



Refugee Documentation Centre (Ireland)  
LEGAL AID BOARD

**South Africa - Researched and compiled by the Refugee Documentation Centre of Ireland on 8 April 2010**

**Treatment of persons who are perceived to be Zimbabwean, or even part-Zimbabwean in South Africa. Police protection/participation in ill-treatment of foreigners/people with a Zimbabwean parent**

Section 2d of the *United States Department of State* 2009 Country Report on Human Rights Practices for South Africa, under the heading 'Internally Displaced Persons (IDPs)', states:

"Foreign African migrants were displaced during the year following xenophobic attacks. On November 17, a mob chased approximately 3,000 Zimbabwean migrants out of the town of De Doorns by attacking and destroying the migrants' shacks. Police fired rubber bullets to disperse the mob and arrested 24 persons for public violence. The minister of home affairs sent a delegation to the town to assist those migrants who lost their identification documents during the attack. The migrants set up an informal IDP camp on a local rugby field and remained there at year's end. The attacks were reportedly sparked by competition for seasonal farming jobs, with residents accusing the Zimbabweans of agreeing to work longer hours for less pay. On December 17, Witswatersrand University's Forced Migration Studies Project (FMSP) released a study that indicated that dissatisfied local labor brokers pressured local leaders and residents to chase the Zimbabweans away because they were angered by income losses blamed on Zimbabwean labor brokers.

In May 2008 xenophobic attacks against foreign African migrants and ethnic minorities by South African civilians in townships in Johannesburg escalated into a national wave of violence in which 62 persons were killed in Western Cape, Gauteng, and KZN provinces. Of these, 21 were South African citizens, 11 were Mozambican, five were Zimbabwean, and three were Somali. The remaining 22 bodies were not identifiable. Fifty-three of the killings took place in Gauteng Province. An estimated 670 persons were seriously injured nationwide. The perpetrators blamed the immigrants for job and housing losses and increasing levels of crime. Most attacks were perpetrated by small mobs adopting vigilante tactics, in some cases under the influence of alcohol. Some victims were beaten to death, others were stabbed, and their shacks were looted and burned.

In 2008 the SAHRC stated that it would conduct a thorough inquiry into the xenophobic attacks; however, no investigation had been launched by year's end. The government was widely criticized for its slow response in arresting and prosecuting perpetrators. Field studies by the Institute for Security Studies and FMSP implicated local ward politicians in orchestrating attacks to gain political

influence with residents, although no related arrests were made. In March the NPA reported that 1,627 xenophobia suspects were initially arrested, resulting in 469 criminal cases based on the 2008 attacks. Of these, 70 suspects were found guilty, 35 were found not guilty, 208 cases had been withdrawn, and 156 cases were outstanding. NGOs noted that none of the arrests or prosecutions were for murder, but the FMSP reported that one suspect was convicted of murder and sentenced to 15 years in prison. There were no further developments by year's end.

Although the government announced in May 2008 that it would set up special courts to speed the prosecution of the perpetrators of the violence, only the Western Cape created such courts, and significant delays were reported. On September 2, the Equality Court in Cape Town postponed until September 28 a xenophobia compensation claim by 11 foreign-national shopkeepers from Zwelethamba township in Worcester. The plaintiffs were seeking financial compensation and an apology from the police for allegedly failing to protect them during the 2008 attacks. There was no further information about the case at year's end." (United States Department of State (Bureau of Democracy, Human Rights, and Labor) (11 March 2010) *2009 Country Reports on Human Rights Practices - South Africa*)

A SW Africa news story from March 2010 reports:

"At least 1,500 Zimbabweans who fled their homes in the De Doorns farming area in the Western Cape, after they were attacked by South African mobs, believe they have been overlooked by authorities and aid agencies.

Many of the displaced were informal settlers living in shacks. They competed for seasonal jobs on the farms with local South Africans who began attacking them and demolishing their homes in November last year.

Four months on, half of the original 3,000 refugees that fled the xenophobic attacks say their plight has for the most part been swept under the rug and forgotten.

Emmanuel Mabika and his family have been living on the field of a rugby club since the attacks. There are no family photos or possessions recalling their former lives in a community that was torn apart by xenophobia.

'Most people here didn't take anything with them because they didn't have time. We had to run for our lives. The only thing that comes to mind in such a situation is to save your children and your own life,' said Mabika. 'You don't think about the clothes, you don't think about personal documents, you just grab what is near you and run.'

Mabika told SW Radio Africa on Tuesday that little success has been achieved on local integration, with less than 1,000 former refugees finding space to co-exist with the locals, while the rest have packed their bags and moved elsewhere." (SW Africa (9 March 2010) *The forgotten plight of Zimbabwe's xenophobia victims in SA*)

Under the heading 'Refugees and Migrants', the January 2010 *Human Rights Watch World Report* for South Africa notes:

"South Africa's immigration system has struggled to deal adequately with the millions of asylum seekers and migrants who have entered the country – up to an estimated 1.5 million of whom are Zimbabwean. Thousands fleeing the political and economic crisis in Zimbabwe who have applied for asylum in South Africa have faced unlawful deportation.

On April 3, 2009, then-Minister of Home Affairs Nosiviwe Mapisa-Nqakula announced a positive shift in migrant policy toward Zimbabweans, which included visa-free entry and "special dispensation permits" to legalize Zimbabweans' stay and give them work rights and access to basic healthcare and education. The Department of Home Affairs at the same time announced an immediate moratorium on the deportation of Zimbabweans from South Africa. However, the government has yet to implement the special dispensation process, which would lessen the vulnerability of Zimbabweans to violence and exploitation both in their homeland and in South Africa.

After xenophobic attacks against foreign nationals in May 2008 left 62 dead and a further 50,000 internally displaced, the government still faces significant challenges in addressing issues of reintegration, resettlement, or xenophobia in local communities. While the government has sought to quickly reintegrate the victims of that violence, some have faced further violence when returning to their communities, and others have been unable to move back for fear of repeat attacks. The government has failed to implement an independent commission of inquiry into the violence, and the pace of holding accountable those responsible for the attacks has been exceedingly slow: According to a report by the Consortium for Refugees and Migrants in South Africa in June 2009, the government had prosecuted only 469 of those responsible for the attacks out of 1,627 originally arrested, and of those prosecuted only 70 were found guilty. Convictions were mostly for the lesser crimes of assault or theft; there were no convictions for murder or rape, despite NGOs documenting many such cases during the attacks." (Human Rights Watch (20 January 2010) *World Report 2010 - South Africa*)

A December 2009 *IRIN News* report adds:

"Xenophobic violence exploded in South Africa in 2008 and scores of people were killed and more than 100,000 people displaced. During the violence, two Zimbabwe nationals were forced by a mob to jump from an eight-story block of flats. One was killed and the other sustained serious injuries.

A local Durban councilor, Vusi Khoza, and several other people are facing charges of murder and attempted murder for the incident. The court case is scheduled to resume in January 2010.

Esta Mutambara, originally from Katanga in the Democratic Republic of Congo, lives a few blocks from where the Zimbabwean men were forced to jump and is regularly taunted as an amakwerekwere, an abusive term for foreign nationals.

Mutambara told IRIN "they [local South Africans] say we come to take away their jobs. Others say we are drug-dealers and we smell. It is so unsafe for us and our families. The thing is every country in the world has foreigners, even America has foreigners but they are not treated the way we are treated when we come to South Africa. The local people have to learn to live with foreigners in their country."

"We hear local people saying there will be trouble here in South Africa after the 2010 World Cup [to be held in June and July]. Some say when the foreign visitors and spectators leave they will drive the amakwerekwere away back to their own countries," she said." (IRIN News (24 December 2009) *SOUTH AFRICA: No good will for foreign nationals*)

A December 2009 *Human Rights Watch* report on migrants in South Africa, under the heading 'Living Conditions', states:

"Migrants who are able to move on and settle in urban areas live in cramped and poorly ventilated conditions. Refugees displaced in the xenophobic violence told Human Rights Watch how they were pushed out of the affordable townships where they lived, and forced into more expensive neighborhoods they hope will be safer. However, the higher rents in the new neighborhoods necessitate more roommates, heightening the risk of disease and conflict. Other migrants, unable to pay rent, spend nights in informal shelters like the Central Methodist Mission Church in downtown Johannesburg, in an abandoned tire garage in Pretoria, or in a borrowed room in a community center in Cape Town. These shelters are overwhelmingly provided by volunteers and small, local community organizations, with little or no cooperation with, or support from, local government. In fact, the Methodist Church has been threatened with eviction actions by local government and neighboring businesses for allowing between one and three thousand Zimbabweans to take shelter in and around its floors each night. Police have raided it twice in the last two years, and hundreds of homeless asylum seekers were arrested and threatened with deportation. Wherever they take shelter, migrants in South Africa frequently live in hazardous conditions, vulnerable to illness, violence, arrest, eviction, food insecurity, and lack of basic services." (Human Rights Watch (7 December 2009) *No Healing Here: Violence, Discrimination and Barriers to Health for Migrants in South Africa*, p.7)

The same report under the heading 'Zimbabweans', continues:

"The economic implosion and political oppression in Zimbabwe in recent years has created a large Zimbabwean diaspora of migrants fleeing economic deprivation and political oppression. Whereas traditional Zimbabwean migration patterns tended to be formal (regulated by work contracts and including visas), and circular (repeated border crossings and returns to Zimbabwe), because of recent crises in Zimbabwe, larger numbers of Zimbabweans are now remaining in South Africa without documents, or seeking protection through asylum. By the beginning of 2008 there were probably between one and 1.5 million Zimbabweans in South Africa, most of whom remained in South Africa without

visas or documentation of any kind. At the same time, the vast majority of new asylum claims have been from Zimbabweans. In 2008 around 115,800 Zimbabweans applied for asylum, including 25,000 to 30,000 Zimbabweans in the border town of Musina in the last half of the year alone. Current estimates suggest that up to 1.5 million Zimbabweans may be in South Africa, but the number of undocumented among them is not known.

Of those Zimbabweans who have applied for asylum, only 1.5 percent were approved for refugee status in 2006 and 2007. The South African government has portrayed undocumented Zimbabwean migrants, and many formal asylum seekers, as ordinary economic migrants, without valid claims to international protection. Moreover, as Human Rights Watch has documented, South Africa's dysfunctional asylum system fails to adequately examine many applications and unjustly rejects many asylum seekers with legitimate refugee claims. Many Zimbabweans, both undocumented migrants and documented asylum seekers, are fleeing persecution, including rampant political violence and routine arbitrary arrests and detention of political opponents of the then ruling Zimbabwe African National Union-Patriotic Front (ZANU-PF). Others are forced to migrate because inflation has made their salaries worth so little that they cannot provide basic needs for their families, or because the breakdown in public sanitation and health systems has put even basic health care out of reach.

In apparent recognition of the humanitarian and legal needs of the vast majority of Zimbabweans who do not obtain international protection, and in a welcome move, outgoing Home Affairs Minister Nosiviwe Mapisa-Nqakula announced in April 2009 that Zimbabwean migrants would be eligible for a special dispensation permit allowing them to stay legally in South Africa for six months. This announcement was accompanied by the implementation of a free 90 -day visa waiver for Zimbabweans (who have passports) and a moratorium on most deportations of Zimbabweans. However, as of November 2009 the special dispensation permit had not been implemented. Until the dispensation is implemented and protection extended to those without the resources for travel documents, the vast majority of Zimbabweans in South Africa remain undocumented.” (Ibid, pp.15-16)

The July 2009 *Freedom House* Freedom in the World report for South Africa notes:

“Also during 2008, a growing trend of attacks on African migrants – particularly Zimbabweans – reached its peak in May, with a wave of assaults that killed 62 suspected foreigners (21 were in fact South African) and displaced some 80,000 others by the end of the month. Provincial authorities, in cooperation with UN officials and local civil society groups, set up 94 refugee camps to shelter about 15,000 displaced people. While some foreigners returned to their home countries and others opted for reintegration in local communities, about 2,000 were forced to leave after the provincial governments shut down the camps in October and September. By November, an additional 10 foreigners had been killed near Cape Town, though the government classified these killings as ordinary criminal cases.” (Freedom House (16 July 2009) *Freedom in the World 2009 - South Africa*)

A June 2009 *IRIN News* article reports:

“JOHANNESBURG, 23 June 2009 (IRIN) - The special permit for Zimbabwean migrants, announced by the South African government, is being put on hold pending a review of the decision by cabinet.

The outgoing home affairs minister Nosiviwe Mapisa-Nqakula announced in April 2009 that Zimbabwean migrants would be eligible for a special permit allowing them to stay legally in South Africa for six months.

NGOs concerned with migration and human rights greeted the move as a progressive and necessary step to effectively manage the estimated more than three million Zimbabweans who have travelled to South Africa to escape their country's economic collapse.

Chairperson of the Consortium for Refugees and Migrants in South Africa (CoRMSA), Kaajal Ramjathan-Keogh, told IRIN: "The special permits have never been available. Home affairs issued some kind of document indicating they would be available, but they have not been."

Home Affairs Deputy Minister Malusi Gigaba said at the time, "We have taken an important decision, which acknowledges that migration patterns between South Africa and Zimbabwe have probably changed permanently."

Home Affairs director-general of Immigration Services, Jackie MacKay, told local media: "The permit confers on them [Zimbabwean migrants] the right to stay in South Africa for a period of six months, it confers on them the right to schooling or education, it confers on them the right to work and access to basic health care."

But after South Africa's general election on 22 April, the new president, Jacob Zuma, appointed former foreign affairs minister Nkosazana Dlamini-Zuma to the home affairs portfolio and the much heralded special permit system for Zimbabweans came under review.

Home Affairs spokesperson Ronnie Mamoepa told IRIN: "The [home affairs] minister wanted cabinet to be briefed about the matter, about the scope and implications of that decision [to grant special permits to Zimbabweans], and we'll take it from there." (IRIN News (23 June 2009) *South Africa: Special permit for Zimbabweans on hold*)

A June 2009 paper from the *Consortium for Refugees and Migrants in Southern Africa* states:

“Recent research has shown that on aggregate, Zimbabweans face the more acute social and human security challenges than either South Africans or other non-nationals. These challenges include access to public services, assets and income, physical insecurity, and feeling threatened because of their nationality. Many Zimbabwean organisations report rising xenophobic threats from members

of the public where their members live and work, due to the expectation that Zimbabweans should 'go home' after the establishment of the Government of National Unity in their country" (Consortium for Refugees and Migrants in Southern Africa (June 2009) *Protecting Refugees, Asylum Seekers and Immigrants in South Africa*, pp.58-59)

## References

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This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

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