

# Perils and Pitfalls- Migrants and Deportation in South Africa.



*Relatives pray outside after visiting detainees inside Lindela Detention Centre, Krugersdorp, South Africa*

**March 2012 – May 2012**

**Report by the Solidarity Peace Trust and PASSOP  
Johannesburg 5<sup>th</sup> June 2012.**



### **The Solidarity Peace Trust**

The Solidarity Peace Trust is a non-governmental organisation, registered in South Africa. The Trustees of the Solidarity Peace Trust are church leaders of Southern Africa, who are all committed to human rights, freedom and democracy in their region.

The objectives of the Trust are:

To assist individuals, organisations, churches and affiliated organisations in Southern Africa, to build solidarity in the pursuit of justice, peace and social equality and equity in Zimbabwe. It shall be the special concern of the Trust to assist victims of human rights abuses in their efforts to correct and end their situation of oppression.

<http://www.solidaritypeacetrust.org>



### **PASSOP- People Against Suffering, Oppression and Poverty (PASSOP)**

Founded in 2007, PASSOP is a community-based non-profit organization and grassroots movement, largely made up of volunteers from the migrant community that works to protect and promote the rights of all refugees, asylum seekers and immigrants in South Africa. PASSOP offers number of programs and a range of services, including anti-xenophobia help desks, paralegal advice for documentation, labour and housing rights, community integration events and workshops, monitoring of Refugee Reception Centres and Internally Displaced Persons camps among other advocacy campaigns.

[www.passop.org](http://www.passop.org)

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## **Abbreviations**

ARV – anti retroviral treatment  
DHA – Department of Home Affairs  
HIV – Human Immunodeficiency Virus  
LRC – Legal Resource Centre  
LHR – Lawyers for Human Rights  
MLAO – Musina Legal Advice Office  
NGO's – Non-Governmental Organisation  
PAJA – Promotion of Administrative Justice Act  
PASSOP-People Against Suffering Oppression and Poverty  
PTSD – Post Traumatic Stress Disorder  
RRC – Refugee Reception Centre  
SAHRC – South African Human Rights Commission  
SANDF – South African National Defence Force  
SAPS – South African Police Services  
SPT – Solidarity Peace Trust  
STI – Sexually Transmitted Infections  
TB – Tuberculosis  
UNHCR – United Nations High Commission for Refugees  
ZDP – Zimbabwean Dispensation (Documentation) Project

## **Executive Summary**

- South Africa receives more asylum seekers than any other country in the world with people mainly coming from Zimbabwe, the DRC, Burundi, Ethiopia, Rwanda, Somalia, as well as from countries further afield to escape poverty, insecurity and political turmoil.
- Up to 1.4 million of South Africa's refugees and asylum seekers are Zimbabwean, representing almost 15% of Zimbabwe's population. Political instability and oppression and the continual threat of violence, poor health and social conditions, as well as the bleak economic prospects ahead are among the major factors that push many young Zimbabweans to emigrate. The slow and problematic implementation of the SADC facilitated Global Political Agreement in the country has fuelled renewed fears of more political turmoil and electoral violence in the near future.
- With the increasing pressure that this process has placed on South Africa, deportation has become an instrument used by the SA Government to attempt to deter migration. Before 2009 South Africa was deporting about 300,000 Zimbabweans a year<sup>1</sup>.
- After the outbreak of xenophobic violence that followed these deportations, on 3 April 2009, the Department of Home Affairs announced its intention to grant Zimbabweans in South Africa a twelve-month 'special dispensation permit' on the basis of the 2002 Immigration Act, section 31 (2)(b). This permit was meant to grant the right to legally live and work in the country. In addition to this the department announced a moratorium on deportations and a 90-day free visa for Zimbabweans entering South Africa to be implemented from May 2009.
- In early October 2011 the South African Government announced that it would resume deportations.
- Between October and December 2011 the Beitbridge Border reportedly handled 7,755 deportees, while an additional 7,177 Zimbabweans were deported between January and March 2012.
- The findings of this report reveal that the deportation process involves an array of inconsistencies, violations and abuses consistent with other reports that have been carried out in this area over the last decade. This is despite the fact that South African law regulates the arrest, detention and deportation of illegal foreigners under the Constitution, the Immigration Act and accompanying regulations, and the Promotion of Administrative Justice Act.

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<sup>1</sup> Tara Polzer, a senior researcher with the Forced Migration Studies Programme (FMSP) at the University of the Witwatersrand in Johannesburg – quoted in Irinnews  
<http://www.irinnews.org/Report/91056/SOUTH-AFRICA-ZIMBABWE-Tussle-over-planned-resumption-of-deportations>

- Regularising the immigration status of the vast number of asylum seekers has placed a great deal of pressure on the Department of Home Affairs. Despite migration in recent years being largely predictable in terms of its numbers and locations of migrants, the department has continued to provide inadequate capacity at refugee reception centres.
- The report indicates that the asylum process is a long and burdensome one; it can take anywhere from two to three years before an applicant even receives an interview to assess a refugee claim. Moreover, in cases involving the renewal of documents, this often involves having to spend several days in queues to acquire them, resulting in a loss of earnings or even the loss of a job.
- Alarming trends of disregard for the law were observed in the verification/screening process. The method of identifying so called illegal immigrants is not transparent and has dangerous effects on the sentiment towards foreign nationals in South Africa.
- The procedure for informing people that they have been found to be illegal and of their rights to contest their deportation is handled in a very inconsistent manner. Moreover corruption and harassment at the time of arrest also appear to be occurring on a national scale.
- The detention stage in the deportation process was found to be littered with abuse, neglect and failure to respect the rule of law. Detainees held in Lindela reported not going through any medical screening before detention. Data shows an almost complete lack of access to medical services, including ARV's. The length of detention is also of serious concern. It was common practice for detainees from countries further North of Zimbabwe to be held in Lindela for longer than 120 days, but even Zimbabweans have on occasion been detained for more than the 120 days. Moreover, several reports including from legal professionals described a release and re-arrest cycle of immigrants used to circumvent the 120 day maximum.
- It is important to note that South African law does not require asylum seekers and refugees to be detained (Refugees Act 130 of 1988). Immigration officers must use their discretion in deciding whether or not to detain someone, and because of the harmful effects of detention, officers must do so in favour of liberty. The findings of this report indicate the officers' discretion is in favour of incarceration.
- There are indications that the arrest, detention and deportation, coupled with the physical abuse of children occur regularly in the Musina/Beirbridge area.

## Recommendations

### **“We need to work together as Africans to solve our problems”**

- 1) It is in South Africa’s economic, security and social stability interests to continue to make significant political investment in stabilising the political turmoil that plagues countries in SADC, which make up the greatest number of asylum seekers in South Africa.
- 2) The South African DHA has an obligation to provide a greater number of RROs and to ensure that these are run efficiently, so that all asylum seekers have timeous access to an official, enabling them to apply, acquire or to renew asylum documents without punitive queues and bribery. **The self admitted flaws in the documentation process are reason enough to halt arrests, detentions and deportations until these flaws have been corrected.**
- 3) Children ought to be considered foremost as children and not as migrants of any type.<sup>2</sup>Unaccompanied foreign minors are required by South African law to be given access to education, health care and safety – the same rights as South African children.
- 4) The verification/screening system must be improved upon if there is any hope of reducing the number of innocent detentions and deportations, and minimizing the risk of law suits. Civil society could play a pivotal role in this process if they were allowed access to detainees.
- 5) Efficient independent monitoring needs to be reinstituted. No independent monitoring has been permitted since 2009 when the monitoring being conducted by the Forced Migration Studies Programme at the University of the Witwatersrand was halted midway through their research.<sup>3</sup>The only independent body that does have permission to monitor conditions at Lindela, is the South African Human Rights Commission. The SAHRC are in fact mandated to oversee and conduct external monitoring of immigration detention facilities, but according to LHR, their monitoring up until now has been “haphazard and infrequent”.
- 6) South Africa should adopt the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). This would allow for independent monitoring of immigration detention centres.
- 7) The South African Government should consider reinstating the Zimbabwean Dispensation Project and once more declaring a moratorium on deportations until after an election in Zimbabwe. Furthermore the department should extend the dispensation to all African countries until the number of undocumented immigrants

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<sup>2</sup> LHR. “Global Report and Campaign to End Immigration Detention of Children to be Launched at UN Human Rights Council.” 21 March 2012. <http://www.lhr.org.za/news/2012/global-report-and-campaign-end-immigration-detention-children-be-launched-un-human-rights->. See full IDC report at [www.idcoalition.org/ccap](http://www.idcoalition.org/ccap).

<sup>3</sup> Amit, R. (2010). Lost in the Vortex: Irregularities in the Detention and Deportation of Non-Nationals in South Africa. FMSP Research Report. Johannesburg: African Centre for Migration & Society. 1-76.

is greatly reduced. Deportations are an ineffective and an expensive policy as those deported almost always return within days.

- 8) The jailing and sentencing of immigrants for up to 4 years imprisonment who breach immigration laws, which is soon to be implemented as it is included in the Immigration Amendment Bill, is not practical as the department of correctional services is already struggling with limited jail space. The situation is so bad in prisons that a presidential pardon of prisoners with 6 months or less left on their sentences was announced recently. The decision was attributed to overcrowding in prisons, showing how desperate is the situation of overcrowding in South African prisons.
- 9) The involvement of youth in immigration raids in Musina is a serious concern. The encouraging of youths to combat crime is very dangerous as it can lead to vigilantism and mob justice. Officials encouraging youth action, while often blaming foreigners for crime, can lead to xenophobic violence.
- 10) The deportation of Zimbabweans in Musina without any due process- merely herding immigrants into deportation trucks- needs to be halted immediately.
- 11) Corruption is very difficult to combat, without transparency and accountability. Ensuring that procedures are consistently followed and immigrants were adequately informed of their rights, would reduce the "opportunity" for corruption.
- 12) Better training on Immigration Law for SAPS and the removal of SANDF from immigration control is necessary in order to demilitarise immigration raids.
- 13) An amalgamation of NGO's working with refugees and migrants should consider establishing an information system and a website on which instances of breaches in law, harassment and corruption could be recorded.

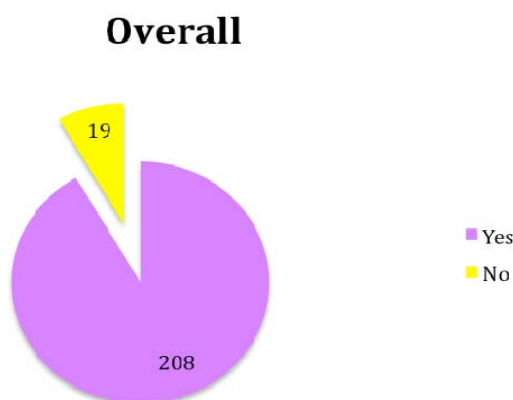


## Introduction

**“Luck was on my side, I paid an officer. South Africa is a good place because we are living under oppression [in Zimbabwe]”**

South Africa receives more asylum applications than any other country in the world. According to Deputy Home Affairs minister Fatima Chohan, 180 000 individuals applied for asylum in 2010.<sup>4</sup> Most asylum seekers from countries like Zimbabwe, Congo, Burundi, Ethiopia, Rwanda, Malawi and Somalia to escape war, poverty, and/or persecution. They come to seek asylum, safety, and opportunity. They come to escape desperate poverty, insecurity and political turmoil – and to save their lives. The South African Constitution protects the rights of all people who flee persecution whether on the basis of sexual or political orientation, race, ethnicity, disease or drought.<sup>5</sup>

With this influx of foreigners, there is inevitably added pressure on society as a whole; how this pressure is handled depends on the outlook taken by government to the problem. Deportation, as will be shown in this report, is an ineffective and very expensive solution. The focus on deportation rather than documentation reduces the resources of government to combat real criminals, and creates a climate that encourages xenophobia. Deportation does nothing to address the influx of migrants, it does not lead to an increased number of legal and documented immigrants. In our survey over 200 respondents out of 227 said they would return if they were deported, while 144 of them had already been deported before and returned.



**Graph 1 shows the number of people who claimed they would return if deported**

Deportations criminalise foreigners by stigmatizing them as *illegal*. The mass deportations of Zimbabweans preceded the xenophobic violence in 2008. Citizens became accustomed to SAPS and DHA raiding houses, market places, taxis and businesses; they began to see the foreign national as a criminal. The foreign nationals were forced to live a life of fear of being caught, like outlaws. Communities were often susceptible to over-politicised hysteria and manipulation, which led them to believe taking action was their civic responsibility. There is concern that if this abuse of power and negative attitude and treatment of foreign nationals by Department of Home Affairs (DHA), South African Police Service (SAPS), South African National Defence Force

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<sup>4</sup> Davis, Gaye. “SA is top refugee haven in world.” IOL News (Independent Online). 3 May 2012. <http://www.iol.co.za/news/politics/sa-is-top-refugee-haven-in-world-1.1284590>

<sup>5</sup> Constitution of South Africa, Chapter 2 (especially: Sections 7, 8, 9 and 10).

(SANDF) and some local government officials continues, it will release the negative energies inherited from the apartheid past that feed the hysteria and xenophobic tensions witnessed in 2008.

South Africa's constitution, laws and norms allow refugees the right to work and live freely, but there is much anecdotal evidence to indicate that these are not being upheld. This report aims to illustrate the deportation process from a legal standpoint and compare that with the reality on the ground as told by witnesses, former detainees and deportees as well as experts and stakeholders. There is a strong disconnect between what the government is telling us is happening to alleged *illegal* immigrants, what the law says about how *illegal* immigrants should be treated and the experiences described by the people forced to go through, or who are directly involved in, this process. South Africa's treatment of foreign nationals that it deems to be *illegal* is seriously at odds with the principles and values South Africa claims to hold true.

#### **Box #1: Xenophobia in 2008**

My name is Raymond. I'm twenty-nine years old now. I come from Zimbabwe Masvingo Province, Bikita District. I came to South Africa in 2006. I started staying in Limpopo, where I worked for a year and then I came to Johannesburg in 2007. It was not easy for me to start life in Johannesburg. I started living in Yeoville, on the street, in the parks. From there, I got work. I started renting, up to the time of xenophobia. I was attacked during that time by the police, the South African police.

They caught me and they beat me. You see the scars on my face? They beat me. They nearly killed me, because of the xenophobia. They drove me to the bush area, where they wanted to dump me. I think their aim was to take me to Alexandria, because a number of people were being killed there during that period. They wanted to drop me there. They knew I was vulnerable, you see. I had to use my tactics to survive. I jumped on top of the van, and they drove all the way from that bush to Yeoville where they beat me. The policeman stepped on me with his shoe. I felt a very big pain, and they nearly killed me at that point. They took me to the hospital where I was given stitches. From there, I went to open a case about the incident, but they did nothing. The police also took my passport. They robbed me and took my money, and passport, and my jacket, which I was wearing. I had to travel on top of the van without my jersey on.

Opening a case did not work, I was igniting more fire. After they beat me, I was going back to follow up with my case. They saw me and said, "You are going to suffer for what you are trying to do, to arrest a policeman."

I told them "No, I just want my passport. If you give me my passport it will be okay, I will not come back again." They wanted to kill me because I was following that case. They arrested me again in the morning.

At the moment I am using an asylum seeker permit. The time I came here I had to cross with my passport, but those cops took it. I don't know what they are doing with my passport. I have an asylum seeker permit to be safe on the street, but I need my passport, you know. At the moment I have valid asylum papers, it will expire in September.

## **Background**

### **i. The Deportation Process**

Between 1997 and 1999, the South African Human Rights Commission conducted a series of investigations and assessments of the various aspects of the deportation process.<sup>6</sup> These investigations into the deportation process were brought about by "increasing reports of violations of human rights." Some of their more significant findings and recommendations included racial profiling when making arrest, failure to give reasons at the time of arrest, failure to assist with verification of or collection of

<sup>6</sup> Kollapen, J. (1999) South African Human Rights Commission: "Report into the Arrest and Detention of Suspected Undocumented Migrants." <http://www.sahrc.org.za/home/21/files/Reports/Report%20into%20the%20Arrest%20and%20Detention%20of%20suspected%20migrants19.pdf>

documentation, abuse of power, corruption, length of detention, failure to acquire a warrant from a court when detaining for longer than 30 days, detention with criminals and violations of one's right to human dignity.

The findings of this report reveal a similar array of inconsistencies, violations and abuses and they are also consistent with the reports that have been published in the past decade. Amongst these reports was a report conducted by Lawyers for Human Rights<sup>7</sup> and one by the University of the Witwatersrand's Forced Migration Studies Programme<sup>8</sup>, both in 2010. Their findings show a significant correlation with the SAHRC reports published 10 years prior. When asked about the progress of the deportation process over the last ten years, Kaajal Ramjathan-Keogh, the head of the Refugee and Migrants Rights programme for Lawyers for Human Rights (LHR) explained that the "Administrative procedures for screening, detaining, continuing to detain and processing releases, have not really improved over ten years."<sup>9</sup>

## ii. Official Statistics

According to the Department of Home Affairs **South Africa's figures for deportations are:**

<b>2003</b>	<b>164 294</b>
<b>2004</b>	<b>167 137</b>
<b>2005</b>	<b>209 988</b>
<b>2006</b>	<b>266 067</b>
<b>2007</b>	<b>312 733</b>
<b>2008</b>	<b>280 837</b>

After the outbreak of xenophobic violence that followed these escalating deportations, a Moratorium on Deportations of Zimbabweans was put in place for two years.<sup>10</sup> According to the department of Home Affairs' 2009 annual report the number of **deportations went down to 1,060. In 2010, the DHA reported 55,825 deportations.**<sup>11</sup> In 2010 the top five nationalities for deportations were Lesotho, Malawi, Mozambique, the Democratic Republic of Congo and Nigeria.<sup>12</sup> Between 2009 and 2010, immigration control cost the DHA 1.8 billion rand.<sup>13</sup> On October 7, 2011 the South African government released a statement that it would no longer provide protection for Zimbabweans and would resume deportations.<sup>14</sup> Between October 7 and December

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<sup>7</sup>Snyman, G. (2010). "Monitoring Immigration Detention in South Africa" Lawyers for Human Rights: 2010 Immigration Detention Report [http://www.lhr.org.za/sites/lhr.org.za/files/LHR\\_2010\\_Detention\\_Report.pdf](http://www.lhr.org.za/sites/lhr.org.za/files/LHR_2010_Detention_Report.pdf)

<sup>8</sup> Amit, R. (2010). Lost in the Vortex: Irregularities in the Detention and Deportation of Non-Nationals in South Africa. FMSP Research Report. Johannesburg: African Centre for Migration & Society. 1-76.

<sup>9</sup> Taken from interview with researcher

<sup>10</sup> IRIN News. "South Africa: Deportations of Zimbabwean migrants set to resume." 7 Oct 2011. IRIN.

<http://www.irinnews.org/Report/93912/SOUTH-AFRICA-Deportations-of-Zimbabwean-migrants-set-to-resume>

<sup>11</sup> Gould, C., L. Landau, and C. Gould. "Counting the Cost of Implementing South Africa's Migration Policy." Institute for Security Studies. 9 Dec 2011. [http://www.iss.co.za/iss\\_today.php?ID=1403](http://www.iss.co.za/iss_today.php?ID=1403)

<sup>12</sup> IRIN News. South Africa: Deportation Tearing Families Apart. 25 October 2011 (IRIN)

<http://www.irinnews.org/Report/94057/SOUTH-AFRICA-Deportation-of-Zimbabweans-tearing-families-apart>

<sup>13</sup> Gould, C., L. Landau, and C. Gould. "Counting the Cost of Implementing South Africa's Migration Policy." Institute for Security Studies. 9 Dec 2011. [http://www.iss.co.za/iss\\_today.php?ID=1403](http://www.iss.co.za/iss_today.php?ID=1403)

<sup>14</sup> IRIN News. "South Africa: Deportations of Zimbabwean migrants set to resume." 7 Oct 2011. IRIN.

<http://www.irinnews.org/Report/93912/SOUTH-AFRICA-Deportations-of-Zimbabwean-migrants-set-to-resume>

2011, the Beitridge Border Post reportedly handled 7,755 deportees.<sup>15</sup> Between January 1 and March 2012, an additional 7,177 Zimbabweans were deported.<sup>16</sup>

### iii. Push Factors that force people to migrate to South Africa

#### *Zimbabwe*

Up to 1,4 million of South Africa's refugees and asylum seekers are Zimbabwean, representing almost 15% of Zimbabwe's population.<sup>17</sup> Political instability and oppression and the continual threat of violence as well as poor human health and social conditions, and the very bleak economic prospects are what push young Zimbabweans (including many children) to emigrate.<sup>18</sup> Zimbabwe's GDP has halved in the last decade.<sup>19</sup> In 2010, it was reported that about 13% of the population of Johannesburg, which is nicknamed "Egoli" (meaning "city of gold"), are Zimbabwean migrants.<sup>20</sup> The signing of SADC facilitated Global Political Agreement (GPA) in Zimbabwe in September 2008 ushered in a cautious hope that the political conditions in the country would improve and set the stage for a steady improvement in political and economic conditions. While this event certainly led to some initial indicators of economic progress this has not led to any substantive growth in the livelihoods of the country's citizens. Moreover the persistent uncertainties around the implementation of the GPA have fuelled the fears of yet another round of political turmoil and violence in the near future. This situation has led to continuing pressures for Zimbabweans to seek a means of earning a living outside of the country, and most notably in South Africa. Additionally the lull in the SADC mediation in Zimbabwe since the beginning of 2012 has not provided the kind of confidence in the process that is so sorely required by conditions in the country.

#### *Somalia*

Much of Somalia is consumed by political violence, and the various armed conflicts in the country have displaced about 2.5 million people.<sup>21</sup> The militant group Al-Shabab refuses to admit aid agencies in the large territories which it controls in the south.<sup>22</sup> This compounds the humanitarian crisis caused by the most severe drought in sixty years and near-famine conditions.<sup>23</sup> These circumstances lead many Somalis to seek refuge in South Africa.

#### *Democratic Republic of the Congo*

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<sup>15</sup> New Zimbabwe. "SA deports 15,000 in 5 months." 5 March 2012. <<http://www.newzimbabwe.com/news-7370-SA+deports+15,000+in+5+months/news.aspx>

<http://www.myzimbabwe.co.zw/news/1051-south-africa-deports-almost-15000-zimbabweans.html?&tmpl=component>

<sup>16</sup> Mzaca, Vladimir. "South Africa deports 15000 as controls tighten." Times Live. 11 Mar 2012.

<http://www.timeslive.co.za/africa/2012/03/11/south-africa-deports-15000-as-controls-tighten>

<sup>17</sup> Solidarity Peace Trust: *Gone to Egoli: Economic Survival Strategies in Matabeleland*. Report. 2009. p. 6.

<sup>18</sup> Zigomo, K. (2012) 'A Community-Based Approach to Sustainable Development: The Role of Civil

Society in Rebuilding Zimbabwe'. Report. 2 April, *Solidarity Peace Trust*:

<http://www.solidaritypeacetrust.org/1159/community-based-approach-to-sustainable-development/>

<sup>19</sup> Solidarity Peace Trust: *Desperate Lives, Twilight World*. Report. Johannesburg: 2010. p. 13

<sup>20</sup> Solidarity Peace Trust: *Desperate Lives, Twilight World*. Report. Johannesburg: 2010. p. 13

<sup>21</sup> Refugees International. "Somalia." Web. 27 Apr. 2012. <<http://www.refintl.org/where-we-work/africa/somalia>>.

<sup>22</sup> Refugees International. "Somalia." Web. 27 Apr. 2012. <<http://www.refintl.org/where-we-work/africa/somalia>>.

<sup>23</sup> Refugees International. "Somalia." Web. 27 Apr. 2012. <<http://www.refintl.org/where-we-work/africa/somalia>>.

Likewise, internal conflict in the Democratic Republic of the Congo imperils the lives and livelihoods of millions of Congolese. With the lowest Human Development Index in the world, Congo has among the poorest educational, economic and humanitarian conditions of any country.<sup>24</sup> Those living in the troubled eastern region are under constant threat of beating, murder and rape by a plethora of violent armed groups. Seeking a better environment in which to live and raise their children, thousands of Congolese seek asylum in South Africa.<sup>25</sup>

#### **iv. Difficulties with Access to Documentation**

**“No documents, I don’t have money to pay for the fines being charged by the department of Home Affairs (2500 rand) to renew my expired asylum seeker permit”**

##### ***a) Asylum Seekers and Refugees***

Regularizing the immigration status of all of these asylum applicants puts a lot of pressure on the Department of Home Affairs, which has been consistently operating under-capacity in comparison to the number of people applying for papers. In May 2011, PASSOP released a monitoring report detailing the difficulties in accessing documentation for asylum seekers and refugees. “The Road to Documentation: Asylum-Seekers’ Access to Cape Town’s Refugee Reception Centre” illustrated the complexities, frustrations, corruption, violence and lack of capacity in the documentation process.<sup>26</sup> The report resulted in some changes being made to the Maitland Refugee Reception Centre (RRC), including the removal of the centre manager and changing of the security company, but they appear to be superficial and have not yet proven effective.

As of April 2012, the refugee appeals board was backlogged by over 166,000 asylum applications waiting to be reviewed.<sup>27</sup> According to Minister Apleni, the department receives an average of 3,500 to 4,000 new applications per month.<sup>28</sup> This in itself is significantly less than the 180 000 reported in 2010, but there still remains a huge delay in issuing asylum certificates, thus rendering these applicants illegal, leaving them vulnerable to arrest and deportation.<sup>29</sup> However, these numbers do not reflect the

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<sup>24</sup> “Human Development Report 2011 - Human development statistical annex.” HDRO (Human Development Report Office), United Nations Development Programme. pp. 27–130.

<sup>25</sup> “D.R. Congo.” Refugees International. Web. 27 Apr. 2012. <<http://www.refintl.org/where-we-work/africa/dr-congo>>

<sup>26</sup> PASSOP: The Road to Documentation: Asylum-Seekers’ Access to Cape Town’s Refugee Reception Centre. Report. Cape Town: May 2011.

<sup>27</sup> South African Government Information. Speaking notes for weekly media briefing by Home Affairs Director-General Mkuseli Apleni. 12 April 2012. <<http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=26595&tid=64246>>

<sup>28</sup> South African Government Information. Speaking notes for weekly media briefing by Home Affairs Director-General Mkuseli Apleni. 12 April 2012. <<http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=26595&tid=64246>>

<sup>29</sup> UNHCR. Submission to the Office of the High Commissioner for Human Rights. Compilation Report – Universal Periodic Review: South Africa. 2011. P. 1.

number of people coming across the border, only those who have been able to apply for asylum.

Those not able to pay bribes are often forced to sit through the chaos for more than a week before accessing the front of the line. If and when an asylum seeker is able to gain access to the reception office, and apply for asylum, they must then return every 3 or 6 months to have their stay extended, while the department sifts through the backlog of applications until a determination on their status is reached. This status determination process for an asylum seeker to be granted Refugee status is not, in theory, supposed to take more than 6 months to complete.

Through Passop's frequent interactions with asylum seekers in Cape Town, it is apparent that the process can take anywhere from two to three years before an applicant is even granted an interview in order to assess their refugee claim. In Johannesburg, it is not uncommon to find asylum seekers who have been in South Africa with legitimate temporary asylum documents for over seven years. In one instance, a man had been living in South Africa with Asylum for 9 years before being told in an interview that his claim was invalidated and he was being forced to go home. In the 9 year period, the man had established a legitimate business and had two more children join his family; but because the judicial process had taken so long, the DHA claimed the conditions in his home country had changed to the point where he was no longer legally allowed to remain in South Africa. He was arrested and not given any opportunity to warn his wife and young children or to close his business and prepare for deportation. (See Box #6)

On a positive note, those who have been able to apply for asylum and be granted a Section 22 document are fortunate in that they at least hold some form of valid documentation. This brings us to the issue of applicants actually being able to apply for asylum. A troubling number of applicants are turned away from Refugee Reception Offices (RROs) countrywide day after day and there were several reports of people being forced to give up on their application in order to keep their employment. In the Western Cape alone a reported **1659** people who presented themselves to the refugee reception centre were turned away unserved over just a 2 week period.<sup>30</sup>

#### **Box #2 – \*Naledi- Access to Marabastad**

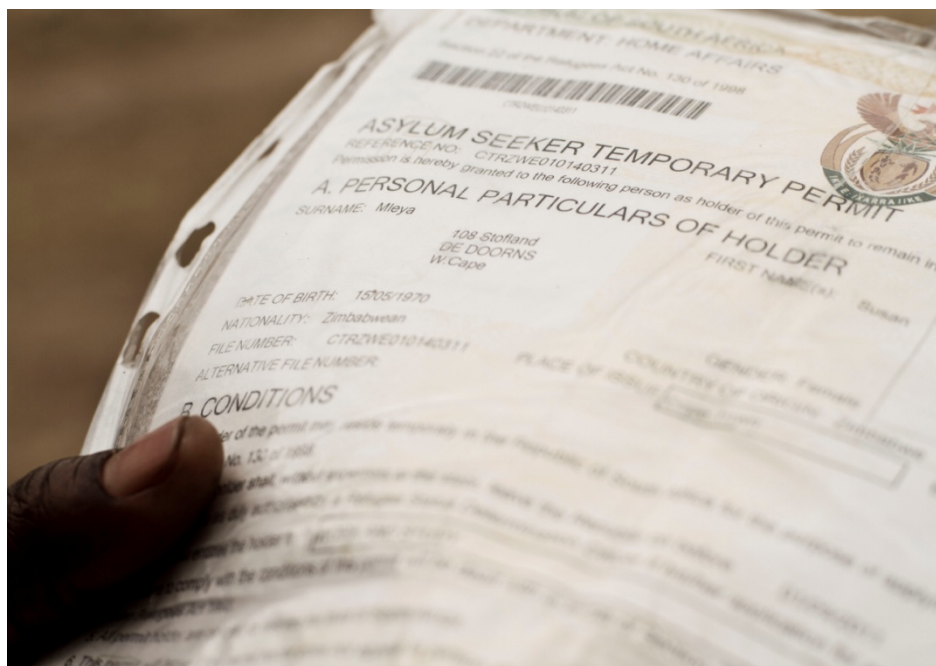
\*Naledi is a mother of six young children, the oldest of whom is fourteen. All seven members of the family live together in one room within a two bedroom flat in Yeoville, Johannesburg. She is an asylum seeker who worked as a security guard with documentation. She attempted to renew her papers when they were set to expire, but **could not get access to the Refugee Reception Centre** to renew the documents. Naledi was forced to give up renewing after repeatedly visiting the reception centre, thus risking her job, her means for survival. Expired asylum documents result in a R2500 fine, which was a further deterrent for her to attempt to deal with her document situation. Naledi continued working and living until eventually being arrested on her way to work. For three weeks following her arrest, her landlord, who relies on Naledi's rent payment for her livelihood, has been supporting and feeding the children and sending them to school. **This arrangement is not sustainable**, as the landlord simply cannot afford to continue supporting six extra children, particularly without access to her usual source of income.

<sup>30</sup> PASSOP report "Road to Documentation"

Upon hearing about Naledi's situation, a local NGO donated some food to the family. Unfortunately, the NGO's resources are limited and the organization cannot sustain this effort. As a result of this situation, **Naledi's children are no longer going to school** because they are unable to pay their school fees and will soon be without a home.

**"The papers are too expensive and too hard to get. The process takes too long and the people are slow and rude."**

**Photo 2: Section 23 Asylum Seeker Permit**



Problems with access when seeking to renew one's document are just as difficult as when first applying, which makes holding a steady job nearly impossible. Most asylum seekers do not have proof of formal qualifications, rendering them forced to work in the informal sector with no sick leave or time off. Renewing

documents means having to spend several days in queues to acquire them, resulting in an absence of earnings or even loss of a job; maintaining valid documentation in these conditions is clearly a very difficult task. The negligent system further punishes individuals whose permits have expired by subjecting them to a R2500 fee. This sum is enough to scare most asylum seekers away from the RROs permanently. When paralegals come across people in this situation, they are advised to report immediately to the nearest RRO and attempt to renew their documents. If procedure is followed, they are brought before a judge where they are able to plea for a lower fine. This reduction is often granted as most judges understand how unrealistic it is expect the average refugee living in South Africa to afford to pay such an exorbitant fee. However, if the asylum seeker is not aware of this process, he or she will most likely not return and will remain undocumented.

Overcrowding and limited capacity also creates situations for violence and ill-treatment of asylum seekers. Many officials and security guards also treat asylum-seekers with indifference or contempt. Among various forms of abuse, security officials –effectively crowd controllers-- use whips (sjamboks) to beat and subdue asylum seekers. At the Pretoria Showgrounds office in April 2012, complaints were lodged when an official brutally beat a foreign national.<sup>31</sup> At the Maitland centre in January, one man waiting for

<sup>31</sup> News24. "Official suspended for beating foreigner." 11 April 2012.

<<http://www.news24.com/SouthAfrica/News/Official-suspended-for-beating-foreigner-20120410>>

asylum died while waiting in the queue.<sup>32</sup> Because there are no medical facilities or first aid at Maitland, the sick man was not catered to. Security officials also engage in corruption, commonly taking bribes so that individuals may be moved to the front of the queue. One SPT report found that touts admitted to be working with police were openly soliciting R150 to take people to the front of the line.<sup>33</sup> These deplorable systems of corruption are widely accepted. Fake border passes and papers are also distributed by individuals who, evidence suggests, have connections on the inside.<sup>34</sup> We documented respondents who described the process of paying bribes for fake papers. One reported that for R500 one could gain entry to the Maitland RRC.

Recently, a miscommunication between border posts and RROs caused great confusion and strife for new asylum seekers. Border posts stopped issuing the Section 23 form, commonly known as the “border pass”, showing proof of entry and providing some protection until an RRO is reached. However, the Refugee Reception Offices were not accepting new applications without a border pass. The requirement of a border pass relies on the assumption that all asylum seekers fleeing for their lives will cross the border through the normal channels. Lawyers for Human Rights won a court case against the DHA over the RROs’ requiring border passes.<sup>35</sup> Whether or not the border posts are issuing them, asylum seekers do not generally travel through conventional means. It is unreasonable to expect a genuine asylum seeker to be in possession of a passport or border pass.

In April of 2011, South Africa announced it would be clamping down on the 1<sup>st</sup> country rule, meaning that they would no longer be accepting asylum seekers from nationals who have travelled through another country before reaching South Africa. But threatening to not welcome or document them did not perturb asylum seekers; it just meant they could no longer come in through regular channels. IRIN News reported on the increase in border jumpers that followed this announcement.<sup>36</sup> The Refugee Reception Centres were turning people away for not having border passes, while the borders were turning people away because they had already been through their 1<sup>st</sup> country. This would have made accessing documentation very difficult in 2011, fostering a larger community of undocumented migrants vulnerable to arrest and deportation.

### ***b) The Zimbabwe Dispensation Project***

In order to reduce the number of Zimbabwean nationals applying for refugee permits in these conditions, the South African government sought to regularize the stay of undocumented Zimbabweans through the Zimbabwean Dispensation Project (ZDP) between September and December 2010. Zimbabweans were offered free temporary work, business and study permits for four years if they applied with a valid Zimbabwean passport and a letter from their employer in South Africa. The department received

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<sup>32</sup> IOL News. “Man beaten at Cape refugee centre.” 26 January 2012. <<http://www.iol.co.za/news/crime-courts/man-beaten-at-cape-refugee-centre-1.1221249>>

<sup>33</sup> Solidarity Peace Trust: Desperate Lives, Twilight World. Report. Johannesburg: 2010.

<sup>34</sup> PASSOP: The Road to Documentation: Asylum-Seekers’ Access to Cape Town’s Refugee Reception Centre. Report. Cape Town: May 2011. p. 7.

<sup>35</sup> IRIN. “South Africa: Asylum Seekers Resort to Border Jumping” 9 February 2012. <<http://www.thezimbabwean.co.uk/news/zimbabwe/51482/south-africa-still-no-clarity.html>>

<sup>36</sup> IRIN. “South Africa: Asylum Seekers Resort to Border Jumping” 9 February 2012. <<http://www.thezimbabwean.co.uk/news/zimbabwe/51482/south-africa-still-no-clarity.html>>



275,000 applications which is a far lower number than even the conservative estimates around the numbers of Zimbabweans in South Africa.<sup>37</sup> Reasons why Zimbabweans did not apply vary from suspecting it was a ploy to deport them, to not getting passports from the Zimbabwean consulate, to not even knowing that it had occurred.

For those who did manage to apply for a permit, they were given nothing more than a receipt with a stamp that made many banks, employers and police suspicious of its authenticity. After their application has been lodged in the system, an SMS is sent with a reference number. As of March 2012, PASSOP was still receiving queries from applicants who had not yet received their reference number. This documentation project, we were assured by DG Apleni, would end before the deportations start. But on October 7, 2011 the South African government released a statement that it would no longer provide protection for Zimbabweans and would resume deportations. Between October 7 and December 2011, the Beitbridge Border Post reportedly handled 7,755 deportees.<sup>38</sup>

The threat of deportations is also known to push undocumented migrants underground. Relevant NGO's expressed concern about the resumption of deportation of Zimbabweans. There was particular concern about the timing of the official announcement. The Census was launched in October of 2011 which, with the deportations occurring, would not provide accurate information on the numbers of Zimbabweans living in South Africa. If foreign nationals are living under threat of deportation, they avoid all state institutions; including hospitals and census officials for fear that their information would be handed over to Immigration. They avoid seeking medical treatment before it is an emergency and inevitably more expensive treatment, the cost of which is shouldered by the tax payer.

## **Methodology**

The goal of the report is to explore current practices in the deportation process and identify potential gaps between legal provisions and actual situations. The underlying theoretical assumption was that there are differences between officially stated laws and policies regarding the deportation procedure and policy implementation and resulting practices.

### **i. Data gathering methods**

The research design of the report is based on a mixed methods approach, meaning that we used qualitative and quantitative data in order to get a comprehensive insight into the actual situations of people awaiting their deportation in South African detention centres.

This approach has the advantage that we could not only capture extensive data on the experiences regarding detention and deportation of over 200 individuals, but we could also gain more in-depth knowledge on individual experiences and could include the opinion of experts and stakeholders.

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<sup>37</sup> IRIN, The Zimbabwean. "South Africa: Still no clarity on Zimbabwean deportations." 3 August 2011. <<http://www.thezimbabwean.co.uk/news/zimbabwe/51482/south-africa-still-no-clarity.html>>

<sup>38</sup> New Zimbabwe. "SA deports 15,000 in 5 months." 5 March 2012.

<<http://www.newzimbabwe.com/news-7370-SA+deports+15,000+in+5+months/news.aspx>>

## **ii. Access**

Solidarity Peace Trust (SPT) and PASSOP are well known and recognized actors in the field of migrants' rights. The authors of this research relied on the established networks of migrants, experts and stakeholders. In addition, PASSOP distributed flyers to raise awareness and provide contact information for those seeking assistance. This allowed the monitors to stay informed of raids when they occur and refer those they are in contact with to the University of Cape Town (UCT) Law Clinic. This also increased the research teams' ability to reach a broad base of respondents.

## **iii. Contact with Government**

In March and April of 2012, PASSOP emailed several offices of the Department of Home Affairs and the South African Police Service requesting information on policies and procedures regarding deportation and immigration raids. Examples of questions included:

- Is there a current policy or directive to implement wide scale deportations?
- Are there targeted populations?
- Is there a quota in place dictating how many arrests for documentation must occur each month?
- Should detainees have access to medical treatment and ARV's?
- Are detainees housed alongside convicted criminals?
- Are detainees provided the forms required by the Immigration Act – (Form 1)- "Notification Regarding Right to Request Review by Minister" - upon notification of their "illegal" status?
- Are translators always provided for detainees who are not fluent in English?

The research team also enquired about how to gain access to Lindela Detention Center, the official statistics on the nationality and numbers of those deported in 2012, and the costs of deportation, detention and litigation. We received a response from the DHA acknowledging receipt of our questions and promising to reply, but the response has not yet been received. With regard to our enquiry into the process to be followed so as to gain access to monitor Lindela, we did not receive any response. The SAPS responded to our questions, their response is mentioned below in the *Arrests* section.

## **iv. Qualitative Data**

In order to gain in-depth insights into current practices in deportation procedures we decided to conduct semi-structured qualitative interviews. These interviews were based on core stock-phrases but also allowed the interviewer and the interviewee to focus on new questions or topics that came up during the course of the interview.

Ten trained monitors were employed to gather information and observe immigration raids and deportations as they happened. There were four monitors in Johannesburg, three in Cape Town, two in Beitbridge and one in De Doorns. All participants were trained and experienced in monitoring and surveying. The Johannesburg monitors were trained and employed by the Solidarity Peace Trust and the Cape Town and De Doorns monitors were community representatives for PASSOP.

Once a monitor or the research coordinator was informed of an immigration raid, the monitor would follow the lead provided, and go to the area where it took place. They would collect the names of those detained and attempt to follow up on their cases and refer where necessary to the UCT Law Clinic and Legal Resource Centre (LRC). During the course of our investigations it became apparent that legal constraints make it impossible for any help to be given to someone that had been arrested without knowing the full name of the detainee.

When not following up on raids or monitoring the Refugee Reception Office (RRO), monitors carried out informal surveys by walking through communities that had large purported numbers of immigrants. In Cape Town these communities included Capricorn, Masiphumlele, ImizamoYethu, Samora, Langa, Phillipi, Athlone and Maitland (RRO). Communities in Johannesburg included DiepSloot, the Methodist Church, Marabastad (RRO), Yeoville, Hillbrow and busy transportation hubs (taxi ranks and bus terminals). Monitors would ask about people that had been affected by the high volume of immigration raids or those that had been arrested for documentation issues. While at first we did not expect this canvassing method to be very useful, it proved extremely effective and informative. Through word of mouth, monitors were continually referred to people that had been detained or deported.

In addition, we monitored outside of Lindela Repatriation Center for three days, speaking with family members and legal representatives. The monitors also went inside on two occasions to speak with detainees in order to gain an idea of life inside Lindela, namely: access to DHA officials, medication, food, bedding and exercise. Pens, cameras and recorders are not allowed in, so interviews inside the deportation centre couldn't be recorded. However, the content was transcribed straight after the interviewer had left the centre.

#### **v. Quantitative data**

In order to expand the picture gained through qualitative interviews, a survey among migrants was conducted.

Quantitative questionnaires were filled out and returned by nearly 200 individuals. Predominantly quantitative for analysis purposes, the questions sought to highlight inadequacies or discrepancies between the legislation in place and the actual realities of the judicial system. The questionnaire was split into three parts: demographic, arrest and detention. Questions covered the conditions for arrest and detention, issues of environment and the demographics of other individuals that had been detained with the participant. It also covered the legal process, such as the distribution of crucial forms and duration of detention, in order to monitor the existence or effectiveness of provisions supposedly in place to prevent abuse by the DHA system.

#### **vi. Data analysis**

In order to analyse the data the following techniques were used:

The completed questionnaires were imported into the data collection program generated by Google, *Google Docs*.

Having transcribed the gained qualitative data we came up with codes and, subsequently, categories for most important topics which we then related to each other. This gave us the opportunity to compare and to explore inter-linkages between results from both data gathering

methods and to thus draw a comprehensive picture of the situation of migrants in South African detention centres.

## **Core Principles of Applicable Law**

South African law regulates the arrest, detention, and deportation of illegal foreigners. The sources of law include the Constitution, the Immigration Act and accompanying Regulations, and the Promotion of Administrative Justice Act (PAJA).

### ***Key rules under the Immigration Act and Regulations:***

- i. Only immigration officials – not police – may declare someone an illegal foreigner for the purposes of deportation
- ii. If police/immigration officers detain someone to confirm their immigration status:
  - The officers must help the detainee access their documents (if readily available), contact other people who can confirm their status, and access departmental records
  - detention for the purpose of verification must not last longer than 48 hours
- iii. If police/immigration officers detain someone for the purpose of deportation:
  - When it is decided that a person is an illegal foreigner and should be deported, that person must be informed in writing (1) that this decision has been made and (2) that he or she has the right to appeal this decision.
  - That person has the right to ask any officer at any time to confirm his or her detention for the purposes of deportation by a warrant of the court.
  - If the requested warrant is not issued within 48 hours, the person must be immediately released.
  - The person must be told about all of these rights upon his or her arrest in a language that he or she understands.
- iv. Maximum detention times:
  - A person detained for the purpose of deportation cannot be held for longer than 30 days without a further warrant of the court (specifically, one which has good and reasonable grounds)
  - Even with a further warrant, the detention may not last longer than an additional 90 days.
  - After someone is held for 120 days, they must be released immediately, regardless of official status.
- v. Prescribed forms must be used in giving effect to the above provisions.
- vi. The dignity and human rights of all detainees must be protected at all stages of arrest, detention, and deportation.

***Key rules under the Constitution and Promotion of Administration of Justice Act (PAJA):***

- i. The processes of arrest, detention and deportation must respect individuals' rights and be fair, lawful, and reasonable.
- ii. Detainees have the right to:
  - Be told in writing that their rights are impaired (explain) by administrative action,
  - Be promptly informed why they are being detained and that they have a right to consult with any legal professional they choose,
  - Challenge the legality of their detention in person,
  - Have their human dignity respected at all times, including the provision of adequate accommodations, nutrition, reading material, and medical treatment,
  - Communicate with and have visits from a spouse, partner, next of kin, religious counsellor, or medical professional.

***Other legal provisions:***

- South African law does not require the detention of asylum seekers, refugees or illegal foreigners (Refugees Act 130 of 1998, South African Immigration Act).
- Officers are supposed to use discretion in deciding to detain people, and are mandated to do so in favour of liberty (South African Immigration Act).
- The Children's Act requires that unaccompanied minors, even if undocumented or illegally in the country, be placed in temporary places of safety – not detention centers like Lindela (Centre for Child Law and Another v Minister of Home Affairs and Other 2005 (6) SA).
- The DHA is legally required to consider asylum claims of a family as a whole to prevent families from being torn apart.

**“I have to get a job and raise my children even if it means I have to get arrested.”**

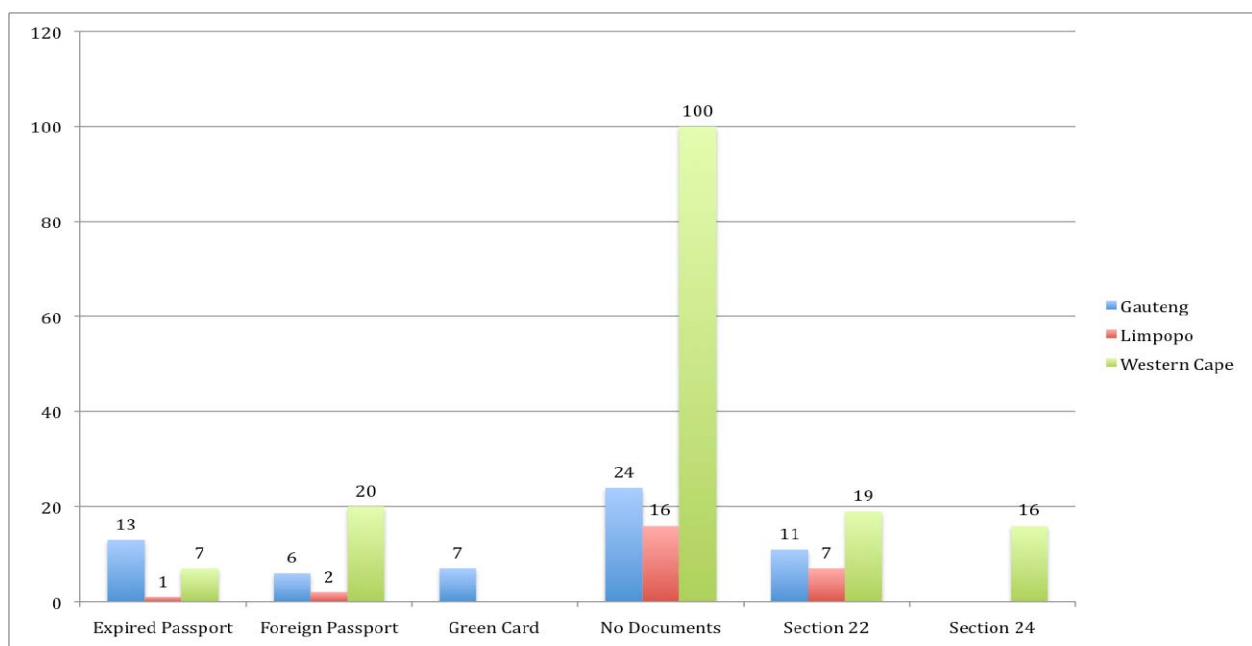
**Arrests and Initial Detention**

The arrest and initial detention process has a pivotal effect on the deportation process as a whole. How thoroughly and justly the law is administered at this stage influences the number of wrongly incarcerated detainees. This in turn would have an impact on the costs of detention and deportation and increase the number of people who would be eligible to file civil claims against the state. If it could accurately be said that all detainees have been verified and given the opportunity to appeal their arrest, it would reduce the pressure and more importantly, cost of the detention and deportation process. The research pertaining to the arrests and initial detention of alleged *illegal* immigrants revealed that this was not the case. Alarming trends of disregard for the law was observed in the verification/screening process. The method of identifying so called

*illegal* immigrants is afrophobic and has a dangerous effect on the sentiment toward foreign nationals in South Africa. We found the SAPS, SANDF and DHA frequently failed to inform arrested individuals of their rights. The procedure for informing one that they have been found to be illegal and will be deported unless they chose to contest this deportation was handled in a very inconsistent manner. Corruption and harassment at the time of arrest also appear to be occurring nationally.

**“The way the police treat the people when they conduct the work it’s not in a humanitarian way. So many human rights are being violated; the whole concept of respect is lost.”**

In their response to a list of questions sent to the SAPS, the latter noted that “the DHA have a mandate to conduct immigration raids on “illegal” immigrants”. The police just assist with the process. Their policy is to arrest and refer to DHA, “anyone who does not have legal documents to be in the country.” If one is not carrying their documentation with them, “Officers are supposed to use discretion in deciding to detain people, and are mandated to do so in favour of liberty.”<sup>39</sup> Our research, as demonstrated below, revealed several inconsistencies between legislation and reality.



**Graph 2 demonstrates the various types of documentation respondents had with them at the time of arrest.**

### **i. Rights**

The person has to be told that they have all the rights outlined under the Core Principles of Applicable Law when they are arrested. The arresting officers must tell the person about their rights in a language that the person understands (unless impractical or unreasonable) (Section 34(1)(c)). Findings from this study reflect that a shocking 90% of respondents (200 people) were not informed of any of their rights at the time of arrest.

<sup>39</sup> South African Immigration Act.

**“They (SAPS) ask us for bribes. I have been arrested several times now because of my papers. I am not a criminal, but they just arrest me.”**

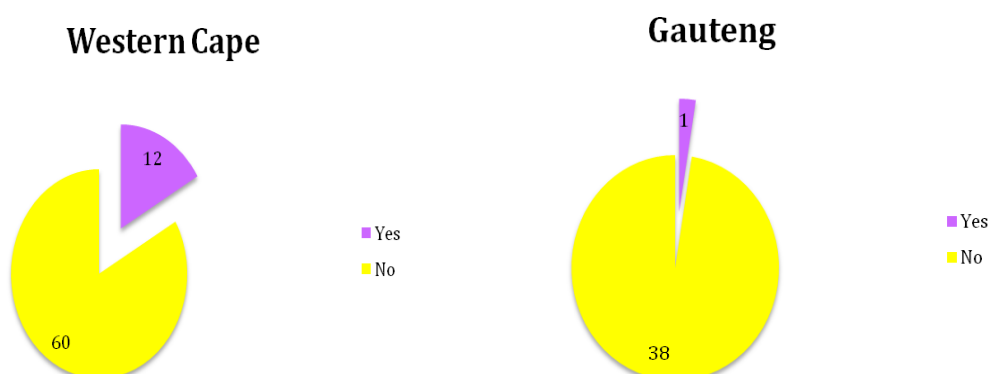
## **ii. Reasonable Grounds for Suspicion**

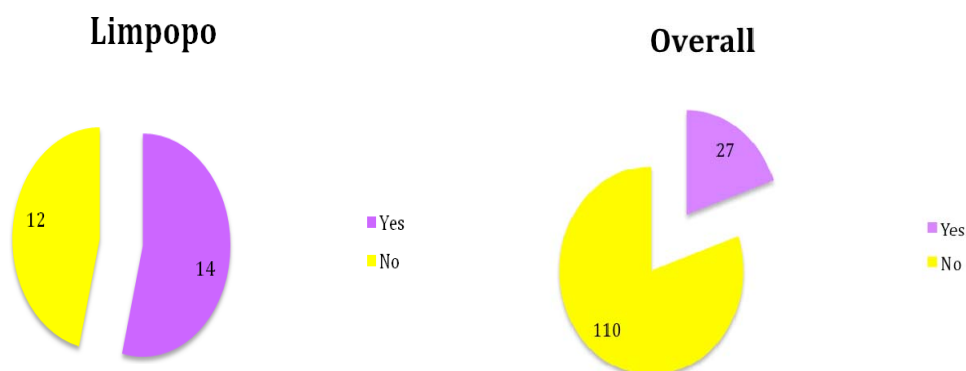
According to the Immigration Act, a police officer must have “reasonable grounds” to stop and detain someone. It specifies that profiling based on race is not to be used as grounds for detention. Racial demographic was not collected; but reports from respondents, with the country data collected, show that racial profiling is the primary method of selecting victims. There were no whites arrested, in fact footage in one raid from Salt River shows the one white person being asked politely to stand to the side while the blacks in the room were made to provide identity documents. This seems reasonable enough, if the system of attaining and renewing documents was not so complicated. People are scared to carry their documents in case they are stolen or lost. Tourists are advised against carrying their identification, yet they are never arrested or harassed, if they are white.

**“It’s only for the black foreigners, not whites, and mostly Zimbabweans are the big targets.”**

## **iii. Verification**

To confirm their status, officers must take reasonable steps to help anyone being arrested to access any readily available documents, contact other people who can confirm their status, and access relevant departmental records (Regulation 32). Our research showed that in Limpopo 12 people said that the police did not assist them. In the Western Cape and Gauteng, the number was much higher. 60 people in the Western Cape and 38 people in Gauteng, responded that they did not receive assistance from the police to collect and verify their document. It is very important for the SAPS to assist suspected *illegals* to verify documentation as this minimizes the numbers of innocent detainees, reduces the number of cases taken to court and reduces pressure on the system. However, even if this is achieved, it does not take away the fact that innocent people who look “foreign” must carry their documentation with them at all times to avoid arrest and potential deportation.





**Graph 3- demonstrates the overall amount of people from Limpopo, Western Cape and Gauteng that were helped by the police in collecting their documents.**

In Woodstock, Cape Town, there was a raid on 3 March where 250 were arrested.<sup>40</sup> Based on information gained from interviews with those who were among the 250 arrested, but not taken to Pollsmoor, we estimated that less than 20 of the initial 250 ended up being transferred to Pollsmoor. Of those inside Pollsmoor, there were still some asylum seekers and permit holders who had not been released, even though they had valid documentation. A monitor was able to interview one of the 20 and was then able to refer him to the UCT Law Clinic where, on the basis of his valid documentation status, he was released. This clearly demonstrates how frequently these asylum seekers are victimised and disadvantaged. The situation affects their economic and job prospects in addition to demoralising and affecting their family and social situations.

Kaajal Ramjathan-Keogh, cites a recent case brought to the attention of LHR of a Tanzanian asylum seeker who, after being brought to Lindela and consulting with LHR, was deported to Zimbabwe. Kajaal confirmed that "It does happen that they deport people to the wrong country, most often Zimbabwe and Mozambique, for reasons that their screening procedures on arrival are not very good."<sup>41</sup>

### **Box #3 The racial profiling, arrest and harassment of a citizen**

*Find below the personal account of Jaidudien Sablay, a legal South African citizen who was unjustifiably questioned and harassed by South African Immigration Officials. Sablay, a student at the University of Western Cape, was stopped by an immigration official and demanded he show proof of citizenship. Despite having his UWC identification card and his father leaving to retrieve the proper documents, Sablay was forcibly placed in the police van, verbally abused and threatened. Sablay's traumatizing experience reflects the dangerous racial profiling tendencies of immigration officials.*

#### **To Whom it May Concern:**

On Tuesday (13 March 2012) evening at 8.30 pm, myself, Jainudien Sablay, ID No 830911 5163 088, a friend and my father came home from the University of Western Cape, where I am doing my honours in Industrial Psychology. While walking to the shop in Hazel Road in Rylands I was stopped by a member of the Special Task Force and Home Affairs

<sup>40</sup> Prince, Natasha. "250 held in raid on immigrants." Cape Argus. 5 Mar 2012.

<http://www.iol.co.za/capeargus/250-held-in-raid-on-immigrants-1.1248943>

<sup>41</sup> Taken from interview with researcher



Immigration. She asked my Dad and his friend to identify themselves and they communicated in Afrikaans that they were South African citizens. She then turned towards me and asked 'what about him'? I then replied in English that I am a South African citizen and to further verify my claim showed her my student card which had my identity number on it. She then replied that this was not good enough and then told me to show her my ID. I told her that it was not on me and she then told me in that case I would have to come with her. She then took me inside one of the shops and threatened to lock me up if I don't show her my ID. As I live 5 minutes away from the incident my Dad agreed with her and a Mr Martin that he would go fetch my ID and they agreed not to lock me up.

While my Dad was gone the lady became very abrasive and said "We can't wait all day here, you must go to the police station now." She then instructed the cops to take me. While this was happening one of the cops sarcastically commented '**we going to put you in a five star hotel now.**' One of the other cops then pulled me by the arm and said "**you going to jail now**".

At this stage I was extremely traumatized and pleaded with him just to wait a minute as my Dad would be here anytime now. He then grabbed me by the scruff of my neck and said "Come" and started pushing me. Before we came to the police van I started to get a panic attack as I am claustrophobic and it was dark as well. I then further pleaded with him but a number of other cops started to surround me, jeer at me and say '**YOU GOING TO JAIL NOW, PUT HIM IN THE VAN.**' At this stage he grabbed me and pushed me in the van. While inside I was extremely afraid for my well-being and was emotionally and mentally scared as I have never experienced this in my life. Luckily my Dad managed to arrive on the scene with my identity document and I was told to get out of the van. The thing that hurt me the most was that no remorse was shown by those who treated me unjustly and violated my human rights. While writing this I am still haunted by the experience which I pray doesn't happen to anyone else.

I feel in this New South Africa we are still treated like dirt and this is a violation to my human rights because to be treated like this is uncalled for, I am not a criminal to be treated like this. My family and I were so traumatized by this horrible experience that they had to rush me to a doctor. I am still feeling sick and I had to skip campus today and stay at home.

I have contacted the media regarding this incident and feel that this should be exposed because I am sure there are others that perhaps experienced similar situations, therefore we must prevent them from doing this to other human beings.

I humbly request your department to investigate this matter urgently and bring these guys to book.

Thanking you,  
Jainudien Sablay  
**14<sup>th</sup> March 2012**

#### iv. Harassment

Harassment was not quantified but it was common to hear stories of xenophobic and afrophobic attitudes from arresting officers. Reports of verbal and physical abuse at the time of arrest were commonplace. In the Western Cape, detainees reported being harassed by the police about their nationality.

**“They will ask for money from everyone. If you don’t have money, or you only have a small amount, it will cost you. You will be inside for a long time, but the ones that can pay are let out... At one point I refused, saying no, and they beat me right there. I started bleeding. They told us to go back to Zimbabwe”**

#### **v. Corruption**

**“I paid a R500 fine to the police and they let me go, not very far from where they picked me up.”**

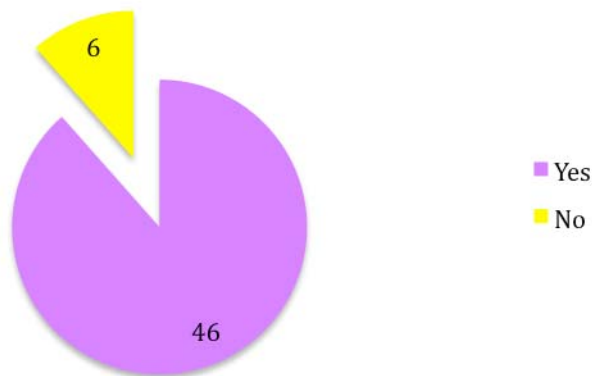
Corruption is one of the most difficult problems for the government to deal with. The people being arrested will do anything to not be arrested because, for many of them, their lives are in the hands of the arresting officers. In Limpopo 10 people (40%) and in the Western Cape, 44 people (37%) said they had witnessed corruption at the time of arrest. While in Gauteng, 46 (95%) of respondents reported having witnessed corruption (see graph 4). In Gauteng, interviewees reported having to keep a hidden stash of money specifically for when the police came to harass them for bribes. Respondents also told of being arrested and detained until one could afford to pay a bribe.

**“I had to pay R200.00 to the police officer to let me go”**

#### **Box #4 - ZDP applicant R2000 bribe for release**

The mother of a 2 year old baby was arrested in Gauteng for not having a permit or stamp in her passport. She had applied for a work permit through the ZDP and was still waiting for her permit. Her husband came to the police station to explain that she had lost her receipt but knew her reference number. He appealed to the officers to verify her details with DHA and let her go. An officer inside the police station told her that she could pay R2000 and be released. At this point they were in contact with our monitors who advised them not to pay the bribe, but rather wait for the DHA to intervene. The SAPS appeared to make no effort to contact the DHA. In the meantime the monitors took the woman’s information and contacted the ZDP office in Harrison St. and requested their intervention. After three days, the DHA were able to verify her documentation and convince the Police station to release her.

## Gauteng



Graph 4 shows how 95% of individuals in Gauteng witnessed corruption at the time of arrest.

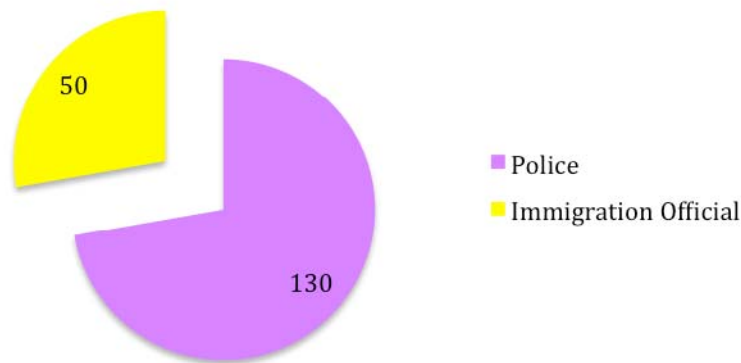
**“They arrested me and I had my papers. They arrest you and say ‘pay so that we can release you’.”**

### vi. Informed in Writing

Prior to being taken to Lindela, the individual must be informed of their immigration status and their right to have the decision confirmed by a warrant of the courts within 48 hours of their arrest. If the person asks for such a warrant and the warrant is not issued within 48 hours, the person must be immediately released (Section 34(1)(b)). When it is decided that a person is an illegal foreigner and should be deported, that person must be informed of the following in writing (1) that this decision has been made and (2) that he or she has the right to appeal this decision and (3) that only an immigration officer can make that decision.

42 (90%) respondents from Gauteng and 13 people (52%) from Limpopo said that they were not informed that their documentation status was not valid. In Western Cape, the amount was much lower, 28 people (24%) (see graph 5). Although Police officers are not legally allowed to declare anyone an illegal foreigner for the purposes of deportation our statistics revealed that in Limpopo, 15 people (75%) said that a police officer told them they were illegal. In the Western Cape 72 people (63%) were informed by police officer, In Gauteng the percentage was higher with Gauteng, 43 people (93%), saying that they had been told that they were illegal by a police officer.

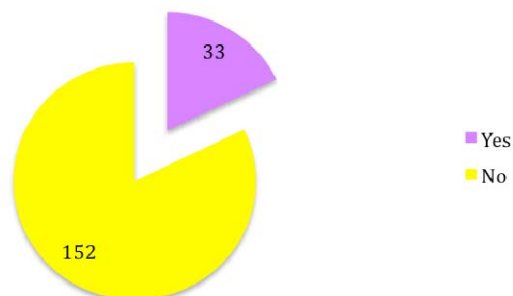
## Overall



**Graph 5- People that were told they were illegal by a police officer, not an immigration official**

In Limpopo, 19 people (83%) said that they were not given a deportation form to sign. In Gauteng, 34 people (70%), while in the Western Cape, the percentage was lower with 54 people (45%) saying that they had not been given a deportation form to sign. The number of people that this was explained to was extremely low in all cases. Gauteng had the most respondents, 35 people, who reported the form being explained to them in a language they understand. In Limpopo, nobody said that the form was explained to them, while in Western Cape only 5% said that it was.

## Overall



**Graph 6- Individuals who had been informed that this form gave them the right to appeal and that their detention was to be confirmed by a warrant of the court**

## Detention

The detention stage in the deportation process was found to be littered with abuse, neglect and failure to respect the rule of law. Detainees held in Lindela, reported not going through any medical screening before detention. Data shows an almost complete lack of access to medical services, including ARV's. The length of detention is of serious concern; it was common to hear of detainees who have been in Lindela for longer than 120 days. Several reports, including from legal professionals described a *release and re-arrest cycle* of immigrants used in order to circumvent the 120 day

maximum. These issues are complicated by the fact that detainees only have access to Bosasa security officials, who lack the necessary training and responsibility to protect the rights of detainees. Officials have been known frequently to ignore or delay court orders for release. However, the lack of transparency at this stage limits the extent to which the problems occurring inside the detention facility can be monitored and addressed.

#### i. Lindela Detention Centre

**Photo 3: The outside of Lindela Detention Centre**



The Lindela Detention Centre is a large holding facility in Guateng used to hold alleged *illegal* migrants while awaiting deportation. The Department of Home Affairs, which is responsible for Lindela, employs a company named Bosasa to manage the facility. Though Bosasa claims that

Lindela is "compliant with all good governance and lawful criteria,"<sup>42</sup> the centre has long been under investigation by various human rights groups after extremely numerous reports of unethical and unlawful treatment of detainees.<sup>43</sup> Reports have noted illegally extended periods of detention, abusive conditions, failure to inform detainees of legal rights, and more.

The greatest concern about the DHA subcontracting the management of Lindela is that the Bosasa officials serve as a buffer between detainee and DHA official. According to the Immigration Act, the detainee is allowed to ask any officer at any time to confirm their detention for the purpose of deportation by a warrant of the court (Section 34(1)(b)). If the detainee asks for such a warrant and the warrant is not issued within 48 hours, the person must be immediately released (Section 34(1)(b)). But a detainee can only enact this right through an immigration officer. The security guards hired by Bosasa have no training in immigration law and have no incentive—unless a monetary one is on the table—to listen to the appeals of detainees. Yet they are the ones with the responsibility of the well being of detainees, many of whom, as the *Arrests* section clearly illustrated, have good reason to want to appeal their detention. As LHR reports,

<sup>42</sup> Bosasa. "Lindela Repatriation Centre." Accessed 3 May

2012. <http://www.bosasagroup.com/content/1361/1275/lindela-repatriation-centre>

<sup>43</sup> Lawyers for Human Rights: 2010 Immigration Detention Report

<http://www.lhr.org.za/publications/immigration-detention-report>

“you may never encounter an immigration officer if you are at Lindela because all you encounter is Bosasa security people.”<sup>44</sup>

## **ii. Access to Lindela**

Without independent monitoring, it is very difficult to confirm statements and promises made by the DHA. A recent example was when the Director General Apleni, in an effort to excuse the long detention periods experienced by detainees at the Lindela Detention Centre, claimed that the detainees were “lying” about their names and countries of origin, and that this was the reason for the extended detentions.<sup>45</sup> The Legal Resources Centre (LRC) responded against these xenophobic comments, disputing his unsubstantiated generalisations to the Minister of Home Affairs.<sup>46</sup> If access was granted he would be able to defend his claims and could be held accountable.

On 30 November 2011, Medicin Sans Frontier (MSF) requested access to Lindela in order to conduct an independent medical assessment of the state of health care provision at Lindela. The Chief Director of the Immigration Directorate for the Department of Home Affairs, Mr Modiri Mathews, denied the request on 21 December 2011.<sup>47</sup> In his denial, Mr Mathews asserted that: “The Department of Health and Chapter 9 institutions such South African Human Rights Commission have oversight responsibilities of the Lindela facility relating to its compliance with adequate medical standards and human rights respectively”. Mr Mathews concluded that “permission cannot be granted as the Department is satisfied with the arrangements it has in place in this regard”.<sup>48</sup> As a result of this response from the DHA, MSF is requesting that the South African Human Rights Commission conduct an independent and transparent medical assessment of Lindela. Lawyers for Human Rights, Section 27, Solidarity Peace Trust and PASSOP have endorsed their request and the urgent need for intervention.

Despite the difficulty of access, we were able to interview detainees inside the centre, by appearing to be visiting one person and then speaking to all those we were able to come in contact with. The rules for visiting allow only visiting one person at a time and no pens may be brought inside so we were only able to ask qualitative questions. In these interviews with current detainees, family members outside Lindela, immigration lawyers, former detainees and deportees who had been through Lindela, we recorded several examples of blatant disregard for legal procedure, court orders and human dignity. One Ethiopian detainee who has been in Lindela for over 6 months informed us that there are “more than 150 Ethiopians inside Lindela with the majority having stayed for over a year now”. (See Box #5) We met the family members of other Ethiopians inside and they had also been in detention for longer than the three month limit. We cannot confirm whether there are as many as 150 Ethiopians inside Lindela who have

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<sup>44</sup> Taken from interview with researcher

<sup>45</sup> Mhlana, Zodidi. The New Age. Reported at LRC.org. 4 April 2012. <http://www.lrc.org.za/lrc-in-the-news/1883-2012-04-04-home-affairs-dg-prejudiced>.

<sup>46</sup> Mhlana, Zodidi. The New Age. Reported at LRC.org. 4 April 2012. <http://www.lrc.org.za/lrc-in-the-news/1883-2012-04-04-home-affairs-dg-prejudiced>.

<sup>47</sup> Correspondence from Chief Director of the Immigration Directorate for the Department of Home Affairs, Mr Modiri Matthews to MSF. 21 Dec 2011. Quoted in correspondence from MSF to PASSOP.

<sup>48</sup> Correspondence from Chief Director of the Immigration Directorate for the Department of Home Affairs, Mr Modiri Matthews to MSF. 21 Dec 2011. Quoted in correspondence from MSF to PASSOP.

been in detention, but a private immigration lawyer, Larry Mzamo, said that the “Majority of people are detained for more than 3 months.”<sup>49</sup> .

#### **Box #5 – Detention over 120 Days**

Gabriel from Ethiopia and his friend has been locked up in police stations and Lindela for over 6 months. His friend has been accused of faking a marriage so as to get RSA residents permit. This is despite proof of the wedding and related documentation. From Gabriel’s account, the team was able to gather, but not verify, that **there are more than 150**

**Ethiopians currently inside Lindela, all for more than 120 days.**

Gabriel reported that Ethiopians and other nationalities are supposed to raise airfares on their own. This was corroborated by other detainees. As was the fact that if, after 120 days they have not raised the airfare, authorities at Lindela are alleged to use a **Release and Re-arrest** strategy whereby they take the detainees out of Lindela and drive them to the outskirts of Johannesburg. Upon arrival in Johannesburg, authorities leave them on the side of the road. The SAPS are then waiting nearby to round them up again and re-arrest them so that the cycle can continue for another 120 days.

#### **iii. Length of Detention**

According to the Immigration Act, no one can be detained longer than 30 days under these provisions without a further warrant of the court (34(1)(d)). The detention can only be made longer by a warrant with good and reasonable grounds, and even then the detention may never last longer than 90 days (Section 34(1)(d)).

After someone has been detained for 120 days, they must be released no matter what their official status is.

South Gauteng High Court Judge Meyer commented: "A detained person has an absolute right not to be deprived of his freedom for one second longer than necessary by an official who cannot justify his detention."<sup>50</sup>

The large proportion of Zimbabwean respondents made accurately quantifying the number of detainees kept for longer than 120 days very difficult. Zimbabweans, for the most part, are not housed as long as detainees from other nationalities because of the proximity to Zimbabwe. Departing to Zimbabwe can be done by road or rail, whereas departing to the DRC or Somalia requires travel by air, which is far more expensive. This is why, the majority of detainees who have been in Lindela for more than 120 days, are not from Zimbabwe. Thus, a disproportionate number of Zimbabweans affects the accuracy of this quantitative data. However, qualitatively, we interviewed detainees, relatives and immigration lawyers who all reported detention over 120 days being very common.

#### **iv. Release and Re-arrest Cycle**

There were also reports from both the legal fraternity, and detainees, of a 120 day release and re-arrest cycle. While they refer to it as such, they simply explained that detainees held for longer than 120 days are released, usually in fairly remote locations,

<sup>49</sup> Taken from Interview with Researcher

<sup>50</sup> *Silva v Minister of Safety and Security* **1997 (4) SA 657** (W), at p 661 – H. See <http://www.saflii.org/za/cases/ZAGPJHC/2010/59.html>

or at arbitrary times of the night. The police are then waiting to re-arrest them for being found undocumented or *illegal* and they are then taken back to Lindela where they begin a new 120 day cycle.

The private immigration lawyer also explained that there is little that can be done by detainees or their families to fight this injustice because they cannot afford the legal fees to take the DHA to court. There are legal aid organisations such as the Legal Resource Centre, UCT Law Clinic and Lawyers for Human Rights; but there are too few resources to support the number of cases that should be filed and even where help may be available, the detainees do not know how to access it. If a detainee is fortunate enough to get representation, and the lawyer obtains a court order for immediate release, there is still no guarantee of freedom. Lawyers report regularly being made to wait more than 24 hours for the order to be carried out. One tried appealing to the sheriff to execute the court order but the sheriff maintains that he would not be able to break into the centre and have them released. Meanwhile, DHA officials inside Lindela maintain that they are awaiting official confirmation from higher up. When the detainee is finally released, his lawyer must hand over his court order, which gives him 14 days to apply for documentation. If the lawyer is unable to get the court order to the person, they will be considered undocumented and therefore *illegal*.

#### **v. Access to Medical Care**

The International Detention Coalition recently reported that, “Detention has been shown to harm health and wellbeing ... Research has demonstrated that being in detention is associated with poor mental health including high levels of depression, anxiety and post-traumatic stress disorder (PTSD) and that mental health deteriorates the longer someone is detained. One study found clinically significant symptoms of depression were present in 86% of detainees, anxiety in 77%, and PTSD in 50%, with approximately one quarter reporting suicidal thoughts.”<sup>51</sup>

The South African Constitution guarantees the right to health services to everyone residing on South African territory, regardless of his or her legal status (Section 27(1) of the Constitution). According to 27 (2) it is the State’s responsibility to enable residents to access these rights, although these may depend on the individual’s financial situation based upon a standard *Means Test* which determines the cost of treatment relative to income. This means that hospitals have to provide everybody with at least basic and emergency care and are not allowed to restrict migrants’ access by charging fees exceeding those defined by the Department of Health.

In the context of means testings, HIV and Sexually Transmitted Infection treatment have an exceptional position. According to the National Strategic Plan and a directive issued by the National Department of Health, refugees and asylum seekers with or without papers shall have access to antiretroviral treatment via public hospitals free of charge.<sup>52</sup> Stating that “everyone has the right to have access to health care services”,<sup>53</sup> the Constitution as well as other regulations mentioned do not in any capacity exclude

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<sup>51</sup> International Detention Coalition (IDC) Immigration Detention Submission to the Special Rapporteur on the Human Rights of Migrants. 3 Feb 2012. <http://www.scribd.com/doc/80883801/IDC-submission-to-the-Special-Rapporteur-concerning-his-report-on-the-issue-of-immigration-detention>

<sup>52</sup> Consortium for Refugees and Migrants in South Africa: Protecting Refugees, Asylum Seekers and Immigrants in South Africa. Johannesburg: CoRMSA, 2008. P. 38.

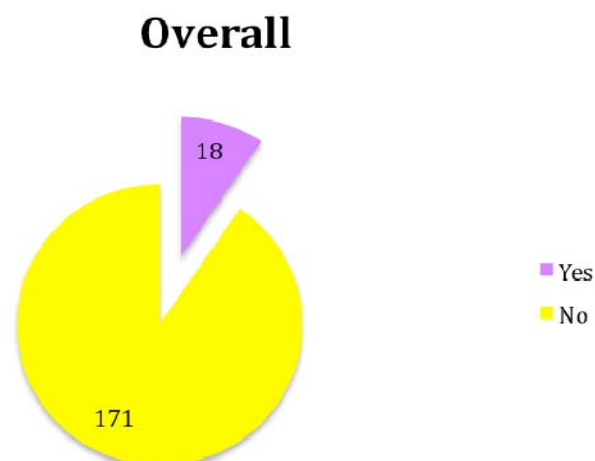
<sup>53</sup> Constitution of South Africa, Section 27.



irregular migrants and migrants in detention or in the deportation process. Moreover, Section 35 (2) more explicitly states “all detained individuals, including those held in administrative detention, are entitled to conditions of detention consistent with human dignity, including the provision of adequate accommodation, nutrition, reading material and medical treatment.” This is also highlighted in Immigration Regulations, Annex B, stating that “Every detainee shall have access to basic health facilities”<sup>54</sup>. Regarding access to health care in practice this means that detainees must, while in detention, be provided with necessary health care including ARV treatment if needed.

Kaajal Ramjathan-Keogh explains: “There is a doctor who comes in once a day... for at least the last ten years, and I actually don’t know what service he provides—he’s meant to be seeing detainees and providing treatment and medical services but its questionable what kind of treatment he is actually providing.” When this was raised with Bosasa by the LHR, they were informed that Bosasa were no longer contractually obliged by the DHA to provide medical treatment to detainees.<sup>54</sup>

**Research findings revealed a significant gap between legal provisions and policy implementation practices. When asked about the possibility of them accessing medical treatment while in detention, 90% of respondents reported not having access to medical care, including ARV’s.** Detainees held at Lindela Detention Centre have little access to medical care of any kind, whether for chronic conditions or new injuries.



**Graph 7 shows the overwhelming proportion of individuals that did not have access to medical treatment (including antiretrovirals) while in detention.**

Exacerbating the health predicament at Lindela, reports indicate that detainees there are not provided with sufficient food and live in conditions which are extremely conducive to the spreading of disease (including TB), resulting in the severe illness and deaths of detainees. An Article by GroundUp, tells about a young Zimbabwean man who spent 3 months in a critical condition inside Leratong, before his family were made aware of his situation. Lindela gave no explanations and take no responsibility for the gentleman’s situation.<sup>55</sup> In December of 2011, a Congolese gentleman died at

<sup>54</sup> Taken from interview with researcher

<sup>55</sup> GroundUp, “Lindela Accused of poor handling of meningitis case,” May 10 2012, <http://www.groundup.org.za/content/lindela-accused-poor-handling-meningitis-case>

Leratong. There were accusations and reports that he was denied treatment inside Lindela which worsened his situation and then only taken to Leratong too late.<sup>56</sup> This apparent trend of refusing treatment until it is an emergency and then transferring responsibility over to the hospital when there is little they can do is costing the government significantly more in medical fees and brings to light a troubling disregard for human dignity.

Naturally, the Centre denies involvement in these deaths. When defending allegations of abuse at the centre, the head of Lindela Makgabo Kekana says the allegations are there but there are not provable. "You have seen people with (injury) marks, yes, because they will be trying to attack us. We do not assault people," says Kekana.<sup>57</sup> The importance of transparency and accountability are paramount for this very reason; these allegations must become provable.

There should not be debate about whether detainees should have access to medical treatment, adequate food or the opportunity to live with dignity; these things *must* be implemented. With the myriad of flaws and inconsistencies thus far in the process, it is clear that there is a desperate need for transparency and accountability to prevent the arrest and detention of foreign nationals with valid documents and citizens who were not carrying their Identity Book, or "Pass". Regardless of the legitimacy of one's status, the manner in which a person is treated while in custody of the DHA, the Constitution should still be respected.

## **Deportation**

The findings with regards to deportation followed similar trends of disregard for human dignity and legal process as in the previous two stages. The detention and deportation of refugees and asylum seekers was found to be taking place. Zimbabweans were interviewed who had been deported during the time that the supposed *Moratorium* on deportation of Zimbabweans was in place. Corruption inevitably rears its ugly head at this stage. Detainees reported having to pay for their own plane tickets to leave Lindela, while others reported having to pay a bribe just to be allowed to then buy their own plane ticket. Official statistics and information regarding the cost of detention, deportation and litigation is very difficult to come by; but from the information we were able to gather, deportation is costing South African taxpayers far more than they realise.

### **i. Deportation of Asylum Seekers and Refugees**

It is important to note that South African law does not require asylum seekers and refugees to be detained (Refugees Act 130 of 1998). Immigration officers are not required to detain illegal foreigners. Officers must use their discretion in deciding

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<sup>56</sup> SABC. "SA to deport 1 800 illegal foreigners." 23 December 2011.

[www.sabc.co.za/news/a/4dd9bb80498758d683c5bbf9983387d0/SA-to-deport-1-800-illegal-foreigners-20111223+death+of+congolesse+at+lindela&cd=3&hl=en&ct=clnk&client=safari](http://www.sabc.co.za/news/a/4dd9bb80498758d683c5bbf9983387d0/SA-to-deport-1-800-illegal-foreigners-20111223+death+of+congolesse+at+lindela&cd=3&hl=en&ct=clnk&client=safari).

<sup>57</sup> SABC. "SA to deport 1 800 illegal foreigners." 23 December 2011.

[www.sabc.co.za/news/a/4dd9bb80498758d683c5bbf9983387d0/SA-to-deport-1-800-illegal-foreigners-20111223+death+of+congolesse+at+lindela&cd=3&hl=en&ct=clnk&client=safari](http://www.sabc.co.za/news/a/4dd9bb80498758d683c5bbf9983387d0/SA-to-deport-1-800-illegal-foreigners-20111223+death+of+congolesse+at+lindela&cd=3&hl=en&ct=clnk&client=safari).

whether or not to detain someone, and because of the harmful effects of detention, officers must do so in favour of liberty.<sup>58</sup>

Our research showed that in fact the opposite is the case: that officers' discretion is in favour of incarceration and that where documentation is not immediately available to prove legitimate status, the suspected illegal is automatically detained.

We interviewed seven refugees or asylum seekers in the Western Cape and Limpopo who had been deported. Five were arrested while in possession of their documents. None of these respondents were informed of their rights at the time of the arrest and only three were given a form to sign, but it was not translated for any of them.

In February 2012, 52 Congolese people deported from Lindela reported abuse, citing that they were deprived of food and water, threatened, beaten and interrogated upon returning to the DRC.<sup>59</sup> There is growing concern among Congolese in Cape Town and Johannesburg that deportation to the DRC of political refugees can be their death sentence.

## **ii. Special Position of Zimbabwean Migrants: Deportations during Moratorium**

In April of 2009, in response to xenophobic violence that plagued South Africa in 2008, a moratorium on the deportation of Zimbabweans was implemented. Of the Zimbabweans we interviewed, 41 were deported between April 2009 and October 2011, despite the moratorium on deportation of Zimbabweans. While this was significantly less than the numbers both after and before, it illustrates a distinct lack of respect for the law and human rights that is so endemic in this system.

## **iii. Deportation despite a Court Order for Release**

In addition, deportations occur even when the courts have ordered their release. It has not been possible to quantify how often deportations occur despite the issuance of a court order for release, but there are numerous examples of illegal deportation. Larry Mzamo, a private immigration lawyer tells of two of his clients who were given court orders for their release, but when the lawyer went to meet them as they were to be released from Lindela, they were not there. No-one from Lindela would give information on their whereabouts and the lawyer was left to assume that they had either been suspiciously released and rearrested, or had already been deported. He further explained that few of his clients in this situation can afford this initial cost to take the DHA to court if their court order is ignored, which makes it very difficult to challenge the DHA in court. He went on to say they are "frustrated as practitioners," and describes the DHA as a "law unto themselves... with no respect for rule of law."<sup>60</sup>

## **vi. Detainees paying to be deported**

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<sup>58</sup> South African Immigration Act; upheld in *Ulde v Minister of Home Affairs and others* and *Jeebhai v Minister of Home Affairs and others*,

<sup>59</sup> Tolsi, Niren. "South Africa ignores deportee torture claims." 9 March 2012.

<http://mg.co.za/article/2012-03-09-sa-ignores-deportee-torture-claims>.

<sup>60</sup> Taken from interview with researcher

Monitors who visited detainees were told that paying for one's own ticket was the only way to leave Lindela if they were from countries that do not border South Africa. Flights to countries like the DRC and Kenya are not cheap. If detainees are legitimately undocumented, then they will not have a bank account and so it is highly unlikely that they will have the money to pay for the ticket. In one instance where the detainee did have the money to finance his own trip home, he has already returned from Kenya, and is trying to rebuild what is left of his business and feed his family, while also attempting to regularise his documentation status again.

#### **Box #6– Thembi\* from Kenya**

Thembi\*(not his real name) is an asylum seeker from Kenya who first arrived in South Africa in 2001. He came to the country on a legitimate asylum case, but due to the backlog, was forced to wait until 2011 to have his formal interview. Thembi brought his family from Kenya with him and started a business making couches and beds. **Twelve years after first arriving, Thembi finally received his interview with the Department of Home Affairs.** At the interview Thembi was informed that his asylum claim was no longer legitimate, therefore rejecting his claim, but they did not explain that the extension on his document was to allow for him to appeal. Confused, Thembi returned, on the date he was supposed to have submitted his appeal, to the RRC to renew his papers. Upon arrival, Thembi was immediately arrested and taken to Lindela without any opportunity to collect his belongings or prepare his family or business for his deportation. **He was only able to contact his family after giving small cash bribes.** Once realizing that **many fellow migrants had been detained in Lindela for over eight months**, Thembi realized that he would have to pay to expedite his deportation. He spent a week attempting to access Home Affairs officials to inform them of his desire to pay for his own plane ticket.

One Ghanaian detainee told him that officials would deliberately ignore detainees in an attempt to frustrate them and push them to desperation. After much effort, the Ghanaian detainee informed Thembi that two DHA officials would agree to meet his wife at the airport in order to collect the plane ticket only after an **extra payment of R1000.** After being deported in early February 2012, Thembi returned to South Africa in March with a visitor permit and is now seeking a business permit. **Upon returning, he found that his business had suffered greatly and that his factory had been ransacked and robbed in his absence.** Throughout Thembi's long and arduous experience with Home Affairs, his wife and three kids were left in South Africa without warning, to fend for themselves.

### **Limpopo**

Limpopo was analysed separately from the Western Cape and Gauteng because it appears to function quite independently. The reasons and details of how immigration policy in Limpopo is implemented differently will be outlined below. The analysis of data taken from the Limpopo province revealed abuse of power, neglect of procedure and disregard for human dignity. Xenophobic tensions appear at dangerous levels. The establishment of a Community Policing Forum in partnership with South African youth and their openly xenophobic approach to crime presents a serious safety concern for immigrants living in Musina. Verification of the immigration status of suspected *illegal* immigrants is not strictly carried out. Failure to provide, and explain the meaning of, the deportation form that should be signed by every detainee was the experience for most interviewees. Overcrowding of cells in the Musina Police Station was reported by monitors and detainees. Despite periodic monitors in place, the arrest and deportation of **Unaccompanied Minors** occurs regularly. Violence during arrest was reported by people who were caught along the border and in Musina. The Musina Refugee

Reception Office also appears to be in a similar situation to that of Maitland and Marabastad.

Limpopo province has a few characteristics that differentiate it. The most obvious is its proximity to Zimbabwe and the distance from Lindela. Unlike the rest of South Africa, Musina has established steering committees and operational forums made up of relevant government departments, NGO's and International Organisations. Through this, Musina has established a certain amount of transparency and accountability for which they should be applauded. There are paralegals from the Musina Legal Advice Office, stationed at various points known to be frequented by asylum seekers. These paralegals are in place to provide information and advice to asylum seekers as they enter the country. This information is vital because, in order to be documented a refugee must at least know what is required before they can do it. There are agreements in place between SAPS, DHA, SANDF and the committee about the procedures to follow when making arrests and when deporting. If these organisations exist and function, then how are there still rights being violated? The operational forum and their guidelines provide protection for all foreign nationals believed to be, by their definition, *vulnerable*. To be considered *vulnerable*, one must be fleeing persecution in some form and must be in South Africa because they are fleeing from persecution.

Limpopo thus departs from the procedure followed in other South African provinces in several ways. Despite the transparency and appearance of accountability, procedural and human rights abuses can be found throughout the process in Musina. Zimbabweans appeared to be the nationality most marginalised in this province. The DHA in Musina doesn't send all arrested alleged *illegal* immigrants to Lindela, only those not from Zimbabwe. Accurate figures were hard to verify, but it was widely reported by both deportees and relevant stakeholders that it was common for vans of arrested, largely Zimbabwean, immigrants to be taken over the border daily without going through any screening or verification process.

Zimbabweans are not sent to Lindela from Musina, but are supposedly all screened before deportation to ensure they are in fact *illegal*. The verification process appears to only apply to those who can convince the Police or Soldier arresting them that they are not lying about their information being in the system. According to interviews conducted for the report those who are not held in the Musina Police Station, are kept in the large SAPS vans throughout the day until the van is full, at which point they are all deported. Asylum seekers who claim to have lost their papers are supposed, according to local agreement, to be taken to the Musina Legal Advice Office (MLAO) where their claim is assessed, but not verified. Basically claimants must convince the paralegal or lawyer that they are legitimate asylum seekers with lost documents. If they can do this, they are then taken to the Musina Police holding cells, where the DHA can verify their status.

The numbers of Zimbabweans deported daily varied from between 50 and 150 depending on the source. Those who are not run through the formal channels are being denied the right to sign a deportation form that allows the opportunity to contest arrest; and the right to be treated with dignity. This information is based on information given by several witnesses, returned deportees and corroborated by members of civil society in Musina. This included a Pastor from a local Church who runs three shelters for men, women and children in Musina and Beitbridge. He was arrested for not being in possession of his passport-which was valid. He tried to tell the soldiers this, but they did not listen and deported him with the others arrested. He was taken to International Organisation for Migration (IOM) across the border and, after refusing the transport to

his home, because he lives in Musina, he crossed back into South Africa and resumed life as a legal temporary resident and Pastor.

There are monitors and safety measures in place to try and legally protect the rights of detainees in Musina, but they are allowed to monitor only for a limited time each day. The Musina detention centre was shut down due its poor conditions and now suspected *illegal* immigrants awaiting deportation are temporarily being kept in Musina Police cells. These cells are very overcrowded and monitors from the Steering Committee have confirmed witnessing cells designed to hold 8 women, with 17 women inside; another two designed to hold 12 men with 27 and 55 men inside each respectively. IRIN News reported having witnessed 102 men in two cells<sup>61</sup>.

The monitors from the steering committee keep a look out for children who may have not been picked up by the policeman or soldier making the arrest. Arrested children are supposed to be taken to a shelter and not detained. Our research indicated that the arrest, detention and deportation, coupled with physical abuse, of children in the Musina/Beitbridge area occurs regularly.

#### **i. Children in detention**

Section 138 of the Children's Act prohibits the detention of unaccompanied foreign minors without a court order. As advanced by the International Detention Coalition, children ought to be considered foremost as children and not as migrants of any type.<sup>62</sup> The Children's Act decrees that any foreign child in need of care must be placed in government-sponsored shelters, and provided with the support and assistance of a social worker. The Constitution dictates that unaccompanied minors, both South African and foreign, are entitled to government protection, including children who have entered the country through irregular channels. A Children's Court inquiry must also be conducted to investigate the child's condition, regardless of the child's legal status and lack of documentation. Unaccompanied foreign minors are further entitled access to education and assistance by a social worker in acquiring legal documentation. Access to assistance is of paramount importance, as South African law prohibits foreign minors from applying for documentation without the support of a social worker.

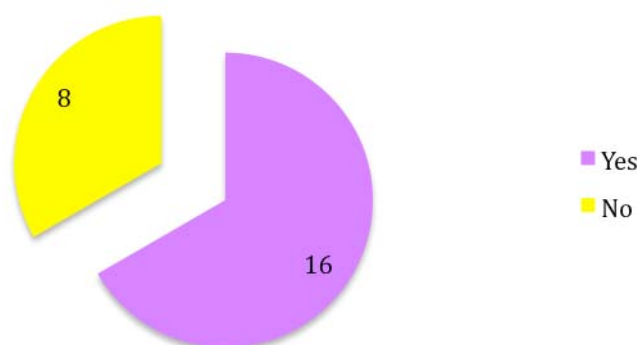
**Our research shows that only two out of forty one who were detained inside Lindela witnessed the detention of children. This compared to 16 out of 24 for those deported and detained in Limpopo who witnessed children in detention. Of the children we interviewed who had been arrested and deported, all took place in Limpopo Province; more specifically Beitbridge. In the short time we spent in Limpopo, we were able to interview eight unaccompanied minors who had been deported up to 4 times despite not yet turning 18 years old. All the children reported being beaten before being deported and some still had the wounds and scars to show for it.**

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<sup>61</sup>IRIN News. "South Africa: Migrants face unlawful arrests and hasty deportations." IRIN. 14 Feb 2012. <http://www.irinnews.org/Report/94865/SOUTH-AFRICA-Migrants-face-unlawful-arrests-and-hasty-deportations>

<sup>62</sup>LHR. "Global Report and Campaign to End Immigration Detention of Children to Launched at UN Human Rights Council." 21 March 2012. <http://www.lhr.org.za/news/2012/global-report-and-campaign-end-immigration-detention-children-be-launched-un-human-rights->. See full IDC report at [www.idcoalition.org/ccap](http://www.idcoalition.org/ccap).

## Limpopo



Graph 8 demonstrates how 66% of respondents indicated being detained with children in Limpopo.

According to a member of one of the inter agency committees in Musina that deals with children, there has recently been a decision to clamp down and reduce the number of children slipping through the cracks. She confirmed that Zimbabweans who are arrested in Limpopo are not detained for long, if at all and so there is little chance for a monitor to see and report the detention of Zimbabwean children. This push has resulted in more monitoring of detention cells in Musina; but it does not provide for or address the need for monitors or oversight of the minors living on the streets. The research team witnessed unaccompanied minors sitting by a fire on the roadside, selling food or working other 'piece' jobs.

### CHILDREN DEPORTED TO ZIMBABWE STATISTICS 2012<sup>63</sup>

MONTH	MALE	FEMALE	TOTAL
JANUARY	70	30	100
FEBRUARY	27	14	41
MARCH	43	29	72
APRIL	36	6	42
1 MAY TO 11 MAY	14	1	15
TOTAL	190	80	270

#### ii. Violence and Brutality

In Limpopo we received several qualitative reports that arrests made along the border by the SANDF frequently involve violence.

#### Box 7# Caught crossing border illegally. Severely beaten before deported

In early March 2012, Sibongile Baloyi, an Ndebele speaking woman living in Diep Sloot, Johannesburg, received a jarring phone call from her husband Samuel\*(not his real name). Samuel informed her that he and seven others had been arrested by immigration authorities while attempting to cross the border from Zimbabwe into South Africa the previous day. After his arrest, Samuel was allegedly taken to a police station in a small town in Limpopo province. He contacted Sibongile three days later to tell her that he had been transferred to another police station and that he was on his way to Beitbridge to be deported. Sibongile learned that the police had been beating

<sup>63</sup>Report on Cross Border Coordination Meeting (meeting of civil society organizations). Pp 6-7.

her husband and his fellow prisoners. The beatings were so brutal that one of the prisoners had lost consciousness.

He was arrested as a border jumper when returning from a trip to Zimbabwe. When they arrived at Bietbridge, there were no officers to sign for them so they could not be deported. His wife lost all contact with him after this and was forced to go to Lindela Detention Centre on the outskirts of Johannesburg to learn of his ultimate fate. After questioning the police for some time, she was told that her husband had never been transferred to Lindela and that he was likely still at the police station.

Sibongile spoke to family in Zimbabwe and was told that her husband had still not arrived home. Throughout this trying period, she had absolutely no contact with Samuel as his cell phone had been confiscated when he was arrested and none of the numbers that he had previously used to contact her were working. Sibongile knew that her husband would have contacted her had he been freed. She was extremely concerned about the torture that her husband may be subjected to in prison. Another week later, Samuel returned to Bulawayo, with severe injuries, this being over two weeks after his initial arrest.

*The other man caught with him was so severely beaten he did not survive.*

### **iii. Refugee Reception Centre in Musina**

Similar to other reception centres around the country, people sleep outside the Refugee Centre in the hope of getting served the next morning. The operational forum has shelters available, but most interviewed outside the centre reported that people had been robbed at these shelters and they felt safer sleeping outside the reception centre as a collective.

A Paralegal who works on the ground for the Musina Legal Advice Office, confirmed reports we had heard outside the Musina Reception Centre; that asylum seekers who came from overseas, (ex. Pakistan, Bangladesh, China etc) are being asked to produce their passports or explain how they made it so far without passports. If they can not produce a passport, they will not be granted asylum. It is neither procedure nor common practice to request that the asylum seeker produce their passport in order to apply for asylum. Unfortunately we were not able to quantify this, as this was a qualitative question asked after it had been raised by other interviewees.

### **iv. Xenophobia in Musina/Beitbridge**

The Musina-Beitbridge area is not a very large metropolitan area, and proportionally the number of foreign nationals in the towns is high. There are frequent and targeted raids of Zimbabweans and other foreign nationals which is fostering Afrophobic tensions. In Musina the word “Zimbabwean” is used by South Africans with a negative connotation; someone who does something socially unacceptable—stealing, smelling or begging is referred to negatively as being “Zimbabwean”. The severity of the anti foreigner sentiment is shown in the formation of their anti-crime coalition that is responsible for conducting, among other things, immigration raids and arrests.

The “Musina Youth Against Crime” and “Community Policing Forum” has been formed to combat crime. The *South African Police Service Page for Musina*, a website which provides updates to the community from the Musina Police, described a recent raid



conducted by the forum as follows: “In December, there was a sweep right through the town. Starting at Beitbridge, the youngsters managed to net a large number of illegals, who, it has been shown, are responsible for a high proportion of the petty and some of the serious crime, here. Of the arrests by just one officer for various crimes last weekend, 24 were Zimbabwean, 1 Pakistani and 4 South African.”<sup>64</sup>

Statements such as the one above show the negative influence the SAPS can have on a community. There is no proof that foreign nationals commit more crimes than locals and to suggest that to untrained, sometimes armed youths is fostering illegitimate tension and aggression towards foreigners.

Limpopo shows progress in the transparency and collaboration that allows civil society to assist government with the processing of foreigners in the area, but it seems that the treatment of Zimbabweans is not part of this transparency and that they are being kept out of the official documenting systems, by being deported from vans and not police stations. This highlights the important fact that policy alone is not enough, accountability is vital if the policy is to be effectively implemented.

### **Cost of Deportation—Financial implications for the Taxpayer**

It is very difficult to access information regarding the amount of money spent by the DHA on the deportation process. The cost of maintaining the detention centres, feeding the detainees, providing medical care (this would add cost if medical care was provided), emergency medical care and the transport costs of bringing so called *illegal* migrants to Lindela and then transporting them home, all adds up to a very expensive process. In 2009 the Forced Migration Studies Programme at the University of the Witwatersrand (now the African Centre for Migration & Society) undertook an analysis of the costs of policing immigration on the SAPS in Gauteng Province. Their finding was that it cost the province some R362,5 million annually to detect, detain and transfer migrants to Lindela.<sup>65</sup> We also know that immigration control cost the DHA R1,8 Billion in 2009/10 (a figure that admittedly includes more than merely the deportation of foreign migrants).<sup>66</sup>

Every time a detainee becomes ill, is not treated adequately inside Lindela, and is then rushed to Leratong hospital in a critical condition for emergency treatment, (see medical concerns in *Detention*) the financial burden of their treatment is placed upon the taxpayer. If they were provided with adequate medical care, treatment and screening to prevent the spread of communicable disease, there would be less likelihood of hospital fees and less chance of spreading communicable diseases.

The court cases that the DHA has lost and had to pay the costs and even punitive damages end up costing the department and therefore the taxpayer unnecessarily. An example of this occurred in January 2010 when South Gauteng High Court Judge

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<sup>64</sup> Musina SAPS via South African Police Service Page for Musina.  
[http://www.dumelangmusina.co.za/?page\\_id=14348](http://www.dumelangmusina.co.za/?page_id=14348)

<sup>65</sup> Amit, R. (2010). Lost in the Vortex: Irregularities in the Detention and Deportation of Non-Nationals in South Africa. *FMSP Research Report*. Johannesburg: African Centre for Migration & Society. 1-76.

<sup>66</sup> Gould, C., L. Landau, and C. Gould. “Counting the Cost of Implementing South Africa’s Migration Policy.” Institute for Security Studies. 9 Dec 2011. [http://www.iss.co.za/iss\\_today.php?ID=1403](http://www.iss.co.za/iss_today.php?ID=1403)

Meyer ordered the immediate release of the applicant. The first and second respondents were ordered to pay the applicant's costs of this application.<sup>67</sup>

In 2009 a Congolese asylum seeker was deported 2 days before his court case was due to be heard.<sup>68</sup> His was the 14th case brought by LHR, in the previous 3 months leading up to that, challenging the unlawful arrest and detention of asylum seekers. In 11 of these cases, the court ordered the release of the applicant from Lindela Holding Facility. In the remaining 2 cases, Home Affairs agreed to release the detained person on the morning of the court hearing, after the detainees had been subjected to months of unlawful detention.<sup>69</sup>

While this Report has not collected statistics on the direct and indirect financial costs of Deportation, the indications are that a more effective documentation system may be considerably less expensive in addition to being more in keeping with South Africa's moral and leadership position on the continent. The financial cost of deportation is an area which requires further research.

## **Conclusion**

### **“I would come back because I have people reliant on me, mouths to feed”**

The primary intention of this report was to expose the discrepancies between the legal requirements around deportation and the anomalies in its practical application. It is clear from the findings, confirming those of many other reports in this area, that South Africa is falling short of its lofty legal standards in the manner that the various government agencies are dealing with this huge challenge. The overall picture of abuse, corruption, lack of capacity and the neglect of the rule of law in this area is a cause for great concern.

Most asylum seekers and immigrants come to South Africa because of the serious political and economic vulnerabilities in their country. The policy of using deportation to deal with this problem has not proved effective, and is unlikely to stem the flow of immigrants into the country in any definitive way. It is clear that this is a major challenge for any government to face, and the challenges of contemporary South Africa in dealing with the historic injustices of this society are clear. However it is also clear that the current policies of the state towards asylum seekers and immigrants are in danger of fuelling xenophobic sentiments within the society, thus further aggravating an already immense challenge,

In this context Zimbabwe represents a particular challenge, with the continuing political uncertainty in the country providing a persistent push for people to leave the country. It is still hoped that the broad implementation of the GPA will provide the basis for moving

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<sup>67</sup> See: *Silva v Minister of Safety and Security*. 1997 (4) SA 657 (W), at p 661 – H.

<http://www.saflii.org/za/cases/ZAGPJHC/2010/59.html>)

<sup>68</sup> PoliticsWeb via LRC. “How much are home affairs’ legal battles costing?” 12 October 2010. <http://www.lrc.org.za/component/content/article/1280-2010-10-12-how-much-are-home-affairs-legal-battles-costing-politicsweb>

<sup>69</sup> PoliticsWeb via LRC. “How much are home affairs’ legal battles costing?” 12 October 2010. <http://www.lrc.org.za/component/content/article/1280-2010-10-12-how-much-are-home-affairs-legal-battles-costing-politicsweb>

towards a generally acceptable election in the near future and that this in turn will begin a greater stabilisation of politics and livelihoods in the country. The challenge for South Africa and SADC remains to ensure that the agreement which they facilitated and have continued to shepherd is put into practice in a way that ensures that the right of Zimbabwean citizens to elect their leaders under conditions not dominated by violence and coercion is guaranteed.

**“I have to come back because here I can give my children life.”**

**“There is no reason to stay in Mozambique whilst my family is in RSA.”**

**Photo 4: ZDP poster outside the Musina Home Affairs office.**



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