



Fédération internationale des ligues des droits de l'Homme

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International Federation  
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الفدرالية الدولية لحقوق الإنسان

## Surplus People Undocumented and Other Vulnerable Migrants in South Africa

### Executive Summary

*As growing domestic and international concerns have been expressed regarding the human rights situation of undocumented and other vulnerable migrants in South Africa, FIDH conducted an international fact-finding mission from 26 February to 5 March 2007 to examine the legal and policy framework applying to their entry and stay as well as their actual working and living conditions.*

The working definition of undocumented migrants chosen by the mission is a very broad one: it includes any person living and working in South Africa who does not have a proper legal status. Hence, this report emphasizes the situation of undocumented migrants that range from waged-workers, circular and seasonal workers, migrants who are self-employed, refugees, asylum seekers and the children of those migrants.

The report reveals that even though both international (**UN Convention on the rights of all migrant workers and members of their families**) and South African law (**2002 Immigration Act and 1998 Refugees Act**) provide for a wide protection of the human rights of migrants, undocumented migrants - who represent around 500 000 persons - are amongst the most exposed to human rights violations and have the least legal protection and support to defend their rights. Most of them come from SADC countries. The highest numbers come from Mozambique, Zimbabwe and Lesotho, with an increase of Zimbabweans in recent years due to the political situation in this country.

The report highlights the widespread and continuous problems faced by asylum-seekers and refugees throughout the **asylum application process**. On entry in South Africa, would-be asylum-seekers may inform immigration officers of their intention of applying for asylum. They should then be granted a temporary permit, under which they have to report within two weeks to a refugee reception office in order to apply. However, many would-be asylum-seekers are not aware of this possibility, are afraid that immigration or police officers at the border may harass them, turn them away, immediately arrest and deport them, illegally detain them or extort money from them. More generally, migrants face with many obstacles through the lengthy and costly immigration process which prevent them from conforming with some provisions of the immigration acts. A significant number therefore enter South Africa illegally. FIDH came to the conclusion that this situation exposes them to the risks of being exploited by smugglers and fellow migrants, of suffering physical hardships or being arrested by the police.

Indeed, our interviews have pointed out the fact that migrants, even documented ones, live in **permanent insecurity**. Police control and harassment is a common experience among foreign migrants. ID control are frequent and may come with police officers asking for bribes or sexual favours, extorting money or goods, inflicting verbal or physical abuse. Migrants run the risk of being arbitrarily arrested and detained, including for longer periods than authorised by law. The report focuses on the conditions of detention at the Lindela repatriation centre, a facility located near Johannesburg, dedicated to the detention of undocumented migrants awaiting for deportation and which has been denounced by human rights defenders for the many abuses and undignified conditions inflicted to detainees since its opening in 1998. Some migrants are also faced with hasty deportation at the country borders without adequate verification of their legal status and with police violence. FIDH considers that those practices clearly violate migrants rights to dignity, personal security and property.

Documented and undocumented migrants are also exposed to **exploitation at work**. This report confirms that many of them are paid below the legal minimum wage, work for longer hours than authorised by law, without obtaining necessary break and leave with no or limited access to compensation for injuries and occupational hazards and diseases, etc. This strengthens migrant workers' vulnerability because of their precarious legal situation. Most of the time, undocumented migrants, will not claim their rights nor seek redress as this would expose them to the risk of being arrested and deported. Unfortunately, inspections conducted by the Department of Labour remain rare and only occasionally lead to imposing penalties on the employer. There are therefore no strong disincentives for employers to continue using, and abusing, foreign migrant workforce, particularly undocumented.

**Women**, who come in growing numbers to South Africa and who are mostly employed in agriculture, domestic work, services and trade, are particularly exposed to exploitation at work. They are confronted with sexual abuse and health risks. While acts of violence against all women are widespread in the country, migrant women are much more exposed to rape and domestic violence, with the lack of an effective State policy to prevent and combat such violence. There is also a growing number of **children** entering South Africa through the Zimbabwean and Mozambican border posts, who seem to be staying in border areas, working on farms, in informal trade, etc.

According to numerous accounts, migrants find it hard to access **health services and facilities**, even for emergency cases. They may be faced with medical staff who keep them waiting for abnormal lengths of time, provide them with exams and treatment which are below the minimum standards, verbally abuse them, treat them with little sensitivity and attention to their pain or specific conditions, have them pay outpatient fees, or deny them access to hospitals either straightforwardly or on the claim that they do not have adequate documentation. **Housing** is often another difficult aspect of migrants' life. Many migrants live in particularly precarious conditions, with little space, little or no comfort and privacy, sometimes no or little access to water, electricity, heating and other facilities. Access to **education** is similarly very limited. Even documented migrant workers, refugees and asylum-seekers are often unable to enrol their children in public schools on the claim that they do not have adequate documentation.

The lack of **effective remedies**, whether administrative or legal, is also a major factor preventing migrants from defending their rights, expose violations and seek redress. In principle, administrative and legal remedies are open to migrants, including vulnerable groups such as undocumented migrants, refugees or asylum-seekers. However, most migrants are not aware that these remedies exist and are available to them or fear to be reported to law-enforcing personnel. Government approach also tends to give precedence to

migration laws over labour and social laws, so that undocumented migrants whose rights have been violated find it hard to get redress.

The **South African migration policy** remains geared towards security concerns and population control, based on the premise that considerable numbers of economic migrants want to come and stay in the country and that large numbers of them are “illegal” migrants. FIDH considers that such vision does not take into account the fact that a large majority of migrants enter South Africa legally and that a number of them are cross-border traders, seasonal, circular or temporary migrants. This focus on migration control tends to criminalise migrants and fuels xenophobia.

The interviews conducted during our mission have shown how **prevalent xenophobic feelings** are amongst the population, mostly directed at Black Africans and mostly based on the vision that migrants (should they be documented or not) are linked with or even responsible for social ills and crimes. Xenophobia within the police is not limited to feelings or attitudes but also translates into extortion, abuse and physical violence. In the media, the treatment of migration issues tends to promote a largely negative representation of migration and foreign migrants. While the situation has greatly improved over the past decade, some daily papers continue to spread a dramatic and negative image of migration to South Africa. Many migrants recount xenophobia as a daily experience, in the shape of discrimination in access to shops, jobs or services, verbal abuse, etc.

In order to prevent and redress current and future human rights violations on migrants, FIDH urges the **South African authorities** to:

- ratify the two major international human rights instruments it has not yet adhered to: the International Covenant on Economic, Social and Cultural Rights and the International Convention on the rights of migrant workers and members of their families;
- ratify the SADC Protocol on the Facilitation of Movement of Persons, signed in 2005;
- respect the resolution on migration adopted by the African Commission on Human and Peoples' rights at its 42<sup>nd</sup> Ordinary Session held in Brazzaville, Congo, from 14-28 November 2007;
- ensure that, in the hierarchy of law, provisions of the Bill of Rights and labour law protecting migrants rights are not subordinated to immigration law;
- ensure respect for due process and migrants' rights and dignity throughout arrest, detention and deportation. In particular, the government should put an end to hasty deportation done at the borders or within the country without adequate verification of the legal status of those arrested and which may contravene South Africa's obligation of '*non-refoulement*';
- improve conditions of detention at Lindela repatriation centre and in other detention facilities, in particular in terms of ill-treatment, access to information and legal aid, and access to food and healthcare. To promptly carry out independent investigation of all allegations of ill-treatments of non-citizens;
- develop inspections of workplaces (through hiring more labour inspectors and capacity-building) in

order to enforce respect of basic labour rights and standards to the benefit of the entire workforce; reinforce sanctions against employers who contravene labour standards and publicise the sanctions;

- develop information materials and set up information desks (e.g. at the main border posts, in refugee reception offices, city councils, etc.) for migrants to know about their rights and available remedies;
- develop research and mechanisms to better know and understand the various types of migration and their impact on South African economy and society in order to have the elements for designing and implementing a coherent and relevant migration policy;
- provide widespread training on migrants' rights and against xenophobia to police services, immigration services, public health and education services and local administrations and to publicly and explicitly condemn and sanction xenophobic behaviours and incidents committed both by public servants and the communities. In this regard, FIDH calls upon the Human Rights Commission and concerned civil society organisations to reactivate and scale up the anti-xenophobia campaign;
- maintain constant dialogue with neighbouring countries and develop an integrated SADC (Southern African Development Community) vision in order to better manage migration flows at regional level.
- invite Mr Bahame Tom Mukirya NYANDUGA, Special Rapporteur on Refugees and Displaced Persons in Africa to visit South Africa.