

## Summary and Recommendations



# NEIGHBORS IN NEED

Photographs by Dirk-Jan Visser





Women queue for water at a natural water spring in the overpopulated area of Tafara Mabvuku outside Harare. Zimbabwe's water and sanitation infrastructure has collapsed as a result of the economic crisis.

Since 2005 an estimated one to 1.5 million Zimbabweans have fled across the border into South Africa, the region's economic power. They have run from persecution, for the majority in the form of targeted, mass, forced evictions destroying homes and livelihoods, and from economic destitution as the Zimbabwean economy collapses. Recent refugees fleeing the brutal crackdown on political opponents of President Robert Mugabe in the aftermath of the March 2008 Zimbabwean elections are the latest wave.

In South Africa they face a vulnerable and uncertain situation. Without documents, they have no right to work and have limited rights and access to social assistance such as health care and housing. Liable to arrest and deportation at any time, they live in permanent insecurity. Due to South Africa's dysfunctional asylum system and unlawful deportation practices, many of the tens of thousands that have applied for asylum are at constant risk of being *refouled*—unlawfully returned.

These are not voluntary economic migrants, even if for many economic destitution is one of multiple reasons for crossing into South Africa. Their presence in South Africa underlines a

failure of foreign policy—the failure to use South Africa's leverage effectively to address the brutal human rights violations and failed economic policies in Zimbabwe causing their flight. Their undocumented status and vulnerability in South Africa, and the increasing public resentment against them, represents a failure of domestic policy—the failure to develop and implement a legal, comprehensive, and workable policy to address the reality of the existence of Zimbabweans in South Africa.

The choice the South African government faces is difficult and stark. Either it continues to breach its fundamental obligations under international law and ignores the reality of







the hundreds of thousands of undocumented Zimbabweans on its territory. To do this means allowing many to be mistreated by police, abused and exploited by employers, while many others are removed haphazardly, arbitrarily, expensively, and ineffectively to Zimbabwe (most returning back over the border within days or weeks).

Or the government can choose to regularize their stay.

This report calls on the South African authorities to adopt a broad-based policy aimed at regularizing the presence of Zimbabweans in South Africa. This should allow Zimbabweans to enter South Africa legally, should regularize their status once in country, should end their deportation, and

In the South African border town Musina, a group that describes itself as an “underground pro-democracy movement” has put up a roadside billboard with a message for arriving immigrants.

should give them the right to work in South Africa on a temporary and reviewable basis. Under the 2002 Immigration Act, the minister of home affairs could establish a new temporary permit scheme called “temporary immigration exemption status for Zimbabweans” (TIES).





The fact of public resentment against foreigners should not deter the South African government from fulfilling its legal obligations and doing what is right. This report outlines eight arguments why regularizing the status of Zimbabweans makes both legal and practical sense:

- Regularization would allow South Africa to meet its fundamental international legal obligation not to unlawfully deport Zimbabwean asylum seekers.
- Regularization would unburden the asylum system of unnecessary claims.



A grave in the extension of the Warrenpark Hills cemetery in Harare; the old cemetery is full. Zimbabwe's economic collapse, AIDS crisis and the lack of access to health care has pushed life expectancy below 37 years.

- Regularization would protect Zimbabweans during entry and stay in South Africa, including against xenophobic violence at the hands of South African citizens.
- Regularization would offset the cost to the South African taxpayer of ineffective deportation and wasteful use of police resources.

- Regularization would provide data on hundreds of thousands of currently undocumented Zimbabweans.
- Regularization would help the authorities to enforce employers' minimum-wage obligations and create a level playing field on which South African nationals could compete fairly for jobs.
- Regularization leading to the right to work would address Zimbabweans' humanitarian needs in South Africa, which would reduce the pressure on South African social assistance programs.
- Regularization leading to the right to work would help Zimbabweans support desperate families remaining in Zimbabwe, thereby possibly reducing the number of Zimbabweans fleeing their country for South Africa.

The fact of the matter, as this report shows, is that repression in Zimbabwe has a direct impact on South Africa. As resentment among the urban poor against foreigners has grown—with Zimbabweans becoming a prime target of xenophobic violence which has killed dozens, injured hundreds and displaced tens of thousands of foreigners—this includes impact on South African social harmony, public safety, and the rule of law.

Accordingly, the South African government, working closely with the Southern African Development Community (SADC), the African Union (AU), and the United Nations (UN), also has every reason to urgently identify a fundamentally more effective political strategy than has been seen over recent months to address respect for human rights and the rule of law in Zimbabwe itself. This is not an alternative to regularizing the status of Zimbabweans in South Africa—the legacy of repression in Zimbabwe, including Zimbabweans fleeing to South Africa, will take time to overcome, even if measures to address it are implemented immediately and effectively.





Young Zimbabwean men enter South Africa near the Limpopo river, on the Zimbabwe-South Africa border. They join hundreds of thousands of Zimbabweans who have entered South Africa in a similar way.





## WHY ARE HUNDREDS OF THOUSANDS OF ZIMBABWEANS CROSSING TO SOUTH AFRICA?

Testimonies from Zimbabweans in South Africa presented in this report explain in personal and individual terms how the Zimbabwean government's political actions and the country's decline have led to their economic destitution and desperation, and have ultimately forced them to leave the country to survive the political and economic crisis.

Political repression has included the direct, violent targeting of opposition supporters, policies resulting in the dislocation of hundreds of thousands of citizens, and an assault on the informal trading sector. These policies have resulted in severe social and economic disruption for massive numbers of people.

Until the 1990s, Zimbabwe was one of the wealthiest countries in sub-Saharan Africa. With the collapse of much of the formal economy after 2000, the informal sector expanded and by 2005 employed three-to-four times the number of people employed in the formal sector. Meanwhile, in the late 1990s, the Movement for Democratic Change (MDC) began to emerge as a nascent political alternative to the dictatorial Zimbabwe African National Union-Patriotic Front (ZANU-PF) regime led by Robert Mugabe, claiming support in various parts of the country, including many high-density suburbs.

Always authoritarian when facing political opposition, the Zimbabwean government became even more repressive following the emergence of the MDC. During election periods (2000, 2002, 2005, and 2008), large numbers of political activists have been assaulted and displaced.

In 2005, in a forcible eviction action called *Operation Murambatsvina* (which translates as "Operation Clear the Filth"), the Zimbabwean government destroyed the homes and livelihoods of about 700,000 people (or 6 percent of the Zimbabwean population) living in the high-density suburbs of Zimbabwe's cities. Because the evictions caused massive economic destitution and had a huge impact on the broader Zimbabwean economy, the evictions triggered the escalation of the contemporary influx of Zimbabweans to South Africa.

Zimbabwe's high-density suburbs were areas of significant support for the MDC. As this and other reports describe, the evictions were almost certainly carried out for political reasons.

The eviction campaign destroyed tens of thousands of houses and thousands of informal business structures. A further 1.7 million people were indirectly affected. A strictly-enforced government ban on informal trading after the evictions



resulted in a severe crisis for individuals engaged in small enterprises and vending.

Though it is not known how many victims of *Operation Murambatsvina* have crossed the border, it is possible that tens of thousands of breadwinners from targeted families rendered destitute by the government's action have come to South Africa to help their families survive. Interviews





The Methodist Church in downtown Johannesburg, South Africa, run by Bishop Paul Verryn, offers shelter every night to approximately 1300 asylum seekers and undocumented foreign nationals, most of whom are from Zimbabwe.

conducted by Human Rights Watch for this report identified dozens of such people.

The brutal crackdown that followed the March 2008 parliamentary and disputed presidential elections to prevent opposition supporters from voting the same way in the presidential runoffs has caused further displacement, with thousands of MDC activists and supporters fleeing from rural areas, some of them across the border to South Africa. These most recent asylum seekers arriving in South Africa are fleeing persecution in the form of torture, beatings, arbitrary arrest, and detention.

Like those targeted for their political activities, people targeted during the 2005 evictions have a strong claim for refugee status under international refugee law. And Zimbabweans fleeing generalized destitution caused by Mugabe's ruinous policies cannot be regarded as voluntary migrants merely seeking financial advantage; the gravity of the current economic crisis suggests that almost all are leaving involuntarily.

This report presents the testimony of those evicted and those fleeing generalized economic deprivation. Without fail these people told Human Rights Watch that they were compelled to leave Zimbabwe and looked to South Africa as their last option for survival.

In 2008 Zimbabwe has one of the world's "fastest shrinking economies" and, by far, the world's highest rate of inflation, estimated by the Zimbabwean state statistical office at 100,000 percent. The real gross domestic product has shrunk for nine consecutive years, and the engine of Zimbabwe's economy, agriculture, has contracted sharply. The proportion of the population living below the poverty line increased from 25 percent in 1990 to 83 percent in 2007. Throughout 2007 and in 2008 unemployment has been estimated at 80 percent.

The collapse in food production has caused a serious food deficit, affecting 4.1 million Zimbabweans (more than one-third of the population) in early 2008. Until June 4, 2008, food assistance programs by international agencies such as the World Food Program were expected to meet all of the assessed needs in rural areas, though only one-third of the one million urban Zimbabweans estimated to be food insecure were receiving formal food assistance. On June 4, 2008, the Zimbabwean authorities announced a complete halt to the work of all aid agencies in Zimbabwe, including those distributing emergency food rations, alleging that agencies had been using their programs to campaign for the opposition party. This followed President Mugabe's announcement on May 29, 2008, that Zimbabwe had had to import 600,000 tons of maize to ease food shortages, and warnings that in the coming 12 months Zimbabwe's cereal production will cover only 28 per cent of the populations' needs.



The health sector in general has been plagued with difficulties providing basic services. Shortages of key drugs are frequent and massive emigration of medical personnel has occurred. Currently, 50 percent of health care positions, including 88





A boy shops at a supermarket in Bulawayo, Zimbabwe's second largest city. Because of Zimbabwe's economic collapse, shops are empty.



percent of primary health care nurse positions, are vacant. Due to regular increases in fees, the cost of health care has increased. A dramatic drop in a broad range of health indicators reflects reduced access to health care. Maternal mortality rose from 283 per 100,000 live births in 1994, to 1,100 per 100,000 live births in 2005. Women's life

expectancy has fallen from 56 years in 1978, to 34 years in 2006.

As of December 2007 an estimated 1.7 million out of 13 million Zimbabweans were living with HIV, sharply increasing the burden on the health care system. Over 70 percent of





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admissions to medical wards in Zimbabwe's major hospitals are patients with AIDS-related diseases. About 350,000 of the 1.7 million people living with HIV need anti-retroviral treatment (ART), and 600,000 need care and support. While medical care provided to People Living with HIV/AIDS (PLWHA) has increased in the past few years, it still falls far short of the

needs. Only about 90,000 Zimbabweans needing ART are currently being treated with anti-retroviral medicines and reports have indicated that some Zimbabweans are fleeing to neighboring countries because of their inability to access ART.

The 2007 Global Tuberculosis Control Report from the World Health Organization ranks Zimbabwe among 22 countries with the highest tuberculosis (TB) burden in the world. Zimbabwe has six times more TB cases than it did 20 years ago, and an estimated two-thirds of Zimbabweans with TB are also infected with HIV. Cholera outbreaks have repeatedly occurred in recent years, as the country's water and sanitation systems have broken down. In December 2007 459 cases of cholera were reported in two high-density suburbs of Harare. In Bulawayo, 11 people died from cholera and more than 300 were hospitalized in 2007. Electric power outages and shortages of chemicals to treat water have interrupted water supplies and compelled individuals to drink untreated water contaminated with fecal matter. At least 6 million people in Zimbabwe—about half the population—do not have access to clean water or sanitation.

The South African government and international actors' recognition of the involuntary nature of Zimbabweans' displacement is a necessary step to identifying the most effective response to their presence in South Africa.

## SOUTH AFRICA'S RESPONSE

The influx of more than a million destitute and hungry Zimbabweans has placed an enormous burden on South Africa. This has resulted in some excessive reactions by the authorities, such as the police raid in January 2008 on the Central Methodist Church in Johannesburg, which shelters over 1,000 homeless Zimbabweans. It has also led to unlawful practices such as rapid deportations by the South African Police Services in the border region.

However, generally the response of the South African authorities has been to turn a blind eye to the presence of Zimbabweans, remaining silent on why they have come to South Africa in such high numbers and on the scale of the human rights violations in Zimbabwe that has driven them. Even during the mass evictions of 2005 affecting 2.4 million people, and the post-March 2008 election violence, the South African government has not set out a clear public policy with its assessment of the reasons for the influx or with a frank admission of the challenges it faces in responding.

Nor has the government responded in a concerted way to the significant and almost certainly increasing humanitarian needs of particularly vulnerable Zimbabweans in South Africa, such as unaccompanied children and the very sick (including PLWHA).

Instead it has adopted a business-as-usual approach, treating Zimbabweans like any other foreign nationals by requiring them to go through standard immigration procedures, or to apply for asylum in a system incapable of dealing with the number of applications. As there are only limited possibilities for obtaining work permits in South Africa, many of the almost 20,000 Zimbabweans who make asylum claims every year do so because they have no other option for legally working and legally remaining in South Africa. Consequently, the asylum system is burdened with potentially thousands of claims that could be better processed under an alternative immigration policy.

The government's policy of deporting some of the hundreds of thousands of undocumented Zimbabweans does not reduce the number of Zimbabweans in South Africa. It does not deter illegal entry and is highly costly to the South African taxpayer, a fact that has increasingly been recognized at the highest levels of government. Despite this recognition, an estimated 200,000 Zimbabweans were deported in 2007. Most returned to South Africa within days or weeks.

Echoing the media's often emotive language used to describe Zimbabweans in South Africa— "a human tsunami," "illegal immigrants," or "border jumpers"—the government has suggested that Zimbabweans in South Africa are all voluntary economic migrants. President Thabo Mbeki has referred to them as an "inflow of illegal people." Other South African



officials have made various statements including "there is no war in Zimbabwe," implying that Zimbabweans cannot possibly have valid asylum claims, that they voluntarily leave their country, and that Zimbabweans "are economic migrants" or "not real refugees."

This business-as-usual approach, which has continued despite the April 2008 campaign of violence, coupled with the



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## ASYLUM SEEKERS (PERMITS)

### NOTE:

FOR ZIMBABWEANS WE ARE FULLY BOOKED BUT  
FOR OTHER NATIONALITIES WE ARE OPEN FOR  
BOOKINGS

tendency to describe all Zimbabweans in identical terms (as voluntary economic migrants), allows the government to ignore three awkward interrelated questions. What are South Africa's legal obligations towards Zimbabweans in South Africa? What should South Africa do to meaningfully respond to their presence? How can the South African government more effectively address the human rights violations and repression causing their flight?

A note on the front door of the Refugee Ministries Centre, an NGO in Johannesburg, South Africa, assisting asylum seekers with problems on their legal status. Between April 2006 and March 2007 almost 20,000 Zimbabweans claimed asylum in South Africa, making up about one-third of all asylum applications in the country.

## **SOUTH AFRICA'S LEGAL OBLIGATIONS TO RECOGNIZE AND NOT DEPORT ZIMBABWEAN REFUGEES FROM SOUTH AFRICA**

South Africa has specific legal obligations not to deport Zimbabweans who are lawfully present: those with temporary residence permits (visitors and workers, including farm workers, in the tens of thousands) and those who have claimed asylum and who await a determination of their status or who have been recognized as refugees (44,423 Zimbabweans claimed asylum in South Africa between 2005 and 2007; within the approximately 5,000 new asylum applications processed each year, the government recognised 241 Zimbabweans as refugees between 2004 and 2006).

Under international refugee law, those targeted under *Operation Murambatsvina* have strong claims for refugee status, but until now the South African asylum system has not considered them to be protected under the 1951 Refugee Convention.

To successfully claim refugee status under the 1951 Refugee Convention asylum seekers need to show that they cannot be sent back to their country because they have a well-founded fear of being persecuted on account of their “race, religion, nationality, membership of a particular social group or political opinion.” Persecution is generally regarded as a “serious harm” that the government is responsible for causing or for being unwilling or unable to prevent.

Human Rights Watch believes that Zimbabweans who were targeted by the forced evictions are refugees. This is because their rights to shelter, work, food, and in many cases education and health care were and continue to be violated to such an extent that they would suffer serious harm if returned to Zimbabwe, and because the Zimbabwean government, responsible for the original rights violations, continues to fail to protect them against the effects of those rights violations.

Zimbabweans targeted by the evictions fear being persecuted because the Zimbabwean government sees them as a political threat. This is because the government views poor Zimbabweans living in high-density suburbs as holding “political opinions” in opposition to it and because it views those suburbs as fertile political ground for fomenting general political dissent.

This report argues that the South African government should ensure that the asylum system recognizes that people targeted by the mass forced evictions have valid asylum claims and that its refugee status determination staff is adequately trained to consider such claims in an efficient and legally coherent way.

Ten years after the 1998 Refugees Act was enacted, South Africa's asylum system and deportation practice continue to be dysfunctional. Asylum procedures create significant obstacles for Zimbabweans at every stage of the application process, particularly in terms of gaining initial access to the system.

These obstacles often violate the most fundamental provisions of South African refugee law. Deportation practice, including deportation focusing specifically on Zimbabweans in the border areas, is often unlawful. There have been documented violations of the most basic principle of international refugee law, the principle of *non-refoulement*, to which South Africa is bound as a party to the 1951 Refugee Convention, and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. A person's right not to be *refouled* is the right not to be forcibly returned to a place where she would face a threat of persecution or a real risk of torture or cruel, inhuman or degrading treatment or punishment.

The dysfunctional nature of the asylum system and of current deportation practices in South Africa means that there is a generalized high risk of Zimbabwean asylum seekers being deported. Under the principle of *non-refoulement* it is unlawful to deport an asylum seeker because the claim is yet to be processed.

Key to improving the system and thereby to prevent *refoulement* is resolving the ongoing challenge of a large backlog of asylum cases. In September 2007 the South African Department of Home Affairs (DHA) confirmed an asylum backlog of 76,400 cases filed before August 1, 2005. Progress made in reducing this old backlog risks being rendered meaningless by the number of new applications. With a total of 105,000 cases lodged on or after August 1, 2005, still not dealt with by the end of 2007, a new backlog is in the making. Until the asylum system is able to find a way of dealing more efficiently with its caseload, the obstacles faced by Zimbabwean asylum seekers and the related risk of *refoulement* will continue.







Over 1000 refugees from Zimbabwe queue every Thursday and Friday in South Africa at Pretoria's Marabastad Refugee Reception Office to apply for asylum. Due to the dysfunctional nature of South Africa's asylum system, many find it impossible to gain access to the office and those who do face repeated problems in securing documentation proving their status as asylum seekers. Documentation is essential to protect asylum seekers from arrest and deportation and gives them the right to work and study in South Africa.

## **SOUTH AFRICA'S LEGAL OBLIGATIONS TO ADDRESS ASSISTANCE NEEDS OF ZIMBABWEANS IN SOUTH AFRICA**

The South African government not only faces the presence of large numbers of Zimbabweans on its territory, but also a Zimbabwean population with serious assistance needs. This is not a problem of South Africa's making. Meeting the needs of Zimbabweans in South Africa is a global responsibility and donor countries should support South Africa to enable it to meet in particular the humanitarian needs of the most vulnerable—the sick, including PLWHA, children, and the elderly.

South African law clearly provides that everyone in South Africa, regardless of nationality or immigration status, enjoys a number of rights which address such needs: access to free emergency health care, including to ART for people infected with HIV, to other forms of fee-based health care, and to basic education.

Recognized refugees have a number of additional rights clearly spelled out in South African law and developed by the courts that ought to guarantee them access to certain types of social assistance. South African courts have yet to unequivocally establish the rights of asylum seekers to certain forms of assistance such as housing, food, water, and social security, but asylum seekers do have the right to study and work. Undocumented Zimbabweans, however, do not have the right to work or other rights to social assistance, except access to emergency and basic health care.

Refugees and asylum seekers continue to face serious obstacles in gaining access to many types of assistance to which they are legally entitled, including access to health care, such as ART. Asylum seekers are often rejected by prospective employers who appear not to be aware of their right to work. Undocumented Zimbabweans are unable to access medical treatment and face various other assistance needs. Nearly all Zimbabweans, documented or undocumented, have desperate accommodation needs. In 2007 many South African charities reported an increase in the number of highly vulnerable Zimbabweans coming to their doors.

The May 2008 violence against tens of thousands of Zimbabweans and other foreign nationals, which follows many similar isolated incidents throughout 2007 and early 2008, has drawn dramatic attention to their vulnerability and needs.

## **THE NEED FOR A BROAD-BASED POLICY FOR ALL ZIMBABWEANS IN SOUTH AFRICA**

The crisis in Zimbabwe, including the ongoing government-orchestrated violence in 2008, means that hundreds of thousands of Zimbabweans will remain in South Africa for the foreseeable future. Many more will join them. With the vast majority having no hope of regularizing their stay, they will continue to enter and remain in the country without documentation in the hope of finding work to help themselves and their families in Zimbabwe survive.

Human Rights Watch believes that a broad-based policy aimed at regularizing the presence of Zimbabweans in South Africa is the most appropriate legal and practical way forward. The policy's components should include: a) allowing Zimbabweans to enter South Africa legally; b) regularizing their status once in country; c) ending the deportation of Zimbabweans; and, d) giving Zimbabweans the right to work in South Africa on a temporary and reviewable basis.

There are at least eight legal and practical arguments for such an approach:

First, regularization would allow South Africa to meet its fundamental international legal obligations. Despite recent initial steps to reform the asylum system, there is no practical prospect of South Africa's asylum and deportation systems improving in the short term. Therefore, Zimbabwean asylum seekers face the risk of being subjected to *refoulement*—forced return to persecution. These include possibly thousands of Zimbabweans who wish to claim asylum in light of the political violence in Zimbabwe in 2008 and people targeted by *Operation Murambatsvina*, if they claim asylum in the future. Because the current asylum and deportation systems currently fail to adequately identify and protect many Zimbabwean asylum seekers, the only way to end their unlawful deportation and to ensure that South Africa respects its obligations under international law is to end deportation of all Zimbabweans in South Africa.

Second, regularization would unburden the asylum system of unnecessary claims. Because many Zimbabweans access the asylum system as the only way to regularize their legal status and to obtain the right to work in South Africa, regularizing their status and giving them the right to work would help reduce the number of claims in the asylum system.

Third, regularization would protect Zimbabweans during entry and stay in South Africa, including against xenophobic violence at the hands of South African citizens. When crossing informally into South Africa, large numbers of Zimbabweans become victims of serious criminal offences, including murder



and rape, committed by violent Zimbabwean people smugglers. Once in South Africa, Zimbabweans' undocumented status exposes them to violence at the hands of South African citizens who almost certainly believe that their vulnerable victims won't report them to the police. Zimbabweans' undocumented status also exposes them to exploitation by employers and to harassment by the South African police. Helping Zimbabweans enter through formal border crossings would attenuate predatory practices at the border. Ensuring Zimbabweans are documented and can work would significantly reduce their vulnerability to xenophobic violence at the hands of criminals, to exploitation by employers, and to corrupt police practices.

Fourth, regularization would offset the cost to the South African taxpayer of ineffective deportation and wasteful use of police resources. The vast majority of undocumented Zimbabweans are not identified or deported, and those who are—up to 200,000 a year or more—return to South Africa within days or weeks.

Fifth, regularization would provide data on hundreds of thousands of currently undocumented Zimbabweans. The South African government would know how many people are in the country, who they are, and where they live and work. In the event of problems that may arise whilst they are covered by the status or when the status comes to an end, the government would be able to identify people it registers under the proposed scheme.

Sixth, regularization would help the authorities to enforce employers' minimum-wage obligations and create a level playing field, on which South African nationals could compete fairly for jobs. This is all the more important given that much of the xenophobic discourse reported in the South African press focuses on allegations that Zimbabweans "steal" South African citizens' jobs.

Seventh, regularization leading to the right to work would address Zimbabweans' humanitarian needs in South Africa, which would reduce the pressure on South African social assistance programs. Because of their undocumented status, Zimbabweans in South Africa are often unable to find or keep jobs, which increases their humanitarian needs. Granting Zimbabweans the right to work in South Africa would help them fend for themselves, which would in turn reduce the number of desperate Zimbabweans seeking help from South Africa's social assistance programs.

Finally, regularization leading to the right to work would help Zimbabweans support desperate families remaining in Zimbabwe, thereby possibly reducing the number of Zimbabweans fleeing their country for South Africa. The right to work would enable Zimbabweans to send desperately needed basic foodstuffs to their families in Zimbabwe. This, in

turn, might reduce the number of Zimbabweans, especially the most vulnerable—children, the elderly, PLWHA—coming to South Africa in search of work and food.

Given the large number of Zimbabweans believed to be in South Africa, the similar needs faced by all of them, and the operational challenges involved in any response, Human Rights Watch believes that the government should adopt the simplest, fairest, and most expedient approach. Human Rights Watch, therefore, urges the government to use its discretionary powers under existing immigration law to grant Zimbabweans in South Africa a limited number of the rights for a limited period of time and under specific terms and conditions. Under the 2002 Immigration Act, the minister of home affairs could establish a new temporary permit scheme called "temporary immigration exemption status for Zimbabweans" (TIES).

In practice the scheme would allow Zimbabweans to enter South Africa followed by regularization at registration centers for all new arrivals and for all Zimbabweans already in South Africa. On proving their nationality, Zimbabweans would receive a permit which would clearly state that the holder cannot be deported and has the right to work for a limited period of time. To ensure that South African citizens understand the need for such a temporary permit scheme, a government information campaign could make clear that hundreds of thousands of Zimbabweans are already working without work permits in South Africa and that officially granting them the right to work would help to regulate their access to the job market and help control wages.

## **SOUTH AFRICA'S ROLE IN ADDRESSING THE SITUATION, INCLUDING HUMAN RIGHTS VIOLATIONS, IN ZIMBABWE**

Over the past two years the deteriorating situation in Zimbabwe has brought regional concern to a sharper focus. In March 2007 SADC mandated President Thabo Mbeki to mediate talks between the opposition MDC and Robert Mugabe's ZANU-PF, with the objectives of securing agreement on constitutional reform ahead of the March 2008 elections and ending the economic crisis.

During its one year as mediator, the South African government repeatedly championed a "quiet diplomacy" approach, avoiding statements that could be construed as critical of President Mugabe, and leading to widespread criticism that it was not sufficiently assertive. The government failed, for example, to hold President Mugabe accountable to undertakings made during the talks. In line with SADC's deafening silence on human rights abuses committed in



Zimbabwe for the past eight years, the South African government also repeatedly failed to condemn the serious rights violations carried out by the Zimbabwean security forces.

The mediation initiative appears to have singularly failed to leverage change in President Mugabe and ZANU-PF's repressive practices. The fact of the violent crackdown that followed the parliamentary and presidential elections in March 2008 demonstrates the failure to send a clear message to President Mugabe that there would be consequences for failing to reach agreement with the MDC on how best to ensure free and fair elections.

As the ZANU-PF organized violence has intensified building up to the June 27, 2008 presidential runoff elections, South Africa's response has remained deeply inadequate. In contrast to other regional leaders, President Mbeki has refused to acknowledge the serious nature of the situation, for example, failing during a visit to Harare on May 9 to condemn or call for an end to the violence, even after he received a preliminary report on the violence from a group of South African former army generals he had appointed to investigate the situation.

Homeless and jobless, hundreds of Zimbabweans live and sleep near Pretoria's Refugee Reception Office, in South Africa, on disused land without any facilities.

These different positions have prevented SADC and the AU from taking concerted and decisive action to intervene in the crisis which has, in turn, emboldened the government of Zimbabwe to turn state institutions even more aggressively against Zimbabweans seeking democratic change and an end to the destruction of their country's economy.

The South African government must abandon its discredited "quiet diplomacy" approach towards Zimbabwe and must urgently play a central role within the AU and SADC to pressure the Zimbabwean authorities to end the current violence and their destruction of the democratic process.



# METHODOLOGY

This report is based on research conducted in South Africa between 13 October and 12 November 2007, and on research conducted in Zimbabwe between 11 and 19 February 2008.

In South Africa, in-depth interviews with 99 Zimbabweans (56 female and 43 male) were conducted by a Human Rights Watch researcher and by an independent South African legal consultant, students from the University of Cape Town, and staff working with a legal assistance NGO in Pretoria, all of whom worked closely with the researcher. Interviews were conducted in Cape Town, Johannesburg, and Pretoria, and in rural areas close to Cape Town and Pretoria. The locations were chosen because most Zimbabweans in South Africa are believed to live in or near to one of South Africa's cities.

Some interviewees were identified one or two days in advance by South African and Zimbabwean civil society groups providing assistance or legal services to Zimbabweans. Others were identified on the day of the interviews by Human Rights Watch. Interviewees were identified and selected by explaining to groups of Zimbabweans that Human Rights Watch wanted to speak with people who had faced difficulties in Zimbabwe relating to food, shelter, employment, health care, and education, and to people who had been affected by *Operation Murambatsvina* (the 2005 evictions). Interviews were conducted with a wide range of profiles including single men and single women (with and without extended families in Zimbabwe), couples with or without children, married men and women who had left their partners and/or children in Zimbabwe, and female-headed households with and without their children in South Africa. Interviews were conducted individually in confidential settings, in English, and lasted an average of 45 minutes.

Human Rights Watch conducted a further 28 interviews with government officials, members of the Refugee Appeals Board, UNHCR, South African lawyers, local and international NGOs, and academics.

In Zimbabwe, two Human Rights Watch researchers conducted 26 interviews (18 female and 8 male) with Zimbabweans in Harare and Bulawayo. Interviewees were identified with the assistance of a number of local NGOs providing assistance to people displaced by *Operation Murambatsvina* and to others in need of social assistance. Interviews were conducted individually in confidential settings and lasted an average of 45 minutes. Almost all were conducted in English, though a small number were conducted in English and Shona using local Shona speakers as interpreters.

In Harare and Bulawayo, Human Rights Watch conducted a further 20 interviews with UN staff and with staff from local and international NGOs.

Human Rights Watch did not publish in the report the names of Zimbabweans who were interviewed because of a fear that the disclosure of their identity might expose them to adverse consequences.

# RECOMMENDATIONS

## TO THE GOVERNMENT OF SOUTH AFRICA

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### *IN RELATION TO ALL ZIMBABWEANS IN SOUTH AFRICA*

- Use section 31(2)(b) of the 2002 Immigration Act to introduce a new “temporary immigration exemption status for Zimbabweans” (TIES) which allows Zimbabweans to legally enter South Africa, regularizes their status, ends deportations of Zimbabweans, and grants them the right to work in South Africa.
- Cooperate closely with the United Nations High Commissioner for Refugees (UNHCR) to put in place a registration system for the new status.
- Ensure that all deportations of Zimbabweans are stopped pending implementation of this new status.
- In accordance with the South African Constitution, ensure that all Zimbabweans in need of emergency and basic medical care, including those in need of anti-retroviral treatment (ART) and tuberculosis (TB) treatment, have access to such care.
- Ensure that the most vulnerable Zimbabweans, such as unaccompanied children, the elderly, and the most sick (including the most vulnerable PLWHA) are provided with other forms of emergency assistance such as food and social welfare assistance.
- Engage in a public information campaign to demonstrate to the South African people that:
  - Zimbabweans’ decision to leave their country and come to South Africa is fundamentally involuntary;
  - the deportation of Zimbabweans is ineffective and a waste of tax payers’ money;
  - the simplest, fairest, and most effective way to address the humanitarian needs of Zimbabweans in South Africa is to allow Zimbabweans to fend for themselves through giving them the right to work; and that
  - a regulated Zimbabwean work force will not undercut wages and opportunities for South African workers.
- End its discredited “quiet diplomacy” approach pursued since March 2007 as SADC-sponsored mediator between the MDC and ZANU-PF, and urgently play a central role within the African Union (AU) and SADC to pressure the Zimbabwean authorities to end the current violence and their destruction of the democratic process.



## **IN RELATION TO ZIMBABWEAN ASYLUM SEEKERS IN SOUTH AFRICA**

- Take immediate steps to ensure that no Zimbabwean asylum seekers, including those fleeing the 2008 post-election repression and violence, are deported from South Africa.
- Officially recognize that despite ongoing reforms, the current dysfunctional state of the asylum system and deportation practices combine to create a high risk of *refoulement* for Zimbabweans.
- Ensure that Zimbabweans are given adequate documentation at all stages of the asylum process to protect them against arrest, detention, and deportation.
- Use the opportunity provided by the current reforms to the asylum system to cooperate with UNHCR and South African nongovernmental organizations (NGOs) to ensure that Refugee Status Determination Officers receive regular and in-depth training on international refugee law, including ongoing on-the-job training.
- Ensure that directors of the five Refugee Reception Offices and all Refugee Status Determination Officers interviewing Zimbabweans who have been targeted by *Operation Murambatsvina* are instructed to consider such people as having, as a matter of principle, strong asylum claims and to ensure that they interview such applicants in-depth in order to establish their potential claim.
- If the proposed “temporary immigration exemption status for Zimbabweans” is not adopted, create a specific team of Refugee Status Determination Officers in each of South Africa’s five Refugee Reception Offices with the specific task and expertise required to review asylum claims by people directly targeted by *Operation Murambatsvina*.

## RECOMMENDATIONS

### TO UNHCR IN SOUTH AFRICA

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- Assist the Department of Home Affairs in establishing a new “temporary immigration exemption status for Zimbabweans,” in particular through registration procedures.
- Recognize that people targeted by *Operation Murambatsvina* have strong prima facie claims to refugee status under the 1951 Refugee Convention.
- Work in close cooperation with the Department of Home Affairs and South African civil society to provide regular and in-depth training to Refugee Status Determination Officers in international refugee law, including to special teams focusing on asylum claims made by people targeted by *Operation Murambatsvina*.

### TO INTERNATIONAL DONORS

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- Encourage the Government of South Africa to introduce a new “temporary immigration exemption status for Zimbabweans” (TIES).
- Provide financial and technical assistance to the government of South Africa to put in place systems to help implement the new status.
- Provide financial assistance to UNHCR and South African civil society to assist them to provide regular in-depth training to Refugee Status Determination Officers in refugee law.
- Provide the South African government with financial assistance to ensure that particularly vulnerable Zimbabweans, such as unaccompanied children and the very sick, have access to medical care and food.
- Provide all necessary support to Southern Africa Development Community (SADC) governments to assure continuity of care for People Living with HIV/AIDS (PLWHA) and tuberculosis (TB) patients on anti-retroviral treatment (ART) and Directly Observed Therapy, Short-Course (DOTS) treatment who move between states, and to ensure synchronization of standards (e.g. recognition of medical tests) and remove eligibility barriers for donor-supported treatment.





A street child sells bread in the evening on the black market in the densely populated area of Warrenpark in Zimbabwe's capital, Harare.

