

# AMNESTY INTERNATIONAL

## PUBLIC STATEMENT

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### **South Africa: Call for South Africa to fulfil its international and domestic obligations in the protection of the rights of refugees and asylum seekers**

Amnesty International welcomes the recent rulings in the South African High Court affecting the rights of refugees and asylum-seekers.

The North Gauteng High Court on 14 December found that the South African authorities' effective refusal to open an alternative refugee reception office (RRO) in Johannesburg following the closure of the Crown Mines RRO in that city was unlawful. As a result, the Court ordered the authorities to reconsider their decision and to consult those most affected by it. On the previous day, 13 December, the Eastern Cape High Court granted an interim order requiring the Department of Home Affairs to keep open the Port Elizabeth RRO pending a full hearing on the abrupt closure of that office on 30 November.

Amnesty International has been seriously concerned by far-reaching changes to the asylum system initiated by the South African government this year. Those moves have had the effect of curtailing and even impeding access to asylum determination procedures and critical asylum services for asylum-seekers and recognized refugees. The organization is concerned that, in violation of South Africa's obligation under international and domestic refugee law, the implementation of the measures already taken -- and that of further ones already announced -- would result in the denial of international protection to those most in need of it.

The South African authorities purported that the closure of the Crown Mines RRO in May 2011 was merely the result of a successful litigation by local businesses to force the closure. Further, they stated that they had taken no decision not to open an alternative office in the same locality. However, following the legal challenge in the North Gauteng High Court brought by the Consortium for Refugees and Migrants in South Africa and nine others with the assistance of Lawyers for Human Rights, it emerged that the refusal to open a new office was for all intents and purposes a consequence of a decision by the South African government to move all asylum services, including registration and refugee status determination procedures, to ports of entry.

Such a move is likely to have a profoundly detrimental effect on the ability of applicants seeking international protection to pursue their claims effectively. Among other consequences, it would effectively deny them access to independent, high quality legal advice. Ultimately, Amnesty International is concerned that it would likely result in the dismissal of meritorious claims to international protection, in violation of South Africa's legal obligations under international and domestic refugee law. In turn, refugees would be denied their rights and exposed to a real risk of persecution and other forms of serious harm.

Like other RROs in the country Crown Mines was the office where asylum-seekers would lodge their claims for international protection and where recognized refugees obtain renewal of their status and relevant documents to prove it. Following its closure, however, the South African authorities have failed to provide any alternative office or to put up any infrastructure or make effective contingency arrangements to provide critical services to refugees and asylum-seekers. Instead, all applicants for asylum or recognized refugees needing to renew their documents have been directed to two existing and over-burdened refugee reception offices in Pretoria.

Since then, new asylum applicants, as well as those whose cases have been “transferred” as a result of the closure of the Crown Mines RRO, have struggled to gain access to Home Affairs officials in the Pretoria offices. Further, people have been queuing repeatedly from early morning hours and, according to evidence submitted in the North Gauteng High Court, have been subjected to verbal abuse or beatings with sjamboks (whips) and batons by security personnel. The ensuing inability to lodge applications or renew documents has left asylum-seekers and recognized refugees at risk of fines, detention and direct or constructive *refoulement* in violation of South Africa’s obligations under domestic and international refugee and human rights law and standards.

The above mentioned decision by South African Cabinet to move all asylum services, including registration and refugee status determination procedures, to ports of entry was behind the recent closure of the Port Elizabeth RRO in November. The Somali Association of South Africa Eastern Cape and the Project for Conflict Resolution and Development, with the assistance of Lawyers for Human Rights and the Centre for Refugee Rights, have challenged the closure. On 13 December the High Court ordered the Department of Home Affairs to maintain full services to all holders of asylum-seeker permits and recognized refugees pending the hearing of the case in February 2012.

The above developments have taken place against a background of other measures instigated by the South African authorities that are invidious for the safety and security of refugees and asylum-seekers in the country. They include conducting deportations of Zimbabweans, following the lifting of the moratorium in September 2011, in a manner that has exposed some, including unaccompanied minors, to the risk of grave human rights abuses and persecution.

Refugees and asylum-seekers in South Africa continue to remain under pressure from targeted violence and discriminatory practices which limit their access to protection or effective remedies. Incidents of violence, forcible closures of businesses and property destruction against refugees and migrants have occurred in numerous locations throughout the year. Local business forums appear to be the drivers behind many of the attacks. For instance, in a series of incidents in May, over 60 foreign-owned shops were forcibly closed and/looted or destroyed completely in different areas of Gauteng province and in the Motherwell area of Port Elizabeth. Police officers in Ramaphosa informal settlement area near Johannesburg condoned or actively participated in the actions of the Greater Gauteng Business Forum who threatened violence against non-nationals and forcibly closed or removed property from their shops. In many of these attacks, such as in Motherwell, local police stations failed to call in reinforcements to stop the violence from spreading.

The interventions of humanitarian and civil society organizations with the police in specific incidents provided a measure of protection for those under threat. However, by late this year the police authorities had still not initiated a systematic country-wide and effective police strategy to prevent or de-escalate violence against refugees and migrants.

Out of concern at the gravity of these developments affecting the rights of refugees and asylum-seekers in South Africa, on 7 and 8 December a representative of Amnesty International raised these matters with high level-officials of the UN Refugee Agency, the United Nations High Commissioner for Refugees, at the agency’s headquarters in Geneva Switzerland.

As a matter of urgency, Amnesty International is calling on the South African authorities to desist from closing any further refugee reception Offices ; to re-institute full services to asylum-seekers and refugees affected by the closures of the Johannesburg and Port Elizabeth offices; and to engage in wide-ranging consultation with those affected by the authorities’ actions and policy changes.

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