



Forced Migration Studies Programme &
Musina Legal Advice Office

**Special Report: Fact or Fiction? Examining
Zimbabwean Cross-Border Migration into South Africa**

Johannesburg
4 September 2007



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THE FORCED MIGRATION STUDIES PROGRAMME AT THE UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

The Forced Migration Studies Programme (FMSP) is Southern Africa's premier centre for research on migration, aid and social transformation. In 2007, the FMSP launched its Migrant Rights Monitoring Programme, building upon the organization's established record of research and advocacy on migrant rights. Its monitoring is premised on with sustained, rigorous research into migrants' access to basic human rights, the way South African immigration policy is being implemented, and the nature of human rights abuses against non-nationals in South Africa.

THE MUSINA LEGAL ADVICE OFFICE

The Musina Legal Advice Office (MLAO) is the leading civil society advocate for migrant rights and agency for the delivery of legal services to asylum seekers and refugees in Limpopo Province. Staffed by trained paralegals with extensive experience in the region, the organisation is extensively networked with regional stakeholders and powerfully positioned to expand rights-based services in the border area.

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EXECUTIVE SUMMARY

This report is a response to increased interest and policy debate surrounding Zimbabwean migration to South Africa. This is the first time that post-Apartheid South Africa has faced people fleeing from political crises and economic deprivation in one of its immediate neighbours. As such, South Africa's response to these crises is a test of the country's ability to develop policy and practices that are empirically based, legally informed, and that effectively protect the human dignity of migrants and South African citizens.

The study tests prominent claims made about the nature and scope of movement and appropriate responses to it. Premised on a critical review of media reports made between June and August 2007, two teams of experienced migration researchers went to Limpopo province to interrogate claims through interviews, observation, and site inspections. Their principal findings are that:

- Evidence suggests elevated numbers of informal border crossings from Zimbabwe to South Africa;
- Recent statements by officials and media reports exaggerated the numbers of Zimbabweans moving across the border into South Africa or already in the country;
- The government has increased resources devoted to border control despite claims by several politicians that they are "not doing enough";
- Current official responses to this problem are inadequate to promote human rights, avoid a humanitarian crisis, and protect South Africa's international reputation;
- Statements by the Department of Home Affairs and others that none of the Zimbabweans now coming to South Africa are *bona fide* asylum seekers are inaccurate. Such statements ignore fundamental obstacles people face in applying for asylum. These statements also tacitly condone the serious violations of the principle of *non-refoulement* that have occurred in Limpopo;
- Proposals to establish a facility providing shelter and food are unlikely to meet the needs of the majority of Zimbabwean migrants;
- There is little evidence that Zimbabwean migration has led to an increase in crime in the border region;
- New proposals to grant Zimbabweans temporary residence permits are unlikely to address the immediate humanitarian crisis if they deny new arrivals the right to work or services.

The report ends by calling on the South African government, media, and civil society to dedicate the material and intellectual resources necessary to develop a human and effective response to the continued arrival of Zimbabweans in South Africa. This should include increased monitoring, and targeted interventions to address at least four real and potential humanitarian problems:

1. The denial of asylum in South Africa to victims of persecution, violence, and conflict;
2. Mistreatment of informal migrants by smugglers;
3. Poor protection of the rights of migrant farm workers;
4. The exploitation and abuse of female migrants.

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BACKGROUND

In recent weeks (July-August, 2007), Zimbabwean migration to South Africa has received increased attention in the media. Responding to signs of a growing migration crisis in the Limpopo province, reporters and public officials have moved briskly towards discussions about appropriate political responses. Refugee camps,ⁱ and temporary protection permitsⁱⁱ are some of the policies now being considered. Undoubtedly, this dialogue has been given added weight by: the increasing evidence of economic and political turmoil in Zimbabwe itself; the apparent lack of a regional solution to that problem; and the international media's interest in Zimbabwean affairs. This is also the first time that post-Apartheid South Africa has faced people fleeing from political crises and economic deprivation in one of its immediate neighbors. As such, South Africa's response to these crises are a test of the country's ability to develop policy and practices that are empirically based, legally informed, and effectively protect the human dignity of migrants and South African citizens.

This increase in discussion might be a positive force for migrants and residents struggling through a complex mix of displacement, opportunity and conflict in Limpopo. Already, the Minister of Home Affairs has made a frank assessment, in the presence of the United Nations High Commissioner for Refugees (UNHCR) António Guterres of the difficulties the South African government is facing in regulating Zimbabwean immigration and the need to develop new approaches.ⁱⁱⁱ But without a wholistic understanding of the relevant actors and dynamics, coupled with careful monitoring of emerging trends, new impulses to 'solve' border problems may lead to problematic or failed interventions that violate the rights dignity and security of migrants and South African citizens.

For the South African government and civil society to develop effective policy responses, at the very least they must identify:

- The magnitude of the actual and potential crisis on the Zimbabwean border, including accurate estimates of the number of people crossing, their reasons for leaving Zimbabwe and coming to South Africa, the vulnerabilities they experience, and their impact of their presence on South African communities;
- The kind of solutions South African communities are able and willing to support;
- Who is responsible for responding to current population movements and what policies national, provincial, and local government are equipped to implement within their legislative mandates and existing capacities.

This is not a call for further hesitation or academic introspection on border policy. Rather, there is a need to rapidly generate meaningful and practical insights into migration issues at the Zimbabwean border and in the surrounding countries. Our main claim is that much recent media and public debate on this subject has been wanting in this regard making it unlikely that future policies on Zimbabwean immigration will be effective.

In addition to the many lives and livelihoods at stake in Limpopo at present, this debate has a number of broader implications:

- Continued failure to address humanitarian concerns is likely to have a negative impact upon South Africa's international reputation;

- Policy decisions will affect relations between South Africa and both present and future Zimbabwean administrations;
- The current scenario is the first real 'test case' for the government of its policies on mass forced migration; and will impact heavily on future attempts to address this recurring regional dilemma.

AIMS

Given these considerations, on 6 August 2007 the Forced Migration Studies Programme, in partnership with the Musina Legal Advice Office initiated an *ad hoc* investigation into this subject. The principal aims of this collaborative research were to:

- Identify the principal claims being made about the Zimbabwe border;
- Investigate whether these claims reflected on the ground realities;
- Evaluate how additional and ongoing monitoring of events could assist in planning and implementing a public response.
- Consider the potential effectiveness of current policy proposals.

Given the urgent demand for research on this issue, and the variety and complexity of the problems involved, this report does not claim to provide the 'last word' on Zimbabwean migration to South Africa. Instead, it qualifies some of the more contentious claims being put forward by various commentators and generates foundations for more empirically informed policy debate.

METHODOLOGY

Over the past five years, the FMSP and the MLAC have generated a diverse range of source materials on the border region consisting of field notes, interviews, case files and survey data on migrants and refugees in South and Southern Africa. The current study began with a comprehensive desk based study of recent public discourse on Zimbabwean cross-border migration using media databases and websites. Having identified some of the most common, contentious and empirically suspect claims, we deployed two research teams^{iv} to the border town of Musina to conduct interviews and site visits in the surrounding areas. The teams conducted a total of 26 interviews over the course of a five-day period, with each interview lasting approximately one hour. The researchers spoke to a diverse range of individuals and organizations, including residents, local business leaders, local authorities, the police, the army, farmers, and Zimbabwean migrants. The majority of interviews were conducted in English; however, some interviews were conducted in Shona when talking with farm workers. Finally, our researchers also conducted site inspections of the Beitbridge border post and International Organisation for Migration (IOM) reception facility at Beitbridge, the Musina detention centre, farms, local businesses, bus stations and along selected portions of the border fence. At these sites the researchers took field notes, photographs and conducted informal interviews.

FINDINGS

Our research reveals that current policy debates are informed by a mix of accurate and inaccurate information. There was a general consensus amongst government officials and private individuals that recent commentators had been correct in arguing that:

- Zimbabwean cross-border migration has generally increased in recent months although the magnitude of these increases remain unclear;
- Many transit and reception areas do not have the capacity to meet the needs of these migrants; and
- Government officials are struggling to design adequate responses to this demographic change.

The research also discovered that current discussions of Zimbabwean migration are characterized by dangerous and misleading half-truths and silences. In turn, these have created unrealistic assessments of the feasibility of various policy proposals and distorted public understanding of the issue and government responses to it. The remainder of this report will focus on these problem areas by:

- Identifying the most prominent ‘myths’ and showing how they have been framed in public discussions;
- Exploring our reasons for questioning the veracity of these myths;
- Identifying key gaps in recent coverage; and
- Providing policy-makers with more verifiable assessments.

Problematic Claim 1: ‘Millions of Zimbabweans are flooding into South Africa’

The most egregious flaw in recent discussions on Zimbabwean migration is the estimation of numbers of ‘illegal immigrants’. Over the past two years, commentators have speculated on the number of Zimbabweans in the country, producing ‘estimates’ ranging from 1.2-3 million persons.^v This demographic guesswork has recently taken aim specifically at the average number of Zimbabweans illegally crossing the border. Although perhaps best encapsulated in the common reference to the provocative image of a Zimbabwean ‘Human Tsunami’,^{vi} these claims have also involved numeric speculation:

Table 1: Published estimates of Zimbabweans Migration Rates by Source

Actual Estimate	Comparative Yearly Estimate	Source(s)	Publication
20000-30000/month	240 000 - 360 000	‘Official’ estimates	Independent
6000-10000/week	312 000 - 520 000	‘Police’	Business Day
3000/day	1 068 000	Musina local police	Mail & Guardian
4000/day	1 424 000	None	Mail & Guardian
3000-5000/day	1 068 000- 1 780 000	None	Mail & Guardian

Reporters undoubtedly face considerable pressure to provide figures to support their research. However, Table 1 illustrates that their decisions to attach numbers to the phenomenon has led them to:

- Make assertions without clarifying sources;
- Fail to reconcile or acknowledge conflicting sources;
- Neglect differences between estimates from the same sources;
- Neglect conflicts with estimates published by their own publication; and most worryingly
- Fail to interrogate estimates against obvious baseline figures (e.g. is it plausible to suggest that almost 10% of Zimbabwe's estimated population had crossed illegally into South Africa within one year?).

In making such estimates, it is important to keep in mind that even before the current crisis the South African government did not possess an reliable estimate of how many Zimbabweans (or other foreigners) were in the country, making it almost impossible to count the new ones or compare new figures against previous baseline estimates.

Many of the respondents in Musina were skeptical of the numbers reported in the media. For example, Jayson Rhana, Chair of the Musina Business Association, stated that "the influx has been blown out of proportion."^{vii} Importantly, the common conflation of border-crossing and illegal immigration in these estimates misses the fact that many border-crossers are here temporarily, are recent deportees, 'shoppers' and legal immigrants. We must also consider how the new barriers to legal immigration are helping to generate larger numbers of informal crossings. Zimbabweans experience considerable difficulties obtaining a passport, partly due to the fact that the government printers do not possess adequate stocks of paper. Less wealthy Zimbabweans also struggle to provide proof of the R 2 060 financial security to obtain a South African visa. Hence, many who would have previously entered South Africa legally have chosen informal channels instead.^{viii}

Problematic Claim 2: 'The South African government has not been increasing its immigration controls at the border'

Several commentators in the media and parliament have either specifically stated, or indirectly implied that the government has been inattentive to its border control duties.^{ix} This claim has been particularly evident in recent efforts to present citizen arrests of undocumented migrants in a positive light. For example, Freedom Front security spokesperson Pieter Groenewald recently stated that "the police [do] not have the necessary ability to control the influx, and farmers therefore have no choice but to take action."^x Max Du Preez supported this line of argument, stating that "the farmers are forced to do the work the police and army are supposed to do."^{xi} When considered in relation to the apparent failure of the *foreign policy* makers in Pretoria to act decisively on the political crisis in Zimbabwe itself, this assessment seems plausible. However, the assessment seems questionable when considered in light of the considerable evidence of increased action on the border:

- The army is building several installations along the border line;^{xii}

- Beginning in December 2006 the police increased their border patrols;^{xiii} the army has recently increased their patrols;^{xiv}
- The police have retained an army warehouse to serve as a detention facility (see figure 1) and are currently building a larger facility in Musina;
- The security forces (SAPS, SANDF, DHA) have been arresting and deporting increased numbers of suspected illegal foreigners.^{xv}



Figure 1: Temporary Detention facility located on army base

Far from being inactive, this evidence suggests that government officials in Limpopo have been substantially ramping up their response to informal movements. Officials in Pretoria have taken a long time to respond to these problems, resisting in particular, the calls for humanitarian responses from the human rights community.^{xvi} However, it is wrong to suggest that the officials on the ground have not been doing their job and equally wrong to use this suggestion to lend credence to the idea that residents (particularly farmers living on the borderline) are justified in their attempts to take immigration control into their own hands. A more accurate assessment of current border management difficulties is that the South African government has *never* been able to control the movement of people across any of its borders, including its borders with Lesotho and Mozambique. Furthermore, as recently acknowledged by the President, the Minister of Home Affairs^{xvii} and the Democratic Alliance,^{xviii} deportations have never been an effective border management strategy in the face of informal migrations of this type.

SILENCE A: SMUGGLING

Violent smugglers known as the *maguma guma* have been accused of numerous exploitative and abusive acts against Zimbabweans. The *maguma guma* allegedly transport people from Zimbabwe across the border illegally into South Africa, where they charge them fees and additionally rob them of other possessions. Sexual violence claims have been filed with the IOM against the *maguma guma* by women who were deported by South African officials. Further investigation is needed to understand how Zimbabwean police and South African police are working to locate and prosecute the *maguma guma*.

Problematic Claim 3: ‘None of the Zimbabweans crossing the border are refugees’

Ever since South Africa began to draft its post-Apartheid refugee and immigration legislation there has been considerable confusion regarding the terms used to refer to different categories of migrants. This confusion has been exacerbated by the pejorative use [mostly for political purposes] of terms such as ‘illegal immigrant’ or ‘economic refugee’, which have no basis in South African law. During the current crisis, several commentators have used such terms, or variants of them (e.g. ‘border-jumper’) as blanket classifications of all Zimbabweans. This has led to considerable confusion over the vexed question of whether any Zimbabweans qualify for refugee status. Recently, this terminological issue has become particularly politically significant. At one extreme, the Democratic Alliance has supported its call for camps with the suggestion that all Zimbabwean migrants are ‘economic refugees’. Meanwhile, the Department of Home Affairs has supported its denial of the need for camps by suggesting that almost none of these migrants are legitimate asylum seekers. The Home Affairs claim is particularly problematic because it is backed up by an appeal to statistical evidence: that only one Zimbabwean claimed asylum at the Beitbridge border post Between January 1 and June 30 2007.^{xix}

SILENCE B: FARM WORKERS

The motivations and working conditions of **farm workers** is a critical yet ignored trend prominent in the current cross-border migration situation. Relatively little is known about the workers, but local testimonies point to:

- increased safety concerns by the farm workers;
- fears by the farm workers of local authorities and immigration officials;
- reported youth under the age of 18 leaving schools in Zimbabwe to work on commercial farms in South Africa in order to send remittances home; and
- abuse of wage labor acts whereby farmers do not meet minimum wage laws.

The question of who qualifies to be a refugee can only be decided on a case-by-case basis, in accordance with the adjudicative procedures outlined in the Refugees Act 1998. The fact that few Zimbabweans have been claiming asylum at the border post does not mean that there are not many legitimate asylum seekers amongst recent Zimbabwean arrivals. Strictly speaking, one’s status as an asylum seeker can not be determined until one has registered an application at one of the four functioning Refugee Reception Offices located inland. The border post guards merely issue asylum seekers with section 23 transit permits that allows them to travel inland to register their claims. Indeed, according to David Cote of Lawyer for Human Rights, the refugee legislation specifically ‘contemplates’ the informal entry of asylum seekers at places other than a border post.^{xx} Put simply, under South African law, legitimate refugees can cross the border informally. Many of the Zimbabweans who have done so over the last few years have been subsequently recognized as legitimate refugees under South African law.^{xxi} Hence, it is misleading to make any claim about the refugee status of people crossing South African borders informally without conducting further investigations.



Figure 2: Apprehended migrants awaiting deportation at Musina detention centre

This misrepresentation of migrant streams is further complicated by the conditions of reception of asylum seekers in Limpopo. Our research suggests that the numbers of Zimbabweans formally applying for asylum may be significantly distorted by local officials' poor understanding of, and/or unwillingness to administer the country's refugee laws. Some officials we spoke to believed that all Zimbabweans were economic migrants, or not 'real' refugees.^{xxii} Based on such spurious and illegal conclusions about the status of Zimbabwean migrants, officials have not been refusing Zimbabweans their rights to claim asylum in South Africa summarily deporting those they find without papers. At the Beitbridge border post, this practice significantly compromises the integrity of South Africa's refugee system. According to observations made by the Musina Legal Advice Office, almost no Zimbabweans claim asylum at Beitbridge because, in contrast to other nationalities, the officials there do not provide them with an opportunity to make such a claim, opting instead to simply send them back across the border.

If these observations are correct, the South African government is responsible for contravening the most fundamental principle of international refugee law: *non-refoulement*.^{xxiii} This is clearly a very serious human rights issue, deserving of separate investigation and monitoring. For the purposes of this report, what is significant is that the spurious claims being made by the Department of Home Affairs, lend legitimacy to these local practices. By supporting the notion that all Zimbabweans are economic refugees or illegal migrants, Home Affairs officials in Pretoria tacitly condone the illegal activities of their junior officials.

Problematic Claim 4: 'The crisis is amenable to a camps-based response'

The most contentious topic in recent public discussions of Zimbabwean migration has been the question of whether the government should consider setting up camps. This debate was sparked by the Democratic Alliance (DA) appeal to the Home Affairs Minister to invoke section 35 of the Refugees Act 1998 which refers to the Ministerial prerogative to set up camps in the event of a 'mass influx'. The Minister has subsequently rebuked this proposition, and categorically ruled out the possibility of

creating camps for recent Zimbabwean migrants on the grounds that they are not 'refugees'.^{xxiv} Nevertheless, for at least a year now the Department of Home Affairs has been making plans to set up a 'transit facility' near the Zimbabwean border. Most recently, the Department has circulated a feasibility study for such a facility to a number of stakeholders. This facility would provide asylum seekers with shelter and food while they awaited a decision on their refugee status. Hence, while this Minister is publicly at odds with the DA on camps, officials within the Department appear, at the very least, interested in a facility that would house certain members of the migrant population.



Figure 3: Young passengers atop a vehicle transporting groceries to Zimbabwe

It is unclear whether either facility would help to alleviate problems on the border. Our research revealed that there are many Zimbabwean migrants living in poverty in the border region. Shelter is in increasing demand, forcing at least some people to seek to create and inhabit very rudimentary dwellings in and around Musina. While some respondents believed that a camp could help some migrants, it is doubtful that most of the migrants moving within and through this region would take advantage of such a facility. Some of our respondents suggested that Musina was merely a transit point for migrants seeking employment on Limpopo farms or further in the interior.^{xxv} Others argued that the majority of the migrants cross the border briefly to buy goods before returning home. Even those migrants who lacked work and adequate shelter would not necessarily welcome the prospect of living in a government facility. Finally, Artonvilla, the building that has been proposed as a potential site for the transit facility, is currently in a dilapidated state, and could not be easily refurbished or renovated for any use [see picture].

SILENCE C: WOMEN

As **women** are migrating in larger numbers, sexual violence is a grave concern accompanying the current migration situation. The subsequent health risks and consequences to women, including the high prevalence of HIV, become emotional, physical, and financial challenges. The IOM reports high incidents of women being raped while crossing the border and there is a strong need to better understand why women are not able to report rapes or abuse when apprehended or arrested in South Africa.

Problematic Claim 5: 'Migration is leading to an increase in crime'

Over the past decade, migrants, particularly those who travel without documents, have been sporadically blamed for South Africa's crime problems.^{xxvi} It is somewhat unsurprising then that there has been a tendency to associate this recent increase in Zimbabwean migration with fears about crime. This idea seems particularly plausible given the common assumption that all Zimbabweans are 'desperate' and, even if not criminally inclined, may resort to theft in order to survive.^{xxvii}

In Musina, several sources blamed a small category of crimes including theft of farm property and smuggling of cigarettes specifically on cross-border criminal syndicates. Residents near the Zimbabwe border also appear fearful of what might happen if the crisis in Zimbabwe worsens.^{xxviii} However, several of our respondents did not believe that Zimbabwean migration was producing a general increase in crime in the area. According to the police commissioner there was a general *decrease* in criminal activity over the previous month.^{xxix} In fact, there was a tendency to regard Zimbabwean migrants as people of good nature who were characteristically disinclined towards criminal activity.

CONCLUSION AND RECOMMENDATIONS

This report has examined many of the empirical foundations for current policy debates on Zimbabwean immigration into South Africa. Before embarking on this research, our organizations were besieged by requests from the media to provide comment on the current situation, to provide facts about what was happening on our Northern border and/or to assist in connecting investigators to key people on the ground. We were concerned, both with the limited understanding that certain journalists possessed about this issue, and the range of claims being presented as fact. Our own study is not intended to provide absolute certainty on these issues, but to ensure that policy is not being developed on the basis of spurious myths about Zimbabwean migration and South African immigration governance. Given our findings, what can we suggest to those seeking to improve South Africa's response to the problem?

Following on from previous reports on refugee affairs, we feel it is necessary to reiterate the point that every individual who wishes to claim asylum in South Africa be afforded adequate access to the reception centres. However, this report has also shown that there needs to be a more sustained effort to clarify the nature of emerging migration trends. While we can all agree that informal border crossings have increased recently, randomly attaching figures to these changes remains misleading and unhelpful, providing a spurious guide to any planned response. What we need to know is who is crossing the border and for what reasons, and how these needs can be matched with the various new policy proposals. This report sheds doubt in particular on the notion that a facility to house portions of the migrant population will be adequate - primarily because such a proposal does not take into account the motivations and intentions of many Zimbabwean migrants. However, the sign that elements of Parliament and of the Ministry are considering South Africa's response in terms of humanitarian rather than 'control' needs is itself a positive step. Clearly, any response must not only address the needs of the migrants, but the concerns of the resident community as well. However, the proposal to grant temporary residence permits without the right to work or social assistance suggests that the needs of migrants and host populations have not been fully considered. Our research suggested that residents were worried less about any apparent 'crisis' in Limpopo and more about the potential for collapse in Zimbabwe. Were there any plans to cater for the potential of increased numbers of migrants and increased levels of deprivation of this group?

Temporary Protection Permits may help to end the endless cycle of informal border crossing > arrest > deportation > informal border crossing, and free up security resources for other more important jobs. However, Pretoria must show that it is willing to partner with local government and communities to provide for any newly legalized migrant population and to solve potential conflicts with citizens. We would be particularly worried if South Africa decided to simply hand out permits without serious consideration of the attendant obligations that arise from recognizing any individual or group's residence rights. Temporary residence permits may also act as a magnet for further migration, especially if they are not adjudicated properly. Prohibitions on the right to work, study, or social assistance will not resolve the humanitarian needs of migrants but will put the burden on South African communities.

Broadly, our organizations welcome the serious intent policy-makers have shown on this subject and the concern the media has been devoting to shed light on these issues. If our comments are critical in tone, they remain constructive in the sense of directed at achieving a common solution to this issue. We also call upon our

partners, the UNHCR and the SAHRC, to monitor this issue and to motivate for prompt responses from the government, particularly on the issue of refugee rights. We will remain active partners in this ongoing discussion, and will continue to monitor developments as they arise. As part of the Migrant Rights Monitoring Programme, we welcome proposals for collaboration from government and civil society, particularly those that involve rigorous research.

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