

**Legal Resources Centre (LRC) Oral Statement to the African Commission
on Human and Peoples' Rights 45th Ordinary Session**

Thank you Madam Chairperson, Honorable Commissioners and Distinguished Delegates:

The Legal Resources Centre (LRC) thanks this Honourable Commission for the opportunity to present an oral statement on the human rights violations of refugees and asylum seekers in South Africa. This statement will further address two human rights issues of major concern for the LRC.

Madame Chairperson, we note General Assembly Resolution 63/149 of 2009 on Assistance to Refugees, Returnees and Displaced Persons in Africa condemning all acts that pose a threat to the personal security and well-being of refugees and asylum seekers and calling upon all States to take all necessary measures to ensure respect for the principles of refugee protection and humane treatment of asylum seekers. We further note the Resolution on the Situation of Migrants in South Africa adopted at the 43rd Ordinary Session of the Commission on Human and Peoples' Rights calling on the Government of the Republic of South Africa to investigate, prosecute and punish those responsible for the May 2008 xenophobic attacks and to institute measures to ensure the protection of foreign migrants in South Africa.

Madame Chairperson, while the LRC commends South Africa's immigration policy framework, we note with grave concern the following issues violating the fundamental human rights of refugees, asylum seekers and internally displaced persons:

- i) The detention of non-nationals at Lindela Detention Centre outside Johannesburg remains a subject of human rights concern. This facility housing people awaiting deportation currently does not have policies regarding the use of force, indefinite detention, and access to legal

representation for inmates as well as policies regulating complaints procedures for inmates and their access to immigration authorities. The absence of these policies is grossly invasive of the human rights of detainees. The LRC and its partners, in conducting regular visits to the facility have been advised by detainees that:

Inmates are detained for long periods, in direct violation of s34(1)(b) of the Immigration Act prohibiting detention without a warrant for a period exceeding 90days. At least 79 inmates at Lindela have been detained for more than 2years;

Detainees continue to be held without due process, verification of status, or access to immigration offices in order to apply for asylum.

In 2008 the Department of Home Affairs instituted a process of 'fast-tracking' asylum applications for detainees. Applicants who are detained at Lindela are transported to Refugee Reception offices, handcuffed and leg-chained. We believe the sole purpose of this fast-tracking is to reject the applications for asylum and immediately deport non-nationals with valid and legitimate claims for refugee status.

Madame Chairperson and Honourable Commissioners,

- ii) On the Immigration System and Status Determination Framework, the LRC expresses concern about the general dysfunction and excessive levels of corruption at Refugee Reception offices which renders many asylum seekers illegal, subject to unlawful detention and ultimately deportation.
- iii) It has been 1 year since the xenophobic attacks of May 2008. This violence was not wholly unexpected, the attacks simply marked a difference in scale, for which earlier incidents had served as a warning.

Despite this recognition, the root causes of the violence have not been investigated, no programmes have been instituted to prevent a recurrence of the violence and, generally, the government has not instituted a comprehensive incident monitoring or reporting mechanism. Further, of the 1627 suspects arrested only 79 cases have been successfully prosecuted.

Against this backdrop, the LRC requests the African Commission to, as a matter of urgency:

- Urge the Government of the Republic of South to extend an official invitation to the Special Rapporteur on Refugees and Internally Displaced Persons to conduct a fact finding mission on the situation of migrants in South Africa, taking special note of the conditions at Lindela Detention Facility;
- In respect of the Xenophobic attacks of May 2008, for the Commission to urge the Government of the Republic of South Africa to develop clear and coordinated interdepartmental strategies to prevent a recurrence of xenophobic violence, ensure greater protection of foreign nationals and provide greater protection to Somali nationals who remain particularly vulnerable to violence and discrimination perpetrated by private and state agents;
- Urge the Government of the Republic of South Africa to ensure that Status Determination processes are fair, reasonable and accessible

On other human rights issues, the LRC is gravely concerned about the inadequate responses to the intersection of gender-based violence and HIV and AIDS in Sub-Saharan Africa, in particular the disturbing legislative trend of criminalising HIV transmission in 19 African States. In this respect, we request the African Commission on Human & Peoples' Rights to:

Take Note of the NGO Forum Draft Recommendation on the Situation of Women and Girls in Africa requesting the Special Rapporteur on the Rights of Women in Africa to establish a Special Task Force to consider the situation of women and girls in the context of HIV and AIDS, in particular, the need to focus attention on HIV as both a cause and consequence of gender-based violence.

Finally Madame Chairperson, the LRC welcomes the opportunity provided to Non-Governmental Organisations with Observer Status to submit comments to the Interim Rules of Procedure of the African Commission. In this respect we take this opportunity to reiterate the importance of transparency in the consideration and adoption of the rules in public sessions of the commission as set out in our submissions. Madame Chairperson and Honourable Commissioner's, the LRC is of the view that this transparency will maximize our participation in the Commission's work of protecting and promoting human and peoples' rights in Africa.

Finally Madame Chairperson and Honourable Commissioners, the LRC expresses its support of the oral statements presented by POWA, Centre for Reproductive Rights and the ATHENA Network.

I thank you

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