



LAWYERS FOR
HUMAN RIGHTS

ZIMBABWE

SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW, 40th
SESSION OF THE UPR WORKING GROUP, JANUARY/FEBRUARY
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ISSUES RELATED TO IMMIGRATION ENFORCEMENT

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ABOUT THE GLOBAL DETENTION PROJECT

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

ABOUT LAWYERS FOR HUMAN RIGHTS (LHR)

Lawyers for Human Rights (LHR) is an independent, non-profit human rights organisation, started by a group of activist lawyers in 1979. LHR's programs undertake strategic work in six areas of human rights law, including a key focus on refugee and migrant rights, including immigration detention.

LHR employs a holistic approach to social justice and human rights enforcement that includes strategic litigation, advocacy, law reform, human rights education, and community mobilisation and support.

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1. INTRODUCTION

- 1.1 This submission has been prepared by the Global Detention Project (GDP) and Lawyers for Human Rights (LHR) for the third cycle of the Universal Periodic Review (UPR) of Zimbabwe in January 2022.
- 1.2 This submission focuses on human rights concerns relating to Zimbabwe's immigration enforcement policies.

2. CONTEXT

- 2.1 Zimbabwe faces a number of migration-related challenges, including significant irregular emigration, transit migration originating elsewhere in Africa en route to South Africa, and refugee arrivals.¹ The country also has a large population of internally displaced people, who numbered more than 270,000 in 2019. According to UNHCR, the country had 9,266 refugees and 11,929 asylum seekers in 2020.²
- 2.2 There have been numerous reports in the past indicating the use of migration-related detention measures in Zimbabwe, in particular for migrants en route to South Africa. However, there is little current information about this practice in the country. I
- 2.3 There is a need to better understand the situation of people who have been deported back to Zimbabwe from South Africa and other countries in Africa and elsewhere, as well as the long-term impact of these deportation procedures and the treatment of these people once they are sent back to Zimbabwe.
 - (a) Zimbabweans have reportedly been subjected to unlawful conditions of detention in South Africa prior to their deportation, including being detained without proper procedures and in facilities that are not in compliance with prescribed standards.
 - (b) Problems in South Africa's asylum system that have been documented by Lawyers for Human Rights and other civil society groups in South Africa resulting in Zimbabwean nationals, whether documented or not, becoming vulnerable to unlawful deportation practices. This means that even where Zimbabwean nationals are validly documented, they still remain at risk of unlawful deportation.
 - (c) Human Rights Watch has reported on the deportation of Zimbabwean detainees in South Africa, describing it as "often unlawful."³ It has reported that while South Africa is party to a number of significant refugee-related international instruments, it continues to defy even "the most basic principle of international refugee law, the principle of non-refoulement."

- 2.4 There is little publicly available information detailing the measures—if any—that official agencies have taken to protect people in immigration custody since onset of the COVID-19 pandemic, or amongst other vulnerable citizens including refugees.
- 2.5 The key provisions regulating administrative immigration-related detention in Zimbabwe are provided in the country’s Immigration Act [Chapter 4:02] of 1979, the Refugees Act [4:03] of 1978, and the Immigration Regulations of 1998 (SI 195/1998).
- 2.6 According to Section 9 of the Immigration Act of 1979, “a person may be detained in terms of section eight in a prison, police cell or other convenient place.” Section 8 provides that “an immigration officer may arrest any person whom he suspects on reasonable grounds to have entered or to be in Zimbabwe in contravention of this Act and may detain such a person for such reasonable period, not exceeding fourteen days, as may be required for the purpose of making inquiries as to such person’s identity, antecedents and national status and any other factor relevant to the question of whether such person is a prohibited person.” In addition, Section 8(2) provides that “an immigration officer may – (a) subject to subsection (3), remove or cause to be removed from Zimbabwe any prohibited person; and (b) pending the completion of arrangements for the removal of a person in terms of paragraph (a) and such removal, subject to section nine, detain that person.
- 2.7 The Immigration Act of 1979 also provides for penalties for entering Zimbabwe at any place other than a port of entry (Section 11(5)) and also for leaving Zimbabwe at any place other than a port of exit (Article 24 (4). Any person who contravenes Section 11(1) and (3) and Section 24(1) and (2), may be found guilty of an offence and liable to a fine or to imprisonment for a period not exceeding one year—or to both such fine and such imprisonment.
- 2.8 The country’s Refugee Act of 1978 provides for the detention of refugees. Section 16 provides that “an authorised officer may arrest and detain any recognised refugee or protected person whose expulsion has been ordered in terms of section fifteen.” According to Section 15 of the Act, “the minister to whom the administration of the Immigration Act has been assigned, may order the expulsion from Zimbabwe of any recognised refugee or protected person if he considers the expulsion to be necessary or desirable on the grounds of national security or public order.” In addition, Section 16 provides that “a recognised refugee or protected may be detained in terms of subsection (1) in a prison, police cell or other convenient place.”
- 2.9 According to a 2009 report from the International Organisation for Migration (IOM), 65 people were detained in Zimbabwe for entering irregularly that year, 71 were deported, and 117 were prosecuted. A 2018 report noted that the number of immigration-related detention cases steadily increased from 365 in 2010 to 1,813 in 2014. This trend was reversed in 2015 when the total number of people in detention dropped to 1,381. In 2016 however, the number sharply increased to 2,316. In addition, between 2010 and 2016, the government of Zimbabwe returned 7,196 irregular migrants to 47 different countries.⁴ The majority of people deported to Zimbabwe in 2008 were deported from South Africa,⁵ while in 2014, the majority of people deported to Zimbabwe were deported from the DRC, and in 2016, from Ethiopia.
- 2.10 In the context of the COVID-19 pandemic, from the commencement of South Africa’s nation-wide lockdown, which lasted from 26 March 2020 to June 2020, 705 Zimbabwean nationals were deported from South Africa.⁶
- 2.11 As part of its COVID-19 response, UNHCR has helped install hand-washing stations in the Tongogara refugee camp and supported more than 1,200 children and young people with home-based learning.⁷

- 2.12 Some pandemic-related measures were also taken in Zimbabwe's prisons, which are notorious for their poor and unsanitary conditions, including overcrowding and a lack of basic amenities like running water in cells. In March 2020, the government acknowledged that the country's prisons had a population of 22,000 people despite an official capacity of only 17,000.⁸ Between March and June 2020, the government released 4,208 prisoners under a presidential amnesty order. Yet, according to Human Rights Watch (HRW), far too many remained behind bars to allow for social distancing. Lawyers who had visited prisons in Harare in July 2020 told HRW that while masks were being provided, inmates and certain guards did not use them partly due to the lack of information on protective measures against COVID-19.⁹
- 2.13 In October 2020, the Zimbabwean Human Rights NGO Forum and a former prisoner lodged a High Court application seeking to compel the country's finance minister, Mthuli Ncube, to release funds for prison facilities. The claimants argued that the Zimbabwe Prisons and Correctional Services (ZPCS) failed to comply with basic COVID-19 regulations such as the provision of facemasks, hand sanitiser, and social distancing and requested that the state provide water, food, vehicles, COVID-19 tests, and medical supplies.¹⁰ On 2 December 2020, the High Court ordered the government to ensure that every inmate at the Chikurubi Prison receives 60 litres of water daily and ordered the finance minister to release funds for supplementary water and food supply. The Court also ordered the country's prison authority to separate healthy inmates from those who are ill and to provide essential medicines.¹¹ On 27 January 2021, 110 detainees tested positive for COVID-19 at the Mutimurefu prison—one of the most overpopulated in the country.¹² Two weeks prior, a senior officer at the Chikurubi prison died from the virus and 15 guards in that prison tested positive for COVID-19.¹³

3. RECOMMENDATIONS DURING THE 2ND CYCLE OF UPR

- 3.1 During the 2nd cycle of the Universal Periodic Review (UPR) of Zimbabwe (34th Session, February/March 2017) Zimbabwe agreed to examine several recommendations.¹⁴ These included:
- Ratify the international human rights treaties to which the country is not a party, including the Convention against Torture and its Optional Protocol, and the International Convention for the Protection of All Persons from Enforced Disappearance (Brazil) (para. 132.1).
 - Ratify other human rights conventions, particularly the Convention against Torture and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Congo) (para. 132.2).
 - Ratify the core international human rights instruments, including the Convention against Torture, the Convention on the Rights of Persons with Disabilities, all Optional Protocols to the Convention on the Rights of Child, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, and the First Optional Protocol to the International Covenant on Civil and Political Rights, and incorporate them into national legislation (Slovenia) (para. 132.33).
 - Issue standing invitations to the special procedures for their country visits (Japan) (para. 132.39).

- Consider amending the existing legislation to ensure that children born in Zimbabwe, regardless of their parents' origins, are issued with birth certificates and ensure the paternity rights of all children born out of wedlock (Namibia) (para. 132.79).

4. RECOMMENDATIONS FROM OTHER HUMAN RIGHTS BODIES

- 4.1 In 2016, the Committee on the Rights of the Child (CRC) recommended that the State party: “(a) Take measures to ensure that all children born in the State party have the legal right to be registered at birth with a name, regardless of their parents’ citizenship status and/or country of origin, and that they have equal access to health care, protection, education and other social services; (b) Consider ratifying the 1961 Convention on the Reduction of Statelessness and amend its domestic legislation on nationality accordingly so as to ensure that every child enjoys the right to acquire a nationality.”¹⁵ The CRC also urged the State party to “(f) Continue the Pretrial Diversion Programme and ensure that children have access to alternative disciplinary measures to deprivation of liberty, such as probation, mediation, counselling or community service, and ensure that detention is used as a last resort; (g) Establish child-sensitive complaint mechanisms regarding ill-treatment and torture of children in police custody and detention; (h) Ensure the independent monitoring of places where children are deprived of their liberty.”¹⁶
- 4.2 In its concluding observations of 2020, the Committee on the Elimination of Discrimination against Women (CEDAW) recommended that Zimbabwe “Promote the use of alternatives to detention, especially for pregnant women, mothers of young children and women heads of household, improve the conditions in female detention facilities in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and enhance the measures to protect women in detention from gender-based violence, including through regular monitoring and independent and confidential complaint mechanisms.”¹⁷

5. RECOMMENDATIONS

- 5.1 Since the second cycle of the UPR (34th Session, February/March 2017), Zimbabwe has yet to ratify the International Convention on the Protection of the Rights of All Migrant Workers and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.
- 5.2 Based on the information provided above, Zimbabwe should consider implementing the following measures to bring it in line with its international obligations and improve its human rights record with respect to vulnerable migrants, refugees, and asylum seekers:
- Ratify the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.
 - Ratify the International Convention on the Protection of the Rights of All Migrant Workers.
 - Provide public access to regularly updated statistics concerning migration-related detention procedures and deportations, including disaggregated information broken down according to gender, age, and reason for detention and/or removal.
 - Disclose information about measures being taken to protect immigration detainees during the pandemic.
 - Provide detailed information on where—and in what conditions—refugees and migrants are detained for reasons related to their nationality, or asylum, refugee or residence status.

- Ensure that child migrants,¹⁸ refugees, and asylum seekers are not placed in detention and instead provide proper care and assistance, in line with the recommendations of prominent UN human rights monitoring bodies.
- Ensure that sites used to accommodate refugees, asylum seekers, migrants, and stateless persons are adequately equipped with sanitation supplies and have implemented other measures to prevent the spread of COVID-19.
- Engage the South African government and Southern African Development Community (“SADC”) leadership on the implementation of a SADC visa in order to de-criminalise migration in the region, which will reduce unlawful deportation from South Africa back to Zimbabwe and result in humane management of movement in the region more generally.
- Provide information about whether vulnerability assessments are made in advance of placing an individual in migration-related detention.¹⁹
- Provide information about the procedures that are used to determine the necessity and proportionality of each detention order, including whether non-custodial measures are systematically considered before detention orders are made.
- Provide annual statistics on the numbers of non-citizens who have been prosecuted for immigration-related offences and the grounds for criminal prosecution.
- Release detainees whose detention is unlawful or unnecessary, including anyone whose deportation is not possible amidst the COVID-19 pandemic.
- Ensure that centres used to accommodate refugees, asylum seekers, migrants, and stateless persons are adequately equipped with sanitation supplies and have implemented other measures to prevent the spread of COVID-19.

ENDNOTES

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