

United Nations High Commissioner for Refugees

## South Africa

We would like to bring your attention to the following excerpts, taken directly from Treaty Body Concluding Observations and Special Procedure reports, relating to issues of interest and concern to UNHCR with regards to South Africa.

### Treaty Body Concluding Observations

#### **CERD/C/ZAF/CO/3 69<sup>th</sup> Session 19 October 2006**

*7. The Committee acknowledges with appreciation the numerous legislative measure designed to build a democratic and multicultural society and to combat segregation and racial discrimination, such as the... Refugees Act of 1998.*

*21. While noting the recent Refugee Backlog Project, the Committee is concerned about the substantial backlog of asylum-seekers' applications (art. 5 (d) and (e)).*

#### **CAT/C/ZAF/CO/1 37<sup>th</sup> Session 7 December 2006**

*6. The Committee acknowledges with appreciation the wide ratification of international human rights instruments by the State party since the end of apartheid, in particular: the ICCPR and its Protocols; the CERD; the CRC; the CEDAW; the Rome Statute of the ICC; the Genocide Convention; the Convention relating to the Status of Refugees, and its Protocol; the Convention against Transnational Organized Crime.*

*7. The Committee welcomes the adoption of numerous legislative measures designed to entrench, promote and enforce human rights, including... (b) the Refugees Act of 1998.*

*16. The Committee is concerned with the difficulties affecting documented and undocumented non-citizens detained under the immigration law and awaiting deportation in repatriation centres, who are unable to contest the validity of their detention or claim asylum or refugee status and without access to legal aid. The Committee is also concerned about allegations of ill-treatment, harassment and extortion of non-citizens by law enforcement personnel as well as with the absence of an oversight mechanism for those centres and with the lack of investigation of those allegations (arts. 2, 13 and 16). **The State party should take all necessary measures to prevent and combat ill-treatment of non-citizens detained in repatriation centres, especially in the Lindela Repatriation Centre, provide non-citizens with adequate information about their rights and the legal remedies available against any violation of these rights and continue to accelerate its measures to reduce the backlog of asylum applications. Prompt, thorough and independent investigation of all allegations of ill-treatment of non-citizens should also be ensured and an effective monitoring mechanism should be established for those centres.***

**CRC/C/15/Add.122 23<sup>rd</sup> Session**  
**23 February 2000**

14. *The Committee is concerned that the current data collection mechanism is insufficient to afford the systematic and comprehensive collection of disaggregated quantitative and qualitative data for all areas covered by the Convention in relation to all groups of children in order to monitor and evaluate progress achieved and assess the impact of policies adopted with respect to children. **The Committee recommends that the system of data collection be reviewed with a view to incorporating all areas covered by the Convention. Such a system should cover children up to the age of 18 years, with specific emphasis on those who are particularly vulnerable, including girls; children with disabilities; child labourers; children living in remote rural areas, including Eastern Cape, Kwa Zulu-Natal and the Northern region, as well as other disadvantaged Black communities; children belonging to the Khoi-Khoi and San communities; children working and/or living on the streets, children living in institutions; children of economically disadvantaged families; and refugee children. Technical assistance in this area from, inter alia, UNICEF is encouraged.***

18. *While the Committee notes that the principle of non-discrimination (article 2) is reflected in the new Constitution as well as in domestic legislation, it is still concerned that insufficient measures have been adopted to ensure that all children are guaranteed access to education, health and other social services. Of particular concern are certain vulnerable groups of children, including Black children; girls; children with disabilities, especially those with learning disabilities; child labourers; children living in rural areas; children working and/or living on the streets; children in the juvenile justice system; and refugee children. **The Committee recommends that the State party increase efforts to ensure implementation of the principle of non-discrimination and full compliance with article 2 of the Convention, particularly as it relates to the vulnerable groups.***

35. *While the Committee notes recent legislative reform to guarantee greater protection of the rights of refugee and asylum-seeking children, it remains concerned about the absence of formal legislative and administrative measures to ensure family reunification and to guarantee the right of access to education and health for refugee children. **The Committee recommends that the State party develop a legislative and administrative framework to guarantee and facilitate family reunification. Additionally, it is recommended that the State party implement policies and programmes to guarantee adequate access to all social services for refugee and asylum-seeking children.***

**Special Procedure Reports**

**Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination  
Economic and Social Council  
E/CN.4/1999/15/Add.1 Commission on Human Rights 55<sup>th</sup> Session  
27 January 1999**

22. *Among the categories of community rehabilitation recommended are health care, mental health care, education and housing. A programme to demilitarise the youth who have come to accept violence as a way of resolving conflict is included under emotional health care, as is a multi-disciplinary programme involving all ministries and departments to resettle the thousands of “internal” refugees driven from their homes due to political conflict.*

52. *Both the public and the administration are unable to distinguish between migrants, refugees, asylum seekers and students. No specific legislation exists on the right to asylum, even though South Africa has ratified the United Nations Convention relating to the Status of Refugees and that of the OAU. They are often likened to “economic refugees”, and thus to migrants. Refugees therefore do not receive adequate protection and, just like migrants without papers, fall victim to xenophobic acts committed by the public; some have been attacked and killed.*

53. *Before the recent arrival of refugees, the South African Government had signed an agreement in 1993 with the United Nations High Commission for Refugees granting refugee status to 120,000 Mozambicans previously regarded as illegal migrants. However, the UNHCR’s repatriation programme will return only 30,000 Mozambicans to their homes, the others preferring to remain in South Africa so as not to have to face the difficult economic and social situation in their country.*

76. *With the exception of the ANC, a majority among the elites of all [political] parties agree on the fact that “it is not our duty to take in refugees from Africa.”*

*Recommendation 4. Given the porous nature of the frontiers, the repatriation of illegal persons to their own countries is clearly an ineffective means of dealing with illegal immigration (in 1994, only 90,000 illegal persons were repatriated out of the 2 million alleged illegal persons living on South African territory). The measure is purely a short-term one which takes no account of regional economic disturbances, economic factors being the main cause of immigration to South Africa – a situation all the more emphasized by the fact that Cold War conflicts have been settled in this area of Africa, with a resulting drop in the number of refugees / See in paragraph 53 the failure of the efforts to repatriate 120,000 Mozambican refugees.. South Africa should broaden its definition of the term refugee to include those immigrants from the SADC who are fleeing from economic instability in their countries caused in part by the destabilisation policy conducted by the South African Government in the sub-region (Zimbabwe, Mozambique, Angola) during the 1970s and 1980s.*

**Civil and Political Rights, Including the Question of Torture and Detention**  
**Economic and Social Council**  
**E/CN.4/2006/7/Add.3 62<sup>nd</sup> Session**  
**29 December 2005**

77. *The Working Group noticed during its visit to the Lindela Repatriation Centre that many foreigners were deprived of their liberty, some with legal residence papers, some seeking asylum and claiming they had been arbitrarily arrested by police officers, ill-treated, not able to contest the validity of their detention and that*

*they could subsequently be expelled from the country with no form of review or recourse. The Working Group has noticed that, although the Constitution and the Immigration Act allow persons fleeing persecution to claim asylum or refugee status, it is almost impossible to do so when in detention. What occurs in reality is that these persons either live illegally in the country or, when arrested, are sent to a repatriation centre and deported with no other form of process or recourse, sometimes having spent months in detention awaiting removal. The right to a lawyer or to legal aid is not covered for such situations.*

**Protection Operations and Legal Advice Section  
Division of International Protection Services  
UNHCR  
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