

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<sup>131</sup> SABC News, *Illegal cross border gun smuggling rife in Limpopo*, 17 August 2004.

<sup>132</sup> The Sunday Mirror (Zim), *Zivhu threatens to spill beans*, 18 January 2004.

<sup>133</sup> This man was in the Zimbabwe National Army at the time he gave up his bed for MK. Since 2000, he has been severely tortured by both police and army because of his MDC affiliation.

Key informants in South Africa have pointed out that South Africa is a nation that fought its own liberation struggle on the basis of their exiles being hosted in nations in the sub-region, where they were accommodated and resourced.<sup>134</sup> Many who now sit in government are among those who had access to housing, education and other training facilities in African nations, including Zimbabwe. Zimbabwean refugees and South African NGO commentators have mentioned the disappointing lack of recognition of the legitimacy of the current Zimbabwean struggle against oppression, and a general lack of solidarity among South Africans with the plight of political activists from Zimbabwe.

On the other hand, many South Africans have become involved in the plight of Zimbabweans, particularly church leaders who have acted to set up feeding programmes, provide shelter, clothing, blankets and over-the-counter medications. Some NGOs are involving themselves in advocacy and research, and provide counselling. A few South African lawyers have taken up the cause of Zimbabweans and represented them in the courts. Ordinary South Africans too, have shown compassion and opened their doors to Zimbabweans, sharing meagre resources and protecting them from deportation.<sup>135</sup>

## PART THREE

### *The revolving door*



*Photograph 13: a Zimbabwean deportee escapes from the shadow of the deportation train that he has just leapt from: destination for him is now no longer Beitbridge, but Johannesburg*

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<sup>134</sup> Among others, Elinor Sisulu of the Zimbabwe Crisis Coalition, Johannesburg office, spoke strongly on this issue.

<sup>135</sup> See Appendix One, Case Four, for a Zimbabwean who was rescued from the streets by a kind South African.



## 1. Crossing the border

The South African border with Zimbabwe runs through a virtual desert region; it is epitomised by thorn scrub and baked earth, and a series of high barbed wire fences and row upon row of razor wire. The border itself is demarcated by the Limpopo River, which for much of the year is not much more than sand and puddles, but which can become a fierce torrent during the rains. The river is home to hundreds of crocodiles, and also traverses game reserves in the border area, where lions and elephants live. Apart from the river itself, there are few sources of water and few settlements in the greater area.

Crossing the border into South Africa is not an obviously easy thing to do, yet with at least a million Zimbabweans illegally in South Africa and tens of thousands crossing to and from several times a year, this formidable barrier is proving to leak people like a sieve.

### *Numbers*

Some Zimbabweans cross the border legally: cross border traders in particular have passports and apply for visas. The South African Embassy receives around 20,000 visa applications a month, and traders enter the country for 21 days at a time, before leaving and applying for another visa. These tens of thousands of Zimbabweans are not part of the illegal immigrant statistics: while many may be violating visa conditions by trading, there is official record and sanction of their entry.<sup>136</sup> If around 100,000 people enter on visas per year, and many of these are the same individuals being issued multiple visas in a year, and if estimates of more than a million Zimbabweans in South Africa are correct, this indicates the vast majority of Zimbabweans are entering or are resident in the country illegally.

The numbers of people crossing the border at “undesigned entry points” are impossible to establish, although some indication is given by the numbers intercepted. During 2002, the South African National Defence Force (SANDF) intercepted 50,852 immigrants on South Africa’s national borders, although this includes illegal border crossers from Mozambique, Swaziland and Botswana.<sup>137</sup> It does not include those intercepted by police in South Africa’s heartland. Altogether, South Africa deports around 150,000 immigrants a year.

The number of illegal immigrants deported to Zimbabwe each year is now around 45,000 or not far below a 1,000 per week. In spite of this seemingly endless process of deportations, possibly hundreds of Zimbabweans cross illegally every night. Indications of this come from border crossers themselves; it is common for Zimbabweans to report being part of groups of around 70 or more people crossing simultaneously on one night. Whether there are several such groups per night, or several per week, is not clear. Many other Zimbabweans cross in smaller groups or even alone.<sup>138</sup>

### **The river – crocodiles and floods**

For much of the year, the Limpopo is a benign river that can be walked through with little problem. However, in the rainy season, which coincides with Christmas and year-end holidays for migrant workers and an accompanying upsurge in border crossings, the river can become a torrent at short notice. The river can flow strongly until May, depending on the rains. Every

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<sup>136</sup> It is not easy to get a visa: South African visa requirements include submitting R 1,000 with your application, and even with this, applications are frequently rejected.

<sup>137</sup> The Mail and Guardian, *The unstoppable tide*, 3 October 2003.

<sup>138</sup> See Appendix One, Cases One, Four and Seven for river crossings.



year, Zimbabweans drown attempting to swim the river when it is in flood. In April this year, SABC reported the deaths of five men attempting to cross the river. Their bodies were retrieved badly eaten by crocodiles. Police had to fire shots to scare off the crocodiles.<sup>139</sup>

One 18-year old interviewee sobbed as she described to the authors, crossing the Limpopo in the middle of the night in January this year. She was one of 73 who crossed together on this night, and she said it was the most terrifying experience of her life. She said the water was up to her armpits, and as this huge crowd stirred up the water, crocodiles closed in. The last person to cross was seized by a crocodile as she approached the shore, and others had to go back and drag her from the water, at which point the crocodile let go and swam off, leaving the victim injured but alive.<sup>140</sup>

### **Human predators: “maguma guma” and the SANDF**

The border area is alive with touts: smuggling people has become a permanent livelihood for many. There are two ways to cross - by taxi or bus through the designated border post at Beitbridge, or through the riverbed. For a price, both are possible without papers. Girls are able to cross the border in trucks, in return for sex with the driver. They hide in the truck drivers' beds and cross in this way.<sup>141</sup> To cross the river without a passport costs from R300 to R500, if you rely on a tout. However, some of these touts entrap Zimbabweans by leading them to isolated spots and then robbing them of all their money and possessions. These men are referred to as “maguma guma”, which means “to get something the easy way” in Shona. Interviewees reported assaults or rape at the hands of these men.

The easiest way to enter South Africa once across the river, is at places where there are gates in the border fence for South African farmers to access the water for farming purposes. These gates are manned by SANDF, and for a fee, they will turn a blind eye and let the Zimbabweans walk by. However, female immigrants are frequently forced to “pay” this fee in sex; some young girl's first experience on arrival in South Africa is rape by soldiers in exchange for not being deported. Interviewees told this to us, as did human rights lawyers, and this has been documented by NGOs working with children in the Musina area.

In August this year, five members of the SANDF were arrested on multiple charges of rape and theft. They are accused of systematically ambushing Zimbabweans in the border area, and stripping them of all belongings. Among the claims are that they raped a number of Zimbabwean women before forcing them to swim naked back across the Limpopo River. A storage container of stolen goods was recovered in the vicinity of Madimbo Military Base near the border in South Africa.<sup>142</sup>

Lawyers for Human Rights gives training in refugee rights and law to members of the police and army operating in the Zimbabwe border area. However, they comment that the SANDF turns over most of its personnel there every three months, meaning that there are always soldiers with not much background in the rights of undocumented migrants in charge of finding them. LHR said that apart from reports of soldiers raping asylum seekers, soldiers make other demands of them, including making them do their washing, ironing and polishing in return for not being

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<sup>139</sup> SABC News, *Four more bodies found in Limpopo River*, 22 April 2004.

<sup>140</sup> See Appendix One, Case One, for this case in full.

<sup>141</sup> Centre for Positive Care (CPC), *“Poverty made this decision for me”: children in Musina: their needs and experiences*, August 2003.

<sup>142</sup> The Star (RSA), 17<sup>th</sup> August 2004; also The Chronicle (Zim), *SA soldiers nabbed for raping locals*, 19 August 2004.

deported.<sup>143</sup> Other groups working with refugees report that in the Musina area, Zimbabwean girls who are semi resident there, are routinely expected to give sexual favours to police and army in return for not being deported.<sup>144</sup>

## **2. Life in the Big Cities: Johannesburg and Durban**

In the course of this report, there has already been repeated mention of some of the issues that make life difficult for Zimbabweans in South Africa. The section following will therefore take the format of describing a cross section of what we observed for ourselves on field visits to apartments or places where refugees live.

Life for illegal immigrants in South Africa is predictably hard. Living conditions are crowded and often unsafe. Large numbers of Zimbabweans live in Hillbrow and Yeoville in Johannesburg, where the rent is low and the crime rates high. The groups we visited were in some instances obviously all political refugees, and in other cases, all would fit the description of cross border trader, or economic migrant. In other cases, the division was not so clear-cut, with a mixture of “purely” political and economic exiles sharing a space.

Economic migrants are the Zimbabweans most subject to deportation, and their large numbers mask and undermine the claims of political asylum seekers.<sup>145</sup> For these reasons, the authors made a point of identifying and interacting with a few small cross border communities in both Johannesburg and Durban.

### **Johannesburg: political exiles**

We visited a two-bedroomed apartment in which 26 young political exiles lived. All were activists who had fled after torture and harassment. Several are on the records of NGOs in Zimbabwe as having been tortured and given medical assistance in the last few years, prior to fleeing. Most had multiple stories of arrest and abuse. Only four had asylum seeker papers, although all had tried to access them. Those without ASPs lived in dread of deportation, and in the course of researching this report, one of them was picked up by the police and transferred to Lindela detention centre pending deportation. He was an individual whom we had witnessed for ourselves queuing outside Home Affairs all night, trying in vain to access the office to apply for asylum. He managed to get a message out to a lawyer, who went to Lindela and secured his release. But in terms of the Regulations to the Refugee Act, no person who indicates to the police his intention to seek asylum can be deported - he should not have been taken into detention. In the course of researching this report, several others who live in this apartment had to bribe police in order not to get sent to Lindela.

This group of talented, angry youngsters are very aware that they are wasting the prime of their lives without access to skills training or jobs, and miss their families and homes very much. However, they are unable to return because of the high risk to themselves of being tortured again – and in any case, back in Zimbabwe they would still have no access to skills training or jobs. Even though their lives in Johannesburg are tough, they see no alternative to exile.

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<sup>143</sup> Interview with LHR lawyer, October 2004.

<sup>144</sup> Appendix One, Case Seven for interviewee claiming assaults by army. The Mail and Guardian, 3 October 2003, op cit, gives similar details linked to border crossings.

<sup>145</sup> As we have already indicated, in our opinion economic exiles are also political exiles, but in the absence of a test case supporting this view, in practical terms they will continue to be considered illegal immigrants, and get deported.

## Johannesburg: a community of the blind



*Photograph 14: a blind Zimbabwean child feels the face of Archbishop Pius Ncube of Bulawayo: he was paying a pastoral visit to some of his parishioners who are now in exile in Johannesburg: July 2004*

Among the Zimbabwean communities is a group of 31 blind people, ranging in age from 2 years old to 60+. This group of very vulnerable people, accompanied by a few sighted children who lead them out into Johannesburg to beg each day, is living in appalling conditions in Hillbrow. The whole group lives in one room, without a kitchen or bathroom. Cooking is done on one double hot plate on the floor, and ablutions are in a communal bathroom down the passage, shared not only by them, but by other tenants. The bathroom was awash with water and urine during our visits.

They explained that the money paid to them from social services in Zimbabwe for their disabilities is the equivalent of about two loaves of bread a month, because of inflation. They cannot survive in Zimbabwe. They have therefore moved to Johannesburg to live by begging on the streets, where they make around R10 a day each.

### *Political refuge*

We did not get full statements from all of them, but one blind man indicated that he had fled Zimbabwe as a result of political persecution. He had bought sugar in August 2002, which was scarce at that time, and was selling it at a small mark up on a street corner. He was attacked by youth militia who accused him of being MDC, stole his sugar and handed him to the police. He was detained in jail until January 2003, and on release, he fled to South Africa.

These are people trying to live with dignity in an appalling situation not of their own making. Many of them have skills and used to knit, crochet, make candles back in Zimbabwe when they had the resources. Several play musical instruments. All would rather be gainfully employed in some kind of enterprise than begging. The majority of blind in this group would be considered undocumented migrants and would be deported if authorities were drawn in.

## **Durban: Cross border traders**

Being a Zimbabwean in South Africa is by and large a joyless existence; many of the traders we met in Durban were from Harare and travel over 3,000 km return on a monthly basis, often crossing the border illegally, using public transport and dealing with harassment from officials, in order to make a living. They spend most of their lives separated from their spouses and children.

Even those who would be considered to be in South Africa for primarily economic reasons by officials, view their decision to leave as political. In their own eyes, the collapse of the economy and the loss of livelihoods in Zimbabwe is the result of political mismanagement; with good governance in Zimbabwe, they would not be in South Africa. While this will not win them refugee status with officials in terms of international criteria for what makes a refugee, it should be noted that individuals do see it this way - political decisions made in the last four years in Zimbabwe are what have driven them over the border to take up tough lives in a foreign land.

Cross border traders are neither eligible for asylum seeker status, nor are many interested in acquiring it. The fact that they regularly re-cross the border indicates that they are not on the run and do not consider themselves likely to come to harm in Zimbabwe. Although this group is not part of the main refugee focus of this report, they are a sizeable community, and it seems relevant to comment briefly on their existence.

Some cross border traders enter South Africa with passports and one-month or three-month visas. They conduct their informal trading and then return to Zimbabwe to acquire further visas. However, while some have business visas, and declare their goods for resale at customs in South Africa, many of them do not have visas allowing them to conduct business, so they are violating visa conditions by vending, and are therefore subject to deportation. Many have no visa or passport. Obtaining a passport is an arduous procedure in Zimbabwe that can take a year or more, and most Zimbabweans do not have passports. Receiving a visa is also problematic, with the South African Embassy predictably swamped with applications and processing around 20,000 a month.<sup>146</sup> Visa conditions have been made tougher, with any prospective visitor having to include R 1,000 in travellers cheques with their visa application, as well as name and ID number of a South African and other supporting documentation. Many visas are still refused.

Cross border traders have formed informal, semi permanent groups in South Africa. They often travel together and live together, in very tough conditions. The authors visited several such groups. The groupings we saw have informal leaders, who oversee rent and at times apply rules to living conditions. For example, one group of around 40 female traders in Durban living in three large rooms, does not allow any men onto their premises, and has a lock-up time for the front door of around 9 pm. Conditions are makeshift and harsh, with people sleeping head to toe without mattresses and using small paraffin stoves for cooking. Privacy is nil. As little as possible is spent on rent and food in South Africa, as the main intention of these migrants is to save money to take back to Zimbabwe for their extended families. As few possessions as possible are kept with them, for ease of packing up and moving back to Zimbabwe every few weeks to acquire more crafts for reselling, and in the case of those with passports, new visas.

There is a high level of fear and suspicion of strangers in all of these groups, who keep a low profile and try to stay out of trouble with officials in order to avoid deportation, or being

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<sup>146</sup> The Mail and Guardian, *Zim scores badly in Amnesty report*, 26 May 2004.

blacklisted for visas in future. Members of one of these groups of informal traders were sure they were infiltrated by CIO, and would become silent whenever these suspected individuals made an appearance on passages nearby.

Nobody we spoke to would live in South Africa or make the long journeys to and fro, if they saw any alternative. It said something profound to us to realise that tough though people's lives in South Africa are, they nonetheless see this as preferable to life in Zimbabwe

### **3. Musina: life in a small border town**

The authors made several trips to Musina, which is 20 km from the border, to establish living conditions there for Zimbabweans, and also to inquire about official and NGO policy towards Zimbabweans in this small town, where the number of Zimbabweans may be proportionally among the largest in South Africa. Most adults arriving in Musina use it as a short term stepping stone to move on to Johannesburg or elsewhere, and pass very quickly through the area; although on any day there may be hundreds of Zimbabweans, from day to day the faces change. Those who tend to stay longer than a day or two are migrant farm workers, and unaccompanied minors.

#### **Farm workers**

Migrant Zimbabweans are employed in the farms in the Musina area, and in some cases, Zimbabwean families have been migrant workers on certain farms for generations. However, RI reported that when they interviewed Zimbabweans working on farms near Musina, it was clear that this group now includes farm workers who have been displaced through farm invasions, who report political abuse, assaults and harassment by ZANU PF as their reasons for leaving Zimbabwe.<sup>147</sup> This group is very afraid of being deported and does not fit the previous seasonal workers' mould, being clearly eligible for asylum seeker status. However, the nearest RRO is in Pretoria, around 450 km away.

#### **Unaccompanied minors**

Small communities of Zimbabwean unaccompanied minors have been identified in this area. Children aged between 12 and 18 who make it from Zimbabwe as far as Musina often make it no further. They realise they do not have the resources to get as far as Johannesburg, and may be afraid of life in such a big city. Some arrive in Musina and think this is Johannesburg!<sup>148</sup> A study by the Centre for Positive Care (CPC) in Musina, an NGO that has a reception office for unaccompanied children of all nationalities, describes in detail different aspects of the lives of unaccompanied Zimbabwean children identified in Musina.<sup>149</sup>

The CPC study interviewed a group of 28 children in Musina. All 17 boys were Zimbabwean, and out of 11 girls, all but three were from Zimbabwe. The boys were living either in the lockers that the taxi drivers use at the taxi ranks, or near the municipal rubbish dump. Some stayed with farm workers. Most of the children were aged between 14 and 16. They came from all over Zimbabwe, from as far afield as Chiredzi, Muccheke, Masvingo and Gokwe. None of these towns are within the traditional border crossing areas. Sixteen of them had lost either one or both parents, and all reported crossing the border to earn money in South Africa.

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<sup>147</sup> RI, 14 July 2004, op cit.

<sup>148</sup> From our own interviews, and information from the Centre for Positive Care in Musina.

<sup>149</sup> CPC, "*Poverty made this decision for me*": children in Musina: their needs and experiences, August 2003.

The living conditions of these children are described as “horrible”: “I have been doing research work with children for about two years and we work with many poor children, but I have never seen such bad conditions for people to live in.”<sup>150</sup> The Zimbabwean girl minors were living with a much larger group of older girls, who included South Africans, many of them sex workers, and many of them single mothers raising children in these appalling conditions.

The researcher’s field notes for the boys describe conditions in this way:

Some boys live near the dump. They do not have water to drink or wash in. They sleep in the bushes where they have put down paper.... They eat what they find thrown away.... They are too frightened to ever go into town as they are so dirty they say the police will know they are Zimbabweans and arrest and deport them.<sup>151</sup>

The CPC offers basic facilities to these children at their drop in centre, including access to bathing and a place to wash clothes. However, they do not offer food of any description, and food is clearly a need among this group. When asked to list what it is they needed, children in this study mentioned the need for water to wash and drink, food, and jobs so that they could send money home.

When the authors visited the CPC drop in centre on different occasions, we came across no girls from Zimbabwe at all, and a small group of boys aged between 17 and 18. They only came to the drop in centre when their search for piece work was not successful, and spent much of the day looking for jobs. We believe our failure to make more contacts with Zimbabwean children was in part due to the brief nature of our visits there. One visit was for a week, but even this was insufficient time to build trust and contacts with children in the area. While finding adults who are secure enough to admit they are illegals and who are prepared to talk frankly can also be problematic, it is clearly more so with children.

The fact that Zimbabwean girls rarely use the centre is indicative of their greater likelihood of finding work. Girls sometimes find a “boyfriend” who is South African and who provides shelter, or they become domestic workers, or sex workers. None of these options exist for the boys, who often end up washing taxis or carrying groceries. Occupations available to boys are less likely to result in any kind of accommodation, so their need to come to the CPC to shower and wash is also likely to be greater.

### **Sex workers**

In August 2004, the authors of this report interviewed 7 Zimbabwean girls working as sex workers in Musina. None of these girls were minors, being aged between 18 and 25 years. All of them claimed to have left their homes because they could not make a living there any longer. Only one was previously a sex worker; the other six had never imagined they would have to resort to this means of earning a living, but had realised they had no options.<sup>152</sup> Their living conditions were very poor and none earned enough money to send home. However, they were all convinced that they were nonetheless better off living such a life in Musina than they would be back in Zimbabwe.

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<sup>150</sup> CPC, *ibid*, page 28.

<sup>151</sup> CPC, *ibid*, page 27.

<sup>152</sup> Appendix One, Case Seven for a case history.

#### 4. Access to health services

A major concern of the authors is whether Zimbabweans in South Africa are able to access health services, in particular whether torture victims with health complications are able to do so. However, we are aware that Zimbabweans from all backgrounds, including unaccompanied minors, need access to health care in South Africa. A selection of anecdotal experiences relating to health care is given here, followed by a summary of findings based on a health questionnaire.

##### **Johannesburg: access to health care based on anecdotal evidence**

###### *Asylum seekers in Hillbrow*

The group of 26 political exiles we visited in their apartment<sup>153</sup> had as one of their main concerns, lack of access to medical support. Several had had falanga in prison in Zimbabwe (beatings to the soles of the feet) and had feet that ached as a result. Falanga typically leaves injuries to the connective tissue of feet and lower legs, and permanent pain. Some complained of pain from other torture related injuries. All should be receiving regular physiotherapy and have access to painkillers, at the very least.

This group recounted an occasion on which they had been donated used cooking oil and had all become very ill with food poisoning as a result of cooking with it. All 25 of them had had simultaneous diarrhoea and vomiting, without access to medication of any kind, in a tiny apartment with one toilet. As most of them are illegal, and as none of them had any money, they had not been able to go to a clinic for medical attention. At one stage they took quinine because it was the only medication in the apartment and they were so desperate.

###### *Community of the blind*

The same blind man who told us he had been imprisoned for selling “MDC sugar”, told us that when his wife was ill recently, he went with her to a local clinic, where he said he was Zimbabwean and asked for help for his wife. The nurse shouted at them, saying that “Mugabe’s people” should go back to Mugabe’s country and not ask her for help. He later managed to get medical help from another clinic for his wife.

When these anecdotes and many others were summarised, they indicated the following general categories of experience in relation to health care, in Johannesburg in particular.

- It is not always possible for a Zimbabwean, or any other foreigner, to walk into a clinic and be given health care. Potential patients are invariably asked for ID of some kind, and many asylum seekers do not have ID, and at this point, some have reported being denied health care. A few reported being called “makwerekwere” and ejected from clinics for producing Zimbabwean ID, or for saying they were Zimbabwean to explain why they did not have ID.
- A further barrier for some refugees is money. Some have reported receiving free medical care, and others have paid small – or large - sums for it. Others have reported failing to access health care because they cannot afford to pay for it, especially for specialist treatment. However, this is much the same in Zimbabwe: many Zimbabweans now fail to access health care for financial reasons.

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<sup>153</sup> This is the same group described previously in this report in the section Johannesburg: political exiles.

- Some Zimbabweans avoid the public health system, because they are worried about the issue of being deported.
- Some have been fortunate enough to use private practitioners, either because they have relatives who pay for them, or through NGOs referring them.
- The Methodist Church in downtown Johannesburg provides an itinerant health care programme for vagrants living on the streets, some of whom are refugees from Zimbabwe and elsewhere. Every Wednesday night, as well as providing a hot meal at various feeding points in the city, this church also hands out small packs of over-the-counter medicines to those reporting general aches and pains. Anyone who appears seriously ill or in need of a proper medical consultation, is given a letter of referral on a letterhead, to general practitioner/s who are prepared to offer this service.

### **Musina: access to health care based on anecdotal evidence**

Unaccompanied minors in Musina reported to CPC that they had formed their own support networks in order to avoid deportation. They mentioned that they do not go to the clinic for fear that the nurse will report them to the police: instead, they club together and buy medicine when one of them is ill. In other words, they are not accessing appropriate medical care.

Among the sex workers we interviewed there, one reported that her child aged two was not getting immunisations because she was afraid to take her to the clinic in case she was deported, but two others with children were taking them to the local baby clinic without problems.

#### *Attitude of health authorities in Musina*

At a recent one day open seminar on health issues hosted by the Musina municipality, health workers raised the issue of Zimbabweans. The general policy at Musina hospital seems to be that Zimbabweans should get health care, but that because they are not South African tax payers, they should pay more. Zimbabweans are charged R75 instead of the R25 that South Africans pay. However, the clinic is free, including to Zimbabweans.

Nurses mentioned a concern about pregnant girls from Zimbabwe, who do not come to the health providers until their situation is desperate. Zimbabwean women in labour with complications suddenly appear at the hospital at the last minute, with no known medical history, and this means having to deal with an emergency situation. The nurses also mentioned the problem of Zimbabweans defaulting on their tuberculosis treatment, either because they move on and then reappear months later, or because they get deported in the middle of their treatment.

In general, the Musina health care system appears sympathetic to and accommodating of Zimbabweans. We did not receive accounts of Zimbabweans being denied health care here, although they did report being afraid to go to a clinic without ID, or not having money to pay for what was needed.



## Summary of findings of health questionnaire

In the light of anecdotal evidence, a questionnaire was devised and 111 Zimbabweans were interviewed via two refugee support organisations.<sup>154</sup> In our own analysis, based on lengthy interviews, this group consisted of 48 “political” asylum seekers and 63 primarily “economic” refugees. This is not a statistically significant sample, considering the numbers of Zimbabweans in Johannesburg, but gives some further insight into this important issue.

*Out of a total of 111 interviews:*

- 39 reported they were not ill and had not tried to access health care in RSA
- 17 went to private doctors and had never used public primary health care systems

*Out of a total of 55 who were ill and could not access private primary health care:*

- 29 received treatment in either a hospital or clinic
- 17 were refused treatment in either a hospital or clinic
- 7 reported they were too scared to seek health care<sup>155</sup>
- 2 reported they could not afford health care and had not had any

**Out of a total of 55 who needed primary health care through the public health system:**

- 29 accessed primary health care
- 26 did not access primary health care**

**- mainly because it was denied, but also at times because respondents felt too afraid or too poor to approach a health care centre.**

The most common institution to refuse health care was Johannesburg Hospital.

- 10 people reported being refused health care at Johannesburg Hospital
- 6 people reported accessing health care at Johannesburg Hospital

The receptionist was the most likely person within a health institution to turn away a Zimbabwean; this was usually who turned refugees away at Johannesburg hospital, and this was also reported at two clinics that denied health care.

### Staff insults

Most commonly, people reported being turned away on a technicality, like not having ID or being foreign and therefore not eligible. However, a few people reported overt racism by health staff. One woman reported being allowed to deliver her baby in Coronation Hospital when she arrived there in full labour, but of having to put up with continuous verbal abuse and accusations of being a “makwerekwere” throughout her delivery. Three others who were refused access to health institutions reported similar abuse by health care staff.

Out of the group of 48 “political” refugees

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<sup>154</sup> See Appendix Three, second questionnaire, for how respondents were found and for health questions.

23 reported they were not ill and had not tried to access health care in RSA  
6 went to private doctors and had never used public primary health care systems

Out of the 19 who needed primary health care through the public health system:

8 received treatment in a hospital or clinic  
4 were refused treatment in a hospital or clinic  
7 reported they were too scared to seek health care

*Out of 19 respondents who had a history of persecution, and who needed health care through the public health system, only 8 had accessed health care. Fewer than half accessed health care. They were twice as likely to be too afraid to look for health care, as to be actually turned away. They were also less likely than “economics” to seek private care.*

## Summary

While this is not a large enough sample to draw any conclusions from, the findings of this survey support the anecdotal evidence that it is not easy for Zimbabweans to access health care.

It is interesting to note that lack of money was seldom given as the main reason. Being denied access to a health institution was more commonly given as a reason. For political refugees, fear of deportation was the most common reason for failing to access health care.

Political refugees were less likely to go to private doctors than economic refugees.

It is also interesting to note that it is not usually the health staff that turned people away – although 5 people reported nurses turning them away - it was far more likely to be the receptionist who turned people away, on a technicality.

The findings of the *CASE survey of refugees* in 2003 are in accordance with our own findings: they found that lack of access to health care affected their respondents who were asylum seekers or refugees from many different nations.<sup>156</sup>

CASE report that 17% of asylum seekers failed to access emergency medical care. They further report that it was usually administrative staff who turned foreigners away.

91% of respondents in their study were able to access primary health care, as opposed to emergency medical care.

Our small sample found a much higher number of Zimbabweans turned away from primary health care than their finding of 9%: around 31% of Zimbabweans who had tried to access primary health care had been turned away. However, our sample was of a statistically insignificant group and our findings are merely indicators of issues that need further examination.

*This survey, together with anecdotal evidence, indicates that Zimbabweans are almost as likely not to get health care as they are to get it. This is cause for concern, particularly considering that among those refused access to health care, were torture victims with related injuries.*

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<sup>155</sup> They self medicated, even though in some cases, conditions appeared to be quite serious. One reported epilepsy, and was not on any medication; one had chest pains; one reporting often fainting; one was pregnant and not accessing ante natal care.

<sup>156</sup> Op cit, pages 142 ff.

## 5. Deportation

Around 45,000 Zimbabweans are deported from South Africa each year now, more than the total deported between 1994 and 2000 put together. The most common route to deportation is via Lindela, a detention centre in Krugersdorp near Johannesburg. People without documents picked up off the streets by police anywhere in South Africa are transported to this centre, and once every few weeks they are deported, in the case of Zimbabweans, via train.

The cost to South Africa of each deportation is in the region of R16,000.<sup>157</sup> This means deporting Zimbabweans may cost South Africa around R720,000,000 per year.

Considering the fact that many, or even most, Zimbabwean deportees are back in South Africa within hours or days of deportation, this seems like an enormous tax burden for very little benefit. While South Africa has the same right as any other nation to protect its borders from a huge influx of undocumented migrants, the current strategy does not appear to be achieving this, and at the same time, it is very expensive.

### Asylum seekers

According to the Regulations to the Refugee Act, an asylum seeker must at all times be in possession of their original permit as proof of their legal status should such proof be required. An asylum seeker in possession of a valid ASP may not be deported, or detained for deportation.<sup>158</sup>

The Regulations further make it clear that:

- *if a person is detained by police as an alien, they have the right to indicate their intention to apply for asylum if they have not already done so and are not already in possession of an ASP.*
- In such an instance, the person... “shall be issued with an appropriate permit valid for 14 days within which they must approach an RRO to complete an asylum application”.<sup>159</sup>

In other words, any non-South African picked up on the streets has the right to tell the police that they wish to apply for asylum, and thereafter this person may not be deported, but should rather have a temporary permit immediately issued by the police to facilitate them getting a formal ASP.

*However, neither the police nor Home Affairs officers abide by this Regulation; Zimbabweans picked up on the streets of Johannesburg are sent to Lindela deportation centre and are deported in their thousands every month, without being given the opportunity to explain that they may want asylum in South Africa.* This is of particular significance bearing in mind the fact discussed previously, that it is extremely difficult to access ASPs, and hundreds of people have queued for them without success.

The ASP is a simple sheet of A4, and is not durable. A further problem for asylum seekers is that having to fold the ASP and carry it in a pocket at all times means that it quickly develops

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<sup>157</sup> The Mail and Guardian, *The Unstoppable Tide*, 3 October 2003.

<sup>158</sup> Regulations, *ibid*, schedule 7 (2).

<sup>159</sup> *Ibid*, schedule 2 (2).

folds and tears and important parts of it can become illegible. The ASP may be needed for years on end considering the slow pace of claims being processed. But it is not possible to have a worn ASP replaced. Police on occasion detain for deportation those with old and illegible ASPs. Even worse, there are reported incidents of the police tearing up ASPs and then sending the person for deportation.<sup>160</sup>

Barry Gilder, Director General of Home Affairs, told the authors in October 2004 that Lindela will soon be a fully fledged RRO, so that in the future deportees will be able to apply for asylum seeker permits here, in order not to be deported – a promise that cannot put right illegal acts committed by Home Affairs authorities against Lindela inmates, in the past and present.

## **Bribes**

Bribing of police officers in order not to get detained and deported is a regular occurrence. We had the experience of Zimbabweans whom we had arranged to interview, arriving late because they had been pulled off a taxi and found to be without papers. They had to negotiate a “fee” in order to continue with their journey. RI refer to a Zimbabwean they interviewed having to pay a R200 bribe to a policeman who stopped him on a pavement and told him to pay up, or be deported.<sup>161</sup> Such reports are commonplace, and occasionally are reported in the media.<sup>162</sup> Home Affairs itself acknowledges this situation which it sees as very serious. They are attempting to crack down, but in the face of understaffing and an overload of work, corruption thrives.<sup>163</sup> There are semi-formal tariffs linked to bribes: R200 to the police on the street to avoid being taken to Lindela, R800 to be released from Lindela, and a sliding scale downwards from this to be allowed to leap from the deportation train en route for Zimbabwe.

## **Conditions in Lindela**

*The problem with Lindela is it has been plagued by corruption, it is under-resourced.... Lindela has been a big headache.*

[Barry Gilder, Dir Gen Home Affairs]

Lindela is a privately run detention centre, paid by the Department of Home Affairs to house detainees ahead of deportation. It is their responsibility to provide accommodation and food, and it is up to Home Affairs to screen detainees prior to deportation. Once in detention, those who currently get the right to explanation and appeal are few. *Refugees International* observed that most deportees are repatriated without ever seeing an immigration official. In a centre that can hold up to 5,000 deportees at one time, “on any given day there may be between two and zero” immigration officers.<sup>164</sup> Those Zimbabweans who know their rights and are able to access a phone to phone a human rights lawyer may be fortunate enough to avoid deportation, but the vast majority are deported without appeal or any contact with anyone.

At times, conditions in Lindela are overcrowded, with up to 5,000 people in a facility designed for 3,000. Detainees end up sharing beds at these times. It has been pointed out by key informants that it is in the financial interest of Lindela to have high numbers of deportees housed there, as they are paid per head.

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<sup>160</sup> LHR and Wits Law Clinic both cited such cases, as did people we interviewed – although so few of our interviewees had ASPs, they were not referring to themselves, but to others they had heard of.

<sup>161</sup> RI, 14 July, op cit.

<sup>162</sup> The Daily Sun (RSA), *Freedom for R800*, October 6, 2003.

<sup>163</sup> The Cape Times, 14 October 2003, op cit.

<sup>164</sup> RI, 14 July 2004, op cit.

Those who have been deported via Lindela report a very high incidence of illness among inmates, particularly of respiratory disorders, and many have commented that nobody comes out of Lindela without being ill and coughing. Respiratory diseases, including tuberculosis, will flourish in an overcrowded situation such as this.



*Photograph 15: this Zimbabwean was one of four who died after being detained in Lindela in October this year. He had relatives in Johannesburg who knew he had been detained; he was one of the fortunate few who was repatriated to Zimbabwe for burial*

### **Deaths in Lindela – detaining of the very ill**

Deportees not infrequently die in Lindela; in just one week in October 2004, eleven deportees died, four of them from Zimbabwe.<sup>165</sup> The question needs to be asked why people this ill are being arrested by the police and taken to a detention centre in the first place. According to Lawyers for Human Rights, Lindela and Home Affairs have undertaken not to arrest for deportation, or to keep in detention people who are very ill. It is inhumane and not in accordance with international obligations towards refugees to detain and deport people who are extremely ill and likely to die during this process. This situation also clearly exacerbates the already obvious problem of people contracting illnesses while in detention.

LHR reported to us that Lindela has in the past failed to inform the appropriate consulate of these deaths, and has failed to give names and details of the dead to LHR, meaning that bodies remain unclaimed and eventually end up in paupers' graves at the hospital near Lindela. A further complicating factor is that people who are detained, especially if they are political refugees, frequently give false names for fear of being on a list that goes to Zimbabwean authorities. To trace who is in Lindela, or who has died there, is not straightforward as a result.

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<sup>165</sup> *South African Women in Migratory Affairs*, an NGO that deals with refugees told us this. They had names and personal details of the deceased, and took us to view the corpse of one of the Zimbabweans and interview his family.

## **The deportation train**

Once a week or fortnight, depending on numbers in detention, a deportation train runs from Johannesburg to Musina 500km away on the Zimbabwe border. This train leaves Johannesburg with around 1,000 to 2,000 deportees on board, and arrives at Musina with several hundreds less. Deportees bribe guards on the train in order to be allowed to jump out of the windows en route - the closer to Johannesburg, the shorter the walk back and the higher the bribe required. Some jump to their deaths or end up with serious injuries, again an indicator of the desperation with which people will try to avoid having to return to Zimbabwe.<sup>166</sup>

We interviewed some deported Zimbabweans on their return to Beitbridge. They reported that the police on the train assaulted the boys and men. Some female detainees reported that the boys had been punched, kicked and generally pushed around by the police en route for the border.

Once more, the issue of deporting the very ill must be raised. Deportees from time to time die in this train in the process of deportation.<sup>167</sup> Again, Lindela and Home Affairs have given lawyers assurances that this will not happen, but the ill continue to be deported. While carriages are set aside for the very ill to travel under less crowded conditions, there is no doctor or medical care on these trains. While Barry Gilder, Director General of Home Affairs stated in a television interview in 2003 that he would take measures to ensure medical support on this train, to date this has not in fact occurred.<sup>168</sup> Some arrive back in Beitbridge barely alive and are admitted to hospital there.

## **Deportation from Musina – holding conditions**

Around 300 Zimbabweans are picked up weekly in the border area and are held at Musina Police Station and deported. Police officials there explained that they feel in a difficult position. According to them, it is not the responsibility of the police to take on the role of processing undocumented migrants. They do not have the capacity to issue ASPs and it is not supposed to be solely their responsibility to oversee deportation. These roles are supposed to be taken by the Department of Home Affairs. However, there is so far no RRO in Musina. The nearest one is Pretoria 450 km away – which seems astonishing given the fact that Home Affairs told us repeatedly that there have been migrants from Zimbabwe crossing at this very point for generations. An RRO is apparently to open in this area soon, but in the meantime the police have to shoulder the problem. Zimbabweans are currently being deported without the opportunity to apply for asylum. The police should in terms of the law be issuing 15 day permits to those who ask for asylum, but this is never done.

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<sup>166</sup> New York Times, November 2003, op cit, reports a death on the train that Michael Wines travelled on.

Deportees interviewed have also reported deaths of people leaping from the train when it was moving, as did LHR.

<sup>167</sup> This was reported to us by other Zimbabweans who personally knew of cases. Michael Wines of the New York Times reported in his article *A long ride to nowhere*, 2003, that a Zimbabwean died on the deportation train the night he travelled on it to Musina.

<sup>168</sup> etv footage, 2003.



*Photographs 16 and 17: Zimbabwean deportees are herded on to a deportation train in Johannesburg, September 2003*

The police report that it is the role of the army and not the police to patrol the border and prevent people entering through undesignated points, but the army is also under resourced which means that there is very little to prevent Zimbabweans walking in to South Africa in their thousands every month.

The police in Musina do not have the resources to deal with the hundreds of Zimbabweans they pick up for deportation every week. Zimbabwean deportees are held in an area by the police station, fenced with chicken wire. This “cage” has no toilets or tap within its perimeter, and deportees are held there in very hot weather: the temperatures in Musina are above 35 degrees for much of the year. The fence is not an impenetrable barrier, and particularly if deportees are held there overnight or over the weekend, then they can escape by scaling the fence.<sup>169</sup>

Zimbabweans may be deported the same day, or they may be held for up to seven days. It was reported to us that the police only register those in “the cage” just before they are deported. This prevents them having to explain the missing ones who escaped. But if you are not registered, then you are not provided with food, so that over the weekend, deportees can end up not being fed for days and not having adequate access to water, because they are not registered.

The police in Musina apparently know full well that their holding conditions do not meet the minimum criteria that deportees are entitled to in terms of the law. However, they have been made responsible for deportees when it should be Home Affairs resourcing this. Police there reported that they have raised the issue of needing more resources with their Headquarters in Johannesburg, so that they could improve holding conditions and cover the costs of feeding deportees properly. However, they have not received any increase in their budgets so far, which leaves them with no option but to continue to hold Zimbabweans in illegal conditions. It is to be hoped that the Musina RRO opens within the shortest possible time.

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<sup>169</sup> Descriptions of the process of deportation from Musina are consistent whether by human rights lawyers, by Zimbabwean deportees, or by the Centre for Positive Care. The authors were given the same descriptions from Zimbabweans in Musina who had been through deportation.: see Appendix One, Case Seven.

## **Police approach to deportees in Musina**

On 20 October 2004, there was a one-day health summit in Musina, in which interested parties could raise any health issue of concern to them.<sup>170</sup> The Commissioner of Police raised the issue of deportations. He told participants that they deport around 4 truck loads of Zimbabweans a week. He felt that this was a pointless process, because those that are deported are back in Musina within a few hours. He said that some weeks they deport the same individuals three times. He commented that those who are deported know how to get back quickly, and what is more, they therefore bring with them a whole new group of Zimbabweans each time, showing them the holes in the fence!

Senior police seemed to have an empathetic approach to Zimbabweans in Musina, which must be applauded. The approach was that the border is a comparatively recent historical event, and it has ruled out the Limpopo River as an effective resource for both countries. The police would be in favour of a more pragmatic approach to the problem, of acknowledging in informal or formal ways that Zimbabweans are suffering and need to be shown neighbourliness at this time of great hardship.

Senior police had the attitude that they were deporting people because this was their instruction, but they would be willing to support a policy which allowed for some degree of integration of Zimbabweans in their area.

It must be added that while at the senior level this was the police position given, *deportees from Musina reported systematic exploitation by police and army who arrest them*. This included having all their money taken as a bribe not to be deported, or in the case of girls, being forced to have sex in order not to be deported - often unprotected sex<sup>171</sup>. Deportees seem to be as much of a cash cow here as in Johannesburg according to varied sources, and this raises the question of whether it would really be that easy to get the Musina police to relinquish their part of the “revolving door” process.

## **Deportation of unaccompanied minors**

According to the United Nations Convention on the Rights of the Child, it is illegal to deport any unaccompanied migrant under the age of 18, without first conducting exhaustive inquiries to ensure that there is a suitable receiving agency in the country of origin. However, Home Affairs has reportedly been deporting children on a regular basis, despite the fact that South Africa is signatory to this Convention.

In March 2004, human rights lawyers making a routine visit to Lindela identified around 100 persons who claimed to be aged under 18 in detention on that day. The Lawyers for Human Rights decided to take Home Affairs to Court and to get a Court ruling on the rights of foreign children in South Africa. This test case took many months, and resulted in a landmark ruling in September 2004.<sup>172</sup>

The Court ruled that all children, including unaccompanied foreign children, have full rights in terms of the South African Child Care Act. The Court further ruled that it is illegal to deport unaccompanied minors without first ensuring a safe environment and suitable adult care in their

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<sup>170</sup> The authors sent a participant to this meeting.

<sup>171</sup> The authors were told about this when they interviewed Zimbabwean sex workers in Musina; August and September 2004.

<sup>172</sup> Details of this test case were given to us in an interview with LHR in October 2004.



country of origin. The precise fates of the children involved in this test case are currently being decided on a case by case basis by the Court.

The numbers of children involved in this case have dwindled over time: many who had claimed to be under 18 were established to be over 18 once inquiries were undertaken. The remainder were held in State care while the case progressed. The girls involved all absconded; their place of safety allowed them to walk in and out as they wished, and they all disappeared over time. The boys have been kept under more restricted conditions, although in a reasonable environment; the remaining number of children is about 14, of which 7 are from Zimbabwe. Individual assessments will be made by the Court, and if it is established that any of the children are orphans with no surviving responsible adults in their families, they may be fostered in South Africa. Otherwise they will be repatriated directly to their relatives.

It is not only Lindela that has been regularly deporting minors. The police in Musina do not register children or unaccompanied minors, and they deport them on a regular basis. Knowing such deportations are illegal may be why the police do not incriminate themselves by recording minors. This means that the scale of the problem of unaccompanied minors being deported from Musina cannot be properly assessed.

The CPC research into children in Musina reported that deportation was a constant threat for Zimbabwean minors, especially for the boys, and many of the children interviewed in their study had been deported at least once in the recent past.<sup>173</sup> Several of the children reported working for extortionist rates, and then being threatened with deportation by employers on pay day, so that they had to flee without pay. We also interviewed four boys aged 17 who had been deported from Musina and had returned within hours.

All the descriptions of deportation from these minors were consistent; in the process they were stripped of all their possessions either by those who arrested them or by adult detainees being deported in the same overcrowded trucks, which may have had up to 80 people on one truck. The deportation conditions were so crowded, the children reported fear of suffocation. The girls reported being deported less often, because they were able to pay soldiers and police in sex in order to stay.

These stories of deportations all ended in the same way – the children were back across the border and in Musina within hours of being delivered in Beitbridge. The deportation process was thus a very costly one in material and personal terms for the children, causing anxiety and distress - but the one thing it did not prevent was the immediate return of the deportee to South Africa, usually within the same day.

### **Deportation of parents without their children**

The director of a child care centre in down town Johannesburg told the authors that she has a large number of Zimbabwean children in her care. From time to time, she will find herself with unclaimed children at the end of the day, and will then hear that the parent/s have been picked up and are in Lindela. She is then left literally “holding the baby” until the parent/s have been deported and have made it back to Johannesburg, a period in her experience of around two weeks to a month, depending on how long they are held in Lindela prior to deportation.<sup>174</sup>

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<sup>173</sup> CPC, August 2003, op cit.

<sup>174</sup> Interview, July 2004.

## **6. Back in Zimbabwe: the deportees on arrival**

### **Zimbabwe police**

The authors went to Beitbridge to witness the process of repatriation for themselves. The police in Beitbridge do not have the resources to cope with thousands of deportees a month. The biggest influx of deportees is that associated with the deportation train once a week or fortnight, which arrives at the border on Thursday mornings. A thousand detainees or more can arrive at one time, ferried across the border in South African police trucks.

On the day we observed, in August 2004, the Zimbabwean police dealt with the deportees one truckload at a time and gave a short speech, in which they appealed to them not to re-cross the border, before dismissing them. We observed that the detainees did not even enter the police station, but were dismissed from the driveway, and remained in police “custody” for around 5 minutes.

At one time the police did fine deportees, but in recent years, since the weekly deportations have become so huge, they simply cannot do so; if somebody is fined and cannot pay the fine, then they have to be detained until the fine is paid, and the police clearly do not have the resources to detain thousands of people. To process such a huge number of people every week in a way that would involve paperwork and record keeping would be logistically impossible, given the small manpower and resources of this police station. This means that any information about deportees is essentially undocumented by the Zimbabwean police. By immediately discharging them, the police do not have to provide food or any other resources for deportees.

On inquiry, the police reported that they are aware that minors are among those deported, and are aware that many of the girls being returned have been victims of sexual abuse. They do not have resources at this point to do anything about this, but have expressed a concern about the issue.

### **The revolving door**

The authors observed the speed with which deportees dispersed. Taxi drivers and maguma guma hang around in the vicinity of the police station, and within half an hour of being dismissed by the police, some deportees were witnessed already in taxis and heading back across the border.

However, to re-cross the border takes resources. It is possible if you know where the holes in the fence are, to walk the river and get as far as Musina without resources, but if you need to catch a taxi back to Johannesburg, then funds are needed. Zimbabweans we spoke to in Johannesburg told us that many Zimbabweans lay plans that come into effect when they are deported. They form a relationship with the taxi drivers that ply the Johannesburg-Musina route, and some taxi drivers have registers of Zimbabwean they deal with.

On being picked up and taken to Lindela, Zimbabweans in this network can phone their taxi driver, and give him the date on which they should be collected in Musina and brought back to Johannesburg – which is the day after their deportation train is due to arrive at the border. In this way, they minimise the number of days they spend away from any job they may have in Johannesburg, because one of the greatest fears Zimbabweans face is losing their jobs - or possessions - when they are deported. On this system, it is not necessary to have the R500 up front for the fare back, as long as somebody else is waiting with it on arrival in Johannesburg.

## 7. Problems of the repatriated in Beitbridge

While it is the majority of deportees who visibly head straight back to South Africa, there are those who remain for some time in the Beitbridge area. The police are not in a position to provide bus permits or any transport money to deportees, nor does any NGO in the area of Beitbridge. Deportees are commonly without money by the time they arrive back, and some are left stranded in Beitbridge trying to raise the money either to get to their homes in Zimbabwe, or back to South Africa. Informants in the Beitbridge area told us that from time to time people are deported to Zimbabwe who are not Zimbabwean; they cannot speak any local language including English. Sometimes South Africans are deported to Zimbabwe! Such individuals can face particular problems getting back to South Africa, as they cannot speak to anyone locally.

### The ill

Those who are deported in a very ill state are admitted directly to the Beitbridge hospital. We were informed that deportees die in hospital on a weekly basis. Two detainees had died the day before we arrived and had been sent to the morgue. There were ill detainees in the hospital, including a man who had been shot and left paralysed, who had been deported in this condition.

In the paediatric ward, there were orphaned children. One 4 year old boy had been left orphaned when his mother was deported very ill and died. A brother and sister aged 7 and 3 years old had been orphaned, also after their mother was deported ill and died. The hospital did not know how to contact relatives of these children. The mothers had been given paupers' funerals.

### Deaths

A tragic case was brought to our attention towards the end of 2003. A deportee was reported to have died of starvation while trying to walk the 300 km through virtual desert to get to Bulawayo. On investigation, it was established that this young man had indeed died in the vicinity of a rural school about 40 km out of Beitbridge. Teachers at the school reported finding him lying by the side of a small stream, moaning that he was hungry. They put him on a donkey cart, but by the time they got him to hospital, he had died.

It was established by the authors that he had his ID on him, but the hospital morgue would not delay his burial to allow for efforts to locate his family. The hospital has facilities to store 6 bodies at a time, and on this day there were over 20 unclaimed bodies, more than a dozen of which were deportees who had died in the hospital. Most of them were without any form of identity.

In the morgue on this same day, there was *a severed human head*, still complete with skin and features, but no lower jaw. This remains of a crocodile's dinner had been picked up on the shores of the Limpopo and delivered to the morgue by the police. The identity of the person was unknown. This human head, together with the dead deportees, was buried in a paupers' grave in Beitbridge the same day.

The police were asked about these cases, of the person picked up in the school grounds and the human head: they confirmed that it is not unusual to find human remains in the greater vicinity of Beitbridge, both on the banks of the Limpopo and in the bush. The police report this happens every few weeks, and they assume these are deportees or border jumpers, who have no relatives in the area to notice they are missing. Such remains may lie for unknown periods in the open until they are discovered, scavenged and desiccated. They end up in paupers' graves.

People in the vicinity of the hospital burial ground complained to us that the paupers' graves are not deep enough. They told us that 39 people had been buried the week before, and that the smell from the corpses was still noticeable.

### **Political exiles: risks on deportation**

We have several cases on file of individuals who, on deportation, decided to go home instead of ducking straight back under the fence to South Africa, and who were then picked up again and re-brutalised by police. We have other cases on file of people who had been wanted by the police for their political activism, and who decided of their own accord that it was possibly safe enough to go home; they were picked up and tortured.

Gabriel Shumba, whose affidavit is in Appendix One, is one good example. He had at one stage fled to South Africa, after 11 arrests and several assaults, and was persuaded by friends and colleagues that it was safe for him to return to Zimbabwe. It was after this return that the torture in his affidavit took place.

Another exiled activist who has led anti-Zimbabwe demonstrations in South Africa in the last few years, returned recently to Zimbabwe of his own accord. In spite of keeping a very low profile, in October of 2004, he was picked up, tortured, and has now been formally charged with "subversive activities" for his protests while in South Africa. He is currently on bail. This case is an indication that activities of known activists are monitored in Johannesburg by the CIO, and this information is relayed back to Zimbabwe.<sup>175</sup>

***In conclusion, it is not safe for a political asylum seeker to be deported or to return to Zimbabwe; to deport an activist, is to place that person at a high risk of persecution.***

## **8. The dead: a problem for the future?**

In the course of researching this report, the authors on several occasions came across the phenomenon of Zimbabweans who have died either in South Africa, or in Beitbridge on deportation, and who have ended up in a paupers' grave, without documentation of who they are and without death certificates in their names. The Chief Executive Officer at Musina Hospital has also raised the issue that their morgue is over full because of unclaimed corpses of Zimbabweans.<sup>176</sup>

In Zimbabwe itself, HIV related deaths number approximately 4,800 per week.<sup>177</sup> Probably the vast majority of migrants and exiles in South Africa are in the high risk age group for HIV and Aids. Considering the very congested living conditions of Zimbabweans in South Africa, and what we were told about women who end up as sex workers to survive, the prevalence of HIV infection could be imagined to be very high in this group. In the longer run, the death rate could be assumed to be correspondingly high.

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<sup>175</sup> This case resonates against the UNHCR's reported cynicism linked to Zimbabweans who protest in South Africa - they suggested the fact that such protests occur, implies there is no risk to exiles. See section on UNHCR in this report.

<sup>176</sup> Musina Health Summit, 20 October 2004.

<sup>177</sup> This was the figure mentioned by doctors in the Ministry of Health in 2003: personal interview.

Possibly hundreds or even thousands of Zimbabweans may be dying every month in South Africa. While some of the dead are being repatriated, others are ending up in paupers' graves. Many exiles and border jumpers have no formal identity documents on them; many arrive and fall outside of supportive social networks, or find themselves forming groups of equally impoverished youths. These groups are very fluid, with individuals coming and going. People may use false names at work and where they live, and some have false documents. People in the support systems of somebody who may die are themselves illegal and trying to avoid official attention. How do they claim a corpse without getting deported themselves?

Who looks out for those who become very ill? Who notices when they die?

Who knows how to reach family members back in Zimbabwe to inform them of what has happened? How many families in Zimbabwe can afford to repatriate a corpse – very often of the very breadwinner they hoped to bring money home to them?

How many families can afford to send somebody on a return trip of two thousand kilometres to witness a funeral at short notice? How many families have passports and visas to travel to a funeral?

What is happening to Zimbabwe's dead in the diaspora?

In any culture in the world, attending the funeral of a loved one is an essential part of dealing with mourning and closure. It is the deep concern of the authors that there are families in Zimbabwe right now who may not even know that their husband/son/daughter/mother/father is already dead and buried in South Africa, or that their human remains are lying on the bottom of the Limpopo or in the open bush. How long does a family wait to hear from somebody who is in fact dead, before starting to wonder why they are so silent? How does a son/daughter/wife sitting in Zimbabwe begin to try to find out the fate of a person who has become silent in a foreign land?

Zimbabweans are not just dying – they are becoming “disappeared persons”, without death certificates, without known places of burial. They are becoming aggrieved spirits who were not buried honourably, and who are now lost and wandering in a foreign place.

Apart from the problems of lack of closure for families, there may be practical problems linked to these foreign deaths in the years ahead, particularly linked to the lack of death certificates. Without death certificates, widows and widowers cannot remarry. Without death certificates, heirs will have problems inheriting whatever little property there may be, or getting birth certificates for children.<sup>178</sup>

### **Orphans in a foreign land**

A further problem drawn to the attention of the authors is that of Zimbabwean children who may find themselves stranded in South Africa when their sole parent dies there. One woman who is a Zimbabwean with a permanent residence permit in South Africa, told us that she has informally adopted a two year old Zimbabwean child, whose mother died in South Africa in 2003.<sup>179</sup> This child was originally looked after by the day care centre that she was attending when her mother died, but this was not a permanent solution. This child has no documentation and no contact address for relatives in Zimbabwe. She is a stateless child. She is somebody's grandchild or

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<sup>178</sup> In many instances, men leave pregnant wives behind, and the issuing of birth certificates in Zimbabwe requires the father's signature. In Zimbabwe, especially in rural areas, people frequently do not apply for birth certificates until their child is of school going age, at 5 years old, so a dead father without a death certificate creates a real problem in such cases.

<sup>179</sup> Interview, October 2003.

cousin, but has now fallen out of her Zimbabwean family system altogether. She is fortunate in that she has a good home: other Zimbabwean orphans in South Africa may not all be as fortunate.

### **Help for the dying and the dead**

There would appear to be a need to help not only the living exiles, but also the dying and the dead. More research needs to be done into all the implications of Zimbabweans dying anonymous deaths abroad. In Zimbabwe, many people now belong to burial societies and pay a monthly premium towards funeral expenses. However, there are many reasons why this system would not work smoothly in the cross-border situation, including issues pointed to before. These include the fact people are very mobile, often use false names, and are vulnerable to unscrupulous schemes, where South Africans might take the money and then threaten deportation when time comes for them to pay up. Many Zimbabweans are in any case the sole member of their family in South Africa; once they die, who is to insist on behalf of the dead that the promised assistance is now paid for?

More Zimbabweans in South Africa need to be able to link in to formal or informal refugee structures, perhaps through NGOs or churches, who could have on file contact addresses for relatives in Zimbabwe. There would be vital issues of trust and confidentiality linked to such lists, considering people's fears of deportation and political persecution of relatives back home. While there are no simple solutions, there is the need for some sort of "buddy system" to ensure that our nation's people are not going un-mourned into mass graves in foreign lands.

## **9. Conclusion**

Zimbabweans are fleeing their nation in their millions. There is no indication that this is going to change in the near future. Three major reasons for the exodus have been identified: the breakdown of law and order, including torture with impunity; the humanitarian crisis, including political abuse of food; the collapse of the economy. Going into exile is a difficult choice: living as a "makwerekwe" in South Africa involves living with a very real threat of xenophobia, of having to bribe police in order not to be deported, or of being deported. It means being vulnerable to crime and exploitation without redress. It means living in appallingly overcrowded and unsafe conditions, and not always having access to basic facilities including health. It means that productive people who once held respectable jobs have to adjust to being beggars.

That so many opt nonetheless to live a hard life in exile, is an indicator of the severity of life in Zimbabwe; however tough things are in South Africa, it is better and safer than being in Zimbabwe. For this reason, would-be asylum seekers are prepared to spend weeks and months in fruitless queues in the hope of ASPs. For this reason, young men are prepared to leap out of deportation trains – risking death on the tracks is better than being forced to go home.

Zimbabweans in exile appear to face a lack of political will in South Africa. While the laws to protect their rights are in place, these are being undermined by the "politics of denial" practised by government officials in relation to the nature of the crisis in Zimbabwe; this results in victimisation at many levels. Zimbabwean exiles have become a "cash cow" – the very government they have fled is trying to harvest returns from them, and corrupt Army, Police and Home Affairs officials in South Africa take bribes from them and other refugees in exchange for another precarious day of not being deported. It is apparent that the current inefficiency in the Home Affairs system plays into the hands of corrupt officials, who are making significant sums of money from bribes. It is not in their interests for the system to become efficient.

The needs of Zimbabweans in exile are those of refugees everywhere – they need recognition and acceptance, and access to essential services. In addition, Zimbabweans need greater understanding of why they have left their nation, particularly from South African officials. The nature of Zimbabwe’s struggle for democracy and of the persecution of democratic forces in Zimbabwe needs to be discussed and acknowledged, particularly among government officials and departments. Zimbabweans need practical assistance. They need greater access to health care, to ASPs, to education and skills training for their exiled youth. Those who are very ill and those who are dead need to have this information reliably conveyed to their relatives back home, through secure and confidential channels.

## 10. Recommendations

There have been several studies of general refugee issues in South Africa in recent years. CASE has produced two major reports, one in 2001 and one in 2003.<sup>180</sup> Both of these reports were accompanied by extensive recommendations that were very thorough and consultative. There is little to be gained by yet again reframing the good work that others have done in this regard. *The National Refugee Baseline Survey: Final Report*, released a year ago in November 2003 made recommendations to the South African Government, the National Departments of Home Affairs, Health and Education; also to the UNHCR and Service Providers, including NGOs and churches. Their recommendations are attached as Appendix Five to this report.

The Solidarity Peace Trust would reinforce certain of the *CASE recommendations*, 2003, summarised here:

To the Department of Home Affairs:

- They should investigate bribery within the department.
- They should issue ASPs that are valid for six months instead of one month
- ASPs should be more formal and should be laminated with anti forgery marks to make their recognition by various service providers more likely.
- Such changes should be combined with a massive campaign to promote recognition of the documents in government departments and with other service providers.

**In addition the Trust recommends that:**

- There is a need to promote greater awareness and debate in South Africa, including at the level of service providers, of the nature of the crisis in Zimbabwe, the scale and type of human rights abuses that are taking place, and the policies that are needed in South Africa to deal with the numbers of Zimbabweans in their nation.

*Refugee reception offices*

- *The Department of Home Affairs* should take action to issue greater numbers of Zimbabweans and others with ASPs each week, as the backlog is causing real hardship to many, among them victims of torture who are at real risk if they are deported.
- *The Police* need to be reminded of their legal obligation to give 15 day permits to any person they pick up for deportation who states that they want to apply for asylum, particularly bearing in mind the fact that gaining an ASP can be so problematic.

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<sup>180</sup> CASE, *Realising Rights: the development of health and welfare policies for asylum seekers and refugees in South Africa*, researched for UNHCR, May 2001; CASE 2003, op cit.

- *Civil society* should be monitoring access to RROs on a systematic basis. Personnel should stand incognito outside RROs and observe whether:
  - Home Affairs officials are giving out helpful information to those waiting
  - Home Affairs officials are illegally insisting on passports
  - There is brutality towards those waiting
  - Bribery is taking place

They should further note how many people from which nations are being issued ASPs each day, and what proportion this represents of those waiting each day.

#### *Health care*

- Further investigations into how best to provide health care to Zimbabweans who may not be accessing the public health services must be addressed. Some are not accessing it because they do not have ASPs. If the above recommendations are acted upon, then much of this problem will resolve itself.
- Until national service providers including the Ministry of Health consistently recognise the rights of asylum seekers, refugees and their documentation, as they are required to by local and international law, there is a need to build a network of support via civil society to ensure that asylum seekers and refugees, in particular those with torture related injuries, have safe access to medical care.
- Civil society should monitor access to medical care, particularly at hospitals, and document instances of denial of the right to services for further action.

#### *Denial of the right to food*

- There is a need for a test case resolving the issue of whether denial of the right to food on political grounds constitutes a “threat to physical safety”. Any civil society group that knows of Zimbabweans in South Africa that have reported political abuse of food, should consider taking the issue to Court.

#### *Deportations*

- The endless cycle of deportations should be reconsidered: this is an expensive and not very effective policy. In particular, urgently:
  - Very ill foreigners should not be detained for deportation
  - Independent health professionals should do an assessment of health conditions at Lindela and on the deportation trains, to facilitate formation of a policy that will prevent communication of diseases, protect the rights of the ill, and monitor deaths of deportees in state custody.
- The UNHCR should be playing a more active role to ensure that minors, and political asylum seekers who may not have ASPs, are not being deported.
- There should be opportunity for deportees at Lindela to put on record crimes against themselves including bribery by South African Police, SANDF, and Home Affairs officials paid for both in cash and in sex. Civil society would be in the best position to document such claims and lay charges.

#### *Repatriation*

- There is a need to protect the rights of deportees on the Zimbabwean side of the border. Among those currently deported, are unaccompanied minors, victims of sexual exploitation, the very ill, and those who have no resources to return to their homes in Zimbabwe and who end up stranded. Also among those deported, may be political asylum seekers who fled Zimbabwe in the first instance for reasons of persecution.



- In view of the fact that the Zimbabwe government is about to force through Parliament an Act that will undermine activities of human rights NGOs and churches, it is not obvious who is supposed to deal with this sensitive issue, and protect the rights of these groups of deportees once they are back in Zimbabwe.
- **If there was better screening of deportees on the South African side, these problems would be reduced in the first place.**

#### *The dead*

- Zimbabweans are dying in South Africa and are ending up as undocumented deaths in mass paupers' graves. This may create problems in the future as relatives back in Zimbabwe do not know where their dead are buried, and do not have death certificates. There is a need to facilitate ways of keeping safe, confidential records of how to contact relatives back in Zimbabwe, in the event of exiles becoming very ill or dying.

## APPENDICES

### APPENDIX ONE:

#### **Case examples of Zimbabweans in South Africa**

A few detailed case histories have been chosen for this section, to illustrate different aspects of life in Zimbabwe and what drives people to leave, and to illustrate the problems faced in South Africa by Zimbabweans. One case is in the form of an affidavit, the others are based on first hand interviews by the authors. Not all cases chosen are of political refugees, to acknowledge the existence of economic migrants, and the problems faced by them (cases 5 to 7). Apart from Gabriel Shumba, all names have been changed to protect informants.

#### **Case One: "Thoko"**

##### **Interviewee:**

Eighteen year old girl from Matabeleland South, who was abducted and raped in a youth militia camp. She was a sixteen year old school girl at the time of the incident she related. She had never been to South Africa prior to January 2004.

##### **Comment from interviewer:**

Thoko had been in South Africa for around a month at the time of the interview in March 2004. She was in hiding in her aunt's house some distance from Johannesburg, and was reported to be in a very bad emotional state. Her aunt knew she had been raped, but she was not prepared to talk about it in the family, and the aunt had asked for help.

Thoko took around three hours to relate her story, and for long periods of time, she cried uncontrollably and could not talk. She had not talked about these events before, although they had happened more than a year earlier. She presented as suicidally depressed, and said repeatedly that she wished she was dead. She had a suicide plan – she was thinking of hanging herself from a tree. She was agoraphobic and could not leave the house without her aunt. She was afraid of walking to the shops nearby in case she was picked up and deported. She was

afraid of travelling in public transport because she was afraid of men. She was incapable of doing basic household chores.

### **Thoko's story:**

Thoko, together with two friends, was walking home from school in her rural district in Matabeleland, during October 2002. There was an election planned for around that time, and the area was overrun with youth militia and war veterans, campaigning for ZANU PF. The girls had to pass near the camp set up by the youth militia, and as they approached, the 3 of them were seized by a group of 8 youth militia, who abducted them into the camp.

The three girls were taken to the tent shared by these 8 boys. They were stripped naked, had their hands tied behind their backs, and were repeatedly raped. All three were raped together, then one at a time so that the other girls were forced to watch what happened to their friends. They were raped by one militia at a time and were also gang raped. They were left naked and mostly tied up for three days, and were repeatedly raped during this time. They had no food and no water for three days. Their mouths were cracked and aching from screaming.

The girls were eventually released when their fathers came to the camp and demanded to know if they were there. They were taken to hospital and treated for their injuries. They were lacerated from the repeated rapes and also bruised and sore from several days of being manhandled and tied up. The police refused to investigate the rape cases, saying they were "political".

After leaving hospital, Thoko was terrified of remaining in her home area because the youth militia camp was still there. She immediately ran away. She went to the Midlands in Zimbabwe where she had a girlfriend who was one of a group of female gold panners. Within two weeks of her arrival there, she heard that her mother had died. Her mother had been an invalid and Thoko had been very close to her. She heard that her mother had died of a broken heart because of what had happened to Thoko. She was too scared to go to her mother's funeral, because of the youth militia, and still feels very bad about that, and somehow guilty that her rape caused her mother to die.

Thoko remained with the gold panners for a year, trying to earn enough money to buy Rands to get to South Africa. She felt very unsafe all of this time, and avoided men. She felt she would be unsafe as long as she was in Zimbabwe, because youth militia were everywhere. When she had enough money to leave, by early 2004, she went to Beitbridge with friends who intended to cross the border.

She was one of 73 who crossed the river one night in January 2004. The river was very full, and she was terrified. Crocodiles closed in on them and she said it was the worst experience of her life. She cried a great deal talking about this night.

Thoko and her friends took a taxi to Johannesburg. She had her aunt's address, which is near the main road between Pretoria and Johannesburg, so the taxi driver took her straight there and her aunt took her in. On arrival, Thoko went into emotional decline and became very depressed.

Thoko's aunt is also a political refugee, having been in MDC structures and having been harassed. Her brother (Thoko's uncle) was beaten to death during the same election period in which Thoko was raped.

Neither the aunt nor Thoko has an ASP, to date (October 2004). One of the other girls who was raped at the same time as Thoko has since died.

Thoko has had psychological support through the NGO network in Johannesburg and her condition is much improved. However, if she was ever deported back to Zimbabwe, there is a strong likelihood of her becoming suicidally depressed again. She is convinced that if she went back, the youth militia would seize her and rape her again.

## **Case Two: “James”**

### **Interviewee:**

James is around 40 years old, an MDC middle ranking official from Mashonaland Central. He is married with children and was harassed by war veterans on several occasions ahead of the presidential elections in March 2002. James is a car mechanic by profession and worked in a garage prior to fleeing Zimbabwe. He had never been to South Africa prior to 2001.

### **Comment from interviewer:**

James was interviewed in Durban in March 2004. He presented as somebody in a deep state of existential despair. At one point during the interview, when he talked about missing his family, he put his head down on his arms and cried for quite some time. He apologised afterwards for having cried. On repeated occasions, he said “What can I do? What must I do?” The questions were rhetorical. He feels entirely trapped in his current life and sees no way out as long as things stay as they are in Zimbabwe.

### **James’ story:**

James was in the MDC structures in a district in Mashonaland Central. This is a part of Zimbabwe that is very strongly ZANU PF, and where there have been many farm invasions. He related that things had been very tough in his area for MDC activists, with multiple incidents of assaults, houses being burnt and even deaths. He decided nonetheless to campaign for Morgan Tsvangirai ahead of the election in March 2002.

Things became very rough in November 2001, and he was manhandled by war veterans on several occasions, who threatened to kill him, harm his family and burn his house. He felt the threats were very serious, as they had indeed done those things to other MDC activists he knew. He heard via an informer that they were coming to abduct him to a base on a particular night, so he fled first to Harare to get a visa in his passport, which took two days, and then to South Africa, in November 2001.

At the time he left, he thought he would be gone only a few months, because his expectation was that Tsvangirai would win the election. However, he did not, and James has therefore been in exile for almost three years, which was not what he had thought would happen. At the time he left home, his wife was pregnant with their third child: she gave birth to a little boy, who is now more than two years old, and has never seen his father. James cried for a long time when he said this.

When he arrived in Johannesburg, James was completely disoriented. He speaks Shona and not Ndebele, so was unable to understand any of the South African languages. He lived as a vagrant on the streets, sleeping on cardboard, competing with South African vagrants for space in storm drains at night, being called a “makwerekwere”. Eventually he connected with a few Zimbabweans who agreed to help him get out of Johannesburg to Kwazulu Natal, where it is easier to survive.

He made his way from Durban down the South Coast, and eventually a white farmer took him onto his cane farm. He does occasional work for this man, for extortionist wages, but is grateful to have a roof over his head. He barely earns enough to survive, and not enough to send money home, which he feels very bad about.

Somebody told him about his right to seek asylum, so with the help of a local NGO, in April 2004, he went to the Refugee Reception Office in Durban. On presenting there for an ASP, he was asked if he had a passport. ***When he presented his passport, the official said that as he had entered the country prior to June 2002, he was not eligible for asylum.*** He was told that his visa was long expired, he was illegally in the country and he should be deported. He literally ran away from the office at hearing this, and has not been back.

James had heard the day before our interview that his brother in Zimbabwe had died. It was his brother that owned the garage that James had worked in, and he was very close to him. He was very upset both that his brother was dead, and that he would not be able to go to his funeral. He had no plans except to try to avoid deportation until there was political change and he could go back to his wife and family.

### **Case Three: Affidavit of Gabriel Shumba**

I, Gabriel Shumba, born on 10 November 1973: National Identity Number: 12-046647F12, Passport number: ZE130844 and of Centre for Human Rights, University of Pretoria, Pretoria 0002, South Africa, do hereby solemnly swear as follows:

1. I am a citizen of Zimbabwe. I am also a holder of a Master's Degree in Human Rights Law, and a Human Rights Lawyer, duly sworn and practising as such in Zimbabwe.
2. Pursuant to the call of my profession, on the 14<sup>th</sup> of January 2003 I consented to represent one Job Sikhala, the opposition Member of Parliament for Saint Mary's. He had engaged me to represent him in a matter in which he alleged political harassment by members of the Zimbabwe Republic Police (ZRP). At that moment in time, Job Sikhala was hiding from the police.
3. My young brother, Bishop Shumba accompanied me to the Saint Mary's Hotel where Mr Sikhala was booked. I found Mr Sikhala in the company of one Taurai Magaya and Charles Mutama. I then proceeded to take instructions and confer with Mr Sikhala. However, at or about 23:00 hrs on the said day, riot police accompanied by plain-clothes policemen and personnel who I later discovered were from the Central Intelligence Organisation (CIO), the spy agency of the government, stormed the room.
4. I identified myself as a lawyer and enquired as to the nature and purpose of the police actions. Thereupon, one of the officers confiscated my lawyers practising certificate and informed me that there was no place for human rights lawyers in Zimbabwe. Others grabbed my diary as well as files and documents. All of us were prodded with guns in the back and bundled into a police defender vehicle. Several acts of assault and violence were perpetrated upon my person. In particular, I was slapped several times and kicked with booted-feet by amongst others, a certain detective inspector Mbedzi, the officer in charge of Saint Mary's Police Station.
5. Moments later, we were driven to Saint Mary's Police Station but no charges were preferred. We were denied access to legal representation and were abused and insulted for allegedly working cahoots with 'western powers' in an attempt to reverse the gains of the liberation

struggle. Our cell phones were also confiscated, and we were denied contact with our lawyers, relatives and friends.

6. Around 01:00 am, we were driven to Matapi Police Station where Mr Sikhala and Bishop were booked into the holding cells. I was taken to Mbare Police Holding Cells, whilst, as I subsequently discovered, Mr Magaya and Mr Mutama were deposited at Harare Central Police Station.

7. I was only booked into the cells at around 03:00 am. I was denied blankets and had to sleep on a concrete floor. The cell that was about 3m X 4m housed over 20 inmates. I had to spend the whole night squatting in a pool of urine and human waste. All night long, I had to endure the torment of lice and bed-bugs bites.

8. My constant pleas for legal representation, food and water were in vain. Around 12:00 pm on the next day, personnel from the CID (law and order section) of the Harare Central Police Station booked me out of Mbare. Again at this juncture, I had not been informed of the nature of the charges preferred against me. The police were under the charge-ship of one Detective Inspector Garnet Sikhova. I was taken to a yellow mini-bus whose registration numbers I was not allowed to see.

9. The mini-bus had no seats inside. It, however, had black curtains and a black carpet lining the windows and the floor. In the extreme end of the vehicle was a raised platform whereupon some of the Police Officers sat. I was nonetheless ordered to sit on the floor facing the back of the vehicle. A black hood was then slipped over my head. It was made of nylon and did not have any breathing-holes in it. In a short while I became claustrophobic, sweated heavily and had difficulties breathing. My requests that part of the hood be pulled slightly over my nose to allow me to breathe were rudely denied. Instead I was asked to use “the mouth that you use to defend the MDC to breathe”.

10. After what appeared like an hour’s drive, the vehicle pulled over and my hands were handcuffed behind my back. I was bundled out of the car to find myself in a tunnel of some sorts, judging by the echoes that our foot-steps made. I was advised that I was now a blind man and had to act as such. After several twists and turns, in what appeared a labyrinth of some sort, we descended to about 3 floors of stairs underground.

11. Off to the right, I could hear the sounds of horrible screaming. I was thrown against the wall and the hood was then removed. I was stripped utterly naked, then had my hands and feet handcuffed and bound so that I was in a foetal position. A plank was thrust in-between my legs and my hands.

12. The room was lined with planks and the light was dim. In a corner to my right side there was a pool of what my tormentors told me was acid, into which I could be dissolved without a trace. In the middle were a small table and a chair. About 15 or so interrogators stood over me and some of them began assaulting me with booted-feet and clenched hands all over the body. I was then given the option of either “telling the truth or dying a slow and painful death”.

13. Several questions were asked about my background as a student activist, my allegiance to the MDC, the political affiliation of judges, my scholarship to pursue the Master’s Degree in South Africa, my alleged involvement in the burning of a government bus, my political ambitions, as well as the arms caches that the MDC was alleged to have had.

14. Running concurrently with the other assaults and ongoing interrogation, various electrical shocks were introduced onto my body. A black contraption resembling a telephone was placed on the small table. It had several electric cables emanating from it. One cable was tied to the middle toe of my right foot, whilst another was tied to the second toe of the left foot. Another copper wire was wrapped tightly around my genitals. Yet another one was put into my mouth. Still in the foetal position, I was ordered to hold a metallic receiver in my bound right hand and I then forced to place this next to my right ear. A blast of electric shocks was then administered to my body for about eight (8) hours.

15. On several occasions, I lost consciousness only to be revived to face the same ordeal. A chemical substance was applied to my body. I also lost control of my bladder, vomited blood and was forced to drink my urine and lick my vomit. Whilst the interrogation was in process, several photographs were taken of me cringing and writhing in pain and in nakedness.

16. At the end of this ordeal, and around 19:00 pm, I was unbound and then forced to write several documents under my torturers' dictation. In the documents, I incriminated myself as well as senior MDC personnel in several subversive activities. Under pain of death I was also forced to agree to work for the Central Intelligence Organisation. In addition, I was compelled to swear allegiance to President Robert Mugabe, as well as to promise that I would not disclose my ordeal, either to the independent press or the courts.

17. Around 19:30 pm, I was blindfolded and taken to Harare Central Police Station, where I was booked into a horrendously inhumane holding cell. On the third day of my arrest, my lawyers, who had at that point obtained a High Court injunction ordering my release to court were allowed access to me. I had not had food nor water throughout the period of my detention. I had also not been formally notified of the nature of the charge against me. Subsequently, however, I was charged under Section 5 of the Public Order and Security Act, which deals with organising, planning or conspiring to overthrow the government through unconstitutional means. These charges were dismissed in a court of law.

18. At present, I have fled the country in fear for my life, having been threatened with death by some of those who tortured me. In spite of psychiatric and other medical treatment, I however continue to experience physical pain, nightmares, as well suffer depression. I am told and verily believe that what the State of Zimbabwe did to me, not only contravenes international law, but also offends against its obligations thereunder. In particular, I believe that torture constitutes a crime against humanity and as such, the authorities in Zimbabwe, under the leadership of President Robert Mugabe, should be held accountable.

19. It is my sincere belief that my torture and ill treatment was authorised and condoned at the highest level of the Zimbabwe state. It is inconceivable that President Mugabe is unaware that his police, army and intelligence officials are using torture. The President has been aware that torture is being used against human rights activists and those suspected to be linked to the MDC, as is exemplified by the case of Mark Chavhunduka and Ray Choto. Nevertheless, he is taking no discernible steps to either condemn or stop the use of torture.

20. I lodged a report of what transpired with the police, but up to now no action has been taken. I have also instructed my lawyer institute civil proceedings, but am not hopeful as I the judicial system has been largely subverted by the executive. Furthermore, the police are notorious for defying court orders.

21. I make the above believing same to be true to the best of my recollection.

**Wherefore, I pray:**

- A) that the Government of Zimbabwe be ordered to respect and abide by its international obligations;
- B) that the Government of Zimbabwe be ordered to pay damages occasioned as a result of the arrest and torture and
- C) that individuals responsible, including President Robert Mugabe, in his official capacity, the Minister of Home Affairs, Kembo Mohadi, the Minister of State Security, Nicholas Goche and the Commissioner of Police, Augustine Chihuri, be brought to account for torture and other crimes against humanity.

Signed on this .....day of September 2003.  
 .....  
 Gabriel Shumba  
 Before Me.....  
**Commissioner of Oaths**

**Case Four: “Kenneth”**

**Interviewee:**

Male, aged 47, father of four. MDC official in rural district in Matabeleland South (confirmed). He had never been to South Africa prior to 2003. He was interviewed in October 2003, in Johannesburg.

Kenneth was forced to leave Zimbabwe as a result of political persecution. He was hunted by war veterans on several occasions, who ransacked his home and were looking for him to kill him. They came to his home on four occasions and on each occasion he managed to run away before he was abducted. His wife was sacked from her job as a civil servant because of his links to the opposition, and his four children were deprived of access to donor food for political reasons (confirmed independently back in Zimbabwe).

In February 2003, Kenneth ran away to South Africa. He walked across the border on his own and followed the railway line by walking alongside it at night. It took him 10 days to reach Polokwane. There, he was arrested and kept in a cell with 15 others, as an illegal immigrant. He was deported back to Zimbabwe after 7 days. In terms of South African law, this deportation was illegal, as this man clearly has the right to claim asylum.

The very same day that he arrived back in Beitbridge, Kenneth crossed the border again and walked again towards Johannesburg. This time he walked for 21 days until he reached Johannesburg, on 4<sup>th</sup> April 2003. There he met a South African on the streets who warned him that he would be deported and who took pity on him and took him home. This kind man looked after him from then until the present. He was too afraid to leave the man’s home for fear of deportation.

Eventually, the South African gave him the R350 needed to buy asylum seeker papers, some time in August. He went to the Home Affairs queue in Braamfontein and bribed somebody to get him the papers. However, when he returned every week after this asking for the papers, he kept being told to come back the next week. After six weeks of this, he grabbed the tout and threatened to beat him up, after which he did receive the asylum seeker papers. He is very relieved because now he can look for work, although he has to return every few weeks to the queue to get a renewal stamp for his paper, which will restrict his work options. He is very

concerned about his family back home, and the need to send them money. His children at home have all been out of school this year as there is no money for fees.

### ***Three “economic” migrants***

#### **Case Five: “Susan”**

**Interviewee:**

Susan is a 16 year old schoolgirl, from Bulawayo, who ran away to South Africa in August 2003. Her mother could no longer pay her school fees. She was interviewed in October 2003.

Susan was taken across the border by a tout who transported 8 of them that night, 4 of them girls, from Musina to Johannesburg. They travelled by taxi, and when they arrived in Johannesburg, the four girls were held hostage in the taxi driver’s apartment for 9 days. He had sex with them whenever he chose for this period of time. He then left to collect another consignment of Zimbabweans, and they ran away. According to the neighbours of this man, this is his regular routine – he brings new girls back to his apartment every fortnight or so. This young girl appears to be surviving now by prostitution although she did not say so.

#### **Case Six: “Rachel”**

**Interviewee:**

Rachel is a 19 year-old girl from Bulawayo who left because “things were impossible at home”. She was interviewed in Johannesburg in October 2003.

Rachel crossed the border in January this year by taxi. When she first arrived, she was living with her older sister who supported her financially. Then her sister was arrested for shop lifting and sentenced to a year in jail. The sister is still in jail, near Sun City. When this happened, Rachel was thrown out of her sister’s apartment by the others sharing it, because she could not pay a share of the rent. After having no place at all for a few days, she was taken in by a South African man.

This is not a love relationship, but he expects her to provide sex on demand. He rapes her daily - or beats her and then rapes her, if she tries to resist or say no. She cannot leave him because she has no legal status or papers and nowhere to go. This man brings other women home almost daily and buys them food, but not her. She makes around R150 a month doing washing for the neighbours, and this is what she uses to buy food for herself. If she could get out of the situation, she would, but as far as she can see, she has no options. She is small and thin and very depressed.

#### **Case Seven: “Mavis”**

**Interviewee:**

Mavis is a 21 year old Zimbabwean now working as a sex worker in Musina. Mavis comes from Kwekwe and is the single mother of a 3 year old. In July 2003 she left Zimbabwe to look for work in South Africa. She has no passport, and crossed the Limpopo river in the company of ten other border jumpers in the middle of the night.

After crossing the river, they came across RSA soldiers who beat them up and handed them to Chumutumbu police station. They were locked up in a fenced cage. She and some others



climbed out of the cage during the night. They continued their journey further south, about a 100 km away, looked for jobs but could not find any. She therefore returned to Musina to look for a job there, but could not get one there either. The hardships of life made her go into commercial sex work. She earns less than R 1,000 a month and has never sent money home because her income is not enough for her. South African sex workers threaten to report her to the police and get her deported if they think she is taking their clients. Soldiers and to a lesser extent police officers demand sex from foreigners like her in return for not deporting them. She has on several occasions had to have sex with soldiers in order not to be deported.

## APPENDIX TWO

### Botswana and the Zimbabweans

#### Xenophobia

Botswana has a relatively small population, of around 1,7 million, and this has allegedly been swelled by an estimated 200,000 illegal Zimbabweans. This is a dramatic influx for any nation to absorb; one-in-ten persons in Botswana are now illegal Zimbabwean immigrants, if estimates are correct. It is hardly surprising that this is resented by the Botswana. There is a general perception in Botswana that Zimbabweans are increasing prostitution and fraud, and “have become a public nuisance for loitering scavenging, begging and sleeping in public places.”<sup>181</sup> Throughout 2004, Zimbabwean media have made running attacks on the Botswana government, accusing it of xenophobia and cruel treatment of Zimbabweans. An electric fence that was recently erected, allegedly as a livestock control mechanism by the Botswana government has also been attacked as an attempt to “electrocute Zimbabweans”.<sup>182</sup> The Botswana government has officially been at pains to try to deal with the Zimbabwean issue, and has no official anti-Zimbabwean policy. They have issued formal statements saying Zimbabweans are welcome in Botswana and reminding the Zimbabwe government that around ten thousand Zimbabweans have work permits or exemption certificates in Botswana, showing that there is no official prejudice.<sup>183</sup> At the same time, they exercise their right to deport thousands of illegal immigrants a month, mostly cross border traders from nearby Bulawayo.<sup>184</sup>

#### Botswana and Zimbabwean crime

In April 2004, the Botswana authorities released figures linked to Zimbabweans and crime in their country; this statement said: “*There is a clear correlation between the increase of crime in Botswana with the presence of illegal immigrants, most of whom are from Zimbabwe.*”<sup>185</sup> The same statement says that during 2002, the number of crimes involving Zimbabweans was 26,214. It further states that as at March 25<sup>th</sup> 2004, there were 681 Zimbabweans held in Botswana prisons.

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<sup>181</sup> Mmegi (Botswana), *No government intervention in bus rank violence*, 7 May 2004.

<sup>182</sup> The Herald (Zim), *Xenophobia persists in Botswana*, 9 August 2004. The Botswana government has not shared South Africa’s quiet diplomacy approach to Zimbabwe, and its more critical stance has laid it open to attacks from Zimbabwe’s state controlled media.

<sup>183</sup> The Daily News (Botswana), *We have the right to curb influx*, 23 April 2004

<sup>184</sup> The issue of political asylum seekers in Botswana is touched on again in the section following on deportations.

<sup>185</sup> The Daily News (Botswana), *We have the right to curb influx*, 23 April 2004.

There has been outrage expressed by the Zimbabwean government about the fact that Zimbabweans arrested for crimes are being subjected to flogging in Botswana jails.<sup>186</sup> However, the Botswana government has justified this as a normal part of the Botswana process of punishment; convicted persons can opt for strokes with a cane as an option to jail or a fine.<sup>187</sup> Authorities there have commented that Zimbabweans opt for strokes rather than pay a fine.

## **APPENDIX THREE:**

### **Surveys**

The two survey forms used for giving the authors background to the report are attached in this appendix. They do not provide a big enough statistical sample to present formal findings, and they have therefore not been formally analysed. This survey provided extra background and insight for the authors, by giving us access to the opinions of larger numbers of Zimbabweans than we could otherwise have consulted. However, the sample, especially the second one, remains more qualitative than quantitative.

#### **Survey of Zimbabweans in Johannesburg**

The first survey, in the form of one double sided sheet, was filled in by 100 Zimbabweans outside the Refugee Reception Office in Johannesburg. All applicants filled it in on the same morning in October 2003.

100 people represented around 20% of would-be asylum seekers there on that morning. Interviewees filled it in themselves, rather than being asked the questions by interviewers, for reasons of time. They could ask questions for intentions of clarification of how to fill in the form if they wished. The responses to the questionnaire gave us some idea of how would-be asylum seekers might present a case to the RRO. There is no way of independently verifying claims as interviewees were anonymous. Responses also gave some indication of geographical spread in terms of where people originated from in Zimbabwe, and how they rated priorities and difficulties of life in South Africa.

#### **Health questionnaire**

In August 2004, two trained counsellors, who are fully conversant with Zimbabwean events over the last five years, and who can speak both of Zimbabwe's vernacular languages, spent 8 working days interviewing 111 Zimbabweans individually in Johannesburg. Each interview took approximately one hour. Interviewers filled in the questionnaires based on responses from interviewees.

Interviewees were sourced through two different refugee support NGOs in Braamfontein, namely Southern African Women in Migratory Affairs (SAWIMA) and Zimbabwe Political Victims Association (ZIMPOVA). Their understanding was that we were trying to find out more about the problems faced in South Africa by Zimbabweans, for purposes of the current report. It was made clear that there would be no material benefit to those interviewed, either at the time of

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<sup>186</sup> Mmegi, (Botswana), *Zims prefer whip to prison, court president says*, 13 May 2004; IRIN ((UN), *Tetchy cross-border relations with Botswana*, 12 May 2004; AFP, *Zim slams "barbaric" treatment of citizens*, 11 May 2004

<sup>187</sup> Zimbabwe itself has corporal punishment as part of its penal system, and as the Zimbabwean state is involved in torture on a regular basis, this outrage is not convincing. It is rather part of a bigger clash over Botswana's attitude to events in Zimbabwe.

the interview, or in the future. We were offering only the opportunity for Zimbabweans to talk to somebody.

Before conducting these interviews, it was agreed that if in the course of interviewing, the interviewers felt that any person needed specific follow up such as counselling or medical attention, referrals to NGOs or private practitioners would be organised.

The focus of this questionnaire was once more on why people were in South Africa, their living conditions, their access to basic services, in particular health. Whether they had ASPs or not and if not, why not, was a further focus. The section of the 5-page questionnaire relevant to health issues is reproduced here, as this is the section referred to in the body of this report.

### SURVEY OF ZIMBABWEANS IN JOHANNESBURG

*This survey is to try and find out why you want refugee status in South Africa. We guarantee that the information given here will be kept anonymous to protect you, and is for research purposes only. This form will not be given to any official. YOU NEED NOT TELL US YOUR NAME.*

AGE: ..... MALE / FEMALE (circle one)

In Zimbabwe, what district or town do you think of as home? .....

Which year and month did you most recently arrive in South Africa? .....

Have you travelled to South Africa before this time? YES/NO

If yes, how many times in the last 5 years? .....

How did you arrive in South Africa? Tick one of the following.

Through Beitbridge border post in a car or taxi / on foot (circle type of transport)

I crossed the river and walked over the border at Beitbridge

Through Plumtree border post in a car or taxi / on foot (circle type of transport)

I crossed the border not at the border post into Botswana

Did you have work or a source of income in Zimbabwe before you left? YES/ NO

If YES, choose one of the following by circling it

Rural farmer (name district).....

Teacher      Nurse      Other civil servant (say type of job).....

Job in industry: what type .....

Job in commercial farming sector: what type.....

Self employed as vendor: what type .....

Other type of work .....

Why did you leave Zimbabwe?

1. You cannot make enough money to survive in Zimbabwe YES / NO
2. You were politically persecuted in Zimbabwe YES/NO
3. You believed your career prospects were better in South Africa YES/ NO

- 4. You did not want to train as a youth militia YES / NO
- 5. You want to study in South Africa YES / NO
- 6. You have relatives in South Africa YES / NO
- 7. You want to travel overseas from South Africa YES / NO
- 8. Other reason: describe.....

Which of the above reasons is the **most important reason**: choose a number from 1 to 8 .....

**If politically persecuted**: what political party do you support in Zimbabwe?.....

Did you hold office in that party? YES / NO if yes, say what.....

Did your persecution include any of the following: put year, month and day if you can remember.

You were beaten or tortured YES /NO on what date/s .....

If more than once, give all dates: .....

You lost property YES / NO on what date/s.....

You /your family were seriously threatened YES / NO

On what date/s.....

Describe in a few sentences the worst thing that happened to you, giving place and the people responsible (eg MDC, war veterans, youth militia, CIO etc).....

.....  
 .....  
 .....

Do you currently have health problems? YES / NO if yes, describe.....

.....  
 .....

Is your health problem linked to your experiences in Zimbabwe? YES/ NO

Do you have nightmares or trouble sleeping? YES / NO

Are you afraid when you walk on the streets? YES / NO

*What are your biggest fears? Choose three and rank them 1 to 3*

- |                          |                         |                |
|--------------------------|-------------------------|----------------|
| being deported           | having no money         | getting ill    |
| The South African police | having no place to stay | the CIO in JHB |

*What is most important to you now? Choose three and rank them 1 to 3.*

- A safe place to stay
- Work, or a way of earning money
- Access to health care (medical support)
- Some one to talk to about your problems (psychological support)
- Access to education
- Other: .....

### HEALTH QUESTIONNAIRE

1. Do you have health problems? Name them.  
-----  
-----
  2. If you feel sick, what do you do?  
-----  
-----
  3. Where do you go for health care? Name the place/s  
-----  
-----
  4. Do you attend now? Yes/no
  5. Do you pay? Yes/no  
How much (per visit?) R-----
  6. Do the Staff at the clinic/health center ask you for?
 

	Yes/No
1.Documents	Yes/No
2.Proof of Status	Yes/No
3.Others (state)	-----
4. Bribes	Yes/No
  7. Have you been refused treatment from any health center? Yes/no  
Name the place/s -----  
By whom? (Name if possible) -----
  8. Have you been threatened by clinic staff? Yes/no  
Have you been insulted by clinic staff? Yes/no  
Brief statement  
-----  
-----
  9. Do you have your own (South African) medical records? Yes/no
  10. Do you have your own (Zimbabwean) medical records? Yes/no
  11. Where do you get your medicines?  
-----  
-----
- |  |        |
|--|--------|
| Are you given free?  | Yes/no |
| Do you pay one amount for all?                                       | Yes/no |
| How much?  | R----- |
| For each item  | Yes/no |
| Do you have to buy your own medicines at a private chemist/pharmacy? | Yes/no |
| Are you told which one?  | Yes/no |

Name the chemist/pharmacy -----

Women and children

12. How many children are with you? -----  
Ages and sex -----  
-----
13. Are they immunized? Yes/no  
Fully Yes/no
14. Do you know where to go for baby clinic? Yes/no  
Name of baby clinic -----
15. Are you pregnant? Yes/no  
How many months -----
16. Are you getting antenatal care? Yes/no  
Name of clinic -----  
If no, why not? -----
17. Do you need Family Planning? Yes/no
18. If yes, do you know where to go? Yes/no  
Name of clinic -----
19. Have you had problems with getting help with women and children's health care? Yes/no

**Comment by interviewer**

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**APPENDIX FOUR**

**Recommendations:**

***CASE National Refugee Baseline Survey: Final Report, November 2003.***

The recommendations emanate from the findings of the study and are grouped by relevant entities to facilitate possible future interventions.

**South African Government**

- The South African government should recognise the valuable contribution that the majority of asylum seekers and refugees can make to the South African economy and refrain from assuming that refugees are unskilled people or people who come to South Africa in search of better work opportunities. Government officials should publicly debunk some of the myths about asylum seekers and refugees and speak positively

about the contribution that asylum seekers and refugees can make to the country.

- The South African government must recognise its international law and constitutional obligations towards asylum seekers and refugees in the country and make efforts to facilitate the provision of basic services such as health, education and documentation to asylum seekers and refugees currently in South Africa. The government should recognise that while the UNHCR and civil society organisations currently assist asylum seekers and refugees with emergency assistance, it is the South African government that bears ultimate responsibility for the welfare of asylum seekers and refugees residing in South Africa.

### **National Department of Home Affairs**

- The Department of Home Affairs needs to recognise the problems of shortage of staff within its RROs and make active attempts to train and appoint more staff to its RROs. It should recognise that the issuing of appointment letters and of asylum permits that are valid for longer than the period prescribed in the regulations to the Refugees Act to finalise an asylum claim, besides being unlawful, will not resolve the current problem with the backlog of cases.
- The Department of Home Affairs must also, in the spirit of Batho Pele (“Putting People First”), make a firm commitment to investigate and take action on the problems of bribery encountered at its RROs.
- With regard to the issuing of documentation, the Department of Home Affairs should consider issuing asylum permits for a period of six months. Extending the validity of the asylum permits could lead to a reduction in the workload of the understaffed RROs. If the permits expire without the Department having made a decision on applications, asylum seekers should be issued with shorter permits thereafter.
- In addition to extending the validity of the asylum permits, the Department should formalise these forms of identification, by laminating them and putting anti-forgery marks, so that they can be more easily accepted by different entities. The permits’ current form as multiply-folded pieces of paper with a number of stamps does not facilitate asylum seekers’ and refugees’ access to a number of basic social and financial services as these documents are often perceived to be fake.
- Upon determination of refugee status, the Department of Home Affairs must immediately issue all recognised refugees with formal maroon identity documents. The lack of formal ID documents that are issued to refugees serves as an added barrier towards further negotiation on issues such as access to government grants, bank accounts and employment.
- Upon formalisation of the different forms of documentation (for asylum seekers and refugees), the Department, in conjunction with UNHCR and entities such as the Roll Back Xenophobia campaign, Lawyers for Human Rights, NCRA and Wits Law Clinic must engage in a massive awareness campaign with government officials within key departments such as Health, Education, Labour and Social Development to make officials and administrative personnel working under these departments aware of what the different forms of identification issued to asylum seekers and refugees look like.
- The Department, with the assistance of the UNHCR, must engage in an awareness campaign with the Banking Council and individual banks, as well as employers to

inform them that asylum seekers and refugees have the legal right to work while they are in the country and that their permits are valid forms of documentation. These entities must be shown prototypes of the documents issued by the Department of Home Affairs in order to facilitate their familiarisation with these documents.

### **National Department of Health**

- Issue a circular or communiqué to all health officials, health professionals and administrative personnel, at both primary health care and hospital level, that explicitly indicates the difference between asylum seekers and refugees and the right of both to have access to health care in emergency situations, based on national legislation and international conventions.
- Issue a circular or communiqué to all health officials, health professionals and administrative personnel at hospital level that makes explicit the fact that asylum seekers and refugees are protected by the Bill of Rights in the South African Constitution and therefore are not required to pay to receive emergency assistance.
- Issue a circular or communiqué to all health officials, health professionals and administrative personnel at hospital level, which seeks to make them aware of the different types of identification issued to asylum seekers and refugees, including the new maroon and silver identity documents for recognised refugees to ensure that asylum seekers and refugees are not turned away on the basis of improper documentation. The Department should liaise with the Department of Home Affairs to obtain the above-mentioned prototypes.
- Institute a monitoring system to assess the practices and attitudes of health personnel at hospital facilities towards clients, including asylum seekers and refugees.

### **National Department of Education**

- Undertake an information campaign amongst education officials, principals, teachers and administrative personnel to make them aware of the right of asylum seeker and refugee children to access education. The Gauteng Department of Education has already taken the lead by organising a workshop on education of asylum seekers and refugees where principals and district officials, amongst others, were informed about asylum seekers and refugees, their rights, as well as special language and counselling needs that they might have. Provincial departments in the Western Cape and Kwa-Zulu Natal should follow on this initiative.
- Issue a circular or communiqué to all education officials, principals and administrative personnel at school level, which seeks to make them aware of the different types of identification issued to asylum seekers and refugees, including the new maroon and silver identity documents for recognised refugees to ensure that asylum seeker and refugee children are not turned away from schools on the basis of improper documentation. The Department should liaise with the Department of Home Affairs to obtain the above-mentioned prototypes.

### **UNHCR**

- Since the majority of asylum seekers lack information about where to stay upon arrival but rely instead on refugee ‘friends’ and people who they do not know to assist them, referral information on shelter/housing and food assistance needs to be more readily available to asylum seekers upon arrival. The UNHCR, in partnership with all its implementing partners, JICA and NCRA, should produce A3 laminated posters, in



English, French and Portuguese, that outline the different service providers, as well as shelters, in each of the cities of study, with their contact details, that can be posted at the RROs. This will serve to inform newcomers as they go to the RROs about where they can go for assistance in a comprehensive way, as well as understand the limitations and criteria for provision of assistance.

- UNHCR, jointly with its implementing partners, the NCRA, JICA and the Roll Back Xenophobia Campaign, should undertake awareness campaigns with asylum seekers and refugees, as well as refugee organisations to encourage asylum seekers and refugees to lodge complaints against incidents of bribery and corruption or to seek assistance from legal NGOs, such as Lawyers for Human Rights, UCT Legal Aid Clinic and Wits Law Clinic, on how to engage in this process. Asylum seekers and refugees are likely to feel quite vulnerable or afraid that their names will be made known to the Department in this process and therefore are likely to require support from legal NGOs to engage in this process.
- Taking into account that documentation has been identified by applicants as a key element not only to access employment and ensure survival, but also to access basic social and financial services, the UNHCR should strengthen its focus on working closely with the Department of Home Affairs on the formalisation of identity documents to asylum seekers and refugees, as well as on their being issued in a timely fashion.
- The UNHCR, jointly with JICA and the Roll Back Xenophobia Campaign, should undertake awareness campaigns that allow South Africans, and asylum seekers and refugees to exchange views and experiences about one another since stereotypes are being reproduced about each other from both sides. These campaigns should take the form of community meetings, road shows, and discussions at schools, as well as at government level.
- The UNHCR, jointly with its implementing partners, JICA and the South African Human Rights Commission should produce information sheets and conduct awareness and education campaigns with asylum seekers and refugees, as well as their representative organisations to inform them of their rights to have access to public health and education services, of their responsibility to inform the South African Human Rights Commission of any infringements of their rights, and of any other institutions that they should approach to lodge such complaints. This information should preferably be conveyed soon after asylum seekers arrive in the country and should be communicated by all implementing service providers, regardless of whether they focus directly on access to services such as education and healthcare. In addition, the UNHCR should make use of the survival guide compiled by Lawyers for Human Rights to convey this information.
- Simultaneously, the UNHCR should work closely with JICA, the Roll Back Xenophobia Campaign, the NCRA and the SAHRC to conduct awareness and education campaigns with national, provincial and local government officials in the Departments of Health and Education on the distinction between asylum seekers and refugees, as well as their respective rights to have access to health and education services.
- Considering that education for asylum seekers and refugees was raised as a main priority by asylum seekers and refugees in our survey, the UNHCR should explore, together with the National Department of Education and partners such as JICA, the possibility of instituting a system of bursaries for tertiary level education for asylum

seekers and refugees.

## **Service Providers**

- Keeping in mind the influence of language on employment, and the fact that female applicants are more likely than male applicants to be unemployed, applicants, but particularly female applicants, should be given the opportunity to learn English. Fluency in English could also have the added benefit of enhancing applicants' ability to communicate with school and health authorities.
- Service providers in each of the cities of study should conduct information campaigns, possibly in the form of public meetings, to inform asylum seekers and refugees about the services that they provide and the criteria that they use to extend that assistance. These information campaigns could also serve to communicate to asylum seekers and refugees that their main priority is to enable the extension of services currently provided by the South African government to include asylum seekers and refugees, while material assistance is meant to assist in emergency situations. Service providers within each of the cities of study should strengthen their coordination of assistance provision in order to limit the duplication of services and enable a larger number of asylum seekers and refugees to be assisted.
- Legal service providers, together with the assistance of JICA and NCRA, should compile a pamphlet for asylum seekers and refugees that includes the main laws that protect employees in the workplace, avenues and procedures for settling disputes, as well as entities that can be contacted if problems with employers arise.
- Similarly, legal service providers, together with the assistance of JICA and NCRA should compile a pamphlet for asylum seekers and refugees that includes people's rights and obligations as tenants, as well as existing avenues for dealing with landlord problems, such as the Housing Tribunal.
- Applicants' high level of participation in religious organisations within their communities should be taken into account in undertaking awareness campaigns. Working closely with religious organisations might allow service providers to reach a large number of asylum seekers and refugees within a setting that they feel safe and comfortable with.
- While issues of integration and community involvement were not analysed in detail in this report, the findings point to the need to conduct more in-depth research to be able to understand why applicants do not generally participate in community organisations, as well as how the negative perceptions are created and sustained despite the level of contact that exists between asylum seekers and refugees and local South Africans.

## **Asylum Seekers and Refugees**

- As information is disseminated to asylum seekers and refugees, asylum seekers and refugees also have a responsibility to be informed of their rights, as contained in the South African Constitution, the Refugees Act of 1998, as well as specific pieces of legislation that govern specific aspects, such as health and education. In this regard, asylum seeker and refugee parents should attempt to play an active role in their children's education, by participating in school governing bodies and communicating with principals if problems arise.

## APPENDIX FIVE

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*Zimbabweans wait to be deported at Lindela*