



**CoRMSA**

**Consortium for  
Refugees and Migrants  
in South Africa**

**REPORT TO THE GOVERNMENT OF THE REPUBLIC OF  
SOUTH AFRICA ON THE HUMANITARIAN CRISIS IN  
MUSINA, SOUTH AFRICA**

23 FEBRUARY 2009

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## **List of Abbreviations**

CoRMSA – Consortium for Refugees and Migrants in South Africa

DHA – Department of Home Affairs

DoH – Department of Health

DSD – Department of Social Development

IOM – International Organisation for Migration

JOC – Joint Operations Committee

LHR – Lawyers for Human Rights

MLAO – Musina Legal Advice Office

MSF – Doctors without Borders / Médecins Sans Frontières

SADC – Southern African Development Community

SAHRC – South African Human Rights Commission

SANDF – South African National Defence Force

SAPS – South African Police Service

SMG – Soutpansberg Military Ground

UNHCR – United Nations High Commission for Refugees

## **EXECUTIVE SUMMARY**

There is a developing humanitarian crisis involving the living conditions of Zimbabwean nationals in Musina, South Africa. The border town of Musina is the first stop in South Africa for many of those who fled political persecution or the dire socio-economic conditions in Zimbabwe in search of protection and a means of meeting basic survival needs. Yet on arrival in South Africa, many are faced with renewed threats to their rights due to delays in the provision of legal documentation, the lack of humanitarian service provision, illegal procedures being undertaken by local authorities and exploitation of the vulnerabilities of Zimbabwean nationals by a variety of actors. This report highlights some of the key challenges to the human rights of Zimbabwean nationals in the Musina area and provides recommendations to the different departments of the government of the Republic of South Africa as a means of assisting these departments to intervene and address this humanitarian crisis.

The Consortium for Refugees and Migrants in South Africa (CoRMSA) is the South African national network of refugee and migrant service providers. This report is the result of a site visit to Musina from 10<sup>th</sup>–12<sup>th</sup> February 2009. The information contained in this report was provided by a variety of non-governmental and international organisations based in Musina working with Zimbabwean nationals on a daily basis. A meeting with government officials that was scheduled for 12<sup>th</sup> February was unfortunately cancelled by government and there was thus no opportunity to address the concerns listed in this report directly with government at the time of the visit.

### ***Key Report Findings***

1. No comprehensive intervention has yet been made by the various government departments despite extremely poor conditions being in place for at least the past six months.

### **Shelter**

2. An estimated 3000 – 4000 Zimbabwean nationals currently spend each night in an unpaved parking area at the Musina Showgrounds waiting for documentation providing legal status in the country to be issued by the Department of Home Affairs (DHA).
3. Those at the Showgrounds will spend one month on average at the site as that is the average duration individuals wait in order to gain access to documentation from the DHA Refugee Reception Office. During this time

this group is effectively restricted to the site for fear of being arrested and deported by the South African Police Service (SAPS) if they move beyond 100 metres of the site.

4. Conditions at the Showgrounds are appalling. There is little to no shelter from the rain and heat in an area where temperatures regularly reach and exceed 40°C and there is an urgent need to move services away from this site for this and other reasons.
5. There is a high risk of sexual and gender-based violence at the Showgrounds. There is no security provided to those at the site and there is minimal provision of lighting at the site. These conditions fail to provide the necessary protection to an already vulnerable group of people at the Showgrounds site.

### **Water / Sanitation**

6. At present there are 14 portable toilets and 12 taps at the site. This is insufficient to meet the needs of the 3000 – 4000 people at the site. This is especially concerning given the cholera crisis in Zimbabwe and in the Vhembe District of which Musina forms part.

### **Documentation**

7. There is an urgent need to provide an alternative form of documentation to Zimbabwean nationals in South Africa. Civil society and international organisations have long called for South Africa to issue legal documentation for Zimbabwean nationals under Section 31 (2)(b) of the Immigration Act but no such provisions have yet been made. As a result, many Zimbabweans in South Africa seek to regularize their status in the country through the asylum system which does not have the capacity to deal with the sheer volume of individual applications.
8. There are long delays in the provision of documentation by the DHA. The capacity of the present temporary Refugee Reception Office at the Musina Showgrounds is not sufficient to meet the demands of the numbers of applications being registered in Musina.
9. The DHA Refugee Reception Office office issues an average of 250 asylum seeker permits per day. The Musina office of the United Nations High Commission for Refugees (UNHCR) estimates that at least 500 permits need to be issued per day to avoid generating an increasing backlog.

10. The Musina Refugee Reception Office at times is not able to issue asylum seeker permits for over a week at a time due to a lack of security paper necessary for the permits, a lack of printer toner or a lack of asylum application forms. This contributes to a longer backlog and increases the amount of time people are restricted to the Showgrounds site.
11. Concerns regarding the non-issuing of asylum seeker permits have been addressed with DHA Head Office but no efforts have been made by DHA to ensure that such logistical breakdowns are not repeated.
12. There are allegations of corruption and abuse by DHA officials and official as well as 'unofficial' security guards at the Musina Refugee Reception Office.

### **Access to Health Care**

13. There are major barriers to Zimbabwean nationals accessing the necessary health care at the Musina Hospital and local clinics. This is due to Zimbabwean nationals being charged excessive fees to access treatment by hospital staff. These fees are against the provisions of a Department of Health directive issued in September 2007.
14. Zimbabwean nationals also have a realistic fear of being arrested and deported if they are caught by the SAPS more than 100 metres from the Showgrounds and this prevents many from accessing health care at local health care institutions.
15. There is an increase in the numbers of women reporting cases of sexual or gender-based violence at Doctors Without Borders/Médecins Sans Frontières' (MSF) mobile clinics. These women are not currently being effectively assisted by the South African authorities.

### **Access to Food**

16. There is limited access to food, with most food in the area being supplied by churches with the support of South African civil society and international organisations.
17. Despite efforts to increase the food supply, the current levels of supply are not meeting the demand. There are also concerns regarding the nutritional quality of the food that is able to be supplied.
18. No food assistance is being provided by government and the burden of food supply is being carried solely by non-governmental actors.

## **Unaccompanied Children**

19. There are estimated to be around 2000 unaccompanied children from Zimbabwe in the Musina area.
20. Unaccompanied foreign children are not being effectively assisted by the Department of Social Development (DSD) in accessing legal documentation. This results in a large number of unaccompanied children (including children under the age of five) being deported - in contravention of the law.
21. Unaccompanied children face major barriers in accessing education due to challenges in accessing legal documentation, inability to pay school fees, and inability to pay for school uniforms.

## **Arrest, Detention and Deportation**

22. The SAPS continue to illegally operate an immigration detention facility at the Soutpansberg Military Grounds in Musina.
23. Conditions within the detention facility are appalling despite concerns being consistently addressed to the relevant authorities.
24. Children continue to be held in detention alongside adults and later deported.
25. Despite completing a pre-registration process overseen by the UNHCR, asylum applicants still face a real risk of arrest and deportation before being issued with permits by the Refugee Reception Office.
26. There remain serious concerns regarding the conduct of some SAPS officers in the Musina area conducting illegal practices towards Zimbabwean nationals.

**Recommendations follow on page 19.**

# CONDITIONS IN MUSINA

## *Introduction*

The ongoing crisis in Zimbabwe has resulted in mass displacements of Zimbabwean nationals into the Southern African Development Community (SADC) region and elsewhere. Whilst efforts at resolving the Zimbabwean political crisis continue, the humanitarian situation in Zimbabwe remains desperate with a cholera epidemic that is estimated to have infected more than 45 000 people<sup>1</sup> and acute hunger.

Violence and persecution in Zimbabwe has also resulted in large numbers fleeing to South Africa and elsewhere in search of political asylum. Whilst there is some optimism regarding political progress with the recent formation of a Zimbabwean Government of National Unity, the effects of the economic collapse and appalling humanitarian conditions will take much time to resolve. For the meantime, it is critical that South Africa and its neighbours play a central role in protecting the rights of displaced Zimbabwean nationals until such time as conditions allow people to return to Zimbabwe and resume a normal life.

Musina is a South African town situated 10 kilometres from the Zimbabwe border at Beitbridge. The town receives much traffic from a variety of Zimbabweans including cross-border shoppers and traders. It is also the first stop for large numbers of Zimbabwean nationals who cross into South Africa seeking protection from persecution and / or the means to earn an income to support themselves and family either living in Zimbabwe or elsewhere.

The Consortium for Refugees and Migrants in South Africa (CoRMSA) is the South African national network of refugee and migrant service providers. As part of its mandate to build local networks, CoRMSA visits the Musina area on a monthly basis to meet with local stakeholders and discuss current challenges. This report is the result of CoRMSA's recent visit to Musina, from 10-12<sup>th</sup> February 2009. During this period, CoRMSA met with civil society organizations including Lawyers for Human Rights (LHR), Musina Legal Advice Office (MLAO), local faith-based organisations, international organisations including United Nations High Commission for Refugees (UNHCR), the International Organisation for Migration (IOM) and Doctors Without Borders / Médecins Sans Frontières (MSF) as well as the provincial and national offices of the South African Human Rights Commission (SAHRC). The Joint Operations Committee (JOC) meeting with local government officials that was scheduled for 12<sup>th</sup> February was unfortunately cancelled without explanation.

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<sup>1</sup> Médecins Sans Frontières/ Doctors Without Borders (MSF). 2009. *Beyond Cholera: Zimbabwe's worsening crisis*.

The situation in Musina represents a clear humanitarian disaster but there has yet to be an effective inter-departmental response from government. Around 3000 - 4000 displaced Zimbabwean nationals spend each night in or around the Musina Showgrounds, where the temporary Department of Home Affairs (DHA) Refugee Reception Office is situated. Once documented, many are assisted with transportation to Johannesburg or Pretoria where some have friends or relatives.

With government efforts concentrated on the cholera intervention and with little effort to address the humanitarian situation of the primarily Zimbabwean nationals, civil society and international organisations are assuming the burden. Yet large gaps still remain. This report highlights key issues raised during CoRMSA's visit and makes recommendations as to how these can be addressed.

## ***Shelter***

Shelter is considered the central issue critical to resolving challenges around the general living conditions. Local organisations consider that providing additional services at the Showgrounds will not address the numerous vulnerabilities of people staying at the site. It is therefore critical that people are moved to a site where shelter can be better provided. The Soutpansberg Military Grounds (SMG) is considered to be the better of the two options currently being considered. Given concerns regarding the role of the SANDF and SAPS in this site, it would be critical for government departments to discuss the implications of such a move with local civil society organisations before a move is implemented. Discussions are reportedly taking place between government departments to explore these options and there is hope that a move could take place prior to the end of February 2009.

## **Musina Showgrounds**

At present there is no effective shelter in place at the Showgrounds. There is little or no shade during the day when temperatures often reach 40°C and over and no additional shelter provisions have been made for the rainy season. Those who are undocumented and stay at the site are afraid to leave it for fear that if they stray beyond a distance of 100 metres from the Showgrounds they could be arrested by the SAPS and deported. On average it is taking people around one month to receive documentation at the Showgrounds and therefore people are being confined to this site for one month before they can move on elsewhere in South Africa.

Those at the site sleep on cardboard they have collected whilst some have erected small shelters from discarded plastic and old blankets. Others sleep in the bushes just outside the site. The high number of people at the site and the

low number of toilets has dangerous implications for the spread of diseases including cholera.

### **Security and Sexual and Gender-Based Violence**

There is reported to be a high rate of sexual and gender-based violence (SGBV) in and around the site. This is reported to be especially high on Friday and Saturday nights. Part of this is due to the lack of security at the site. The municipality is not providing any organised and therefore effective security and there is insufficient light at the site which also contributes to the conditions which generate violence. Local organisations are exploring the possibilities of organising a volunteer security watch comprised of people staying at the site but as people move on once they receive their documentation there will be challenges with continuity.

The municipality is urged to address the lighting situation. At present there are two lighting poles – one with two lights and one with just a single light. Additional lighting would most likely assist in reducing the risk of SGBV. In the main parking area where a lot of people have to “camp out” there is no light at all, save for the less than effective rays of light coming from across the road. These conditions contribute to the risks of women at the site facing SGBV.

With little access control to the site, there are also reports of local Musina residents exploiting the reliance of some Zimbabwean women on survival sex for income. Given the desperation of people in the site, local organisations report that some women are asking for as little as R2 for sex. There are reports of local residents picking up different girls from the site each night for this purpose. Addressing the conditions at the site and controlling access to the site would in the absence of more systemic protection solutions, go some way in addressing this exploitation.

### **The Need to Move Assistance from Musina Showgrounds**

There are multiple reasons for the need to move the DHA services as well as the people being assisted away from the Showgrounds to an alternative site. The Showgrounds area is situated on the southern edge of Musina and includes the Musina Community Hall. There is understood to be resentment from members of the community about their lack of access to community facilities given the site’s current occupation by the DHA.

There is reluctance by some government structures to erect any form of shelter that may result in a long term structure being in place at this site as this would appear to be a “refugee camp”. UNHCR has secured agreement from DHA for the erection of rub halls for temporary shelter at the Showgrounds site but

agreement with the municipality has yet to be secured. Rub halls are large tents measuring around 10x24 metres and one of these could provide some shelter for women and another for men. The national office of DHA has agreed to discuss the option of rub halls being erected with the municipality. The municipality is understood to be reluctant to allow shelter to be set up at a central site such as the Showgrounds but may be more willing to allow structures to be erected if DHA services were moved to a more peripheral area.

There is also pressure for a move away from the Showgrounds from local businesses including a number of transport companies that utilize the road that runs past the Showgrounds. In the past, there has been tension with a local business owner on an adjacent property due to people at the Showgrounds using a tap on his property.

SMG is the local military base which also houses the controversial Musina detention facility for alleged illegal immigrants. The South African National Defence Force (SANDF) will shortly be moving from this site leaving it in the hands of the South African Police Service (SAPS). The site is located 3km from the southern side of Musina and is considered to be far enough from town for more comprehensive assistance services to be set up. A move to the SMG, however, should be linked to issuance of exemption certificates and stay of deportations, to avoid the risk of a mix-up of processing and deportations in the same site.

The other alternative that has long been discussed is the Arton Villa site which is also a former SANDF site. This is considered by local organisations to be too far from Musina and not suitable as a site for service provision. The site is considered to be dilapidated and there are concerns as the site has not yet been cleared of unexploded ordinances.

The issue of shelter has been raised in the weekly JOC meetings. The District JOC was to raise this in the Provincial JOC which in turn was due to send an assessment team. Feedback on this assessment was due to be provided at the District JOC meeting of 12<sup>th</sup> February which was unfortunately cancelled.

## ***Water / Sanitation***

MSF are in the process of completing drainage plans for the Showgrounds and have constructed hand washing sites where people can wash their clothes. This is to reduce the amount of stagnant water at the site which is critical in efforts to address the cholera epidemic. MSF with the assistance of non-governmental organisation Mvula Trust have also designated separate men's and women's toilets. There are currently 14 portable toilets (currently paid by the Municipality) at the site and 12 taps. The toilets are also being regularly cleaned with chlorine as there remains a suspicion of cholera at the Showgrounds.

The Department of Water Affairs and Forestry has indicated it will provide 15 additional toilets at the Showgrounds and have arranged for contractors to build 10 showers – five for women and five for men.

## ***Documentation***

### **Legal Documentation for Zimbabwean Nationals in South Africa**

Since 2007, CoRMSA, Human Rights Watch and other organisations have called for South Africa to issue Zimbabwean nationals in South Africa with a legal permit under the provisions of Section 31 (2)(b) of the Immigration Act which allows for the Minister of Home Affairs to “grant a foreigner or a category of foreigners the rights of permanent residence for a specified or unspecified period when special circumstances exist which justify such a decision...”.

CoRMSA believes that this alternative form of legal documentation remains essential given:

- The need to legalise the stay of the large number of Zimbabwean nationals in the country in order to be able to provide the necessary humanitarian assistance;
- Refugee status may not be the best form of protection for all entering South Africa as some may have left the country primarily due to the socio-economic situation rather than direct persecution. Others may also wish to travel back and forth across the border which refugee status does not allow;
- The asylum system cannot by itself accommodate the needs of the large numbers of Zimbabwean nationals applying for refugee status;
- Legal documentation is key to accessing other forms of protection including access to police assistance for victims of crime (including victims of gender-based violence), access to health care for those desperately in need, and access to justice for those suffering labour and other exploitation;
- Arresting and deporting Zimbabwean nationals in South Africa is ineffective given that many simply return and creates an unnecessary and avoidable expense for the taxpayer;
- The treatment of Zimbabwean nationals in South Africa during this time of crisis is likely to have significant implications on regional relations in the future.

Discussions are reportedly taking place on providing this alternative form of documentation but no concrete plans have yet been announced.

## **Delays in Issuing Documentation**

CoRMSA is disappointed to note that the praise local organisations have previously given the DHA Refugee Reception Office staff has been replaced with a number of concerns. At present, DHA is issuing 250 permits per day on average, but this is not guaranteed every working day. Service provision is often hampered by administrative deficiencies such as a lack of security paper to print section 22 asylum seeker permits, a lack of toner for the printers and a lack of application forms, for asylum. Local organisations have taken to purchasing supplies of toner to ensure DHA services continue. Efforts to address this with the DHA Deputy Director-General have not met with a guarantee that service will be improved.

There is a clear need for DHA to increase the capacity of their office. At present, the DHA office operates out of mobile trucks and there is an urgent need for additional trucks and staff. DHA previously indicated its mobile trucks were being used to issue identity documents to South Africans in preparation for the elections later this year. With the final voter registration period having been held on 7<sup>th</sup> and 8<sup>th</sup> February, there seems little reason that these trucks cannot be relocated to Musina.

UNHCR is of the opinion that DHA should be issuing 500 permits a day to be able to cope with the current demand and gradually absorb the mounting backlog. At present, the numbers arriving each day seem to be far exceeding the numbers being issued with permits each day. At this rate, there will be little chance of the process becoming more efficient. The fact that no permits have been issued for sometimes up to a week due to DHA supply problems further compounds the documentation crisis.

UNHCR and MLA0 are currently assisting DHA with the intake process. Each day they register new asylum applicants who are then assigned to a group number depending on the order in which they arrived as well as any potential additional vulnerabilities. Group numbers each day vary but as of Wednesday 11<sup>th</sup> February, groups 3-7 had been completed but people had been registered to groups up to 27. It is therefore still likely that those in the later groups will still wait for around one month before they receive their permits. In the meantime they still face the risk of arrest and deportation should they leave the Showgrounds.

## **Allegations of Abuse and Corruption**

There are a number of additional concerns regarding the performance of DHA staff at the Showgrounds. Whilst the pre-registration and intake process has been set up with UNHCR support, DHA staff appear to select additional clients who were not part of this system and there are numerous allegations of corruption as a result.

There are serious allegations regarding the use of force by security guards and DHA staff on clients waiting to be assisted. There are usually four security guards on duty controlling access to the DHA facility. In addition there are a number of men who patrol the area without uniform but holding sticks and / or pieces of hose pipe and these are said to be 'unofficial' security recruited by DHA. Whilst it is acknowledged that crowd control is necessary, there are concerns that there is little accountability for those not in uniform. It is alleged that these security guards as well as senior DHA staff have been observed beating individuals in an excessive manner, which sometimes takes the form of individuals being chased and beaten whilst on the ground.

DHA staff also insist on serving a certain number of non-Zimbabwean clients. Local organisations have raised concern regarding this practice given that this appears to encourage people from other parts of South Africa to come and apply in Musina. Groups of organised individuals have been observed arriving in Musina in cars with South African but not Limpopo registration for the purpose of applying for refugee status at the DHA office. When staff from local organisations have spoken to individuals in these groups it is apparent that they have spent a significant amount of time in South Africa. It is suspected that their applications for asylum have been rejected at one of the other Refugee Reception Offices and they are coming to make fresh applications. This is illegal but is facilitated by the fact that the Musina Refugee Reception Office is not connected to the database the other Refugee Reception Offices in South Africa are linked to. There are suspicions that corruption is involved in ensuring the access of these groups to the Musina Refugee Reception Office.

Whilst there are concerns about this apparent abuse of the asylum process, there are also concerns with regards to the fairness of the intake of non-Zimbabweans. The present system means that non-Zimbabweans are likely to be served on the same day as they arrive whilst Zimbabweans wait around one month for service. DHA staff insist on serving up to 50 non-Zimbabwean clients and this severely limits their service to Zimbabweans given that only 250 new applicants are assisted each day. Pending a resolution to this problem, it would be advisable to limit intake of third country nationals to only one day a week. DHA has suggested Fridays but this arrangement needs to be confirmed.

## ***Access to Health Care***

### **Access to Hospitals and Clinics**

Despite the cholera epidemic and the progressive measures taken by Minister of Health Barbara Hogan to ensure access to treatment for all in need, access to health care remains a major concern. Individuals staying at the Showgrounds site

have indicated their fear of venturing out of the site to access hospitals and clinics for fear they will be arrested and deported. MSF, which has a daily mobile clinic at the entrance to the Showground, and provides between 1,000-1,500 consultations each month, has had to resort to providing specific referral letters for individuals needing urgent hospital care but there are still concerns that these patients will be arrested on their journey back from the hospital.

There are also concerns regarding the denial of treatment at the hospital and the fees indigent Zimbabwean nationals are being charged for treatment. There continue to be incidents where Zimbabwean nationals report being refused treatment at the Musina hospital on the basis of not being able to pay the fee. Many Zimbabwean nationals are also being charged R500 for their treatment as though they were private patients. Department of Health (DoH) circular BI 4/29 REFUG/ASYL 8 2007 of September 2007 clearly states that “refugees/asylum seekers **with or without** a permit that do access public health care shall be assessed according to the current MEANS test [emphasis in original]”. These concerns have been raised with the hospital but these practices persist with the hospital staff denying the exorbitant overcharging and referring to the hospital’s right to ask if a patient can pay.

Additional illnesses being treated at MSF's mobile clinics include respiratory tract infections, sexually transmitted infections (including HIV), gastro-intestinal and diarrhoeal diseases (including cholera, particularly in November and December), and stress-related ailments. An increase in the number of malaria cases has also been noted.

### **Sexual and Gender-Based Violence**

An increase in the numbers of patients reporting cases of sexual and gender-based violence (SGBV) at mobile clinics has also been noted. This may be due to a rise in the number of incidents or else an increased rate of reporting of incidents. There is significant concern regarding the treatment of victims of SGBV at the SAPS office where they are reportedly forced to wait for extended periods before receiving the necessary assistance, if they are lucky enough to be assisted without external intervention by some of the local organisations. This is concerning for both medical and psychological reasons.

In addition, patients who report directly to the hospital for treatment are referred to the SAPS and not treated medically before a SAPS report has been done (this despite the fact that not all women do wish to report to SAPS or pursue a legal complaint – especially given their concerns about being deported). As many of these women are still awaiting their asylum permits they are scared to go to the police and therefore in the end do not get medical and psychological treatment. There is thus an urgent need to improve the quality of care available to SGBV victims.

## ***Access to Food***

### **Shortages in Food Provision**

Whilst food provision has increased since CoRMSA's previous visit in November 2008, there is still a severe shortage of food supplies given the ever increasing large numbers of people relying on food aid. There are concerns too for the nutritional quality of the food given that people are reliant on this food for at least one month whilst they wait to access documentation from the DHA.

At present food is being provided by a number of local civil society organisations, international organisations and churches. Cooked meals are provided by a number of different churches but there are concerns regarding the sustainability of funding of such initiatives. Some churches also provide food parcels but once again the demand outstrips the supply. At one church that CoRMSA visited, staff reported frequently meeting Zimbabwean nationals who had not eaten for many days and were desperately in need of food.

Local government has yet to contribute towards the costs or provision of food. Whilst it is understood that there could be political concerns in providing food solely to non-South Africans, government could still provide funding to the existing food suppliers which could avoid such political concerns. Government could also take the progressive step of providing funds for food provision to the extent that the existing food suppliers are able to provide for all of the most vulnerable people in the area including the most desperate South Africans.

### ***Unaccompanied Children***

There are presently a large number of unaccompanied foreign children in the area. Some estimate there to be in the region of 2000 unaccompanied foreign children in the Musina area. The issue of unaccompanied children has long been seen as one of the primary challenges facing non-nationals in the area.

### **Legal Documentation**

There has long been a challenge in assisting the children access the necessary legal documentation. Unaccompanied children are supposed to be brought to the attention of the local DSD office which is supposed to assist the children with accessing the DHA and obtaining documentation. Once documented, the children are then supposed to be assisted by DSD in being taken to a place of safety.

Unfortunately, there has generally not been a consistent and appropriate response from the local DSD office and as a result, many children have remained undocumented and thus arrested and detained alongside adults in the Musina detention facility in a manner that explicitly contravenes the law. Various efforts have been made to work with the local DSD office and raise concerns at District and Provincial level but there is yet to be a sustained and effective response.

Part of the problem appears to lie with the capacity of the local DSD office which currently has only five staff members. Given the scope of the crisis around unaccompanied children far greater capacity is needed to resolve the issue.

In addition, the local magistrate has raised concerns regarding the documentation supplied to him by DSD seeking an order to place the children in a place of safety. There may need to be an intervention by a more senior DSD office to assist the local DSD office with the completion of these forms.

### **Access to Schools**

The majority of the unaccompanied foreign children are not attending school. There are various reasons for this including the children not having the necessary legal documentation, children not having uniforms and the children not having the money when requested to pay for school fees. At secondary school level there is a challenge around space in the schools. The South African Constitution provides the right for “everyone” to have a basic education and the lack of access to schooling for children displaced as the result of the humanitarian situation in Zimbabwe is likely to have dire consequences for regional development.

### **Detention and Deportation of Children**

At the time of CoRMSA’s visit, there were 27 and then 50 children in detention on consecutive days. A large majority of the 27 children had contact numbers of a person in South Africa that they were trying to find. These children needed to be assisted by DSD in making contact with these people and once the children are documented the children can be assisted in linking up with their contacts.

At the time of CoRMSA’s visit there was also an unaccompanied child under the age of five at the detention facility who was to be deported. There is a clear need for an urgent and effective intervention from DSD to stop such incidents from being repeated.

## ***Arrests, Detention and Deportation of Non-South Africans***

### **Conditions at the Musina detention facility**

There remain significant concerns about the arrests, detention and deportation of non-South Africans in the Musina area. In June 2008, CoRMSA raised concerns with the SAPS, DHA and DSD regarding the conditions of detention at the SMG detention facility, the presence of children in detention, the lack of proper screening of the immigration status of detainees and procedures not being followed in the deportation of detainees. Since then conditions have not improved significantly despite an initial improvement in 2008 following a surprise visit by the Minister of Home Affairs' legal advisor.

As a result, Lawyers for Human Rights (LHR) has launched litigation in the Pretoria High Court. The detention facility is currently being overseen by the local SAPS instead of DHA. The Immigration Act requires the DHA to bear responsibility for verifying whether those arrested on immigration charges are in the country legally or not. LHR is asking the court to order DHA to designate the site a detention facility under the Immigration Act and improve the procedures and conditions to comply with its legal obligations. Failing this, LHR has asked for the facility to be closed within one month.

Further concerns regarding the Musina detention facility are described in more detail in a report released by LHR in December 2008 entitled *Monitoring Immigration Detention in South Africa*. The report is available online at <http://www.lhr.org.za/publications/monitoring-immigration-detention-south-africa-2008>.

### **Preventing the Deportation of Asylum Seekers**

At present there is a real threat that those waiting to apply for asylum will be arrested and deported prior to being issued with documentation from the DHA Refugee Reception Office. This has significant implications in South African and international law. CoRMSA has discussed with local organisations and UNHCR and SAHRC the possibility of providing additional protection to those who have completed the pre-registration process but are waiting to receive their Section 22 permits. Section 21 (4)(a) of the Refugees Act states that “no proceedings may be instituted or continued against any person in respect of his or her unlawful entry into or presence within the Republic if such person has applied for asylum in terms of subsection (1), until a decision has been made on the application and, where applicable, such person has had an opportunity to exhaust his or her rights of review or appeal in terms of Chapter 4”.

Those who have completed the pre-registration process with UNHCR and MLAO have therefore demonstrated a clear intention to apply for asylum and would therefore have submitted an application and received a Section 22 asylum seeker's permit on the day of their pre-registration if DHA had sufficient capacity to process their applications. As a result, those who have pre-registered with UNHCR and MLAO should be treated in the same way as those bearing Section 22 permits and should not be deported. This position still needs to be discussed with DHA and SAPS to work out the practical way in which this can be implemented.

### **Concerns Regarding the Conduct of SAPS Officials**

There remain concerns regarding the conduct of some Musina SAPS officials. International organisations report being informed by senior police officials that Musina SAPS officials had a standing order to arrest any person with a Section 22 permit that had been issued more than seven days ago. This is an illegal practice and is clearly designed to force those receiving documentation to move out of Musina.

In 2008, additional illegal practices conducted by the local SAPS also included holding Zimbabwean nationals in police cells over weekends as a 'preventative measure' to prevent crime over the weekend. Threats of litigation over these practices appear to have resulted in greater compliance with the law by the SAPS.

### ***Conclusion***

The concerns raised in this report are critical and need to be acted upon with urgency. Whilst there have been informal indications of progressive measures being undertaken to address some of the concerns, no official announcements have yet been made. Interventions by government need to take cognizance of the broad range of concerns to ensure that such interventions do not result in an unintended negative impact on further rights.

CoRMSA, its members and partners have indicated their willingness to assist government in the process of resolving this humanitarian crisis through consultations on appropriate forms of intervention and provision of resources where possible.

## **RECOMMENDATIONS**

1. There is an urgent need for an effective inter-departmental intervention in the crisis in Musina. This needs to involve national, provincial and local government working in consultation with civil society and international organisations to find the best way to address the various human rights issues at the same time as addressing the concerns of South African residents in the area.

### **Shelter**

2. There is an urgent need to relocate DHA services away from Musina Showgrounds. The SMG site, once vacated, appears to provide the best site of the current options, provided deportations cease or appropriate separation between the deportation and documentation processes can be maintained. Municipal authorities, disaster management officials, DHA, DSD, SAPS and other relevant bodies should discuss the possibilities around such a move thoroughly with representatives of local civil society and the relevant international organisations. This should give rise to agreements regarding the services to be provided at the new site, access to the new site, security at the site and other key considerations.
3. There is a need for concerns regarding living conditions to be addressed at the new site. This means providing sufficient shelter, food, access to health care and other services at the new site for the duration it takes individuals to access their Section 22 permits.
4. Pending a move to the SMG, which may take some time to come to fruition, the Municipality should give its consent to the UNHCR offer to set up temporary shelters at the Showgrounds.

### **Documentation**

5. There is an urgent need for government to find an alternative means of documenting Zimbabweans in South Africa. The asylum system may be appropriate for many but will not address the needs of all. It simply does not have the capacity for this.
6. There is an urgent need for DHA to increase the capacity of its Musina office to be able to issue at least 500 Section 22 permits a day to be able to cater for the rate of demand. This means bringing additional staff and mobile trucks to Musina.
7. There is the need for DHA to ensure no further logistical problems prevent the operation of the Musina Refugee Reception Office. This means ensuring supplies of application forms, security paper and toner for the printers is sufficient.

8. To minimize abuse of the system and ensure transparency and fairness, processing of asylum seekers from third nationalities should be limited to one day a week, to be agreed upon with DHA.
9. There is the need for DHA to address concerns regarding excessive use of force by the security guards and DHA staff at the Showgrounds.
10. There is the need for DHA to engage with local stakeholders and thoroughly investigate allegations of corruption involving staff at the Musina Refugee Reception Office.

### **Water / Sanitation**

11. There is the need to urgently ensure sufficient toilets and washing facilities are in place at the Musina Showgrounds.
12. In the event of a move to SMG or an alternative site there is the need to ensure that this site is adequately equipped to meet sanitation needs.

### **Access to Health Care**

13. There is a need for clear communication from the National DoH office to Musina Hospital with regards to access to health care for Zimbabwean and other non-South African nationals and the respective fees scale that should be used.
14. There needs to monitor access to health care at the hospital to ensure no patient is denied access to health care on the basis of his or her nationality or legal status.
15. Patients should not be arrested or risk deportation when seeking health care; this includes during the travel between the hospital and Showground.

### **Unaccompanied Children**

16. There is a need for intervention by a more senior DSD office to provide capacity and guidance to the local DSD office in dealing with the crisis of the large number of unaccompanied children.
17. There is the need for assistance from the Department of Education to ensure those not currently attending school are provided with access to education.

### **Arrests, Detention and Deportation**

18. The arrest, detention and deportation of children need to cease with immediate effect.
19. All undocumented children found by the SAPS need to be referred to the DSD and not be taken to the SMG detention facility.

20. The SAPS should desist from withdrawing people's permits, of whatever description. In the event that an SAPS officer does not understand a permit, the bearer of the permit, together with his/her permit should be referred to the DHA for clarification of status.

# **Appendix**

## ***List of report recipients***

### **Home Affairs**

1. Minister of Home Affairs - Honourable Nosiviwe Mapisa-Nqakula
2. Director-General – Mr Mavuso Msimang
3. Deputy Director-General – Mr Jackie McKay
4. Director of Refugee Affairs – Ms Busisiwe Mkhwebane-Tshehla
5. Director of Immigration Inspectorate – Mr Modiri Matthews
6. Director of Deportations – Mr Ricardo Abrams

### **Social Development**

1. Minister of Social Development – Honourable Zola Skweyiya
2. Director-General – Mr Vusimuzi Madonsela
3. Director of International Social Services – Dr Tebogo Mabe
4. Director of Social Relief – Mr Joe Molifi

### **Health**

1. Minister of Health – Honourable Barbara Hogan
2. Director-General – Mr Thamsanqa Mseleku

### **Safety and Security**

1. Minister of Safety and Security – Honourable Nathi Mthethwa
2. Acting National Police Commissioner – Commissioner Tim Williams

### **Foreign Affairs**

1. Minister of Foreign Affairs – Honourable Nkosasana Dlamini-Zuma
2. Director-General – Dr Ayanda Ntsaluba

### **Education**

1. Minister of Education – Honourable Naledi Pandor
2. Director-General – Mr Duncan Hindle

### **Provincial and Local Government**

1. Minister for Provincial and Local Government – Honourable Sicelo Shiceka

2. Director-General – Ms Lindiwe Msengana-Ndlela

### **Water Affairs and Forestry**

1. Minister for Water Affairs and Forestry – Honourable Lindiwe Hendricks
2. Director-General – Ms Pamela Yako

### **National Disaster Management Centre**

1. Executive Manager - Mr Lance Williams
2. Deputy Manager: Disaster Intervention and Support – Mr Goodman Chiloane

### **Limpopo Province**

1. Premier – Mr Sello Moloto
2. Director-General - Dr Hlamalani Manzini
3. MEC for Education - Dr Pakishe Motsoaledi
4. MEC for Health and Social Development - Mr Seaparo Sekoati
5. MEC for Public Safety and Liaison - Mr Ratshivhanda Ndou

### **Vhembe District**

1. Executive Mayor – Councillor Falaza Mdaka
2. Municipal Manager – Mr Muthotho Sigidi

### **Musina Municipality**

1. Executive Mayor – Councillor Caroline Mahasela
2. Municipal Manager – Mr Abram Luruli

### **South African Human Rights Commission**

1. Chairperson – Commissioner Jody Kollapen
2. Deputy Chairperson – Commissioner Zonke Majodina
3. Head of Non-Nationals Desk – Ms Joyce Tlou
4. Head of Limpopo Office – Mr Jeffrey Nkuna

### **South African Red Cross Society**

1. President – Ms Mandisa Kalako-Williams

### **United Nations High Commission for Refugees, Pretoria**

1. Regional Representative – Mr Sanda Kimbimbi
2. Deputy Regional Representative – Mr Sergio Calle Noreña

**United Nations Children Fund, Pretoria**

1. Country Representative – Ms Aida Girma

**International Organisation for Migration**

1. Regional Representative - Mr Hans-Peter Boe