



LAWYERS FOR HUMAN RIGHTS

REFUGEE AND MIGRANT RIGHTS PROGRAMME - JOHANNESBURG

Second Floor, Braamfontein Centre, 23 Jorissen Street, Braamfontein, 2001

Tel 011 339 1960 Fax 011 339 2665 Web www.lhr.org.za

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COURT CRITICISES HOME AFFAIRS PRACTICE OF DETAINING ASYLUM SEEKERS

The North Gauteng High Court handed down judgment today in which it criticised the Department of Home Affairs' practice of arresting and detaining asylum seekers without verifying their status or allowing access to the refugee system.

The court held that *"(i)t is simply untenable in a constitutional democracy that someone should have to give up their liberty on account of administrative difficulties or inefficiencies on the part of an organ of State."* (paragraph 32).

The Zimbabwe Exiles Forum ("ZEF"), a non-profit organisation which advocates for the rights of Zimbabweans living abroad, brought an application in 2008 after a number of their members were arrested outside of the Chinese embassy during a protest against a shipment of arms through South Africa to Zimbabwe. The majority of the 208 people arrested had applied for asylum, but those without documents were detained at Lindela for a number of months before the court ordered their release. At the time, South Africa's refugee reception offices were in complete disarray and they were simply unable to deal with the numbers of people who were approaching them for protection.

Despite the court ordering the immediate release and issuance of permits, to those who had been detained back in 2008, ZEF persisted in bringing comprehensive challenge against the Department's unlawful policies and practices in detaining asylum seekers.

The court confirmed this view and held in its judgment that:



- The undue delays in issuing documents under the Refugees Act was unlawful and inconsistent with the Refugees Act. .
- The arrest and detention of asylum seekers who had made applications but not yet received their permits was unlawful and inconsistent with South African law.
- The practice of keeping asylum seekers in immigration detention pending the outcome of such applications was unlawful and inconsistent with the Constitution.
- The practice of keeping such asylum seekers in immigration detention pending the appeal of negative decisions was also found to be unlawful and inconsistent with the Constitution; and
- The practice of re-arresting detainees upon their release in order to get around the 30 day limit of detention without a warrant under the Immigration Act was unlawful and inconsistent with the Constitution.

“This judgment is consistent with the repeated findings of our courts that the excessive use of immigration detention by Home Affairs is unlawful, unconstitutional and a violation of our international obligations,” said Ms Kaajal Ramjathan-Keogh, coordinator of LHR’s Refugee and Migrant Rights Programme.

Today’s judgment should serve as a call on the Department of Home Affairs to immediately release all asylum seekers who are presently being detained, and to revisit its policies regarding immigration detention and its own practices of detaining those seeking asylum protection in South Africa. This is particularly relevant considering the draconian measures which the Department is intent of pushing through Parliament in the new Immigration Amendment Bill. We also refer to the recent comments made by the Minister in the course of the Immigration Amendment Bill process and remind her of South Africa’s international obligations to protect asylum seekers and refugees and to

ensure that their rights are respected. We call on the Minister to carefully peruse the judgment and consider the practices of immigration officials in terms of South Africa's international obligations and the Constitution.

CONTACT LAWYERS FOR HUMAN RIGHTS:

Kaajal Ramjathan-Keogh

Head: Refugee and Migrant Rights Programme
Litigation Unit

Lawyers for Human Rights

0845148039

Jacob van Garderen

National Director

Lawyers for Human Rights

0828203960

David Cote

Head: Strategic

Lawyers for Human Rights

0726287698