



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés



**Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report
- Universal Periodic Review:**

South Africa

I. Background Information and Current Conditions

South Africa is a party to the *1951 Refugee Convention relating to the Status of Refugees*, its *1967 Protocol* and the *1969 OAU Convention regarding Specific Aspects of Refugee Problems in Africa*. South Africa is also the only country in Southern Africa that has not entered reservations to the 1951 Refugee Convention and has fully embraced international standards of refugee protection in its national legislation, the Refugee Act of 1998. The 1998 Refugee Act was reviewed in 2008 and amended to include gender as a ground for persecution, among other changes. The adjudication process has also been revised making the determination of refugee claims the responsibility of Status Determination Committees, instead of the Refugee Status Determination Officers.

South Africa hosts some 57,899 refugees and about 180,000 asylum-seekers. The majority of refugees originate from Somalia, the Democratic Republic of Congo (DRC), Rwanda, Burundi, Ethiopia and Zimbabwe. Since 2008, South Africa has become the main destination for asylum-seekers, registering one third of the asylum applications worldwide. Zimbabweans accounted for 81% per cent of all asylum claims submitted in 2010. The 2010 provisional statistical report issued by the Department of Home Affairs of the Government of South Africa (DHA) indicates that in the last two years the country has received over half a million asylum applications (341,602 in 2009 and 180,637 in 2010). The same report identifies the 'ambiguous inclusive asylum regime' as one of the contributing factors. The report specifically cites the large proportion of manifestly unfounded decisions issued to nationals from countries in the Asian-Pacific region, as well as from Zimbabwe and Malawi; and the increase of irregular migration into South Africa.

The number of asylum claims thus remains overwhelmingly high and has substantially strained the asylum system, despite efforts by the DHA to reduce the number of pending asylum applications. South Africa also receives a high flow of mixed migration. People move to South Africa from as far as the Horn of Africa, the Great Lakes and even some Asian countries for a variety of reasons; some move to seek international protection and others for economic and other reasons.

With the asylum system in South Africa being clogged with such large number of asylum applications and with their immigration and asylum systems unable to cope with the large number of foreigners (including refugees and asylum-seekers) in the country, the DHA initiated a review and reform of their asylum and immigration regimes. The Immigration Act and the Refugee Act have been amended in 2011. The changes tighten these regimes, affecting the reception of foreigners and impact on the access of asylum-seekers to the asylum system. Implementation of the new laws will most likely commence in early 2012.

II. Achievements and Positive Developments

UNHCR welcomes the inclusion of gender as a ground for persecution in the amendments made to the Refugee Act of 1998.

The Government of South Africa should also be commended for the regularization exercise for Zimbabweans living in the country (Special Dispensation Permits), which allowed many to apply for work permits.

III. Challenges and Constraints

Issue 1: Immigration control and Restrictions on the Right to Admission

South Africa has recently begun to tighten immigration controls at the border. NGOs working in the border area in Musina have reported instances where individuals attempting to enter into South Africa without valid travel documents have been denied entry. It has been stated that immigration officials have been instructed to enforce the requirement for ‘positive identification’ at the border areas for any individual (including asylum-seekers) entering South Africa. This has resulted in large numbers of asylum-seekers crossing the border through illegal routes, exposing them to violence and exploitation by criminal gangs operating along the borders. UNHCR is concerned that such procedures may prevent individuals from seeking asylum and further putting them at risk of ‘*refoulement*’.

The Government has also stated that South Africa will not permit an asylum-seeker to enter its territory and to apply for asylum, if the individual has transited through a “safe third country” where he/she could have sought asylum. In these instances, such persons may be sent back to the country that they have transited.

The deadline for lodging an asylum application upon arrival to the country has been reduced from 14 to 5 days under the new Immigration Amendment Act.

Issue 2: Asylum System

The asylum system in South Africa remains problematic. The large number of asylum applications lodged annually, combined with the backlog of applications from previous years, has made it very difficult to ensure fairness and efficiency of decision-making in the refugee status determination process. The quality of refugee status determination and the decision-making process is compromised due to abuse of the asylum permits,

corruption and the pressure to manage the high numbers of asylum applications. In its concluding observations and recommendations on South Africa, the Committee on the Elimination of Racial Discrimination (CERD) stated that:¹

“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)). In the light of general recommendation 30 (2004) on discrimination against non-citizens, the Committee encourages the State party to accelerate its measures to reduce the backlog of applications for asylum.”

Issue 3: Zimbabwean Documentation Project

The Zimbabwean Documentation Project (ZDP), initiated by the Government in 2009/2010 to allow Zimbabwean nationals to remain in the country and to apply for special work permits, was concluded in August 2011. Around 100,000 persons are still waiting for permits. In October 2011, the Government began to systematically deport Zimbabwean nationals who did not hold the required documentation that would have entitled them to remain in South Africa.

UNHCR is confident that Zimbabwean nationals in South Africa who are either recognized as refugees and/or those who have declared their intention to seek asylum in South Africa will continue to enjoy international protection accorded under the Refugee Act 1998.

However, UNHCR is concerned that the situation in Zimbabwe remains unstable - notwithstanding the slight improvement of the social and economic situation – as there has not been any significant change in the political situation, and the standard of living remains low. Moreover, UNHCR is concerned that a number of Zimbabweans may be unable to prove or claim their Zimbabwean nationality and could therefore be rendered statelessness, if they remain undocumented in South Africa. Such individuals are likely to face legal and social challenges and may face discrimination or exclusion, if returned to a country which does not recognize them as its citizens.

Issue 4: Xenophobia

Violence against foreigners, including asylum-seekers and refugees, is still a concern despite efforts by South African Police to control the xenophobia. Although it has not been as widespread as in 2008, sporadic incidents continue to occur and are accompanied with loss of life, loss of property, disruption of life and impact negatively on durable solutions, including local integration, of persons in need of international protection.

Refugees in South Africa are allowed to work and to avail themselves of basic social services. Competition between refugees and South African nationals for jobs, housing, business opportunities and social services has raised tensions, and aggravated xenophobic attitudes among some in the local community. It is noticeable that poor socio-economic conditions among host communities provide a breeding ground for xenophobia.

¹ CERD/C/ZAF/CO/3, 69th Session, 19 October 2006

In addition, xenophobia in South Africa undermines refugees' local integration and the stability of their livelihoods. Due to fear of attacks in the townships, refugees prefer to live in more expensive inner-city areas. Accommodation in shelters is temporary and available only for the most vulnerable, often resulting in the separation of family members.

Although some initiatives have been undertaken by the Government, more efforts need to be undertaken to prevent and combat xenophobia, racial discrimination and other forms of related intolerance.

In this context we wish to refer to the concluding observations and recommendations by the Committee on the Elimination of Racial Discrimination on South Africa:²

“While acknowledging the “Roll Back Xenophobia” campaign, the Committee remains concerned at the persistence of xenophobic attitudes in the State party and negative stereotyping of non-citizens, including by law enforcement officials and in the media, as well as at reports of racist behaviour and prejudices, in particular in schools and farms, and the inefficiency of the measures to prevent and combat such phenomena (art. 7).

The Committee recommends that the State party strengthen its existing measures to prevent and combat xenophobia and prejudices which lead to racial discrimination, and provide information on the measures adopted with regard to promoting tolerance, in particular in the field of education and through awareness-raising campaigns, including in the media.”

Furthermore, during his visit to South Africa in May 2011, the Special Rapporteur on the human rights of migrants met with migrants, refugees and asylum-seekers as part of his agenda. While acknowledging the efforts made by the Government of South Africa, the Special Rapporteur noted that a number of challenges in this area still need to be addressed:³

“In addition to specific legislation, additional measures should be taken, such as:

- (a) Strengthening the response of police and justice authorities to ensure that perpetrators of hate crimes and police profiling of foreign nationals are held accountable;***
- (b) The development of measures to monitor cases of hate crimes against foreign nationals by using police and justice statistics as a means of monitoring trends of such crimes and the response of police and justice authorities to these cases (with statistics on, inter alia, the number of arrests, the number of offenders prosecuted and the number convicted);***
- (c) The establishment of a visible and accessible mechanism whereby members of the public can report cases of violence against foreign nationals as a means of providing more effective police responses to mob violence against foreign nationals;***
- (d) The establishment of a permanent body in the office of the Presidency to ensure effective coordination of different Government department programmes on social cohesion, addressing xenophobia, police profiling and tackling hate crimes.”***

Issue 5: The right to a nationality and statelessness

² CERD/C/ZAF/CO/3, 69th Session, 19 October 2006

³ A/HRC/17/33/Add.4, Human Rights Council, 17th Session, 2 May 2011, Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante

South Africa is neither a party to the *1954 Convention relating to the Status of Stateless Persons*, nor to the *1961 Convention on the Reduction of Statelessness*. As set out below, accession to these Conventions is recommended as a general step to strengthen the international legal framework applicable to South Africa.

Accession to the *1954 Convention relating to the Status of Stateless Persons* would establish a framework to protect such individuals and would work to avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment of stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met.

Furthermore, the *1961 Convention on the Reduction of Statelessness* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties. An increase in the number of States parties is essential to strengthening international efforts to prevent and reduce statelessness.

Issue 6: *Detention of illegal immigrants*

South Africa Immigration Act provides for the detention of illegal foreigners for the purposes of deportation at a designated detention centre. The South African Human Rights Commission and other human rights organizations in South Africa have recognized that the detention and deportation of illegal foreigners is characterized by corruption and violations of the law.

IV. Recommendations

In view of the above, we would like to suggest to the Office of the High Commissioner for Human Rights to consider referring in its compilation report the following recommendations aimed at enhancing the protection of persons of concern to UNHCR in South Africa:

Issue 1: Implement protection-sensitive entry mechanisms to allow for admission of asylum-seekers into the territory and provide them with an effective opportunity to apply for asylum. In enforcing the “safe third country concept”, protection against *refoulement* must be ensured. South Africa should also be encouraged to work with governments in the region to manage mixed migration and to ensure that the appropriate safeguards are in place.

Issue 2: The Department of Home Affairs should implement measures to reduce the backlog of asylum applications and to develop a fair and efficient refugee status determination procedure.

Issue 3: Undocumented migrants under deportation should be treated humanely and in line with South Africa’s obligations under international and

national legal frameworks. The process should take into consideration the specific needs of vulnerable groups, such as unaccompanied minors, survivors of violence and those needing continued medication.

The Government of South Africa should continue to grant protection under the 1998 Refugee to Zimbabweans nationals who are either recognized as refugees and/or those who have declared their intention to seek asylum in South Africa.

- Issue 4:** Maintain the issue of xenophobia at the highest level in the national agenda. Bias motivated violence should be considered as an aggravating circumstance under the criminal law. The State should be encouraged to strengthen the response of police and justice authorities to ensure prosecution of such crimes.
- Issue 5:** Accede to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*.
- Issue 6:** South Africa should take all necessary measures to prevent and combat ill-treatment of non-citizens detained in repatriation centres. Persons who identify themselves as asylum-seekers must be granted access to the asylum process at the earliest opportunity.

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