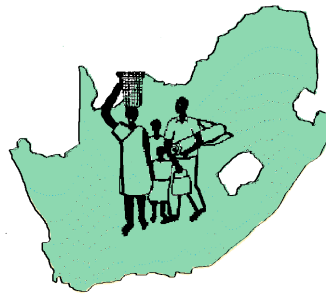


# NATIONAL CONSORTIUM FOR REFUGEE AFFAIRS

## Summary of Key Findings: Refugee Protection in South Africa

### 2006



*I still have not managed to get an asylum seekers permit. I am scared of queuing at Home Affairs. I do not see the use and I think I will face further violence there.*

**Zimbabwean asylum seeker in Johannesburg**

### **BACKGROUND**

This report, commissioned by the National Consortium for Refugee Affairs (NCRA), in conjunction with Lawyers for Human Rights and the Forced Migration Studies Programme at Wits University, assesses South Africa's compliance with its legal obligation towards asylum seekers and refugees and provides recommendations. This is the first of a series of annual reports the NCRA will issue as a way of measuring progress in the realisation of the rights of asylum seekers and refugees and of evaluating the effect of advocacy activities. The report is based on three months of research in four of the five cities where refugee reception offices are located.

With the advent of democracy in 1994, South Africa shifted from a refugee producing country to one receiving refugees from across the African continent and beyond. At the beginning of 2006, South Africa was hosting approximately 140,000 asylum seekers and 30,000 legally recognized refugees.<sup>1</sup> In the first three months of the year, somewhere around 18,000 people applied for asylum for the first time in South Africa. The table below provides an overall breakdown of asylum seekers and refugees over the last five years.

**Breakdown of asylum seekers and refugees in South Africa  
2000-2005<sup>ii</sup>**

	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
Refugees	15 063	18 605	23 344	26 558	27 683	29 714
Asylum Seekers	15 138	11 417	52 451	84 085	115 224	140 095
<b>Total</b>	<b>30 201</b>	<b>30 022</b>	<b>75 795</b>	<b>110 643</b>	<b>142 907</b>	<b>169 809</b>

The greatest number of refugees and asylum seekers come from the Democratic Republic of Congo, Somalia, Ethiopia, Angola, Burundi, Congo (Brazzaville), and Rwanda. Over the last year, the number of Zimbabweans seeking protection in South Africa has grown dramatically to approximately 20,000. While the number of asylum seekers and refugees has increased substantially in the last few years, it remains small in comparison to those in countries such as Tanzania, Uganda and Kenya<sup>iii</sup>.

By signing the United Nations and African Union Refugee Conventions and developing its own Refugees Act in 1998 (adopted in 2000), the South African government has made important strides in protecting people who have been compelled to leave their countries of origin as a result of well-founded fear of persecution, violence, or conflict. Under this legislation, refugees and asylum seekers have, among others, the following rights:

- They have the right to not be returned to their country of origin or any other country if doing so would place their life or security at risk;
- From the moment they lodge an asylum application, they have the right to work and study. Refugees have access to health care, public relief, and assistance. All people in South Africa have the right to life saving medical treatment;
- The right to have their asylum applications adjudicated in a manner that is lawful, reasonable and procedurally fair, which includes the right to appeal a negative decision on asylum claim;
- The right to freedom of movement and not to be arbitrarily arrested and detained. When detained, under conditions consistent with human dignity.
- The right to legal representation;

## **ACCESSING REFUGEE PROTECTION IN SOUTH AFRICA**

Although these rights are guaranteed in law, accessing these rights is far from guaranteed. Would-be refugees must first find their way to one of the country's five Refugee Reception Offices (RROs) located in Port Elizabeth, Durban, Cape Town, Pretoria, and Johannesburg. Once there, they must file an application with the Department of Home Affairs (DHA). Over a period of not less than six months, these applications are considered by Refugee Status Determination Officers (RSDOs) within the DHA. Only after a positive decision is made is someone considered a refugee. At this point they are to be issued with documentation attesting to their status.

Although the DHA has a critical role in determining people's refugee status and issuing identification documents, they are not the only actor in providing protection to refugees. Because South Africa does not use camps, refugees are required to access jobs, housing, medical care, education, and other social services through existing markets and institutions. This shares responsibility for refugee protection with all three spheres of government—national, provincial, and local—service providers, and the police. Non-governmental organizations, religious bodies, legal service centres and business also play a critical role in ensuring refugees are able to live safe, healthy, and productive lives in South Africa.

## **KEY FINDINGS REGARDING REFUGEE PROTECTION IN SOUTH AFRICA**

The report commends South Africa for its progressive refugee and asylum legislation dedicated to promoting a just society for all residents. Rather than warehousing refugees in isolated camps or detention facilities, South Africa encourages refugees to live in its cities where they can work and contribute. Despite these positive commitments, *refugees and asylum seekers face significant obstacles to protection in South Africa*. The following section outlines the NCRA's central findings. Key problem areas include:

- Initial access to the asylum procedure,
- Delays and irregularities in the status determination process,
- Inadequate resources dedicated to addressing the massive backlog of asylum claims;
- Lack of access to documentation;
- Inadequate programmes for assisting unaccompanied children;
- Obstacles to accessing government-funded social services;
- Unlawful harassment, arrest, detention, and deportation.

## **Initial Access**

The law requires that every potential asylum seeker report to one of the country's five Refugee Reception Offices (RRO). All people have the right to apply for asylum and to have their application fairly considered. Despite these legal guarantees, the NCRA has identified the following problems:

- The DHA employs a screening process to reject some applicants before they undergo the prescribed interview with a Refugee Status Determination Officer. Not only are the pre-screening forms not prescribed by law, but asylum seekers must complete the forms in English without access to interpretation services;
- Because most of the Refugee Reception Offices only screen new applicants one day a week, asylum seekers face prohibitively long queues and often are forced to return multiple times to file an application. During this period, they go without documents and are vulnerable to arrest and deportation;
- Many of those who pass the pre-screening are not immediately interviewed and issued with an asylum seeker permit (Section 22 permit), but are given appointment slips asking them to return as much as six months later. During this period, they do not receive any documentation, do not have access to social services; and have no protection against arrest; detention; and deportation.

## **Status Determination Process**

Based on the asylum seekers' application and interviews, the DHA is responsible for determining whether an individual qualifies for refugee status in South Africa. This process is expected to take six months and to be conducted in a way that is free of bias and corruption. Practice, however, differs significantly from these expectations in ways that severely compromise protection:

- The Department of Home Affairs does not have adequate financial and human resources to effectively implement the asylum procedure. As a consequence, applications are rarely finalized within the prescribed six-month period and the DHA currently faces a backlog of 100,000 undecided applications;
- Due to delays in the system, many asylum seekers must renew their Section 22 (asylum seeker permits) every one to three months. This has requires significant sacrifices in terms of time and money spent for travel and waiting and compromises their ability to work;

- Because the DHA's systems are not integrated, asylum seekers must return to the office where they initially applied to renew their permits. This limits their ability to move for work or family reunification and results in concentrations of asylum seekers in areas close to Refugee Reception Offices. It is also in violation of two court orders;
- Breakdowns in the 'Backlog Project'. In March 2006, the DHA Department instituted a Backlog Project to adjudicate over 100,000 asylum applications lodged between 1998 and 31 July 2005.
  - Under this project, only 12% of considered applications have been approved.
  - The low approval rate has resulted in a large number of appeals without sufficient staff to process these increased numbers, creating a new backlog at the appeals stage;
  - Many asylum seekers are compelled to contest negative decisions without any representation.

## **Documentation**

Official identity papers are a crucial aspect of refugee protection. Refugee identity documents are essential in finding work, accessing social services, and preventing arbitrary arrest, detention, and deportation. Conversely, something as innocuous as petty-trade to walking in the street becomes illegal in the state's eyes without the requisite documents. Despite their importance, asylum seekers and refugees face severe obstacles in accessing needed documents to which they are legally entitled:

- Asylum seekers may be left without valid documentation for as long as six months while they await appointments with RROs. During this time, they are at risk of arrest, detention, and possible return to their country of origin without an asylum hearing;
- Employers and other institutions often do not recognize even valid asylum seeker and refugee documents, barring asylum seekers and refugees from exercising their rights. The fact that these documents often appear forged—even when they are not—only contributes to their ineffectiveness;
- Refugees rely on a mix of maroon refugee identity documents (similar to a South African Citizen document but with a red cover) and new 'Smart Cards'. During the transition process, some refugees have not been issued with either. This only adds to confusion regarding valid and invalid documents.

## **Unaccompanied Asylum Seeker and Refugee Children**

Although it is estimated that more than half of the refugee population in the world comprise of children, the refugee children in South Africa form a much smaller portion of the general refugee population. Most refugee children are accompanied by parents or guardians. There are, however, a growing number of unaccompanied refugee children who have been separated from their parents, abandoned or orphaned before or after arrival in the country. Recent court judgments have compelled the State to:

- allow unaccompanied asylum seeker children to apply for asylum;
- provide legal representation to;
- find alternatives to the detention undocumented unaccompanied foreign minors at the Lindela Repatriation Centre;
- provide social assistance and to facilitate foster care placements;

Despite some improvement in the government's handling of unaccompanied children the report highlights the following problems:

- Social workers and child commissioners do not always initiate Children's Court proceedings as required by law;
- Officials at refugee reception offices frequently refer children to NGOs rather than to the Children's Court;
- The Department of Social Development has failed to find emergency accommodation for unaccompanied children, relying instead on NGOs to perform this service;
- Children are often left in emergency accommodation, with limited access to the necessary care and schooling, for extended periods of time before social workers open Children's Court proceedings;
- The current version of the Children's Bill contains no explicit provision for unaccompanied foreign children.

## **Access to Livelihoods**

South Africa is to be commended for guaranteeing refugees and asylum seekers the right to work. Access to productive employment is a critical component of preserving refugees' welfare and dignity. It also limits the financial burden on the State and other social service providers. As many refugees are highly educated and experienced, their right to work also generates new South African jobs. The NCRA has found, however, that many refugees are effectively barred from productive employment:

- Delays in receiving valid documents prevents asylum seekers from gaining employment or opening bank accounts needed to receive regularly pay cheques;
- Asylum seekers and refugees have been barred from working in the security industry because they are not citizens or permanent residents and cannot provide police clearance certifications from their home countries;
- Asylum seekers and refugees have been prevented from registering for street trading on the grounds that their permits do not constitute valid documentation;
- Refugees and asylum seekers with professional qualifications are often unable to practice because they are unable—often for reasons of expense—to have their qualifications certified by the South African Qualifications Authority (SAQA).

## **Access to Social Services**

Refugees and asylum seekers are entitled by the Bill of Rights to social services. The Refugees Act specifically states that refugees are entitled to the rights set out in the Bill of Rights, which include the right to adequate housing, education, basic health care and social security. To facilitate the provision of social services to refugees and asylum seekers it is necessary for government departments to develop enabling policies and to collaborate with each other. The report concludes that little progress has been made to integrate refugees and asylum seekers into general governmental services. Specifically, the following problems are mentioned:

- The National Housing Code restricts housing subsidies to citizens and permanent residents, which excludes asylum seekers and refugees.
- There are widespread reports that health care personnel refuse refugees access to health services to which they are entitled. Much of this discrimination is do to difficulties of language or ignorance of refugee rights. Other instances are linked to xenophobia or other forms of discrimination. There also continues to be ambiguity on refugees' rights

to access anti-retroviral (ARV) treatment for HIV/AIDS preventing refugees from access life saving medical care;

- Some refugee children struggle to access the primary education guaranteed to them by law. The reasons for this include language, the inability to pay school fees, age, and outright discrimination.

## **ARREST, DETENTION, AND DEPORTATION**

The arrest, detention and deportation of asylum seekers and refugees have been an issue of concern to refugee advocates and NGO's for several years. Despite considerable litigation and advocacy from civil society, asylum seekers and refugees continue to be unlawfully arrested and detained. The report also includes accounts of where asylum seekers have been deported in violation of the Refugees Act. The concern expressed is that undocumented asylum seekers who are unable to obtain asylum seeker permits are most vulnerable to police harassment and arrest. Allegations against police officers who disregard or destroy valid permits are also noted. However, the report commends Gauteng-based SAPS and Metro Police structures for publicly acknowledging the shortcomings of the police services and their commitment to eradicate problem areas such as corruption and unlawful arrests.

Regarding detention conditions at the Lindela Repatriation Centre, the NCRA is encouraged by the Ministerial Committee of Inquiry into the high number of deaths which occurred at the facility. The committee, after wide consultation, made a number of critical findings and recommendations for the improvement of the facility, in particular the medical facilities and access to medical care. In this regard, the NCRA was also encouraged by the UN Working Group on Arbitrary Detention's recommendation to the government to redouble its efforts to prevent the unnecessary detention of asylum seekers.

The report notes the improvement of the Johannesburg International Airport detention facility but raises concern about conditions of detention at police stations, particularly around border areas.

## **XENOPHOBIA**

Xenophobia is often described as an intense and irrational dislike or fear of foreigners based on unfounded myths and stereotypes. Foreigners in South Africa are often victims of negative public perceptions and xenophobic attitudes of South Africans. Although there is no comparable data available, indications are that prevailing negative attitudes against foreigners have not decreased despite a number of initiatives to address the problem. This phenomenon is not limited to benign negative attitudes but often culminates into violent threats or attacks. During

the period July 2005 to May 2006 more than 6 incidents were reported where large groups of protesting people have threatened or attacked refugees.

Concern is also expressed about the way in which refugees and foreigners are portrayed in the media. Various studies have found that despite some notable improvements, the media in general are inclined to perpetuate some of the unfounded myths about foreigners in South Africa. Tabloid newspapers, such as the Daily Sun, have been singled out in this regard.

## **RECOMMENDATIONS**

The report contains a number of recommendations aimed at government departments, including DHA and the police, as well as local government, NGOs, and the United Nations High Commissioner for Refugees. Key recommendations include:

### **Department of Home Affairs**

- ⇒ Eliminate the pre-screening and appointment process and institute immediate receipt of applications and the issuance of Section 22 permits;
- ⇒ Increase the number of Refugee Status Determination Officers at Refugee Reception Offices to prevent a further backlog of asylum applications;
- ⇒ Extend its current initiatives to provide interpretation services not only for the Backlog Project but also to assist all asylum seekers who enter the asylum procedure in order to reduce the possibility of abuse and corruption and enable asylum seekers to provide accurate information in their applications;
- ⇒ Improve the refugee database system and provide additional computer equipment to process asylum applications and to facilitate communication among the Refugee Reception Offices and the directorate in Pretoria;
- ⇒ Ensure all asylum applicants and refugees have appropriate interpretation services;
- ⇒ Establish accessible, adequately equipped refugee reception offices that are capable of issuing appropriate documentation;
- ⇒ Educate service providers, other government departments, and the public sector about the refugees rights and documentation;
- ⇒ Clarify the procedure for dealing with unaccompanied children;

- ⇒ Ensure the immediate release of undocumented asylum seekers and any other unlawfully detained person when so informed.
- ⇒ Heighten the profile of the Public Education Unit by engaging in public information campaigns, through the use of printed and visual media (including radio adverts) to enable the acceptance of smart cards and asylum seeker permits and to inform asylum seekers about the current backlog project;
- ⇒ Reaffirm its commitment to work with NGOs by engaging in a consultative process to identify blockages in the asylum determination procedure and thus avoid additional legal challenges at taxpayers' expense;

#### **South African Police Services and Metro Police**

- ⇒ Continue its initiatives to sensitise its members to the rights and obligations of asylum seekers and refugees and to combat xenophobia within the police force;
- ⇒ Work more closely with the Immigration Inspectorate, and preferably only through joint operations, before effecting arrests of asylum seekers and refugees;
- ⇒ Ensure that asylum seekers and refugees are not detained at the Lindela Repatriation Centre, not even for identity verification purposes.

#### **National Department of Social Development**

- ⇒ Enhance its awareness raising activities with social workers to ensure the protection of unaccompanied asylum seeker and refugee children;
- ⇒ Finalise its comprehensive plan to extend social assistance grants to recognised refugees and ensure that the documents issued to recognised refugees are lawfully recognised as valid forms of documentation for the purposes of social assistance grants;
- ⇒ Publicise the activities of the newly established Refugee Relief Fund Board, including timelines for future activities and its operating procedures to enable asylum seekers and refugees to access emergency relief where necessary;

- ⇒ Explicitly state in the Children's Bill that it applies to all children within South Africa's borders, regardless of nationality or status to avoid any potential exclusion of unaccompanied foreign children from its application and implementation;
- ⇒ Ensure that capacity building training on, and monitoring of, the Children's Bill explicitly incorporates the treatment of unaccompanied foreign children;

### **National Department of Health**

- ⇒ Ensure the standardisation of administrative procedures to ensure that asylum seekers and refugees are able to access public health care services;
- ⇒ Enhance capacity building and training of administrative and health care workers to include specific components addressing issues of xenophobia and the rights of different groups of foreigners to access health care services;
- ⇒ Consider the procurement of interpreters to enhance the ability of asylum seekers and refugees to communicate their ailments;
- ⇒ Ensure that refugees have access to voluntary testing and counselling for HIV and that HIV-positive refugees have access to anti-retroviral treatment.

### **National Department of Education**

- ⇒ Institute the policy of 'free schools' as soon as possible to enhance the ability of asylum seekers, refugees, and destitute South Africans to exercise their right to basic education;
- ⇒ Strengthen the inclusion of refugee-related topics and discussions about xenophobia into the school curriculum;
- ⇒ Facilitate information materials on school registration procedures, exemptions from school fees and other important issues affecting children's education, in languages such as French and Swahili to assist caregivers of asylum seeker and refugee children who are not conversant in English to play a more involved role in their children's education.

## **Parliament**

- ⇒ Follow up on the 2004 report by the Public Protectors Office regarding conditions at the Johannesburg refugee reception office to ensure that problems are remedied and not repeated;
- ⇒ Exercise greater oversight over the DHA and its partners to ensure that processes adhere to legal standards and that the rights of refugees and asylum seekers are respected. This includes taking active steps to avoid detention and deportation of refugees;
- ⇒ Dedicate adequate resources to the Department of Home Affairs Refugee Directorate and to the Legal Aid Board to ensure that applications for asylum are processed quickly and effectively and that refugees and asylum seekers have access to legal representation.

## **South African Human Rights Commission**

- ⇒ Renew its efforts to work actively with NGOs to monitor the respect for the rights of asylum seekers and refugees, in line with its mandate, not only at facilities like the Lindela Repatriation Centre but also at refugee reception offices, main clinics, hospitals and schools;
- ⇒ Follow-up on the Public Hearings on Xenophobia that it hosted in late 2004 to assess any progress made in combating xenophobia;
- ⇒ Heighten its visibility by participating actively in forums and networks that strive to further the realisation of the rights of asylum seekers and refugees.

## **National Department of Housing**

- ⇒ Recognise the South African government's obligation to provide housing assistance to asylum seekers and refugees as a specific group of foreigners and possibly review the National Housing Code;
- ⇒ Clarify the terminology adopted in existing housing policies and ensure the explicit inclusion of asylum seekers and refugees as a separate category of foreigners;

- ⇒ Explore the extension of housing assistance programmes to destitute refugees, following the example of the Department of Social Development in relation to social assistance grants for vulnerable refugees.

#### **Department of Provincial and Local Government and Local Authorities**

- ⇒ Strengthen its initiatives to integrate asylum seekers and refugees into city plans and facilitate the production of global cities;
- ⇒ Engage organisations working with migrants and refugees to gather information required for further action and to engage in in-depth discussions about the integration of these groups into South Africa's metropolitan areas;
- ⇒ Motivate national government for a revision of housing policies that limit the ability of asylum seekers and refugees to access housing and be fully integrated into cities;
- ⇒ Review its street trading registration policies to (a) enable both asylum seekers and refugees to register, without disadvantaging asylum seekers on the basis of the short duration of their permits; and (b) give new traders the opportunity to register to trade in commercial areas, rather than renewing the permits of the same traders indefinitely.

#### **United Nations High Commissioner for Refugees**

- ⇒ Provide assistance to refugees wishing to convert their professional qualifications from countries of origin into qualifications recognised in South Africa;
- ⇒ Provide additional support to legal and paralegal services throughout the country to ensure refugees and asylum seekers have access to legal assistance;
- ⇒ Place additional pressure on the Departments of Education and Health to ensure that public services are available to refugees. Where necessary, provide resources for translation and training;
- ⇒ Work jointly with the Department of Home Affairs to hold a national workshop on unaccompanied asylum seeker and refugee children with all key partners, namely the Departments of Home Affairs (Refugee Affairs and Immigration Inspectorate), Social Development, Justice, SAPS, Health, Education, as well as the Magistrate's Commission to iron out gaps in existing procedures and develop a more comprehensive policy. Follow this workshop with relevant stakeholder meetings at local level to

familiarise local role-players with the revised procedure and thus avoid misunderstandings in the implementation phase.

### **Civil Society and the National Consortium of Refugee Affairs**

- ⇒ Provide additional legal assistance to refugees and asylum seekers at all stages of the application and appeal process and enhance efforts to coordinate ongoing litigation;
- ⇒ Conduct regularly monitoring of the Refugee Reception Offices, Lindela Repatriation Facilities, and of proposed regulations and practices to ensure that refugee rights are protected;
- ⇒ Foster greater communication among service providers; government agencies; and refugee organisations;
- ⇒ Strengthen existing local networks to be inclusive of key local representatives from Refugee Affairs, Immigration Inspectorate, Departments of Health, Education, Social Development, Metro Police and SAPS to ensure horizontal information-sharing on asylum seekers and refugees across government departments;
- ⇒ Monitor and advocate based on the recommendations in all of the sections outlined above

### **CONTACT INFORMATION**

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<sup>i</sup> An asylum seeker is someone who has applied for refugee status but whose application has not yet been reviewed. A refugee is someone who the Department of Home Affairs (DHA) has determined qualifies for protection in South Africa.

<sup>ii</sup> Statistics obtained from the Department of Home Affairs and the UNHCR.

<sup>iii</sup> According to UNHCR statistics, at the end of 2004, Tanzania was host to approximately 602,000 refugees, Uganda was host to 250,000 refugees, whilst Kenya was host to 240,000 refugees. These figures exclude asylum seekers in these same countries, (UNHCR, *2004 Global Refugee Trends: Overview of Refugee Populations, New Arrivals, Durable Solutions, Asylum Seekers, Stateless and Other Persons of Concern to UNHCR* (Geneva: UNHCR, 2005)), 8.