



## Refugee protection and international migration

### A review of UNHCR's role in Malawi, Mozambique and South Africa

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## Executive summary

This review examines the response of UNHCR and other stakeholders to three distinct but interrelated mixed migratory movements that are currently taking place to and within southern Africa. First, a movement of people from the Horn of Africa to South Africa, generally transiting through Kenya, Tanzania, Malawi, Mozambique and, to some extent, Zimbabwe; second, a movement of people from the Great Lakes region of Africa (Burundi, the Democratic Republic of Congo and Rwanda) to South Africa, a proportion of whom are also taking up residence in Malawi and Mozambique; and third, the large-scale departure of Zimbabwean citizens from their country of origin, the majority of them also moving to South Africa.

These movements are mixed in the sense that they include refugees, asylum seekers, people who are leaving their own country in response to governance and development failures, those who are seeking economic, educational and family reunion opportunities, as well as some who regard the journey to South Africa as a first step towards more distant destinations such as Europe and North America.

Following an introduction to the purpose, scope and methodology of the review, the second chapter of the report focuses on the irregular movement of people to and through Malawi and Mozambique. The chapter examines the way in which the journey is organized, the protection risks encountered by those engaged in this movement, as well as the challenges that it has posed for UNHCR and the two states concerned.

The report draws attention to the fact many of the refugees involved in this movement, especially those from the Horn of Africa, have their own notion of protection - one that does not correspond to UNHCR's traditional approach to the issue of asylum.

For the most part, these refugees have little interest in remaining in camps and becoming recipients of international assistance in a country close to their place of origin. Instead, their primary objective, and their own way of finding protection, is to reach South Africa, to join family and clan members who have already made that journey, to find work or establish a small business there.

Chapter 3 of the report analyzes the much larger movement of people from Zimbabwe to South Africa, an influx that continues at a rapid rate, despite the recent political and economic changes that have taken place in their country of origin and despite the xenophobic violence that continues to threaten foreign nationals living in South Africa.

The report examines the means whereby Zimbabweans cross the border, the reception they receive on the South African side of the frontier, as well as the procedures used to record and regularize their presence there. The chapter points out that Zimbabweans are obliged to submit an application for refugee status if they wish to

remain and work in South Africa, an arrangement that, because of massive number of people concerned, has placed unbearable pressures on the country's asylum system.

The fourth chapter of the report provides a more detailed account of the way that UNHCR, the authorities, regional organizations, civil society and other actors have responded to the large-scale mixed migration that South Africa has experienced in recent years.

The chapter examines the ways in which UNHCR has sought to reach out to persons of concern to the organization, the efforts that have been made to engage other actors in the tasks of refugee protection and migration management, UNHCR's response to the problem of xenophobic violence and the way in which resettlement is being used as a tool of protection.

The report highlights the government's recent admission of the need for fundamental changes in the country's immigration and asylum system, and makes a number of recommendations with respect to the way that UNHCR can make effective use of this opportunity. These and the report's other recommendations are summarized in the closing chapter.

# 1. Introduction to the review

1. In December 2007, the High Commissioner made a commitment “to review the effectiveness of UNHCR’s interventions in the area of international protection and mixed migration in order to learn lessons from its experience and ensure that they are incorporated in its policymaking and programming processes.”
2. This review of UNHCR’s role and activities in Southern Africa is one of a series being conducted by the organization’s Policy Development and Evaluation Service (PDES) in fulfilment of that commitment. Previous reviews have focused on the Spanish Canary Islands, Southern Italy and Morocco.
3. While these reviews and their recommendations are intended to focus primarily on the role and activities of UNHCR, they take full account of the broader operational context in which UNHCR has to work and thus refer to the policies and practices of other actors that have an interest and involvement in the issues of refugee protection and international migration.
4. This review of UNHCR’s role in Malawi, Mozambique and South Africa was undertaken by Jeff Crisp and Esther Kiragu of PDES. The review entailed an initial analysis of relevant documents, as well as interviews with key UNHCR staff and representatives of IOM and other partner organizations in Geneva.
5. The second phase of the review consisted of visits to three countries in the region, Malawi, Mozambique and South Africa, where the team consulted widely with key stakeholders, including national and local government officials, border guards and police, UN Country Team representatives, NGOs, members of civil society and academic researchers.
6. The team visited several locations where people who are on the move are to be found, including frontier posts, refugee camps, reception, transit and detention centres. Interviews were conducted with a range of refugees, asylum seekers and migrants.
7. In addition to this report, the information and analysis provided in this review has been used as a basis for a background paper for an International Conference on Mixed Movements and Irregular Migration from the East, Horn and the Great Lakes Region of Africa to Southern Africa, to be held in Dar es Salaam, Tanzania, in September 2010. That paper can be accessed on the Evaluation and Research page of the UNHCR website.
8. The team would like to thank all of the UNHCR staff in Malawi, Mozambique and South Africa for their efforts in facilitating and contributing to this review.





## 2. Malawi and Mozambique

9. In the past decade, a 4,500 kilometre mixed migration route has emerged, stretching all the way from Eritrea, Ethiopia and Somalia in the Horn of Africa to South Africa. The route incorporates a number of other countries, including Kenya, Tanzania, Malawi, Mozambique and Zimbabwe, as well as the Great Lakes states of Burundi, Rwanda and the Democratic Republic of Congo (DRC).

10. A clear distinction can be made between the three countries visited in the course of this review. Malawi and Mozambique are essentially (although not exclusively) countries of transit for people who are travelling south, while South Africa is the intended destination for the majority of people who are on the move in the region.

### **The operational context**

11. Malawi and Mozambique are signatories to both the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, as well as the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa. Both countries have registered several reservations to the 1951 Convention, including Article 17 (on the right to wage-earning employment) and Article 26 (relating to freedom of movement). While Malawi and Mozambique have translated these commitments into domestic law, the refugee legislation of both countries is currently under review.

12. At the close of 2009, Malawi had a registered population of 10, 716 persons of concern to UNHCR. Out of this number, 4,175 were recognized refugees while the remaining 6,541 were asylum seekers (both rejected and those awaiting the outcome of appeals). With the exception of 1,291, all were resident in Dzaleka refugee camp, on the outskirts of Lilongwe, the capital city.

13. Mozambique had a total population of 7,619 persons of concern to UNHCR at the end of 2009, 3,163 of them recognized refugees and 4,456 of them asylum seekers. The majority of the refugees are resident in Maratane camp, close to the city of Nampula in the north of the country.

14. Both Malawi and Mozambique have a long history of involvement with refugee issues and a close familiarity with UNHCR. Malawi started to receive refugees from Mozambique during the struggle against Portuguese colonial rule, and hosted a large number of Mozambicans in the 1980s, when the Frelimo government and Renamo opposition movement (supported by South Africa) were engaged in a highly destructive civil war. Those refugees returned to Mozambique very quickly when peace returned to the country in the early 1990s, in the context of one of UNHCR's largest and most successful repatriation and reintegration programmes.

15. In recent years, a new phenomenon has emerged in Malawi and Mozambique, namely the movement of people from the Horn of Africa (especially Ethiopia and Somalia) and the Great Lakes region of Africa, transiting through the two countries on their way to South Africa, either directly or by way of Zimbabwe.

16. As later sections of this report will explain, most of these people are young men, travelling in organized groups and relying upon human smugglers to cross international borders in an irregular manner. While they may submit an application for asylum in either Malawi or Mozambique, many remain in those countries for a relatively short time, often for rest and recuperation before proceeding further south.

17. This movement is a highly mixed one. It includes people with a valid claim to refugee status as they are fleeing from persecution, armed conflict and political violence in their countries of origin; refugees who have previously been accommodated in camps or urban centres in neighbouring and nearby countries; vulnerable migrants who are moving in response to poor governance and harsh economic circumstances; people who are seeking better livelihoods, income-generating and educational opportunities; as well as those whose ultimate aim is to make their way to Europe or North America. It also includes a growing number of people who originate from other parts of the world, especially South Asia.

18. While accurate statistics on these irregular movements are by definition impossible to compile, there is a broad consensus in Malawi and Mozambique that the number of people involved is increasing, raising new concerns amongst officials, politicians and the public. Responding to these concerns, the states involved have resorted to largely ad hoc responses, including encampment policies; increased security and policing in refugee camps; interception, detention and deportation; as well as the introduction of roadblocks and border closures.

19. In this context, UNHCR's primary objective - to identify those new arrivals who are in need of protection and to ensure that they are granted asylum - is a particularly difficult one. It is complicated by three additional considerations.

20. First, many of the refugees, especially those from the Horn of Africa, have their own notion of protection - one that does not correspond to UNHCR's traditional approach to the issue. For the most part, they have little interest in being confined to camps and becoming dependent on international assistance. Their primary objective, and their own way of finding protection, is to reach South Africa, to find work or establish a small business there, to reunite with family or clan members and, in some cases, to explore the possibilities of onward movement.

21. Second, while the number of foreign nationals passing through or residing in Malawi and Mozambique is very small by global standards, the refugee protection and migration management systems of both countries are struggling to cope with the new phenomenon of mixed, irregular and transit migration.

22. Third, as a result of their longstanding relationship with UNHCR, both Malawi and Mozambique naturally look to the organization for support in addressing this issue. UNHCR's presence in both countries is very limited, however, while other UN agencies and IOM have not engaged substantially with the issue of mixed migration. UNHCR consequently finds itself under significant pressure in responding to a challenge that beyond the strict confines of its mandate for refugee protection and solutions.

## **The journey south**

23. The clandestine movement of people from the Horn of Africa to South Africa, transiting through Malawi and Mozambique, is a poorly documented one, with relatively little known about its scale, the way that it is organized and funded or the means whereby people are able to make such long and difficult journeys across so many state borders. Further information and analysis is needed in this respect if appropriate responses to this phenomenon are to be formulated.

24. While Somalis have an evident motivation to make such long and arduous journeys - namely to escape from the violence that has scarred their country for so long and which has escalated in the past two years - the situation of the Ethiopians is more complex. While their country of origin is not without its economic and political problems, there is evidence to suggest that young rural Ethiopian men are actively recruited by human smuggling networks, lured by the prospect of finding work in South Africa. According to some reports, both the fear of electoral violence in Ethiopia (the elections were held in May 2010) and the livelihoods opportunities generated by the World Cup have expanded the pool of people who are prepared to make the journey south.

25. In order to reach Malawi and Mozambique, Somalis and Ethiopians must first pass through Kenya and Tanzania. Some of the Somalis are refugees who have stayed for some time in the refugee camps of Dadaab in north-east Kenya or taken up temporary residence amongst the large Somali community in Nairobi, where money can be raised to finance the rest of their journey.

26. Those people making their way to South Africa from the Great Lakes region have a somewhat simpler journey given the much closer proximity of their countries of origin. While accurate statistics are unavailable, a proportion of those from Burundi, Rwanda and the DRC and known to be moving on from refugee camps in the region, especially Tanzania.

27. According to evidence collected in the course of this review, people transiting through Malawi and Mozambique tend to move in groups, sometimes involving as many as 140 individuals. Almost all are young men; women, children and families are very rare. Each group appears to have one designated English speaker, although it is unclear whether this person is a smuggler or a client. From what the evaluation team was able to observe, they carry few possessions and seem to have very little money with them.

28. The journey is an extremely arduous and hazardous one, often involving constant changes in modes of transport, long walks through the bush, as well as the constant threat of exhaustion, robbery, extortion, arrest, detention and deportation. Local populations, border officials, police and military officers as well as truck drivers and boat owners appear to play a significant role in facilitating the movement through Kenya, Tanzania, Malawi and Mozambique.

29. The people who make this journey are not necessarily the poorest members of society, even if economic hardship and the desire to gain a better standard of living are amongst their motivations for moving. In order to finance the journey south, it is necessary to have access to savings, remittances, saleable assets or loans. According to some informants, the fare from the Kenya/Tanzania border to Malawi is in the

region of \$850, while a \$1,700 payment is required to complete the journey to South Africa.

30. The evidence collected in the course of this review suggests that such groups are able to enter Malawi from Tanzania with relatively little difficulty, although the routes used to move south are changed all the time in order to escape detection by the authorities. In Malawi, for example, a six-month border closure in 2007 did little to stem the movement and prompted the use of new clandestine routes along Lake Malawi.

31. Entering Mozambique appears to be more difficult as the border is patrolled by the military. Groups of new arrivals are regularly deported to Malawi, an issue that has had a negative impact on relations between the two states. Deportations from Malawi to Tanzania appear to be much less common.

32. As in Malawi, official efforts by the Mozambican authorities to obstruct irregular migration seem to have led to the establishment of new routes and means of transport. Most recently, Somalis have been avoiding the country's land border by travelling on a seasonal basis in small and overcrowded boats, landing in the northern province of Cabo Delgado. Needless to say, this journey is fraught with many dangers.<sup>1</sup> Despite those dangers, there are many indications to suggest that sea travel will become an increasingly important dimension of mixed migratory movements in the region.

33. A key location on the long route to South Africa is Dzaleka refugee camp in Malawi, which accommodates both a long-term group of residents, mainly from the Great Lakes region, and a transitory population, primarily from the Horn of Africa. All new arrivals at the camp receive basic food and other assistance and are expected to stay in the camp's transit area for three months before they are registered and allocated a plot of land in which to construct a more permanent shelter. Within this period, interviews are undertaken and documentation prepared for Refugee Status Determination (RSD).

34. Despite these provisions, people arriving from the Horn of Africa are generally not interested in seeking asylum and remaining in Malawi. According to one official in Malawi, "if there was a tunnel to South Africa under our country, they would not bother coming to the surface."

35. After a period in the camp, they leave Dzaleka, travelling in groups, often at night, making their way to the border with Mozambique in trucks, tankers and containers. According to several informants in both Malawi and Mozambique, they survive by taking crops from farms and granaries belonging to local people, an issue which has provoked a growing degree of hostility towards them.

36. Government officials, border guards and police officers in both countries also expressed concern about the security implications of clandestine movements and the fear that is provoked when significant numbers of foreign nationals pass through a village or are found sleeping in the bush. There is particular concern with respect to Somalis, who in the public imagination are associated with the armed conflict in their

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<sup>1</sup> In early June 2010, nine Somalis died off the coast of Cabo Delgado when the boat they were travelling in capsized and sank.

country of origin and are consequently believed to have connections with militant and terrorist groups.<sup>2</sup>

37. A particular problem for Malawi is to deal with the significant number of people who are deported from Mozambique and who then find themselves stranded in the border area. UNHCR formerly assisted the authorities to transport such people back to Dzaleka, but experience showed that within a matter of days or even hours, they would leave the camp and make their way back to the Mozambique border. This to-and-fro movement happened so often and with such speed that border officials in both countries came to recognize the faces of the people they apprehended.

38. Malawi does not wish to detain these people, partly because the Refugee Act allows transit through the country and partly because, in the words of one official, "they have committed no crime." They are, however, held by the authorities pending their return to Dzaleka, a situation which places significant demands on the police in terms of transport, accommodation, food and other basic needs.

39. The evaluation team witnessed a graphic illustration of this problem in the Malawian border town of Dedza, where six traumatized young men from the Horn of Africa and Great Lakes region were being held in a dark room at a police station, unable to communicate effectively in English, without food and water, and with no means of returning to Dzaleka.

40. After the intervention of a local UNHCR staff member accompanying the team, the organization was able to send a car from Lilongwe to collect the men and take them back to the camp. All of the local stakeholders involved in the incident confidently expected the men to return to the border area and to make another attempt to enter Mozambique a few days later.

41. Those who succeed in crossing the border have the option of residing in Maratane camp in Nampula Province, which currently accommodates 4,000 refugees and 3,000 asylum seekers, some of whom have had their cases rejected but who have not yet exhausted the appeals procedure. Most are from the Great Lakes region, as new arrivals from the Horn of Africa prefer not remain in Mozambique but to continue their southward journey.

42. While the evaluation team was not able to visit the camp, it is reportedly in a good location, close to the town of Nampula, with reasonable services and agricultural land. Many of the longer-term residents from the Great Lakes region have become at least partially self-reliant and are benefiting from a process of de facto local integration.

43. By way of contrast, a number of difficulties, including security problems, have arisen with respect to the much smaller group of people from the Horn of Africa in Maratane. According to government officials, around 400 people from the Horn of Africa have gone to Maratane but only 130 remain. "They are just waiting to get more energy to prepare for the rest of their trip to South Africa," the evaluation team was told. "These guys are not here to stay."

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<sup>2</sup> There have been unverified rumours of Somali and Pakistani militants running clandestine training camps in northern Mozambique. This has been strongly denied by the government.

## **A challenging issue**

44. The number of foreign nationals travelling to and through Malawi and Mozambique is modest, especially when compared with mixed migratory movements in other regions of the world, such as the Mediterranean and Gulf of Aden. And yet it is a particularly challenging one.

45. Malawi and Mozambique are expressing growing concern about this unregulated movement of people, a phenomenon which, as noted before, has acted as an irritant in relations between the two states. Neither has significant capacity in relation to the issue of migration management, a situation exacerbated by IOM's limited presence and activities in Mozambique and its absence from Malawi.

46. Given the situation in their countries of origin and the opportunities available to them in South Africa, it seems unlikely that the number of people moving south from the Horn of Africa and Great Lakes region will diminish in the near future. Indeed, the fear in Malawi and Mozambique is that it will continue grow.

47. While migration information programmes and local development initiatives in countries of origin have a role to play in averting these irregular migratory movements, it would be naïve to think that they can have a major impact on numbers. In the case of Somalia, of course, the violence and disruption that has forced so many people to flee from the country has actually intensified in the past two years, prompting more people to look for a more secure future elsewhere.

48. The situation is complicated by the nature of the southward movement, which straddles the traditional distinction between the flight of people escaping from armed conflict and political violence and the migration of people in search of better livelihoods and new opportunities. Indeed, while the people involved in this movement may leave their country of origin for different reasons, both refugee-related and otherwise, once they set out on this difficult and dangerous journey they are confronted with the same protection risks: lack of access to adequate food, water and shelter; the risk of harassment, robbery, extortion and exploitation; and the possibility of becoming stranded and destitute in a foreign country.

49. UNHCR's options in this intractable situation are limited, especially as the modest size of the organization's presence in Malawi and Mozambique makes nationwide coverage and regular cross-border cooperation very difficult. The distance from the northern border of Malawi to the country's southern frontier, for example, is around 1,000 kilometres, while in Mozambique, the distance from Maputo to Cabo Delgado is twice that length. Although UNHCR retains a presence in Nampula, its office in Tete was closed in September 2009, once it became clear that an anticipated influx of Zimbabweans would not take place.

50. Given the very clear likelihood that UNHCR will be unable to provide substantially more financial or human resources to its operations in Malawi and Mozambique, a number of alternative approaches are recommended.

51. First, UNHCR should continue with its efforts to strengthen the asylum systems and to improve the living conditions of refugees in these and other countries (e.g. Kenya and Tanzania) through which refugees are currently transiting. A very specific issue in this respect (but admittedly one without any obvious or easy means

of resolution) is to ensure that asylum seekers from countries such as Somalia and Ethiopia have access to interpreters when making their claim to refugee status.

52. With respect to capacity building, the evaluation team was struck by the limited knowledge of UNHCR's 10 Point Plan on Mixed Migration amongst stakeholders in both countries. While the Plan does not provide a panacea for the complex mixed migration issues that exist in the region, it has a valuable role to play as a framework for joint analysis, strategy development and operational activity.

53. Second, and building on the apparently successful example of Maratane, where refugees have been able to pursue a de facto if not a de jure form of local integration, UNHCR should advocate on behalf of a similar approach in Malawi. While this may not yield immediate results, constructive alternatives must be sought for the 'Dzaleka solution', whereby people are confined to a camp that has few livelihoods opportunities, which is rife with suspicions and antagonisms imported from conflicts in the Great Lakes region, and which has become an important focal point for human smuggling.

54. Third, while UNHCR is obliged to go beyond the boundaries of its refugee protection mandate in mixed migration situations, it should also avoid a situation in which other international actors act on the assumption that the organization has general responsibility for people who are the move, irrespective of their motivation and legal status.

55. In the context of Malawi and Mozambique, UNHCR and IOM could usefully initiate a concerted discussion (both in Pretoria and Geneva) on their respective roles, responsibilities and resources. At the same time, there is scope for much more active engagement in mixed migration matters by the respective UN Country Teams.

56. In this respect, UNHCR must, at both the global and local levels, demonstrate how the issue of mixed migration is relevant to the mandate and mission of other UN organizations. UNDP, for example, has identified migration as a global priority and focused on this issue in its most recent *Human Development Report*. But this has not been reflected at the country level in either Malawi or Mozambique. To address this situation, the UNCT in both countries should be encouraged to develop some initial inter-agency initiatives, such as a 'safe migration' programme that provides foreign nationals with accurate and practical information in relevant languages.

57. Finally, UNHCR should discourage the authorities of both countries from taking initiatives that appear to offer quick and easy solutions to such a complex problem. Recent experience in Malawi, for example, suggests that border closures do not achieve their intended objectives and can have a number of unintended consequences: the creation of new clandestine routes, higher levels of bribery and corruption, as well as increased dangers for refugees, asylum seekers and migrants themselves.

58. This review also has serious reservations with respect to a plan drawn up by the government body and UNHCR partner INARS in the city of Tete, a transit point for people who are making their way to South Africa. The plan entails the construction of a transit centre on the outskirts of the city, where new arrivals could be accommodated, assisted and screened, so as to identify those who should enter the RSD procedure. Those who are 'screened in' would be accommodated in

Maratane. The centre would also provide services to some 300 recognized refugees in Tete, many of them teachers and nurses from the Great Lakes region.

59. According to an official of the Migration Department, Tete is a long way from Maratane, and yet there are no facilities to accommodate new arrivals who are apprehended in the former city. As a result, they have to be kept in prisons or police stations that do not have appropriate facilities for them. "This," he said, "is not acceptable in humanitarian or human rights terms."

60. While considerable energy has been put into the elaboration of the transit centre proposal, it unfortunately (as is the case with a somewhat similar proposal in South Africa, examined in Chapter 4) raises more questions than it provides answers. Who, for example, would pay for the construction and maintenance of the centre and be responsible for its management? Would new arrivals go and remain there on a voluntary basis, or would some form of detention be required? Would the centre become another hub of human trafficking? And what would happen to those who are considered not be in need of international protection? Would they be deported to Malawi and sent back to Dzaleka, only to return to the border and to try their luck again, as is currently the case?



### 3. The Zimbabwean influx

61. The movement of people to South Africa from other countries in the region is by no means a new phenomenon. Under apartheid, the country had a well-developed migrant labour system that brought in large numbers of foreign workers.

62. Well before apartheid ended, moreover, people from other parts of the continent (such as teachers and medical staff from West Africa) began to make their way to South Africa to escape from difficult conditions in their own countries and to take advantage of the economic opportunities there. In the 1980s, large numbers of Mozambicans fled to South Africa as a result of the civil war and a sizeable number remained in the country once peace had been established in their country of origin.

#### **Accelerated movement**

63. The movement of people to South Africa, especially irregular migration, has accelerated sharply in the post-apartheid period. The reasons for this development are not difficult to ascertain. They include the difficulties of life in countries such as Ethiopia, Somalia and Zimbabwe, the better opportunities and services that are available in South Africa as well as the infrastructural development and economic activity stimulated by the World Cup.

64. As in other parts of the world, moreover, migration has facilitated and encouraged more migration. Whether they originate from Somalia, Ethiopia, one of the Great Lakes states or a more distant country, migrants to South Africa know that they will be able to count on the support and solidarity of friends and family members from their own country.

65. Technology has also played a significant role in this process. In a reception centre for Zimbabwean women in the South African border town of Musina, it became evident to the evaluation team that many residents had access to mobile phones, and were thus able to plan their onward journey, make contact with friends and relatives in other parts of South Africa and arrange money transfers.

66. Recent developments in Zimbabwe, such as the introduction of a power-sharing agreement and the use of the US dollar as an official currency, appear to have led to some improvements for people living in the country. Inflation rates have dropped, for example and many goods are in more plentiful supply.

67. The influx of Zimbabweans in South Africa, however, shows no sign of abating. Some 300 people arrive in Musina every day, equivalent to around 100,000 per year. According to several Zimbabwean informants, this is because people who do not have access to dollars are unable to benefit from the improved supply of goods, while the country's drought and food security crisis are prompting people to leave the land and to seek alternative coping mechanisms, including movement to South Africa for longer and shorter periods of time. According to many interlocutors, there is a great deal of to-and-fro movement between the two countries.

68. Significantly, humanitarian workers and government officials in Musina report that a growing number of single Zimbabwean females (some of them with young children) and unaccompanied minors are now arriving in South Africa. There is also evidence to suggest that new arrivals from Zimbabwe, who in the past tended to come from urban areas and to have some education, are increasingly illiterate and originate from areas deep in rural Zimbabwe. It would be useful for UNHCR to verify that this is the case and, if it is so, to examine the reasons for the changing profile of the new arrivals.

69. This situation raises some interesting and important questions with regard to those involved in the Zimbabwean influx. While it is clear that they are crossing the border in order to find work and earn wages in South Africa, and while both the government and UNHCR take the position that most are not refugees, it would be difficult to describe this movement as 'labour migration' in the traditional sense of that concept. According to some commentators, it is better understood as a form of forced migration or 'survival migration', even if most of the people concerned do not meet the criteria for refugee status.<sup>3</sup> It is recommended that UNHCR analyze this concept to assess its usefulness.

### **Protection developments**

70. Two or three years ago, South Africa was affected by a major protection crisis. First, large-scale deportations to Zimbabwe were taking place (as many as 300,000 people in 2007) without adequate safeguards to prevent the *refoulement* of any individuals with a valid claim to refugee status.

71. Second, the border town of Musina was overwhelmed by the number of new arrivals from Zimbabwe. Large numbers of people congregated in squalid conditions in an open field known as the Musina Showground, a facility that was eventually closed and cleared by the authorities in highly chaotic circumstances.

72. Third, in mid-2008 South Africa was convulsed by a spate of xenophobic violence, leaving dozens of foreign nationals (and some South Africans) dead, and displacing many thousands of others.

73. As explained in more detail in the following chapter, this protection crisis has subsided to some extent. A moratorium has been introduced with respect to the deportation of Zimbabweans. Enhanced reception and registration facilities have been established in Musina, while new arrangements have been established that enable Zimbabweans to seek asylum and work in South Africa. Although xenophobic incidents continue to take place, the type and level of violence witnessed in 2008 has not recurred.

74. Despite these developments, the situation of Zimbabweans and other foreign nationals who enter the country is a very difficult one. Because Zimbabwean passports are difficult and expensive to acquire, and because a passport is needed to exit Zimbabwe legally, many new arrivals choose to arrive in South Africa as 'border jumpers', evading the official crossing at Beit Bridge, close to Musina, and cutting their way through the electrified razor wire fence that separates the two countries.

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<sup>3</sup> Alexander Betts and Esra Kaytaz, 'National and international responses to the Zimbabwean exodus: implications for the refugee regime'. *New Issues in Refugee Research*, no. 175, July 2009.

75. In addition to the inherent dangers of this act, border jumpers are confronted with other risks. Crossing the Limpopo River, they may be attacked by crocodiles, while those who reach the game parks on the South African side of the border have to contend with the presence of lions and other wild animals.

76. Danger also comes in two human forms: the *magumagumas*, thugs and gang members who subject new arrivals to harassment, robbery, rape and extortion; and the *malaishas*, taxi drivers and transporters who work independently or in collusion with the *magumagumas*, and who are responsible for spreading misinformation, cheating their clients, encouraging and organizing the cross-border movement of unaccompanied children.

77. Border jumpers who are apprehended by the authorities are transferred to a facility known as SMG, a bare warehouse-like structure on a military base which is guarded by unarmed security personnel and divided into male and female sections. Detention at SMG is limited to three days, after which new arrivals are released and expected to report to the official Refugee Reception Centre in Musina.

78. The SMG is deficient in several ways. According to a High Court ruling it is unfit for its current purpose, but no alternative facility has yet been found to accommodate new arrivals. The SMG is often overcrowded, is limited in the services that it provides and is used to house children, despite a prominent sign on the wall of the building that states "no person under 18 years is allowed to be detained." A Red Cross offer to provide food to the SMG has not been accepted by the police, who are accused by certain human rights activists of using SMG inmates to provide them with free labour.

79. There also appears to be some randomness in terms of who is taken to the facility. One woman encountered at the SMG explained that she had crossed the border with a passport to buy HIV drugs that were unavailable in Zimbabwe, and thus did not understand why she had been apprehended and detained.

80. Another concern raised by local informants is the practice of recruiting documented new arrivals to work on commercial farms in the Musina area. The evaluation team heard persistent stories that such farm workers often receive less pay than they have been promised, that unannounced deductions are taken from their wages, and that men and women are obliged to share accommodation. This issue should be brought to the attention of the authorities.

81. New arrivals from Zimbabwe and other countries who register at Musina's Refugee Reception Centre are documented and subsequently expected to visit the DHA in Pretoria or Johannesburg for interviews and further processing. No official assistance is provided except for those who are obviously vulnerable or who have compelling reasons for not continue their journey immediately.

82. Separate transit centres have been established in Musina for women, children and men, although adults can normally remain in these facilities for a maximum of three days. Administered by a church with some support from UNHCR, the women's facility appeared to offer a welcoming and supportive environment, but is overcrowded and unfortunately located next to a night club that plays incessant and high-volume music. The men's centre (better described as a shelter) is also managed

by a church but is much more rudimentary in terms of the accommodation and services it provides.

83. Other forms of support are now available to new arrivals in Musina. In addition to the activities of several government departments, IOM provides new arrivals with high energy biscuits and advice on asylum and immigration procedures. The Musina Legal Advice Office, a UNHCR implementing partner, identifies vulnerable people who require immediate and/or special assistance. Lawyers for Human Rights, another of UNHCR's implementing partners, provides legal counselling and monitors the treatment of detainees, while Medecins sans Frontières provides health services and mobile clinics in the Musina area. UNICEF is also present and focuses on the situation of unaccompanied children.

84. After a degree of hesitation in view of the non-refugee character of the Zimbabwean influx, UNHCR established an office in Musina. This has proven to be the right decision. UNHCR now convenes and chairs weekly inter-agency meetings that are greatly valued by participants in terms of the opportunity they provide for information sharing and strategy development.

85. A number of interlocutors informed the evaluation team that UNHCR's status as a UN agency with a specific and internationally recognized protection mandate provide it with a significant degree of authority and legitimacy, enabling the organization to represent the humanitarian community as a whole in discussions with the authorities, police, military and immigration service in addressing the difficulties experienced by new arrivals from Zimbabwe. In the words of one official, "without UNHCR being here the situation would be far more difficult."

86. The distance from Musina to the Pretoria-Johannesburg area, the preferred destination for many of the most new arrivals, is some 500 kilometres. Those who have access to money are able to travel by public transport, which is readily accessible. Many are unable to afford such transport, however, as demonstrated by the number of people walking alongside the main highway, carrying IOM plastic bags and trying to hitch a lift from one of the many trucks on the road.

87. The evaluation team was informed that the Jesuit Refugee Service in Polokwane, which lies south of Musina on the road to Pretoria and Johannesburg, assists some of these people by providing them with train tickets. It was not possible, however, for the team to examine the criteria and procedures used for their distribution.

### **Seeking asylum**

88. Once they have travelled south from Musina, new arrivals have a choice as to where they pursue their asylum application with the DHA: Pretoria, Johannesburg, Cape Town, Durban and Port Elizabeth. More than 220,000 new asylum seekers were registered in 2009, most of them Zimbabweans.

89. The evaluation team visited the Marabastad refugee centre in Pretoria, which is reserved for the use of Zimbabweans. The centre receives some 1,800 people a day - men, women, young people and children who form an endless series of queues, both inside and outside the building.

90. While this process is a surprisingly orderly one, it is evidently an arduous and exhausting experience, not only for the Zimbabweans but also for DHA officials, especially the 20 RSD officers who are expected to process between 10 and 15 cases a day in order to deal with the backlog of asylum applications (well over 300,000 at the end of 2009).

91. The South African asylum system is coordinated countrywide by a sophisticated electronic database, making it possible for each refugee centre to detect 'recyclers' who attempt to submit more than one application. Recycling is punishable by law, entails a sentence of up to six months imprisonment and has been evoked from time to time to act as a deterrent to this practice, sometimes with unfortunate results.

92. At the Lindela deportation centre near Johannesburg, for example, the evaluation team encountered a young Burundian woman, who had reportedly been subjected to sexual violence at some stage of her journey to South Africa. She was being returned to her country of origin because, on the advice of a woman from DRC, she had submitted a second application for refugee status, rather than renewing her asylum seeker permit, as the law requires. UNHCR monitors the situation at Lindela through its partner Lawyers for Human Rights, and this arrangement has reportedly been successful in securing the release of refugees and asylum seekers. Even so, and in view of the recent concerns expressed by civil society in relation to Lindela, a more direct UNHCR involvement in the monitoring process would be advisable.<sup>4</sup>

93. In some parts of the world, states have effectively abdicated responsibility for many aspects of the refugee issue, expecting UNHCR to manage refugee camps, to process asylum applications and to organize the resettlement of those asylum seekers who are recognized as refugees. To the great credit of South Africa, the country has not taken this easy way out of the issue. Indeed, it has embraced the principle of state responsibility, has (unlike many other states) granted asylum seekers and refugees both freedom of movement and the opportunity to work, and has invested considerable resources in its asylum system.

94. And yet that system is seriously dysfunctional in a number of ways. Under current legal and administrative arrangements, the easiest (and in most instances the only) way for Zimbabweans and other foreign nationals to remain legally in South Africa and to work there is to submit an application for refugee status. Not surprisingly, significant numbers of people without a valid claim to refugee status (Zimbabweans, other Africans, a growing number of people from Asia and even a few citizens of non refugee-producing states such as Denmark, Japan and the USA!) have made use of this opportunity. And in doing so, they have placed unbearable pressures on the country's asylum system.

95. The sheer volume of asylum applications received by DHA in the past three years has almost inevitably had an adverse impact on the quality of RSD decisions. Indeed, in an interview with the evaluation team, a relatively senior DHA official acknowledged very frankly the severity of this problem, going as far as to suggest that the quality of decision-making had become "a joke."

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<sup>4</sup> Roni Amit, 'Government wasting money, violating the rights of foreigners in arrests, detentions and dangerous deportations', 8 June 2010, <http://www.migration.org>

96. Independent research has confirmed this assessment. After reviewing more than 300 negative RSD decisions from all five of South Africa's refugee centres, the author of a recent report concluded that such decisions were often illogical and were not based on supporting evidence. In many cases, there was no rational connection between the rejection of an asylum application and the reasons given in support of this decision. There was evidence of RSD Officers engaging in the practice of 'cut and paste' decisions for many refugee claimants, coupled with errors of fact and the selective use of country of origin information.<sup>5</sup>

97. Current practice in South Africa has a number of other negative consequences. First, because of the flawed nature of the RSD process, new arrivals with a valid refugee claim are often denied that status and are deprived of the entitlements associated with that status (e.g. the ability to open a bank account, access to credit, permanent residence status and travel documents).

98. Second, Zimbabweans and other foreign nationals who do not have such a claim are obliged to enter the asylum procedure and regularly re-register with the authorities, a serious inconvenience and expense for people whose primary ambition is to work and earn some money. As a result, many do not bother to renew their certificate, rendering them subject to detention at the repatriation facility in Lindela while their nationality is verified.

99. These difficulties are compounded by a third characteristic of South Africa's asylum system, described by a UNHCR staff member as one of "decisions that are made too quickly and appeals that are made too slowly." Indeed, the evaluation team was informed that the Appeals Board had made no decisions in the last six months. Such a situation can only undermine confidence in the asylum system and perhaps even foster the growth of xenophobic sentiments.

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<sup>5</sup> Roni Amit, 'Protection and pragmatism: addressing administrative failures in South Africa's refugee status determination decisions', Forced Migration Studies Programme, Wits University, April 2010.

## 4. South Africa

100. A heterogeneous society itself, South Africa's diversity has been substantially reinforced by the influx of foreign nationals that has taken place since majority rule was established in 1994. While accurate figures are difficult to establish, the UNHCR office in Pretoria estimates that in addition to large numbers of Zimbabweans, the country now has a population of around 70,000 Somalis, up to 20,000 Ethiopians, some 35,000 Congolese and 10,000 people from other countries in the Great Lakes region. Just under 50,000 of the foreign nationals living in South Africa are recognized refugees.

101. The country also has a substantial population of people from nearby parts of Africa (e.g. Angola, Malawi and Mozambique) and from farther afield (e.g. Nigeria, for example, and increasingly, from Bangladesh, China, India and Pakistan). The foreign-born population in South Africa is consequently mixed in every sense of the word: in terms of their country and region of origin, their ethnicity, their motivation for moving to the country, the length of time they have lived there, their legal and socio-economic status.

### **The political context**

102. Despite the scale of the migration issue in South Africa and the convulsive impact of the xenophobic violence of 2008, this issue has not really made its way to a national agenda that is crowded with other urgent problems: housing, public service delivery, unemployment, income inequality and the HIV-AIDS pandemic, to give a few examples.

103. According to some interlocutors, many South Africans have an ambiguous attitude towards immigrants. On one hand they have a sense of obligation towards countries and societies that supported them during the struggle against *apartheid*. On the other hand, that struggle has given them a sense of entitlement and a conviction that their needs and rights should take precedence over those of foreign nationals who have taken up residence in the country.

104. While UNHCR has naturally focused its attention on the situation of people who have moved to South Africa from other countries, an equally if not more pressing issue for many local actors is to be found in the large-scale movement of South African citizens from rural to urban areas, many of them taking up residence in overcrowded shanty settlements. The issues of internal and international migration in South Africa have thus compounded each other, making them both more difficult to address.

105. According to a number of interlocutors, including senior officials, the structure of government in South Africa has also made the tasks of refugee protection and migration management more complex. There appears to be a lack of coordination within the administration on cross-cutting issues such as migration. More generally, each level of government in the country (national, provincial and local) has a tendency to function in an autonomous rather than a coordinated manner.

106. The vibrant nature of South African civil society is another relevant consideration. The country's Constitution is by any standards a liberal and generous one in terms of the rights and entitlements that it gives to people, both nationals and non-nationals, living on its territory. But South Africa has struggled to meet the expectations of public opinion, as well as the country's very active human rights community and its strong trade union movement, both of which have been critical (albeit for different reasons) of the way that the state has addressed the issue of migration.

107. The human rights movement, for example, has been very litigious in nature, bringing cases against the government to court on a regular basis. While UNHCR staff appreciate the value of such activism, they also express concern that this approach can sometimes impede the search for practical solutions to immediate problems.<sup>6</sup>

108. In terms of public opinion, it is especially important to note the very high level of unemployment amongst South African citizens, currently standing at some 27 per cent according to the ILO. Whether the perception is accurate or not, there is a widespread conviction amongst low-income and no-income South Africans that irregular migration from Zimbabwe and other countries has reduced the employment opportunities, wages and conditions available to them.

109. It is very difficult to generalize about the situation of Zimbabweans and other foreign nationals in South Africa given the number and variety of people concerned and their growing dispersal throughout the country. In Johannesburg, life is evidently tough. Despite the generous provisions of the Constitution, practical access to public services is limited, while only patchy support is available from NGOs, churches and other members of civil society, including refugee community associations. Many are obliged to live in what MSF describes as "bad buildings", where they are obliged to pay rent but where they do not have access to reliable water, electricity and sanitation systems.

110. Even so, and whether or not they are refugees, South Africa offers a particular kind of protection: the ability to work (mainly through day labour and in sectors such as construction, security, the service industries and domestic labour), to earn cash and to send some money home, as well as the ability to link up with supportive social networks established by their compatriots and fellow foreigners. Significantly, recent research indicates that the conditions of life experienced by Zimbabweans are much less dependent on their legal status than on the access they have to such networks.

### **The role of UNHCR**

111. There has been a longstanding UNHCR presence in South Africa, first established in the twilight of the apartheid regime, before any other UN agencies had established themselves in the country. UNHCR played an important role in supporting the many South Africans and Namibians who went into exile during the

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<sup>6</sup> For example, one case was brought to court to prevent the introduction of a token system that was intended to avert the need for asylum seekers to queue for long periods at DHA refugee centres.



period of minority rule, and also organized the return of those refugees when *apartheid* was brought to an end. In these respects, it is a well respected organization.

112. In the current context, UNHCR's position in relation to the Zimbabweans in South Africa has been a subtle and arguably ambiguous one. Like South Africa itself, UNHCR considers the majority of Zimbabweans not to be refugees, while recognizing that some individuals from that country may be in need of international protection. In advocating for a moratorium on the deportation of Zimbabweans, however, UNHCR has unusually asked for the principle (or at least the practice) of non-refoulement to be applied to a non-refugee group.

113. According to some critics, UNHCR could have recognized the Zimbabweans as refugees under the terms of the OAU Refugee Convention, which refers to people who have left their own country as a result of "events seriously disturbing public order." The organization has not taken this position, however, largely because there is a lack of doctrinal clarity with respect to this provision of the Convention. Zimbabwean 'survival migrants' who have left their own country because they cannot sustain themselves and their families at home thus fall into an important protection gap.

114. In order to address that gap, UNHCR has been obliged to interpret its mandate in a flexible manner and to become more substantively involved in migration matters than has traditionally been the case. According to one staff member, "in South Africa, an involvement with refugees and asylum seekers inevitably means an involvement with migrants, because such large numbers of migrants have entered the asylum system and because UNHCR cannot only provide protection to refugees when xenophobic violence takes place: it has to be concerned with the situation of all foreigners."

115. A number of other considerations have complicated the work of UNHCR in South Africa. As indicated earlier, the UNHCR office in Pretoria is a regional one, covering the whole of Southern Africa. As is the case in many regional offices, the Representative and his staff have had to make a difficult choice between the need to address pressing problems in the country where they are located and the need to give adequate attention to the many other countries for which they are responsible.

116. The work of the Pretoria office has been affected by three additional factors: (a) the wide-ranging process of structural and management reform that UNHCR has implemented on a global level over the past three years; (b) the strong and in some senses unfair criticism levelled at UNHCR in South Africa by members of civil society who claimed that the organization's response to the xenophobic violence of 2008 had been inadequate; and (c) a difference of emphasis amongst UNHCR staff in terms of the extent to which UNHCR should pursue an institutional strategy, focused on relations with government, or a community-based strategy, focused on relations with persons of concern and grassroots associations.

117. Finally, as in Malawi and Mozambique, the evaluation team was struck by the limited extent to which UNHCR has been supported by other members of the UN Country Team in its efforts to address the issue of mixed migration. While IOM has a significant presence in South Africa its activities appear to be focused on human trafficking, although some members of civil society in South Africa have suggested

that the scale of this problem (especially in relation to the broader issue of mixed migration) has been exaggerated.

118. Other members of the UNCT remain relatively inactive in relation to the migration issue because they perceive it as a 'UNHCR problem', and because they consider it to be potentially controversial. According to an ILO representative, for example, irregular immigrants constitute "a grey zone" in the UN system, and ILO has not taken up the matter with any vigour because of its need to retain good relations with the trade union movement, which has adopted an "aggressive" stance on this issue.

119. A similar story can be told in relation to other organizations. UN-HABITAT has (at a global level) developed a new interest in the issue of humanitarian action in urban areas, but this has not yet been reflected in the organization's presence and activities in South Africa. OCHA became quite extensively involved in the issue of xenophobic violence but has now adopted a much lower profile in relation to migration matters. OHCHR's role in the country has reportedly been strengthened (the current High Commissioner for Human Rights is South African) but its presence and activities remain limited.

120. Given the scale of the mixed migration issue in South Africa, the severity of the xenophobic violence that took place in 2008, as well as the common belief that such violence might flare up again after the World Cup, a more proactive and coordinated UN approach would be of great value. In this respect, the Resident Coordinator has a particularly important leadership role to play and should be encouraged to do so.

## **Advocacy**

121. In association with other rights-based organizations in South Africa, and with the direct and personal support of the High Commissioner, UNHCR's Pretoria office has played an important role in advocating on behalf of effective refugee protection and migration management strategies in South Africa.

122. Those efforts appeared to have come to fruition in April 2009, when Home Affairs Minister Mosiviwe Mapisa-Nqakula announced a major change in the government's existing policy on mixed and irregular migration - a policy once known as 'arrest, detain and deport'. Henceforth, the Minister announced, Zimbabweans would benefit from a visa waiver, would no longer be returned to their country of origin, but would instead be granted a temporary 'special dispensation permit', allowing them to live and work in South Africa and to access public services.

123. While the moratorium on deportations was indeed introduced and has been maintained since that announcement was made, the permit system has not been established by the successor to Mapisa-Nqakula, who left office two weeks after her making her policy pronouncement. This turn of events has been a source of great frustration to UNHCR protection staff in South Africa, one of whom likened his job to "constantly banging your head against a brick wall." The following paragraphs explore the meaning of this statement.

124. In certain respects, and by global standards, it can be argued that the protection situation in South Africa is a reasonable one. Zimbabweans and other foreign nationals have little difficulty in entering and remaining in the country. They enjoy freedom of movement and the right to work, and they are able to lodge an application for refugee status by means of an asylum system that is maintained and funded by the state.

125. According to a senior UNHCR staff member, “the current situation is relatively satisfactory in terms of admission and non-refoulement.” The same person also points out that the situation in South Africa compares well with that in neighbouring Botswana, where all asylum seekers are detained and where recognized refugees are held in a camp with limited freedom of movement.

126. As indicated earlier in the preceding chapter of this report, however, and as recognized by DHA officials, South Africa’s asylum system is a largely dysfunctional one, in the sense that it represents the only means whereby most foreign nationals can remain legally in the country, find employment and access public services. The result of this situation has been a deluge of asylum applications, poor quality RSD decisions, the likely denial of refugee status to individuals who may qualify for it, a lack of public confidence in the asylum system, as well as a considerable amount of wasted time, effort and money.<sup>7</sup>

127. UNHCR, for example, has devoted considerable resources to the task of capacity-building in South Africa, training RSD officers and border guards, assisting DHA with accelerated procedures and other mechanisms to deal with the backlog of asylum applications. And while such efforts appear to have had some positive consequences, they cannot address the structural deficiencies of the system as a whole.

128. In this context, UNHCR has little alternative but to persist with its current advocacy efforts, arguing on behalf of an official policy that (a) maintains the moratorium on the deportation of Zimbabweans; (b) takes Zimbabweans and others with weak claims to refugee status out of the asylum system and which regularizes their status by other means; (c) enables a much higher standard of RSD decisions to be made in relation to a much smaller number of applications; and (d) accelerates the appeals process.

129. Some optimism in relation to these advocacy objectives can be drawn from a speech given by Deputy Home Affairs Minister Malusi Gigaba in June 2010, on the occasion of World Refugee Day. According to Gigaba, “the challenge we are facing is that many economic migrants take advantage of the asylum route in order to regularize their stay in South Africa simply because there are no other available options. This results in the asylum system being clogged up ... and hence this undermines the protection obligation for genuine asylum seekers as they often have to wait in long queues for their status to be determined, and thus become vulnerable to exploitation by unscrupulous employers, organized criminal syndicates or even public servants.”

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<sup>7</sup>An additional problem is to be found in the issue of fraud. While in South Africa, the evaluation team saw numerous newspaper headlines such as ‘Cops raid bogus Home Affairs site’, ‘Bribe racket at Home Affairs’, ‘Bribery and corruption rife at refugee centre, official admits’.

130. Gigaba went on to recognize that “what is certain is that South African immigration policy cannot remain as it currently is. There are way too many gaps to be plugged.” He also announced “an extensive immigration policy review, to overhaul the asylum seeker and refugee system in toto.” Acknowledging the systemic weaknesses of South Africa’s administration, Gigaba closed his statement by underlining the need “for greater coordination between all government departments, between different tiers of government as well as between government and civil society.”

131. As an organization that has close links with both government and civil society, UNHCR is ideally placed to play a constructive role in South Africa’s immigration policy review. In addition to the advocacy positions recommended above (see paragraph 127) there are a number of other issues on which UNHCR should express a clear opinion.

132. First, there is a risk that in its efforts to manage migration more rigorously South Africa might also become stricter on the issue of asylum. Suggestions have been made, for example, that asylum seekers should not have the right to work or that this right should be limited to a six month period. This would be a retrograde step, making it difficult if not impossible for refugee claimants to support themselves. UNHCR would certainly not be in a position to provide assistance to significant numbers of asylum seekers, even if the numbers could be brought down by taking Zimbabweans out of the asylum system.

133. Second, there have been suggestions that a transit facility should be established in South Africa, where asylum seekers could be accommodated pending the outcome of an RSD procedure. Like the transit centre proposal in Mozambique, this suggestion raises a number of important questions. Who (and how many people) would be accommodated there? How long would they remain in the facility? Would the centre be open or closed? If open, would people really remain there? If closed, would it be constitutional under South Africa law? What rights would people have in the Centre? And who would pay for and manage it? Having considered such questions, the evaluation team concurs with the words of a UNHCR staff member, who says that “it might be preferable to remain with the current chaos than to see this option pursued.”

134. A third proposal that has been made from time to time in South Africa is that of establishing one or more ‘refugee’ camps, where Zimbabweans entering the country could be accommodated and assisted. Such proposals have not been pursued, largely because (a) it is recognized that Zimbabweans go to South Africa to look for work and earn money and would therefore be unlikely to remain in a camp; (b) the camp option could prove to be very expensive – certainly more expensive than allowing Zimbabweans to support themselves; and (c) UNHCR and the South African government had a common interest in avoiding a situation in which a mixed migration scenario is turned into a refugee problem.

135. While all of these considerations remain very pertinent, the evaluation team was told in Musina that there is in fact a growing interest in the camp option amongst Zimbabwean new arrivals, especially women with young children, as well as adolescents and young adults who have missed much of their schooling (which is highly prized in their country of origin) and who feel that a camp might provide them with an opportunity to catch up with their education.

136. The evaluation team does not consider this to be an appropriate or sustainable response to the influx of Zimbabweans, both in consideration of their non-refugee status and because of the many and well known problems associated with life in a refugee camp. There is, however, a strong case to be made for the provision of improved care to vulnerable Zimbabweans who arrive in Musina and who are currently assisted for only a very short period of time.

### **Expanded outreach**

137. Effective outreach to refugees and persons of concern is a central theme of UNHCR's new (2009) policy on refugee protection and solutions in urban areas. In keeping with this principle, the organization has extended its presence from the Pretoria-Johannesburg area to Cape Town and Durban, where increased numbers of refugees, asylum seekers and migrants have been taking up residence. Even so, with the number of new arrivals growing and spreading across the whole country, UNHCR will be increasingly hard pressed to identify and maintain contact with them.

138. A particularly interesting effort to improve UNHCR's outreach to persons of concern is to be found in a Protection Needs Assessment (PNA) that was conducted in the latter half of 2009. The PNA was based on an extensive questionnaire survey administered by students in halls and sports centres, amongst refugees and asylum seekers selected by UNHCR's partners, including civil society and church groups. It was intended to enable UNHCR to develop a better understanding of the protection problems encountered by refugees and asylum seekers in a context where they were increasingly dispersed, largely beyond UNHCR's reach and at risk of xenophobic violence.

139. While many UNHCR staff consider the PNA to have been a useful and worthwhile exercise, they also acknowledge its weaknesses. First, in the words of some, it turned out to be a "data collection exercise," which "provided a pipeline for resettlement," but which was not really used to craft new protection strategies. Second, while a considerable amount of money (1.5 million rand) and people were involved in the exercise, the raw data collected was not fully analyzed or presented in a final report.

140. Third, some UNHCR informants expressed the view that the methodology of the PNA has been "haphazard" and "unsystematic." Only people identified by local organizations were interviewed in the course of the PNA and Zimbabweans were not included. Fourth, the exercise reportedly created resentment amongst those people who were not included in the PNA and raised unrealistic resettlement expectations amongst those who were included. Lessons should be learned and documented from this experience in order to inform and enhance future exercises of this type.

141. With respect to the broader issue of community outreach, there are, as indicated earlier in this report, some differences of opinion within UNHCR as to whether the organization should adopt a governmental-institutional approach or one that it is more community-based. The last two years have effectively seen a shift from the former to the latter, largely as a result of the xenophobic violence of 2008, as well as the increased scrutiny of UNHCR by NGOs and civil society organizations, many

of whom consider that that the organization should be more visible, do more outreach with refugee communities, and be more demanding of the government in view of South Africa's Constitution and its ratification of the international refugee and human rights instruments.

142. In similar vein, a DHA official interviewed by the evaluation team stated that UNHCR should not give the impression of "hiding away on the 11<sup>th</sup> floor of a Pretoria tower block," while a refugee community organization observed that the UNHCR office has to overcome the disadvantage of not being located in Johannesburg, where the largest numbers of refugees and asylum seekers are to be found.

143. A community-oriented approach, focusing on issues such as early warning of xenophobic violence, peaceful coexistence and conflict resolution, liaison with the police and community leaders is a particularly appropriate one in the context of South Africa and is fully consistent with UNHCR's new urban refugee policy. There are some doubts, however, whether the organization has the financial and physical resources (such as vehicles) to implement this approach in a comprehensive manner. In 2010, for example, the Comprehensive Needs Assessment for South Africa amounted to \$26 million but only \$ 11million was allocated to the operation.

144. In order to examine this issue from a broader perspective, it is recommended that the issue of community outreach be a primary feature of the urban refugee evaluations and lessons-learned workshop that UNHCR has planned in the months to come.

### **Protection Working Group**

145. Another initiative taken in South Africa is to be found in the establishment of the inter-agency Protection Working Group (PWG), which was formed during the xenophobic violence crisis by UNHCR, OHCHR and the Consortium for Refugees. It is chaired by UNHCR and significantly addresses the protection needs of all people, including refugees, asylum seekers, regular and irregular migrants, Zimbabweans and South African nationals. Its members include UN agencies, IOM, civil society and academic researchers. Additional members, such as representatives of the police service, are brought in on an *ad hoc* basis for discussions on specific issues.

146. Most of those agencies that are members of the PWG consider it to be an example of effective practice and point to the following achievements that it has to its credit:

- providing an effective forum for coordination, information and idea-sharing;
- facilitating the establishment of an early warning system in relation to xenophobic violence;
- promoting cooperation with the police on issues such as training, contingency planning and early intervention against xenophobic violence; and,

- bringing civil society representatives to the table on an equal basis with other actors.

147. Two specific issues have arisen in relation to the PWG. The first is that of government membership. While the Department of International Relations and Cooperation and the police service are represented on the PWG, the DHA is not.

148. The second issue concerns the criteria for PWG membership, which, according to some interlocutors, currently lack transparency, especially in relation to the issue of which civil society organizations have and have not been invited to join the group. The formulation of clearer criteria would help to resolve this issue and dispel any impression that the PWG is an exclusive club.

### **Resettlement as a tool of protection**

149. One important contribution that UNHCR has made to protection in South Africa is the establishment of a resettlement programme. Resettlement in South Africa is not used as a large-scale solution but is targeted at people with specific protection needs, including women at risk and survivors of torture.

150. In addition, resettlement can be made available to people who have been repeated victims of xenophobic violence and who find it difficult to 'pick up the pieces' and start their lives again. Asylum seekers can also be considered for resettlement if they have been subject to attacks.

151. Just over 5,000 people have been identified as being in need of resettlement. Almost no Zimbabweans have been resettled so far as they are generally not interested in this solution, preferring to work in South Africa and to send money home until conditions are such they can go back to their homes.

152. Resettlement is a very labour-intensive activity in South Africa. Because the RSD undertaken by DHA lack quality and credibility, UNHCR is obliged to carry out a full 'protection assessment' for each person seeking resettlement. This is a worthwhile investment, however, as resettlement constitutes an important means of providing protection to people who cannot access it locally.

153. Resettlement does not appear to have acted as a 'pull factor' for new arrivals, perhaps because there are so many other characteristics of South Africa that draw people to the country. Interestingly, however, one Somali refugee community association warned that the programme might eventually have this effect, and that it could also encourage a growing number of people to make or present themselves as vulnerable in order to gain a resettlement place.

154. Some UNHCR staff share this concern and have underlined the need for the resettlement programme to be accompanied by active information initiatives so as to reduce any misunderstandings associated with it. This review supports that proposal.

## Xenophobic violence

155. Xenophobia has taken two recent forms in South Africa. First, and despite the generous provisions of the South African Constitution, practical access to public services such as education and health is often very difficult for foreign nationals. Non-South Africans are also subject to abuse, exploitation and discrimination by employers (sometimes migrants find that they are dismissed or arrested just before pay-day), as well as the police, government officials and members of the local community.

156. Second, and in addition to such day-to-day discrimination, refugees, asylum seekers and migrants in South Africa live in constant fear that large-scale violence of the type witnessed in May 2008 will erupt once again. Indeed, attacks have continued to take place since that time and were being reported at the time of writing. The Somali refugee community in South Africa, who have a reputation for being successful entrepreneurs and retailers, buying in bulk and selling cheaply, who often keep their money in cash rather than in bank accounts, have been amongst the most prominent targets of such attacks.

157. Xenophobic violence in South Africa is often interpreted as a popular and spontaneous reaction to the government's perceived failures in relation to service delivery, a lack of jobs and mounting income inequality, not to mention the influx of foreign nationals in the past few years. According to some commentators, however, xenophobic violence is more deeply rooted in the South African state and society, is a great deal more organized than it appears, does not necessarily take place in the very poorest neighbourhoods and is often provoked by powerful actors who have an economic or political interest in large-scale looting, the displacement of people and the administration of mob justice.<sup>8</sup>

158. UNHCR became involved in the effort to combat such incidents before the violence of 2008. The organization's 'Roll back xenophobia' campaign won the respect of other stakeholders working in this area, and when the May attacks took place, UNHCR was called upon by the government to assist. While the government had disaster management structures and procedures in place, it quickly became clear that they were designed to meet the needs of a short-term natural disaster, rather than a longer-term outbreak of violence which displaced large numbers of people and made it impossible for them to return to their usual place of residence.

159. When it became clear that the official response to the crisis was not entirely adequate, there was a somewhat unrealistic expectation within civil society that UNHCR, as an operational organization with a mandate for the protection of displaced populations, would step in to fill the gap. UNHCR's perceived inability to do so was heavily and publicly criticized by a number of organizations, prompting the High Commissioner to launch an inquiry into the matter.<sup>9</sup>

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<sup>8</sup> See Loren Landau, 'Loving the *alien*? Citizenship, law, and the future in South Africa's demonic society', *African Affairs*, vol. 109, no. 435, 2010.

<sup>9</sup> 'Report of the ad hoc inquiry into UNHCR's response to the 2008 xenophobic crisis in the Republic of South Africa', January 2009. The inquiry found that the expectations of civil society "may in some cases have resulted from misunderstandings of UNHCR's longstanding refugee protection mandate, as well as its more recent role under the UN collaborative mechanism known as the Cluster Approach in



160. One of the biggest challenges now confronting the office is to ensure that UNHCR, along with the government, security services and other stakeholders, is able to respond effectively if, as many commentators predict, large-scale xenophobic violence flares up again. It is consequently of note that UNHCR has been working more closely with the South African Police Service, the aim being to develop a better understanding of refugee and migration issues amongst the police and to work more closely with them in promoting proactive community policing in high risk areas. A particularly innovative approach in this respect has been to provide all 190,000 South African police officers with guidance on issues such as how to deal with xenophobic violence and the rights of asylum seekers when they receive their pay slip.

161. While xenophobic violence is a constant threat, it seems unlikely to deter people from making their way to South Africa. For people originating from countries such as Somalia and Zimbabwe, it continues to be a place of relative safety and economic opportunity. Migrant labour also serves an economic purpose. Foreigners, especially Zimbabweans, are more prepared than nationals to accept low wages and are less ready to strike or protest than South Africans. They consequently have an advantage in a labour market where large numbers of people are competing for work.

162. At the same time, the continued ability of foreign nationals to find work, coupled with the visible success of entrepreneurial groups such as the Somalis, creates the very conditions in which xenophobic sentiments can be mobilized and manipulated. Hence the conclusion of many commentators that xenophobic violence is likely to erupt again once the euphoria and heavy security of the World Cup has past.<sup>10</sup> A UNHCR priority must be to prepare for this eventuality, working in close cooperation with both the authorities and with other members of the Protection Working Group.

### **Regional actors and initiatives**

163. In his World Refugee Day address, the Deputy Home Affairs Minister was careful to underline the regional nature of the refugee, asylum and migration issue in Southern Africa, and to call for action to be taken at that level. "It is our wish", he said, "that there should be uniform policies and systems in the region to facilitate human movement and encourage regular migration throughout the region. This imposes an obligation on all SADC [Southern African Development Community] states to ensure that their countries are politically stable and developing economically, and that their nationals are both identifiable and have proper travel documents so that they can be protected during travel and in countries of destination."

164. Although such a regional approach makes eminent sense, some questions have to be raised as to whether the region has the structures and processes required for it to be effectively implemented. An enormous amount of international attention has been given to the issues of 'migration and asylum' and 'migration and development' during the past five years. But the SADC appears to have contributed little to these

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protecting the rights of IDPs." At the same time, the inquiry concluded that UNHCR's advocacy "was not always communicated effectively to civil society groups."

<sup>10</sup> Harriet McLea, 'Violence against foreigners after Cup', *The Times*, 12 May 2010.

discourses. Moreover, a longstanding proposal for the establishment of an SADC freedom of movement agreement, along the lines of that established by ECOWAS in West Africa, no longer appears to be under active consideration.

165. As experience in West Africa and the European Union suggests, freedom of movement agreements may function in regions where there is a degree of convergence in the economic trajectory of the states concerned, and where people are moving in multiple directions. In Southern Africa, however, the region is dominated economically South Africa, which is primarily a country of destination, while other members, including Malawi and Mozambique are essentially countries of origin and transit. Freedom of movement in this context would, in the short term at least, mean one-way traffic in the direction of South Africa.

166. As explained in this report, the migration system that channels people to South Africa now goes substantially beyond the SADC region and includes countries such as Ethiopia, Kenya, Somalia, Burundi and Rwanda. It is therefore of some significance that UNHCR and IOM are jointly organizing an International Conference on Mixed Movements and Irregular Migration from the East, Horn and the Great Lakes Region of Africa to Southern Africa, to be held in Dar es Salaam, Tanzania, in September 2010.

167. The risk associated with this initiative is that delegates from the countries concerned will (as they have in the past) reach a very general agreement on the need for better refugee protection and more effective migration management, as well as a consensus that such objectives are best obtained by means of a 'comprehensive and regional approach', without setting out a road map that identifies the concrete actions required for such an approach to be implemented.<sup>11</sup>

168. As one of the sponsoring organizations, UNHCR should do everything it can to avert such an outcome of the Dar es Salaam conference. At the same time, the organization must ask itself and its partners what the traditional concept of 'refugee protection and solutions' means in a region where the migratory movements are so highly mixed in nature, where most people who are on the move are confronted with similar risks to their human rights and where many of those individuals who have a valid claim to refugee status interpret this notion in their own way.

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<sup>11</sup> This weakness characterized the outcome of an earlier regional meeting on irregular migration, held in Malawi in February 2009.

## 5. Recommendations

169. While a considerable amount of research has been undertaken in relation to the movement and presence of foreign nationals in South Africa, very little is known about the size, nature, organization and funding of mixed migratory movements from the Horn and Great Lakes region of Africa to the southern part of the continent. UNHCR's Regional Bureau from Africa, with the support of the Policy Development and Evaluation Service, should undertake, commission or encourage additional research on this theme, ideally in partnership with IOM and appropriate research institutes.

170. UNHCR's Regional Bureau for Africa should initiate a strategic dialogue with IOM at both the Geneva and Pretoria levels in order to discuss the respective presence, roles and activities of the two organizations in Malawi, Mozambique and South Africa. In partnership, UNHCR and IOM should make a strong and concerted effort to ensure that all three Resident Coordinators and UN Country Teams devote more attention to and assume greater responsibility for the issue of mixed migration and, in the case of South Africa, that of xenophobic violence

171. Given the modest number of people involved in the mixed migratory movement through Malawi and Mozambique, as well as the limited size of the recognized refugee population in both countries, UNHCR cannot be expected to provide substantially more financial or human resources available to its operations in those countries.

172. Within the limits of current capacity, UNHCR should continue with its efforts to strength the asylum systems of Malawi and Mozambique. Particular efforts should be made to make interpretation facilities available to asylum seekers, to expedite RSD and appeals procedures, to formulate joint strategies with the authorities and other partners on the basis of the 10 Point Plan and to promote the solution of local integration, even if it is in a de facto rather than de jure form. For the reasons stated in Chapter 2 of this report, UNHCR should discourage the construction of a reception centre in the Mozambican city of Tete.

173. UNHCR South Africa and UNHCR Zimbabwe should jointly seek to verify whether the profile of the new arrivals in the former country is changing, as suggested in Chapter 2 of this report. More specifically, it would be useful to know whether and why the number of single females, unaccompanied children and uneducated people from remote rural areas is increasing.

174. At the same time, UNHCR's Department of International Protection should examine the utility of the 'survival migration' concept, the potential development of a soft law framework for people falling within this category, as well as the origins and meaning of the clause contained in the OAU Refugee Convention that refers to "events seriously disturbing public order."<sup>12</sup>

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<sup>12</sup> Alexander Betts, 'Towards a soft law framework for the protection of vulnerable migrants', *New Issues in Refugee Research*, no. 162, August 2008.

175. UNHCR South Africa should encourage the authorities in Musina to reduce the dangers experienced by new arrivals in the country, especially by countering the activities of the *magumagumas* and *malaishas*. The authorities should also be urged to close the SMG; to end the practice of detention, especially for children; and to investigate the alleged exploitation of new arrivals from Zimbabwe who are employed on commercial farms in the Musina area. In association with the authorities and other humanitarian agencies, UNHCR should examine the arrangements that have been put in place for the identification and care of vulnerable new arrivals and to determine whether improvements can be made in those respects.

176. In South Africa, UNHCR should persist with its efforts to encourage the authorities to establish a more effective, efficient and equitable system of refugee protection and migration management, especially by (a) maintaining the moratorium on the deportation of Zimbabweans; (b) removing Zimbabweans as well as asylum seekers with manifestly unfounded and manifestly well-founded applications from the RSD procedure; (c) accelerating the appeals process; (d) retaining the arrangement whereby asylum seekers are entitled to work; (e) expressing its reservations with respect to proposals for the establishment of a reception or screening centre in Musina and the creation of camps for Zimbabwean new arrivals.

177. In addition to the above, UNHCR South Africa should implement the following recommendations:

- review current arrangements for the identification and release of any persons of concern to UNHCR who may be held at the Lindela deportation centre;
- review the issues of DHA participation in the Protection Working Group (PWG) and, more generally, membership criteria for the group;
- ensure that the PWG has comprehensive contingency plans in place to ensure an effective response to any major outbursts of xenophobic violence;
- continue to establish effective working relationships with the police, community leaders and refugee associations so that immediate action can be taken in relation to any early warnings of xenophobic violence;
- ensure that refugees and asylum seekers receive accurate information about resettlement policies, procedures and criteria, so as to avert the potential for misunderstandings on this matter;
- persist and strengthen its efforts to encourage regional approaches to the issues of refugee protection and migration management, especially in relation to the role of SADC and the forthcoming regional conference on mixed migratory movements, organized by UNHCR and IOM.