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No. 06: The Point of No Return: Evaluating the Amnesty for Mozambican Refugees in South Africa

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Editorial Note:

In the 1980s, civil war in Mozambique forced hundreds of thousands of people to flee their homes and seek refuge in neighbouring countries, including South Africa. Formal refugee status was granted only after the civil war ended, with the signing in October 1992 of a Tripartite Agreement between Mozambique, South Africa and the United Nations High Commissioner for Refugees (UNHCR). The majority of these former Mozambican refugees clearly wish to remain in South Africa, as few took advantage of a UNHCR offer of free repatriation to Mozambique in the early 1990s. In 2000, an estimated 200-220 000 former Mozambican refugees remained on South African soil. The South African Cabinet decided in December 1996 that Mozambican refugees who wished to remain in the country should be given permanent residence status. This amnesty was eventually implemented between August 1999 and February 2000 by the Department of Home Affairs (DHA). Unlike earlier amnesties, a number of NGOs participated in the outreach, advocacy and monitoring components of the amnesty's implementation. This paper presents a detailed examination of the amnesty process, including its planning, the criteria for eligibility, the information campaign, the application procedures, the problems encountered and the lessons learned. Recommendations from this document can be drawn upon to develop appropriate responses to any future refugee influx to South Africa, whether from neighbouring countries or further afield. This report was prepared by Nicola Johnston of the Wits Rural Facility.

Abbreviations

AWEPA	Association of European Parliamentarians for Africa
CIDA	Canadian International Development Agency
DHA	Department of Home Affairs (South Africa)
NORTRAPA	National Para-Legal Association
OAU	Organisation of African Unity
RRP	Refugee Research Programme (University of the Witwatersrand)
SACC	South African Council of Churches
SADC	Southern African Development Community
SAMP	Southern African Migration Project (Queen's University)
UNHCR	United Nations High Commission for Refugees
WRF	Wits Rural Facility (University of the Witwatersrand)

Contents

1.0 Causes and Dimensions of the Mozambican Refugee Movement to South Africa

1.1 In the 1980s, the civil war in Mozambique forced hundreds of thousands of people from their homes. By the end of the decade, the population of Mozambican refugees in the neighbouring countries of Tanzania, Malawi, Zambia, Zimbabwe, South Africa and Swaziland was estimated at 1.7 million; or more than 10% of the total population of Mozambique.[1] A further 4 million were internally displaced by the war. Many who crossed into South Africa had already been displaced within Mozambique and were forced to flee again with the spread of the fighting. Refugees came with horrific accounts of the viciousness of the war.[2]

1.2 The majority of Mozambican refugees who fled to South Africa came in the mid-1980s. This was the most violent period of fighting in the 16 year war. They arrived in their thousands and often as whole village groups from rural border areas in Gaza and Maputo provinces. The majority fled on foot across the closest border. For many this meant walking through the Kruger National Park and risking attack by wild animals.[3]

1.3 Apartheid South Africa did not recognise the UNHCR, the UN and OAU Refugee Conventions nor the refugee status of the Mozambicans. The refugees were allowed to settle by the former homeland authorities of Gazankulu and Kangwane. This was permitted by the Pretoria regime provided that the refugees did not leave these areas. Ironically, therefore, they became more integrated into local communities in South Africa than in other countries of refuge. The fact that they were for the most part Shangaan-speaking meant that integration into local communities was eased since social and cultural links across the border were historically well-established.

1.4 At the height of the mass influx period, there were an estimated 350 000 Mozambican refugees in South Africa. The traumatic war experience, prolonged fighting and

profound social disruption in Mozambique prompted the majority of refugees in South Africa to remain on after the war ended. This contrasted with the situation in Malawi, Swaziland and Zimbabwe when the majority of refugees returned to Mozambique after the war.

2.0 Profile of the Mozambican Refugee Population in South Africa

2.1 In 2000, an estimated 200-220 000 former Mozambican refugees remained on South African soil, despite the fact that the civil war ended in 1992.[4] They still live mainly in north-eastern South Africa, along the border with Mozambique. The majority have been there for 10-20 years. They have become reasonably well integrated into local communities, although they represent a particularly vulnerable sector of an historically-disadvantaged rural population due to their previous lack of formal status. They generally live in settlements close to local villages, where they have built traditional mud-brick houses on land allocated to them by local chiefs. Another group has settled in the large peri-urban settlement area of Winterveld near Pretoria in North West Province. Pockets of refugees also reside in parts of northern Kwazulu-Natal Province, though they have remained much less visible.

2.2 The majority of these former Mozambican refugees clearly wish to remain in South Africa. In the early 1990s, fewer than 35 000 availed themselves of a UNHCR offer of free repatriation to Mozambique, and many of these subsequently returned to South Africa. Many of the younger generation were born in South Africa and are schooling or working here. The war experience of violence, community division and severed families also left many too traumatized to return. In many cases, there is little left to go back to. Many former refugees have married locally and are not distinguishable from other local South Africans except for a slight accent in their pronunciation. The majority, however, live in what are still referred to as “temporary” settlements, which resemble satellite

villages attached to local villages or small townships. Here they have poor access to land, water or electricity.

2.3 The Mozambicans provide a power base for many local chiefs or civic leaders, who therefore wish to retain them as such. However, with greater pressure on land use in the former homeland areas, some leaders have requested Mozambicans to consider returning to Mozambique. The land which the Mozambicans occupy is generally common grazing land which is in short supply.

2.4 The failure of the apartheid state to grant the Mozambicans formal refugee status when they initially arrived in the 1980s rendered them highly vulnerable in terms of access to protection, justice, basic facilities and resources. The most fundamental consequence of the lack of status for refugees before 1993 was economic: "as a result of the Government's denial that there was a refugee situation, very little international assistance was available. As such, even those settled in separate refugee settlements enjoyed only limited nutritional assistance, not the broader material assistance generally associated with such settlement patterns."[5] In the majority of cases Mozambican refugees were therefore obliged to join the migrant labour force, working both on the commercial farms and in the urban areas "where their lack of documentation rendered them vulnerable to super-exploitation and abuse by employers."[6]

2.5 After 1994, Mozambican refugees were subject to a more intense and new form of harassment as the new government stepped up its efforts to control undocumented migration. By the late 1990s, the post-apartheid government was deporting over 150 000 Mozambicans a year. The police made no distinction between new unauthorized residents and long-standing refugee residents. Although the numbers are unknown, it is clear that many refugees have been deported over the years (the majority of whom undoubtedly return as soon as they can).[7]

3.0 Voluntary Repatriation of Mozambican Refugees

3.1 Formal refugee status was granted only after the civil war had ended in 1992, with the signing of a Tripartite Agreement between Mozambique, South Africa and the United Nations High Commissioner for Refugees (UNHCR). Mozambicans were granted refugee status through a process of "group determination" if they had arrived in South Africa between January 1985 and December 1992. Refugee status was also granted to those who had arrived as contract workers during the early 1980s and who became "refugees *sur place*" due to the prevailing security situation in Mozambique.[8]

3.2 The Agreement adopted the refugee definitions given in the 1951 UN Convention and the 1969 OAU Convention. The Mozambicans were the first group ever to be granted "refugee" status in South Africa, even before the country had actually signed the UN Convention on Refugees (which it did after the first democratic elections in 1994). They are also the only "mass influx" refugees South Africa has experienced.[9] The Agreement itself was a breakthrough but was also potentially very restrictive:

> *The presence of a refugee shall thereafter be regularised provided that the continued presence alone of such a person shall not establish any claim to permanent residence or any similar right in South Africa* (Article IV, Section II c)
>
> *Refugees shall enjoy full legal protection, but shall not have automatic entitlement to social, economic and welfare rights, provided that they shall not be treated any less favourably than aliens generally in the same circumstances* (Article IV, Section II d).

3.3 The Agreement did enable the UNHCR to organize a voluntary repatriation programme. Voluntary repatriation started 17 months after the civil war ended in Mozambique and

lasted from March 1994 to April 1995. The initial UNHCR estimate of the number of people wishing to be repatriated was 250 000. This was later revised to 120 000 in August 1994, due to the low response rate of potential returnees. By the end of the organised repatriation programme, only 31 569 (12.6% of the initial estimate) had returned to Mozambique from South Africa. This return rate was extremely low considering the fact that South Africa hosted the largest number of Mozambican refugees after Malawi.

3.4 By the end of 1995, a further 35 471 had repatriated of their own accord. This gave a total of 67 060 returnees. Research by the University of the Witwatersrand Refugee Research Programme (RRP) amongst refugees, deportees and returnees identified the following reasons for the low response rate.

> People were afraid to go back and start again with nothing, after having spent such an extensive period of time in South Africa (an average of 10 years). Many of those who took up the offer of voluntary repatriation later returned to South Africa due to the lack of access to land and the danger posed by remaining land-mines.
>
> Though the civil war ended with the signing of a Peace Agreement in October 1992, many did not believe that the peace would last, since it had broken on so many occasions in the past. In Mozambique, radio broadcast indicated that there were still "warriors in the bush" preparing to go back to fighting if a peace settlement was not reached between political parties. Refugees in South Africa received these radio broadcasts and did not believe the war was really over. Rumours even surfaced that the UN vehicles were taking people to military bases to be killed.

Late delivery of promised goods and materials such as food, ploughing tools and seeds after people were repatriated to their villages in Mozambique was communicated to those remaining in South Africa and acted as a deterrent to further potential returnees. When returnees did not get goods they had been promised, some came back to South Africa and spread the news that there was no emergency assistance being provided in Mozambique.

Lack of infrastructure such as schools, clinics and roads in Mozambique was cited as a reason for refugees choosing to remain in South Africa.

Political factors also affected a large number of potential returnees. The voluntary repatriation programme coincided with elections and related campaigns in both South Africa and Mozambique. In South Africa refugees were promised citizenship and equal rights during election campaigns. They were also granted the temporary right to vote in the 1994 South African general elections.

The fact that refugees were not given a chance to assess the situation in Mozambique before deciding to return meant that potential returnees were unable to dispel fears and rumours. Many only realised that the peace was lasting and that conditions were adequate in Mozambique after the UN repatriation programme had closed. Those who could afford to then returned of their own accord, while others remained, unable to afford the transport costs for themselves and their few possessions.

3.5 On 31 December 1996, one year after the end of the UNHCR voluntary repatriation programme, a Cessation Clause was invoked, ending the short period of formal refugee status of Mozambicans in South Africa. This left those remaining Mozambicans who had come to South Africa as refugees once again without any formal status in the country.

The cessation of refugee status also saw an end to the supply of organised food assistance through Operation Hunger and the World Food Programme. As a result, these former refugees were forced to find work by whatever means to support their families. Many were forced to travel to urban areas and live and work informally. Some managed to acquire South African permanent residence status, since they had a South African spouse, or had been born in the country. The majority, however, remained without any formal status.

3.6 The Cessation Clause was preceded by a South African Cabinet decision to grant amnesty to those who had fled the civil war in Mozambique and wished to settle in South Africa. In theory, this should have meant that Mozambican refugees were not left in limbo, insecure and vulnerable. In practice, this is exactly what happened. The Cessation Clause granted former Mozambican refugees "exceptional leave to remain", though what this meant was never stipulated. The extended delay in implementing the amnesty decision meant that deportations of refugees continued. Their situation remained extremely vulnerable with limited economic survival options or access to basic services.

4.0 Amnesties and Exemptions

4.1 Since 1994, the new South African government has implemented several immigration amnesties with implications for the status of former Mozambican refugees.[10] The first was the Miners Amnesty announced in October 1995. This granted the opportunity for miners who had been working on contract in South Africa since 1986 to apply for permanent residency. A number of Mozambican residents qualified for South African residence under this amnesty.[11] Because Mozambican miners have to be recruited in Mozambique, the vast majority are residents of that country and not refugees. This

amnesty therefore had limited impact on the Mozambican refugee population in South Africa.

4.2 Of greater significance was the amnesty for Southern African Development Community (SADC) nationals in July 1996. This amnesty offered the opportunity for SADC citizens to apply for permanent residence, provided that they had been living in South Africa for five years or more, had no criminal record, and either were involved in economic activity or had a South African spouse or dependant born or residing lawfully in the country. Since Mozambique is a SADC country and most refugees came to South Africa in the 1980s, many qualified for this amnesty. However, as in most refugee contexts, many had insufficient documentation to support their applications. Some 146 672 Mozambicans applied for the amnesty, a mixture of refugees and migrant workers.[12] Around 60% of these applications emanated from Mpumalanga and Northern Province.[13] In total, 61 000 applications were rejected by the Department of Home Affairs, most on the grounds of inadequate documentation.

4.3 The South African Cabinet decided in December 1996 that Mozambican refugees who wished to remain in the country should be given permanent residence status. It took nearly three years before this decision was implemented. The amnesty was finally implemented between August 1999 and February 2000 by the Department of Home Affairs (DHA). The process offered the estimated 220 000 former refugees still remaining in the country the opportunity to apply for permanent residence status, or to register for assistance to return to Mozambique.

4.4 It is important to understand the reasons for delay and how they were dealt with by the various interested parties. The DHA claimed that the initial delay was due to changes in legislation on 1 July 1997 regarding permanent residency status and citizenship, as well as a backlog of applications from the 1996 SADC exemption.

The DHA also claimed on more than one occasion that it lacked the resources to implement the amnesty.[14] Once 1999 rolled around without any action, the general election further delayed the amnesty start date, as it was not a strong vote-winner to be legalizing two hundred thousand Mozambicans at this time. On a practical level DHA officials were fully occupied with the registration of Identity Documents for South African citizens wishing to vote.

4.5 The urgent need for implementation of the amnesty was stressed at a SAMP Conference in Pretoria in June 1997 and at a workshop in Nelspruit in July 1997 hosted by the Association of European Parliamentarians for Africa (AWEPA) and the Mpumalanga Legislature. A task force was set up following the workshop with representation from AWEPA, Wits Rural Facility, Idasa (as the South African SAMP partner) and the Department of Home Affairs (DHA). Several meetings were held which raised issues of concern relating to the context and conditions under which the amnesty would be implemented.[15]

4.6 Of particular concern to the NGO partners was the process of learning from the mistakes made in the earlier SADC amnesty, particularly around an effective outreach strategy.[16] Once an agreement had been drawn up with the DHA, the NGO and government participants discussed the broad issues and terms of implementation. These included the dissemination of information, experience of previous amnesties, governmental and non-governmental cooperation, eligibility, viable proof and documentation, access and outreach support. Further discussion of the details of this project was then decentralised to the main focus provinces where the former refugee population were concentrated (Mpumalanga, Northern Province, North West Province and Kwazulu-Natal). The degree of non-governmental input and consultation was in marked contrast to the earlier SADC amnesty.

5.0 Planning the Amnesty Process

5.1 In the implementation of the 1996 SADC Amnesty, it was clear that there were considerable access barriers for applicants in the former Mozambican refugee communities. An evaluation of that Amnesty led to several recommendations for further interventions:[17]

Provision of outreach centres in rural areas, to reduce applicants' travel costs.

Establishment of application support and advice services for appeals, particularly in rural areas.

Shortening of forms, so that only information directly relating to the application is collected.

Provision of better trained temporary staff.

Consistency in accepting varied forms of documentation.

Devising means to ensure that all application procedures be carried out in one visit (i.e. criminal record check, application, collection of supporting documents).

Allowing applications from women applying independently of their partner or spouse.

Developing a common vision of the purpose of the Amnesty between the policy makers and the implementing agents. This should be done by improving communication both between different departments and between different levels

of Home Affairs. The motives behind policy decisions should be clearly stated and should inform the manner of implementation.

5.2 A key challenge for the refugee amnesty was to overcome the prohibitive transport costs which had dissuaded potential SADC amnesty applicants from coming to DHA offices to make an application. The first task was therefore to identify the areas where there was the greatest concentration of Mozambican refugees in the four focus provinces and to make recommendations for where mobile units should be placed to assist those far from DHA offices. Nineteen mobile unit locations were identified to cover Northern Province and Mpumalanga, one in the North West to cover Winterveld and one roaming unit in Kwazulu-Natal to cover the pockets of refugee households living in a widespread area. In Northern Province six regional DHA offices were involved in the project, Mpumalanga had three offices involved, North West Province two offices and Kwazulu-Natal one.

5.3 To service the mobile units, the DHA required additional temporary staff for which it had no budget allocation. Since this was crucial to the success of the intervention, AWEPA undertook to raise funds for these officials from its donors, despite the fact that it was not normal procedure to fund government structures. Once funds had been secured, a formal contract had to be drawn up between the DHA and AWEPA. After that had been signed, there were further technical delays while the Department of Finance processed the AWEPA funding support.

5.4 The NGO partners involved in the outreach programme included the South African Council of Churches (SACC), the National Para-Legal Association (NORTRAPA), SAMP (through Idasa), the RRP and AWEPA's implementing arm, Refugiado.[18] A training programme was put together to sensitise and orient partners to the situation of former Mozambican refugees, the motivations behind the amnesty and the outreach

support initiative. The programme also defined clear roles and responsibilities for each of the partners in their work together as a team:

> The SACC provided volunteers for each of the mobile units to assist the applicants and the DHA with the filling-in and sorting of forms. The SACC have a long history of contact and support of the former Mozambican refugee communities. Their participation was encouraged in order to counter refugees' fears regarding the real motivation of DHA, which many refugees had previously experienced through arrest and deportation.
>
> SAMP supported the initial political negotiations for the terms of the Amnesty and produced the information materials through Idasa.
>
> NORTRAPA provided one para-legal for each mobile unit to assist applicants with any advocacy issues and advice. This had been a recommendation from the SADC Amnesty evaluation in order to counter corruption and potential ill-treatment of applicants.
>
> RRP had two field monitors, one in each of the major focus provinces (Northern Province and Mpumalanga); one data analyst monitoring the number of applications from each mobile unit; and one monitoring coordinator developing monitoring strategies, bringing all the monitoring information together in report form, and following up issues of concern with the appropriate body.
>
> Recommendations for selection procedures, roles and responsibilities, and information dissemination techniques were included in the planning document and commissioned by Refugiado from RRP.

5.5 In terms of collaborating so closely with NGOs, this project was unprecedented for the DHA. Once the process was decentralised to a provincial level to deal with details of implementation and coordination, collaboration became more fluid. In general, this was very positive in terms of mixing different areas of expertise and varied approaches to the same process. Once a working relationship was established on the ground between the different partners, trust and adaptability increased. Positive, interactive and open working relations were established over time. Once a relationship of trust and respect was established, it was important to sustain a realistic balance between the bureaucratic and procedural approach of the DHA and the humanitarian participatory approach of NGO partners relating to the needs of applicants.

5.6 The DHA was initially insecure about the envisaged "monitoring" role of the para-legals. However, once job descriptions were circulated and roles and responsibilities established these concerns were allayed. Having received the job descriptions of the para-legals, the DHA Northern Province even took the initiative of providing a one-day training session for the para-legals on immigration procedures and regulations which related to the process. All partners were given the opportunity to raise issues of concern with the process; these were summarised and documented in the monthly monitoring reports produced by the RRP office. The issues raised in these reports formed the agenda of coordination meetings.

6.0 Defining Eligibility

6.1 The only condition applied to this amnesty by the DHA was that the applicant should have come to South Africa during the period of the civil war in Mozambique; effectively before the Peace Declaration was signed in October 1992. In discussions at the national committee level it was agreed to extend the deadline to the end of 1992. In this way,

economic migrants from Mozambique would be separable from those who fled the country because of the civil war.

6.2 The guidelines drafted by the DHA (Departmental Circular No.34 of 1999) were based on provincial discussions between all the partners. However, some additional restrictions and inclusions were added by the DHA. The provision of a start-date of 1985 (Sections: 1.2, 1.4a and 4) for the period of eligibility was one addition. Although the mid-1980s saw the height of the influx of Mozambican refugees to South Africa, there were many who came at the beginning of the 1980s. NGOs therefore argued that the amnesty should include those who came at the beginning of the 1980s and previously. They were concerned about the treatment of those who had originally come for work and remained as "refugees *sur place*", due to the situation in Mozambique.

6.3 A further concern raised by NGOs was that genuine applicants were already being arrested and deported, which would undermine the amnesty initiative. To stop this situation, a moratorium on the deportation of Mozambicans was requested by NGO partners. The DHA refused to agree to such a moratorium, citing the large number of undocumented Mozambican migrants in the country. It agreed simply that immigration officials would be sensitised to the project. In addition, at a provincial level the DHA agreed not to arrest bogus applicants at offices and mobile units during the application phase, so as not to deter genuine applicants from applying.

6.4 Throughout the process, the DHA remained extremely wary of "bogus" applicants, either Mozambicans who entered the country after the civil war or other migrants who were non-Mozambican nationals. It wanted to limit the planned information campaign and applications to the main refugee settlement provinces – Northern Province, Mpumalanga, North West and Kwazulu-Natal – and to exclude Gauteng Province, where the majority of "economic migrants" were located. NGOs argued that many Mozambican former

refugees were resident in Gauteng, especially in areas like Alexandra and Soweto. Some of these had their household base in the settlement provinces, but had been forced to seek employment in Gauteng once food distribution ceased in 1994. Others came straight to Gauteng during the war to seek employment and support themselves and their households. Many had relatives or friends who had been working in Gauteng before the war and had come to join them when fighting began in Mozambique. The DHA remained unwilling to extend the project to Gauteng Province, effectively shutting out many Mozambicans who had come to South Africa in the 1980s, in possible contravention of the Cabinet decision.

6.5 Despite the fact that there was only one condition for the amnesty, establishing accepted and realistic proof of date of entry was difficult. The majority of genuine former refugees were without any formal documentation. Here the detailed knowledge of the NGO partners working directly with the former Mozambican refugee communities was to prove crucial. Community meetings were held to establish what official papers or documents potential applicants possessed, and which might be used for dating their entry into South Africa. The following documents were identified and accepted as supporting proofs by the DHA:

- Food ration cards (received by some refugees when they first arrived in RSA)
- Identity cards from the Tribal Authorities
- Gazankulu/Kangwane pass books (issued in 1987-89)
- White identity cards issued by the Mozambican Consulate
- Hospital/Health cards
- "Road to Health" cards of children born in RSA
- School/creche records

Some documents – such as the Gazankulu/Kangwane passbook (issued in 1987-89), ration cards issued by the SACC (1984-90), and Voluntary Repatriation Application Forms (VRAF) – were only ever issued to former Mozambican refugees. These were taken as accepted proof. However, the ration card only had a serial number and had to be linked up to a directory to establish if the applicant in possession of the card was the real owner. It was agreed that if this ration card was supported by an affidavit from the issuing body this would constitute an accepted proof. Not all former Mozambican refugees were issued with ration cards, since food distribution took place only between 1984 and 1994 and those arriving after 1990 were not issued with ration cards. Also, some people had lost or disposed of their ration-cards, since they were redundant after the food-distribution programme ceased in 1994.

6.6 There were clearly genuine applicants who were without any of the above-mentioned documents. The NGOs therefore proposed that referral letters or affidavits should be accepted from certain recognised bodies who were familiar with the former Mozambican refugee community members. This included the Tribal Authorities, who in many cases had allocated communal lands for the refugees to settle on, and the SACC, who had been supporting the Mozambican refugee communities since their arrival. Civic Associations were also included, though in practice these referral letters were not accepted as sole proof, since the associations were established after the cut-off date for proof of entry (1992). Hence these documents were taken more as supporting evidence. School, creche, hospital and clinic referral letters could also be used in support of applications. For those who were employed, an affidavit from an employer was also accepted. To cover those who were without an employer to vouch for them, the NGOs proposed that affidavits from friends, relatives and neighbours in possession of RSA identity documents be accepted, though in practice this had to be substantiated by other proofs such as hospital records.

6.7 In the case of applicants not possessing any of the above documents, verification interviews were to be used. It was agreed that these might also be applied in addition to documents. They were to follow the *Guidelines for Refugee Status Determination of Mozambicans in South Africa* in conjunction with Departmental Circular No.34 of 1999. The latter effectively excluded those former Mozambican refugees who had settled in areas other than those stipulated, i.e. Northern Province, Mpumalanga, North West and northern parts of Kwazulu-Natal.

6.8 An additional condition included by DHA Head Office at a very late stage was the requirement for applicants to prove their Mozambican nationality. This was supposedly to avoid bogus applications from non-Mozambican nationals. The requirement posed a new set of problems to the implementation partners. Although DHA immigration officers felt capable of establishing the nationality of an applicant through interview procedures, the DHA claimed that this would be extremely time-consuming and take them from their other numerous duties. Some DHA provincial heads also felt that for "political" reasons, the task of certifying nationality should be conducted by representatives of the Mozambican State. The Mozambican Consulate in Nelspruit was asked to participate in discussions to resolve the issue.

6.9 In practice, different provinces developed different approaches to the requirement for proof of Mozambican identity. Mpumalanga initially did not take any applications at all from those without proof of nationality. Northern Province took all applications and those without proof of nationality were kept as pending files, awaiting a support initiative from the Mozambican Consulate. In this way they acquired statistics of those files pending proof of Mozambican nationality, which in turn assisted the Consulate to develop an appropriate outreach support based on the known workload. So as not to undermine access, it was necessary for the Consulate to run a simultaneous outreach

initiative to support the amnesty process. There was again no budget to do this and AWEPA again shouldered the responsibility of raising the funds required.

6.10 The process of acquiring the support of the Mozambican government, raising funds, getting an agreement signed and recruiting people, took the whole six month application period. This process was also slowed down significantly by the flood disaster in Mozambique. In the interim the Mozambican Consulates in Nelspruit and Durban assisted those applicants who managed to come to their offices. However, for the majority of applicants the travel costs were too high. It was finally agreed in all provinces that applications should be taken pending proof of citizenship.

7.0 The Information Campaign

7.1 The importance of a targeted information campaign well in advance of the start of the intervention and throughout the process had been highlighted in the SADC amnesty evaluation.[19] The most effective modes of information dissemination were seen to be local radio and community meetings. A high percentage of the former Mozambican refugee population are illiterate which again reinforced the necessity for these methods. Targeted information leaflets were put together and translated into Shangaan and Swati. The information included in these leaflets was compiled jointly by the NGO outreach partners and the provincial DHA. The draft was slightly adapted and then approved by DHA Head Office. The media unit of Idasa was responsible for putting together leaflets and compiling the radio programmes to go out on local radio stations. It was important that this information was coming from non-governmental sources trusted by potential applicants in order to allay fears amongst the former Mozambican refugee community that this was a process to entrap them.

7.2 The information campaign was originally scheduled to commence on 1 August 1998 and the application process on 1 September 1998. However, the delays in the start of the project affected the planned information campaign, which was to include the start date of the project. When a start date for the project was finally secured at short notice for 9 August 1999 (a whole year later than originally planned), this allowed only a two-week information campaign prior to the start of the project. However, since it had taken so long to secure the start date the partners felt it was not appropriate to delay again in order to enable a more extensive pre-start information campaign.

7.3 Local and provincial media were targeted during this initial campaign and on-going information initiatives took place throughout the six month application phase and the four month appeal phase. The aim of this exercise was to counter misinformation and fear surrounding the process and inform applicants of various deadlines and procedures. Local radio announcements had a visible effect during both the applications and appeals phases. Community meetings set up by SACC and RRP provided an important "safe" forum to give information, and for potential applicants to raise concerns and fears. In addition to local and provincial coverage, wider national media was used to counter potential xenophobic responses from the general public. Both local and national media were very responsive to and supportive of the process.

8.0 Application Procedures

8.1 From the experience of the SADC Amnesty it was clear that some procedures needed to be adapted and improved to avoid the huge backlog of applications and to ensure that all genuine applicants were granted access to this project. The support of additional DHA temporary officials, SACC volunteers and NORTRAPA para-legals ensured that there were appropriate human resources to render the application process more efficient.

8.2 In order to economise on stationery costs, the same application form as for the SADC Amnesty (BI 169) was used. There was a surplus of these forms remaining in most DHA offices. It was agreed that the sections of the form which did not apply to applicants for this exemption would be omitted, as recommended in the SADC Amnesty evaluation. In practice, this was the section relating to economic activity, since this was not a condition for the refugee amnesty.

8.3 In some offices in Northern Province, Mozambican refugees who had applied for the SADC exemption, but failed on grounds of lack of proof of economic activity, were automatically taken as approved under this programme. They were fast-tracked to fill forms to apply for their IDs (BI 9), which were then sent to Pretoria for processing.

8.4 One of the biggest delay factors for the SADC Amnesty had been the need to get police clearance for all applicants before applications could be processed. This was done by the Department of Justice in Pretoria, who checked the fingerprint sample of applicants on their central database. A clean criminal record was also a condition for the refugee amnesty. However, the NGOs motivated that those applicants who had been approved on all other conditions (entry before 31 December 1992 and Mozambican nationality) should be assisted to apply for an ID. It was initially agreed that this would be issued to the applicant, but that it would be cancelled should it later prove that the applicant had a criminal record. Some of these IDs were processed and returned to the local office before feedback had been received from the Department of Justice. Offices were free to use their own discretion on this. One office did not issue the ID until the criminal record had been cleared, since it felt it would be difficult to retrieve an ID from applicants. This then became the recommended practice from the regional office and caused delays of up to three months for approved applicants to be issued with IDs after feedback from the Department of Justice had been received.

8.5 Though application procedures varied slightly from office to office, the emphasis at all was on cutting down the number of follow-up visits required by the applicant. Some offices allowed the applicant to fill out all forms including the application for an ID in a single visit. Should the application be approved, the ID application could immediately be sent off to Pretoria without the applicant having to return to the office to check the status of his/her application and fill the subsequent forms on approval. Other offices were concerned that the additional cost for the applicant of having to provide photos for the ID application should be incurred only if the applicant was successful. In such cases, the applicant would be required to visit the application point to check the progress of their application. If approved they would then be asked to procure two photos and give their fingerprints for an ID application. This method also meant that more first applicants could be assisted since the additional ID forms did not need to be filled until later.

8.6 In an attempt to reduce the number of follow-up visits required by applicants, the Section 41s were issued for a three-month period rather than the usual 31 days. Applicants were given staggered dates when they should return to check their applications. This was effective when the processing of these applications followed expeditiously. However, this was not always the case, since applications in some offices were processed on an ad hoc basis. Others went according to reference number and order of application, which meant that those who had come first would be first processed.

8.7 The DHA agreed that applications should be taken from a principal applicant and that this application would cover their spouse(s) and dependants under the age of 18. In the SADC Amnesty, some women had not been permitted to apply as principal or independent applicants without their spouse. Although the official form stipulated no gender for the principal applicant, in practice it was again interpreted as the husband. This hindered applications from some women living apart from their spouse or unsupported by their spouse. The issue was raised in the training sessions and the para-

legals were asked to ensure that women be supported in submitting applications as a principal applicant when requested.

9.0 Issues, Problems and Challenges Identified

9.1 *Monitoring Responsibility.* Responsibility for the monitoring and evaluation of the implementation of the amnesty rested with the RRP. Monitoring reports were produced on a monthly basis and distributed to all partners involved.[20] The issues raised in these reports formed the agenda for the regional and inter-provincial coordination meetings, where they were discussed and resolved where possible. The main issues identified in the monitoring are considered below.

9.2 *Access to Documentation and Prohibitive* Costs: The DHA accepted affidavits from those who could certify that an applicant had been in the country from before the end of the civil war. However, as with the SADC Amnesty, some local chiefs charged amounts which were not affordable to many genuine applicants. The outreach programme partners appealed to some chiefs to reduce their costs and received positive response in some areas. In other cases, alternatives to the affidavit from the chief were found and recommended.

9.3 *Bogus Applicants:* There were a number of bogus applicants who tried to take advantage of the process. In the Giyani region in Northern Province, minibus taxis with Mozambican registration numbers were seen at the offices bringing Mozambican applicants directly from Mozambique. There were also reports from the informal border post at Mbuzini, on the Mozambique-Swaziland border, that a number of those entering on day concessions were not returning to Mozambique. The SANDF, which controls this border, informed the DHA of these abnormalities. In response, copies were circulated of the identification documents taken from those who crossed the border and did not return.

If these people then applied for exemption, they were immediately disqualified. In an attempt to avoid bogus applicants accessing the process, mobile units targeted former refugee settlement areas and appealed to chiefs not to write documents for those they did not know. However, the income for chiefs was an incentive not to comply. Those in possession of fraudulent documents had their applications rejected.

9.4 *General Operations:* The provincial DHA offices were given extensive flexibility from head office in Pretoria to take in applications for this project. The standard of assistance provided to applicants improved over time as the mobile unit teams became more organised and familiar with their tasks. The volunteers spent most of their time providing information, completing application forms, sorting and checking application files and feeding back results. The para-legals were most involved in advising applicants on what supporting documents were required, giving information about the regularization process and following up local cases of extortion. Applicants were generally treated well by all the outreach partners though there were a few reported cases of aggressive language by DHA officials in one particular office. However, this office was under a significant amount of strain with a large influx of applicants.

During the festive seasons there were a number of applicants who had their application documents confiscated from them as they crossed to Mozambique to visit relatives or friends. This undermined the application process, but also emphasised the manner in which the target group relates to borders. It had not been sufficiently explained to applicants when they submitted their application that they were not permitted to cross any border until their application had been processed and they were in possession of correct travel documents. For many this would mean they would have to wait five years to apply for South African citizenship with all the costs involved and then apply for a South African passport. For others in possession of a Mozambican passport, they would need to apply for permission from DHA to travel on a foreign passport after they had

received their South African Identity Document. Such restrictive policies effectively encourage unauthorized traversing of borders.

9.5 *Protection of Applicants:* The documentation issued to applicants to give them temporary protection during the processing of their applications varied greatly. It was an ongoing concern that, due to pressures with the huge influx of applicants, shortcuts were taken on the issuing of the correct documentation to protect applicants. The agreed procedure was that all applicants should be issued with Section 41s. Initially, the period for which these Section 41s were valid varied from three weeks to three months. To avoid additional administrative work renewing Section 41s, it was agreed at an inter-provincial level that Section 41s would be issued for a three-month period. In practice, some applicants were not issued with Section 41s at all. Some offices only issued applicants with their receipt of application. Others included a stamped photo of the applicant on the receipt of application. On some section 41s it was incorrectly stipulated that the applicant's movements should be restricted to the Province where the application was made. In one office only applicants working in Gauteng were issued with Section 41s, because it was not thought to be necessary for those living locally.

During the monitoring process there were ten reported cases of applicants getting arrested by the police or SANDF at roadblocks close to borders, because they were not in possession of any documentation. On one occasion genuine documents were reportedly destroyed by the arresting police officer. In the other cases, applicants were not in possession of a Section 41, or the police required verifications of their documents with the issuing DHA office. DHA officers were supportive in getting applicants released from arrest. An appeal was made to DHA to rectify this situation and the issue was resolved in most offices over time. Shortage of both human resources and stationery allocations were a factor throughout the process which contributed to correct procedures not being followed.

Other cases were reported of applicants being deported to Mozambique because their Section 41 document had not been renewed after the expiry date. In some provinces, the Section 41s were only given for 31 days, despite the agreement to extend them to a three-month period to reduce administration for DHA and revisiting costs to the applicants. It was not sufficiently emphasised to applicants that they would need to renew their Section 41s on the specified expiry date. Applicants interviewed stated that the costs involved to travel to the DHA offices to renew their permits were prohibitive. Others were not aware that they were required to do this and simply planned to go and check their application after six months.

The sheer workload, shortage of immigration officers and stationery constraints led to corners often being cut in the issuing of documents. The monitoring team was constantly raising concerns relating to the lack of protection documentation. The para-legals were requested to ensure that applicants were issued with Section 41s and that applicants kept these up to date.

9.6 *The Slow Processing of Applications:* The influx of applicants in the Northern Province was far greater than in Mpumalanga, North West and Kwazulu-Natal. This put a lot more pressure on the offices in this Province. The SACC volunteers were tasked with assisting in the processing of applications. This improved the speed of the process although a backlog of unprocessed applications remained a year later. These were mainly applications still pending proof of no criminal record by the Department of Justice in Pretoria. Refugiado continued to fund one temporary DHA officer and one volunteer to assist with processing in each DHA district office for a period of three months after the close of the application phase. However, this was insufficient time in which to complete all the processing and the DHA permanent staff was left with this as an additional task on top of its everyday work. As a result, processing of remaining

applications became exceedingly slow and applicants and DHA officials alike were frustrated by the situation.

9.7 *Appeals Procedures:* After the closure of the applications phase, an appeals process was set up to support any rejected applicants who wished to exercise their right to appeal the decision. In Northern Province and Mpumalanga, there was a para-legal based at each of the DHA offices which had been involved in the project. The para-legals advised those who wanted to appeal and submitted written appeals to the DHA regional board for consideration. On the request of the para-legals, draft appeal letters for common case types were drawn up by the Wits Law Clinic. Applications were processed on different premises in different offices. Some of the grounds for rejection were appealed at an office level. Others were discussed at an inter-provincial level to attempt to standardise procedures. As mentioned above, some offices allowed administrative mistakes to be corrected without the application needing to go to the regional appeal board. Others required that formal appeal procedures be followed. There were a number of appeal cases which were rejected at a provincial level. Some of these were further appealed at a national level.

The main grounds for rejection were the following:

- incorrect date of entry;
- return to Mozambique after initial entry to South Africa;
- residential base in Gauteng;
- those who worked as contract workers for their whole period in exile;
- petty crime offence record;
- fraudulent documents;

- young applicants without sufficient supporting documentation for an independent application;
- no proof of Mozambican nationality.

9.8 *Return to Mozambique:* Particularly in the refugee settlement areas close to formal borders, there were many cases of applicants having returned to Mozambique and come back to South Africa subsequent to their original entry into the country. These cases included those who returned to locate family members and check the situation in the country; those who were involuntarily deported to Mozambique; those who had returned to attend funerals or support family crises; and those who had returned with the UNHCR voluntary repatriation programme, but were unable to support themselves in the country and therefore returned to South Africa. Such cases were appealed at a regional, provincial and national level on the basis that all former refugees had the right to return to establish whether conditions were safe or not,[21] and that the Amnesty was qualified as "unconditional" for those who had settled in South Africa. The NGOs argued that prior to the elections in Mozambique in 1994, it was dangerous for anyone visiting the country not to be in possession of a Mozambican identity card. Therefore, those going back to check conditions in Mozambique would have had to acquire an identity card during this period, otherwise they would have risked arrest. At the time of writing there was no reversal on the decision.

9.9 *Date of Entry:* Applications often lacked sufficient proof of date of entry or included contradictory information relating to the date. Such cases were most common for those who used their Mozambican identity document to prove their Mozambican nationality. When processing applications, the DHA checked the date when these documents were issued and if this was later than the cut-off date, or different from the specified date of entry, the application was rejected on the basis of inconsistency of supporting

information. Such cases occurred mainly in the Nkomazi region (Mpumalanga), which is close to the Komatipoort formal border post with Mozambique.

9.10 *Applicants from Gauteng Province:* As mentioned above, there were a large number of potentially eligible applicants residing in Gauteng. Some of these had a residential base in the focus provinces, but were working in Gauteng Province. Others had been based in Gauteng since they had arrived in South Africa.

Applicants were not informed when they applied that applications from Gauteng would not be accepted. This in itself was misleading. The DHA in this respect was "screening" undocumented migrants by entering them on the Migration Control System, rather than assisting those who were genuine applicants. Those who applied had to show proof of residence in one of the focus provinces.

There were still bogus applicants who had arrived in South Africa after the cut-off date and managed to acquire referral letters from chiefs or bogus employers stating that they had come to South Africa before 1992. This jeopardised the applications of those who were genuine applicants from Gauteng since it heightened the suspicion of the DHA. The fact that North West Province was a focus province yet is so close to Gauteng province caused problems for those genuine applicants from areas such as Winterveld. Many bogus applicants tried to apply through these offices (Brits and Garankua) which made screening procedures much more stringent on the one hand and open to corruption on the other. Rejected applications from Gauteng were approved on review only if the applicants could prove that they had a residential base in one of the focus provinces.

9.11 *Contract Workers:* There were applicants who had been working as contract workers since they first sought refuge in South Africa. The majority were working on commercial farms in Mpumalanga, Northern Province and North West. They were

required to renew their contracts on a yearly basis and for this some had, by law, to re-enter Mozambique to renew the contract with an agent. Some such applicants were rejected, despite the fact that their household base had been in South Africa since they had arrived during the civil war.

9.12 Petty Crime Records: The applications of those rejected for having petty criminal records were appealed and the majority were approved on review. Most of these petty criminal records related to the lack of formal status of the applicant. These included records of arrest and deportation, selling liquor without a licence and working without a permit.

9.13 Survival Fraud: A number of applicants were in possession of fraudulent South African identity documents which had been acquired to access more stable work options and to avoid arrest. These documents were often in an adopted South African name, so as not to be conspicuous to the authorities. Some had been acquired through fraudulent means and others applied for through DHA channels giving fraudulent supporting evidence. These applicants approached the para-legals, SACC volunteers and RRP monitors for advice. Many were keen to secure a legal ID in their own name and regularise their situation in the country. A new ID application under a different name would be picked up in the finger-screening process. In addition, young people who had completed their matric exams under a false name would also have problems in changing the names on their exam certificates.

This issue was taken up at an early stage in the planning process to a provincial appeal level. A meeting was set up with then Premier for Mpumalanga, Mathews Phosa. Phosa was sympathetic to the situation and added that many former exiles from South Africa had experienced the same situation and adopted fraudulent documents to survive. He agreed to raise the issue at a political level with the Minister of Home Affairs on the basis of a motivation letter from the outreach partners. However, before the issue could be

followed up, Phosa left office. The issue then had to be pursued in the appeals phase of the project.

9.14 *Incorrect Spelling of Names and Recalling Dates:* As with the SADC Exemption, the different spelling, and sometimes even different meaning, of the names of applicants was a problem. Some applicants had adopted a South African name since residing in the country, in order to be less conspicuous. The majority of applicants were illiterate, so they were unable to spell their names for those taking their details for the application. Dates were also often difficult to establish correctly from applicants. The majority of applicants were illiterate, or only literate in Portuguese. In addition, there were administrative mistakes with dates being miswritten by those who were taking down information. Some applications were rejected for inconsistency in the spelling of names or non-correlating dates. Para-legals conducted follow-up appeals for those who were able to provide additional documentation. However, specialised interviewing skills required to establish dates by alternative techniques were not available or were not culturally applicable for Mozambicans.

9.15 *Young Independent Applicants:* There were a number of young applicants who were over the age of 18 and therefore had to apply as a principal applicant independent of their parents or guardians. This created problems when they had to prove their Mozambican nationality, since they were either very young when they left Mozambique or were actually born in South Africa. In both cases they had difficulties answering questions posed by the Mozambican Consulate to establish Mozambican identity. Some cases were resolved by applicants being requested to return with their parents, but this was difficult for those whose parents were deceased or those who had been adopted by a local family.

9.16 *No Proof of Mozambican Nationality:* The largest caseload, which was still outstanding at the time of writing, involved 25 462 applications in Northern Province. They were

not given a concession to submit proof of Mozambican nationality after the stipulated cut-off date for processing of applications. This was despite the fact that further funding support was secured to enable the Mozambican Consulate to continue their outreach to assist such applicants in Northern Province. These applications, many of which had been submitted early in the application process, were no longer processed and applicants were not granted the right to appeal. The case was appealed by the outreach NGOs initially at a regional level and was then referred to the DHA head office.

9.17 *Political Appeal:* Some rejected applications of concern have been reviewed on request of the NGO partners by DHA at a provincial level, but mostly with little success. Appeal issues were raised with DHA head office in Pretoria with little positive response except an agreed extension for pre-identified applicants who were not assisted on account of the circumstances created by the torrential rains in February 2000. At the time of writing, key appeal cases were being compiled for those which NGO partners felt should have been included in view of the unconditional nature of the original Cabinet decision. Since the amnesty was the result of a Cabinet decision, it was agreed by the NGO partners that certain difficult issues at a bureaucratic level of appeal should be raised at a political level (see Appendix 1).

10.0 Analysis of the Amnesty Process

10.1 Data Collection: Each application was given a reference number so that it would be possible to trace applications. DHA entered all applications manually into registration log books, held at each of the involved offices, and into the computerised Movement Control System. The RRP also collected data evaluation forms from all the application points, which were used as a monitoring tool in terms of directing the human resources to where there was the greatest need. The number of applicants registered each day was recorded by the SACC volunteers who assisted with filling and interpreting the forms. These

records were collected and checked by the RRP monitors and then entered into a database. The statistics gathered were a useful evaluation tool and enabled some crosschecking of official DHA statistics.

Through the RRP data-collection process, it was possible to pick up duplicate reference numbers and refer them back to the relevant DHA office. There were even examples of up to five principal applicants from the same office with the same reference number. This was usually corrected by allocating a letter to each.

The RRP statistics were more geographically specific because they included mobile unit names. This gave a clearer picture of where the main concentration of former Mozambican refugees were located in the two provinces covered (Northern Province and Mpumalanga). A register was taken of the mobile unit where an application was made, the area of residence, the reference number, the number of dependants and the date on which the application was taken. At the appeals phase it was possible to monitor those who were approved and rejected, as well as those who were approved on review.

DHA kept their own statistics of principal applicants, spouses, dependants, approved and rejected applications, and those still outstanding. In Northern Province a specific record was kept of those who were pending proof of Mozambican nationality.

10.2 *Applications Process:* The pattern of application for most amnesties is that the major application influx takes place just prior to the closing date. In this project, the long-term situation of vulnerability of the target group played a significant role in the delayed response of genuine applicants to come forward and apply for exemption. For many, mistrust of the motivation behind the amnesty initiative remained, despite the attempt to circumvent this with the involvement of the SACC. Until peers were seen collecting their IDs from the DHA offices, many did not believe that the initiative was genuine. Past

experience of the DHA for most former refugees had been the arrest and deportation of household members. Those who did come forward and were rejected for the SADC Amnesty were also despondent, since they had invested time and money to apply without any positive result. For this reason, they were not motivated to apply for this new amnesty. Others claimed that without bribes they got nowhere and since they were either unwilling or unable to pay the required bribes they did not believe it was worth trying.

For those working on commercial farms, the fact that the project took place during the busy harvesting season affected their ability to apply. The response from farmers to this initiative was also varied. Some were very keen to assist their workers to get formal documents; others were dubious of the implications for them coming forward with their former refugee labourers. Still others did not want their workers to have formal status since they believed they would become more demanding in terms of the nature of their contract and access to land. There were also those who just wanted to focus on getting the short-term work done and were unwilling to provide their workers with time off to apply for exemption.

The mobile units did go to the farms and assist former refugees to apply in some farming areas. However, this could happen only with those farmers who were willing to co-operate with the process. The outreach project attempted to approach farmers unions to emphasise the importance and time limit of the project. In general, this generated a positive response, though some farmers required the reassurance of a DHA official that they would not be penalised retrospectively for employing these people.

10.3 *Number of Applicants:* The estimated number of former Mozambican refugees residing in South Africa was 200 000 – 220 000. The draft Guidelines from the DHA (Circular No. 34 of 1999) gave a figure of only 90 000. The number of applicants during the application phase (9 August 1999 - 31 July 2000) according to province was as follows:

Table 1				
Province	**Applicants received**	**Applicants approved**	**Applicants rejected**	**Applicants outstanding**
Northern	96997	69748	1787	25462
Mpumalanga	14036	9571	3742	723
Kwazulu-Natal	2052	1482	558	12
North West	17663	1168	10685	5810
Total	**130748**	**82969**	**16772**	**32007**

Source: DHA statistics 24/05/00

These figures suggest that the number of potential applicants exceeded the DHA estimate.[22] However, the RRP database has records of only 87 268 applicants from Mpumalanga and Northern Province, 23 765 less than the DHA total of 111 033. This can be partially explained by some inaccuracies picked up in the DHA statistical records, in which some double counting was identified in the Northern Province. On the other hand, the RRP data-collection was not fully functioning in the first few weeks of the applications process. Some applications were missed at this stage, though the monitors did update the records where possible, using the DHA office registers. With the huge number of applications, there was also much room for human error. The fact that there were so many offices involved in the project in Northern Province made it difficult to track down mistakes.

10.4 *Success Rates and Appeals:* Northern Province had by far the highest number of applications to deal with. The general success rate for applicants in Northern Province was also much higher than other Provinces. This reflects the fact that the highest number of genuine applicants are also based in this Province. The 25 452 outstanding applicants are those discussed above in Section 9.16 who were not considered because they did not provide proof of Mozambican nationality before the cut-off date.

In Mpumalanga there was a relatively high number of rejections. This can be explained by several factors. The geographical location of the offices and mobile unit was very close to the formal border with Mozambique and Swaziland and there was a noted influx of Mozambicans throughout the applications period, many of whom did not qualify as genuine applicants. Rejected applications included some with petty administrative mistakes. In Northern Province these were corrected before the final processing, to avoid the added administrative procedure of going to appeal. Hence the number of appeals in Mpumalanga far outweighed those in Northern Province. Mpumalanga's rejection rate was 28.7%, Kwazulu-Natal was 31.5% and Northern Province was only 2.8%, despite the fact that there were many more applications in Northern Province.

In Kwazulu-Natal, any applicants residing outside the stipulated northern area were rejected irrespective of what proof they provided of their reasons for entering the country originally. Hence the number of rejections from this office was also relatively high. The northern Natal area is close to an international border, so some applicants might have crossed the border to apply for the amnesty. A major ground for rejection was the "date of entry" for applicants in this area. There were also reports from the Durban Refugee Forum that a number of former Mozambican refugees resident in the area had not had a chance to apply due to the restricted interpretation of the geographical delimitation of areas of refugee settlement.

In the North West Province, or more specifically the Winterveld area, the interpretation of the DHA in processing applications was that applicants needed to prove they were "refugees". Even if they had entered the country prior to the end of the civil war, many who did not have a supporting affidavit stipulating that they came to the country as refugees were disqualified. Application screening was also very strict in some offices to ensure that applicants from neighbouring Gauteng Province were excluded from exemption, irrespective of what proof they presented.

10.5 *Return Applicants:* From all focus provinces, only 158 applicants registered for assistance to return to Mozambique. This low figure totally contradicted a pre-amnesty survey conducted by RRP to gain an insight into the potential number of former Mozambican refugees still wishing to return to Mozambique.[23] Though this survey was not statistically representative, all the former refugee community members interviewed stated that there were people who still wanted to return to Mozambique and would register for assistance if it was available. Of the over 200 interviews conducted it was projected that a minimum of 20% and a maximum of 40% of former Mozambican refugees in Northern Province and Mpumalanga would register for assistance to return to Mozambique. From follow-up interviews during the project, it appears that the chance of acquiring a South African identity document quickly became the favoured option. There were also some who stated that they would first want to try to get a South African ID, then take their family back to Mozambique and later come back to South Africa to work.

10.6 *Communication and Coordination:* Government and NGO coordination was based on a "learning-by-doing" model, which meant correcting mistakes as implementation proceeded. There was often insufficient follow-up because so many different areas (both geographical and organisational) were being covered. Communication between the DHA and NGO partners at an intervention level and on a day-to-day basis was good. However, there were still problems with information being disseminated from the inter-provincial meetings to those conducting the interventions. In some offices and units the minutes of these meetings and feedback had not been circulated. At another level, communications between DHA head office and DHA provincial/regional level was also ineffective. NGO partners kept in frequent telephone contact throughout the application and appeal phases of this project. NGO coordination meetings were held between the various organisation coordinators on a month to six-weekly basis. There were occasional problems with information from these meetings not reaching representatives in the field. This was particularly an issue with NORTRAPA, who did not have a budget for their

coordinators to visit the para-legals. It was eventually decided that the NORTRAPA coordinators should rather be represented at meetings by one selected para-legal from the field, who was more familiar with what was happening on the ground.

Most partners had other work obligations in addition to this project. This at times hindered the effectiveness of the project work. There were also meetings between DHA Pretoria, AWEPA and Refugiado at which NGO partners had not been given a chance to give inputs. This created frustration amongst NGO partners who felt that their expertise and experience was not being made use of.

10.7 *Level of Outreach:* The level of outreach activities varied from office to office and was often directed by the influx of applicants to the office as well as the geographical spread of former refugee settlements in the vicinity of the office. At offices like Giyani and Malamulele in the Northern Province, there are large refugee settlements in close vicinity to the offices. The offices are also easily accessible from Gauteng. Hence the outreach activities were curbed due to the mass influx of applicants to the offices.

In order to encourage applicants to come forward, the DHA agreed to assist all applicants and not effect any arrests of suspected bogus applicants at DHA offices until the applications phase was over. However, in the Giyani, Malamulele and Mhala offices this had a negative side-effect for genuine applicants in more distant refugee settlements, who were unable to sustain travel costs to come and apply at the offices. This effectively undermined the outreach programme. In response, NGO partners requested that the outreach continue on set days of the week despite the high number of applicants at the offices, who would then be assisted at a slower pace. This was a compromise agreement which was not wholly satisfactory, but did facilitate access to more genuine applicants in refugee settlement areas and made it more difficult for bogus applicants to access the process.

10.8 *Accepted Documentation:* Although accepted proofs had been identified and agreed upon by all partners, in practice the weight of these proofs was given varying importance in the different offices involved in this project:

- *Affidavit from a friend, relative or neighbour*: At an early stage the Giyani regional office stated that due to the potential for extortion and abuse, an affidavit from friends, relatives or neighbours would not be accepted alone as sufficient documentation of proof of entry. It would nonetheless be taken as secondary supporting documentation, but other proofs would have to accompany it. This was based on the disclosure that some local citizens were taking money from potential applicants to write them a supporting affidavit. Such entrepreneurial activities were a feature in most areas. However, the responses from the DHA offices were different. The Daantjie mobile unit in Mpumalanga and the Mhala office in Northern Province responded to the issue of extortion by interviewing those who proclaimed to know the applicant. This involved a significant amount of additional work, but illustrated their commitment to assist genuine applicants who were without formal documentation to support their application.

- *Gazankulu/Kangwane Pass-book*: The Gazankulu or Kangwane pass book was taken as one of the best proofs to support both "date of entry" and proof of Mozambican

nationality. These books were only issued between 1987 and 1989 to those who came to South Africa as "refugees". The books had an official stamp and the picture of the holder. Some offices still required that applicants obtain an official proof of Mozambican nationality, whereas others accepted this document as proof of nationality. Unfortunately, those who came after 1989 were not issued with this document.

- *Proof of Mozambican Nationality*: The requirement for proof of Mozambican nationality was included very late in the planning process and there were different responses from the provinces to this requirement. Mpumalanga Province was insistent that for the sake of international relations this proof should be a document issued by the Mozambican government, such as a passport, identity document or a certificate from the Mozambican Consulate. The Northern Province DHA was more flexible in terms of being open to the immigration officers' professional ability to interview applicants to establish their nationality. This again involved greater time commitment per applicant on the part of the DHA. In view of the fact that the Northern Province had by far the highest workload, the preferred solution was for a parallel outreach project by the Mozambican Consulate to support those without any proof of Mozambican nationality.

- *Referral Letter from the Traditional Authorities*: This was the most widely-accepted document and in practice often taken as a prerequisite for the approval of an application. The Traditional Authorities had records of those to whom they had allocated land when they first arrived in the country. However, the income generation aspect of the referral letters was the driving motivation for most tribal authorities to become involved. The NGO partners negotiated with the Traditional Authorities to reduce their costs as much as possible so as not to exclude potential genuine applicants who were unable to support such costs. Some were more sympathetic than others. Charges ranged from R2 - R100. For specific cases during the application extension period, no charge was made.[24]

  Alternative options to the Traditional Authority letter were found and motivated for in areas where these authorities were not willing to reduce their fee. In the Phalaborwa area, for example, the SACC referral letter and the affidavit from the food ration card issuing authority were widely used.

- *Secondary Proofs*: In all offices, marriage documents, hospital, creche and school records were taken as secondary proofs and applicants were requested to get a referral letter or affidavit from the other accepted sources. Referral letters from Transitional Local Authorities were not taken as primary proofs, because these bodies had been set up after the 1992 cut-off date, despite the fact that members of this authority may

have known the applicant for a longer period. During the appeals phase some applicants were requested to acquire these secondary proofs to substantiate that they had been in the country before the cut-off date.

10.9 *Para-legal Support:* Protection and legal advice was provided by the para-legals based at each application point (office or mobile unit). Their role was to establish that applicants were given sufficient advice and support to submit their applications. During the applications phase para-legals spent most of their time checking that the documents of applicants were in order before they submitted their applications. Some were requested to follow up cases of applicants being apprehended and incorrectly arrested while applications were being processed.

The independent role of para-legals was jeopardised in some DHA offices by the actions of some DHA officials. This was compounded by the lack of guidance and support from the provincial para-legal coordinators. During its monitoring activities, RRP was often called upon to raise issues of grievance or need for guidelines on behalf of para-legals, in effect playing a facilitatory role to procure the support needed. Some para-legals were more experienced and confident than others and were able to support others when they were given the opportunity to work together.

10.10 *Reasons for not Applying and Follow-up:* The RRP office received several reports of potential genuine applicants who were not included in this process. The explanations provided for this were many. Some farm workers claimed they were not given a chance to apply by their employer. Others claimed they were not informed until after the application period was over. Some feared that the process was a means of identifying and deporting them back to Mozambique. Others did not believe the project was genuine until they saw their counterparts receiving their new identity documents, by which time the application period was already closed.

These issues are being followed up by the NGO partners. Additionally, a programme for formal integration support is being developed based on a needs assessment conducted by RRP and the SACC in the communities currently hosting the former Mozambican refugees. The results of this needs assessment are being used to address the integration needs in each of the communities, to ensure the formal integration and support the entrenchment of the rights of the former refugees in the communities where they have settled. The focal issues have been around access to land for permanent settlement; rights awareness; and the needs of vulnerable groups, such as old people and young children. The aim is to develop initiatives to support the community as a whole, so as not to create any tension in the community.

10.11 *Evaluation of the Success of the Legalization Process in Achieving its Stated Goals:* The basic stated goal of the Regularisation project was to formalise the status of former Mozambican refugees still settled in South Africa. The fact that the project was finally implemented after such prolonged delays was an achievement in itself. Without the combined efforts of the NGO supporting partners it is unlikely that it would have been brought to fruition at all, since there was no other push for implementation. The levels of cooperation between the DHA and NGO partners was also exemplary in terms of achieving a jointly coordinated project. Though many genuine applicants remain without formal status in the country and extensive follow-up is still required, the number of people assisted with the limited resources available is impressive.

11. 0 Lessons from the Amnesty

The main lessons learned from the evaluation of the Mozambican refugee amnesty process include the following points:

1. The need for a clearly communicated motivation for Amnesty from government. This was an issue for the SADC Amnesty well as this initiative. The different interpretations of the process by the various DHA offices involved reflect the lack of clarity on the aims of the amnesty and the essentially political motivation behind the initial Cabinet decision.

2. Commitment of required resources and support for the implementation of the Amnesty. The necessary resource allocation to ensure that the process could be implemented adequately was not budgeted for within government resources. Implementation was subsidised by concerned NGO partners who had the welfare of the target group at heart.

3. Development of constructive dialogue and close cooperation between government and NGOs. The process illustrated that there is much scope for joint work between government and NGOs. In the case of vulnerable groups such as undocumented migrants and refugees, NGOs are generally more approachable than government bodies and often have positive relationships with such groups which can be built on.

4. Fluent communication channels between all levels of government and various actors involved in planning and implementation. Clear communication channels are crucial with such national and multi-dimensional projects. These need to operate on a two-way basis between the implementation base(s) and national headquarters. The experience and knowledge of practitioners should also weigh more heavily in the development and implementation strategies of such projects.

5. Clear and transparent roles and responsibilities of all actors involved. The development of these is the basis for good planning and communication. In order to

avoid overlap and tension and to ensure that such a project runs as smoothly as possible, there need to be clear-cut roles and responsibilities as well as accepted terms of reference. Exclusion of NGOs from some meetings and attempts to stop the free flow of monitoring information were not consistent with this goal.

6. Commitment of all actors to the same objectives. The development and understanding of common objectives is vital when there is a diversity of parties involved from different angles and with different responsibilities.

7. Delegation to those with most relevant expertise and experience in the context of the project. Those with greatest knowledge of the target population; those who have experience with the context/environment in which the Amnesty will take place; and those who are most familiar with the practical implementation of Amnesties and dealing with applications need to be central in the planning phase of the project.

8. Formulation of appropriate terms of eligibility for the target population. This process has been described in detail above and should be based on using local knowledge and developing a participatory process at the project planning phase.

9. Identification of appropriate proofs of eligibility for the target population and bureaucracy. This needs to involve in-depth consultation with the target population and NGOs, integrating both the humanitarian and bureaucratic perspectives of the project.

10. A comprehensive information campaign. From past experience with both the SADC Amnesty and this project, it is clear that the information campaign needs to happen well in advance of the implementation of the amnesty, as well as during and after the process. Such a campaign needs to be clear, targeted and repetitive. It should aim to inform the target population in their own languages, and should include a wider information component to counter any potential xenophobic responses from the wider population. During implementation it should aim to counter misconceptions as well as to inform, and should allow space for any concerns of the target population and other stakeholders to be raised.

11. Independent monitoring throughout the planning, implementation and follow-up. Monitoring should function as a feed-back tool for adaptation of activities during implementation; raise any concerns of the various stakeholders; and deal with any issues of barriers to access to the Amnesty as well as wider issues of protection. Although self-monitoring and setting targets is a constructive component for the progress of such a project, independent monitoring is also crucial with regard to objectivity, especially in the context of covering humanitarian as well as practical issues.

12. Awareness of potential areas of fraud or extortion in procuring documentation to support applications. This should be an integral consideration of the planning of such a project and the ongoing monitoring and evaluation during implementation.

13. Development of strategies to avoid bogus applicants without affecting the access of genuine applicants. It is crucial that the genuine target group are not penalised by responses and strategies to counter fraud and extortion. This is a difficult and sensitive balance that needs to be continuously monitored, both by those coming into contact with bogus applicants and by those familiar with the target group.

14. Para-legal support at all application points. This was a key component in this project in terms of support for the target group. Para-legals should be well-trained for the context in which they will be working, have easy access to independent legal back-up when required, and be sensitive to the situation of the target population they are supporting.

15. Sensitive questioning of illiterate and innumerate applicants. This is an issue which needs to be considered for certain vulnerable target groups. There is also a need for a standardised approach with regard to officially accepted names of applicants - culturally specific linguistic knowledge is needed on which to base a strategy for spelling the foreign names of illiterate applicants.

12.0 Conclusions

12.1 The amnesty process and related outreach initiative was the first of its kind in South Africa. The project provided a benchmark in forced migration policy implementation. Though the Mozambican refugees were victimized by the lack of clear policies in South Africa during its period of transition, this initiative embraced the issue of naturalisation as an option for long-term refugees. The amnesty represented a tangible option for those former refugees wishing to remain in the country to apply for formal resident status, and for those who did not to register for assistance to return to Mozambique. This was something that the UNHCR had not followed through on: to provide a durable solution for those remaining refugees who did not take the voluntary repatriation option in 1994-95. Though very few registered for assistance to return to Mozambique during this project, the option was crucial in terms of providing a real alternative for former Mozambican refugees. It also served as a point of political legitimacy which encouraged the support of the DHA in implementing the project.

12.2 The lessons from previous amnesty projects were fed into the planning and implementation of the refugee amnesty. That these lessons would be taken seriously was ensured by the participation on the planning committee and implementation of several NGOs with detailed, expert knowledge. In that sense the amnesty became a far better and more effective exercise than its SADC predecessor.

12.3 Nevertheless, the DHA's overriding concern with detecting unauthorized Mozambican migrants impacted negatively on the amnesty implementation in at least two ways. First, the amnesty was not, in fact, a national amnesty but confined to provinces in which the DHA deemed former refugees lived. This was an erroneous assumption and excluded any refugee who had moved to Gauteng for whatever reason during their first decade in the country. In this sense, the amnesty as implemented by DHA failed to honour the Cabinet's decision. Second, the amnesty excluded contract workers who might originally have come to South Africa as refugees and then, for reasons of survival, taken up work on the farms or in the mines.

12.4 The DHA was also greatly concerned that it would be swamped by "bogus" applicants. Regrettably, there were instances of bogus application, which played into these fears. The DHA also refused any humanitarian extension to the amnesty on the grounds that this would open the way for bogus applicants. This needs to be challenged and appealed at a higher level, since it contravenes the original motivation to "regularise" the status of the stipulated target group.

12.5 A huge amount of work remains in relation to the appeals from this project and the inclusion of those genuine applicants who remain without status definition in the country. Follow-up is also required in terms of ensuring the entrenchment of the rights that should be accorded the successful applicants. An integration support programme has been set up

by the concerned NGO partners to facilitate the formal process of integration into the former refugee host communities. This project aims to focus on the host communities as a whole rather than the target population in order to avoid creating any xenophobic tensions.

12.6 Mozambican refugees are the only mass influx of refugees South Africa has sustained in the last century. The experiences of the treatment of this group need to be built on for any future refugee influx from neighbouring countries, or other groups from further afield. Preparedness for potential refugees from the evolving situations in the SADC region is a crucial. Lessons and recommendations from this document, together with the wider experiences with the former Mozambican refugee example, can be drawn upon both to develop appropriate responses now and to avoid learning the same lessons again.

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ENDNOTES

1 J. Drumtra, *No Place Like Home: Mozambican Refugees Begin Africa's Largest Repatriation* (Washington: US Committee for Refugees, 1993).

2 For general accounts of the Mozambican war and refugee testimony see R. Gersony, "Summary of Refugee Accounts of Principally Conflict Related Experience in Mozambique" (Washington: US Department of State, 1988); M. Hall, "The Mozambican National Resistance Movement (RENAMO): A Study in the Destruction of an African Country" *Africa* 60 (1990): 39-68; Alex Vines, *RENAMO Terrorism in Mozambique* (Bloomington: UI Press, 1991); W. Finnegan, *A Complicated War: The Harrowing of Mozambique* (Berkeley: UC Press, 1992); and Ken Wilson, "Cults of Violence and Counter-Violence in Mozambique" *Journal of Southern African Studies* 18 (1992): 527-80.

3 Nicola Johnston and Caetano Simbine, "The Usual Victims: The Aliens Control Act and the Voices of Mozambicans" In Jonathan Crush, ed, *Beyond Control: Immigration and Human Rights in a Democratic South Africa* (Cape Town, 1998).

4 Figures based on food distribution data from Operation Hunger.

5 Chris Dolan and Vusi Nkuna, "Refugees, Illegal Aliens and the Labour Market: The Case for a Rights Based Approach to Labour Movement in South Africa" Wits Rural Facility, 1995, pp. 5-6.

6 The numbers who entered the labour force were estimated at 100 000 in 1995; Chris Dolan, "Aliens Abroad: Mozambicans in the New South Africa" *Indicator SA* 12 (3) (1995).

7 Jonathan Crush, "Fortress South Africa and the Deconstruction of the Apartheid Migration Regime" *Geoforum* 30 (1999): 1-11 and Johnston and Simbine, "The Usual Victims."

8 UNHCR: *Guidelines for Refugee Status Determination of Mozambicans in South Africa* (December 1993).

9 Chris Dolan, *The Changing Status Of Mozambicans in South Africa and the Impact of this on Repatriation to & Re-integration in Mozambique* (Norwegian Refugee Council, Document Series No. 2, 1997).

10 J.Crush and V.Williams, eds., *The New South Africans? Immigration Amnesties and Their Aftermath* (Cape Town: Idasa Publishing, 1999).

11 Some 75 000 Mozambican miners were eligible but only 9 000 (38%) actually applied; see Ibid., pp. 5, 65-70.

12 Ibid., p. 6.

13 This can be seen as a rough measure of the number of refugee applicants (around 60 000).

14 The Minister and his Department had originally opposed all of the amnesties in Cabinet although there is no evidence that this was responsible for prevarication after the decision was taken.

15 Jeff Handmaker, Nicola Johnston and Vincent Williams, "Legalizing the Status of Mozambican Former Refugees Currently Residing in South Africa: Recommendations for Implementation" (Pretoria, 1998).

16 Crush and Williams, *The New South Africans?* pp. 45-56, 84-88.

17 Ibid. pp. 45-56 and Handmaker, Johnston and Williams, "Legalizing the Status."

18 Refugiado/AWEPA provided some funding and coordination support for the overall outreach process. The European Union Foundation for Human Rights in South Africa funded the monitoring activities of RRP and one additional para-legal in the appeals phase. CIDA provided a contribution through support for the South African SAMP partner, Idasa.

19 Handmaker, Johnston and Williams, "Legalizing the Status".

20 There were initially some sensitivities on the part of the DHA about these monitoring reports being widely distributed. It was therefore agreed that they would be circulated amongst the outreach partners and donors only. All partners were given a chance to view and comment on a report in draft form before it was formalised and distributed.

21 A practice which is in keeping with both the UN and OAU Refugee Conventions.

22 Although this figure contains bogus applicants.

23 Refugee Research Programme, *Assessment of Potential Former Mozambican Refugee Returnees*, July 1999.

24 This extension period was specifically for applicants who were not assisted during the stipulated application period due to the impact of the torrential rains in February 2000.

APPENDIX

The following letter was drafted by RRP to summarise the issues requiring specific attention:

Political Channel for Appeals of Applications for Exemption from former Mozambican Refugees - by Wits. RRP on behalf of the outreach support partners

Through the RRP monitoring of the processing and appeals phase of the regularisation of former Mozambican refugees there appears to be some inconsistency in the scrutiny of applications which are being rejected. This is particularly the case in Mpumalanga and Kwazulu-Natal Provinces where the percentages of rejected applications are considerably higher than in Northern Province. Mpumalanga's rejection rate is 28.7% (4th April), Kwazulu-Natal is 31.5% (4th April) and Northern Province is 2.8% (31st March).

Some applications which appear to have been unfairly rejected have been appealed by para-legals at a provincial level with additional support documentation from applicants and written submissions and rejected by the Department of Home Affairs on review. Some of these cases which are being rejected again on reconsideration seem to be rejected on grounds which were outside the original accepted guidelines for qualifying for exemption.

It has been agreed at a local and provincial level that there is a need to clarify and appeal these issues at a higher level before taking appeals any further at a local level. Since the DHA at provincial level are only able to work on directives from head office and head office is implementing the parliamentary decision to offer Amnesty to those FMRs still residing in South Africa, it was agreed that the issues of concern should be taken back to the political level to clarify the motivation and interpretations of the original decision.

Points of Concern:

1. The process has been emphatically referred to by the DHA as a 'Regularisation' process rather than an 'Amnesty'. (see early Task Force minutes). It therefore appears inconsistent that genuine applicants are being refused exemption on issues of detail. For example, in Mpumalanga appeals are being made correcting the grounds given for rejection and on review other issues of detail are being found as grounds for sustaining the rejection (refer to para-legal Jane Khumalo, Tonga office for specific examples) .

2. The Guidelines for the Exemption (Departmental Circular No. 34 of 1999) referred to the Cabinet decision as 'unconditional' (1.1), yet in some areas additional conditions are being specified on the processing of applicants. For example, former Mozambican

refugees in the border areas are being penalised for being in possession of Mozambican identity documents which show that they have returned to Mozambique after their initial entry date to South Africa.

3. Some applicants are being rejected for simple administrative mistakes in their applications. For example, at the Tonga office in Mpumalanga applicants have been rejected for not providing the photo-copy of both sides of their Mozambican Identity document, or where an employer has not signed an affidavit, or where the school starting date for dependent children is later than the date of entry.

4. Different spelling of names is a major concern (as it was in the SADC exemption). Some applications are being rejected where the spelling of names is inconsistent. The Mozambican/Portuguese spelling and names are similar sounding but often differently spelled in South Africa. There is a need for a directive on this. Some offices in Northern Province are correcting the spelling of names to the Mozambican spelling, whereas other offices in Mpumalanga are rejecting applications because one or two letters are differently spelled.

5. Survival fraud is an issue, as it was for those in exile during the apartheid regime. Some former Mozambican refugees have used South African names to integrate and acquire documents in South Africa. They now wish to regularise their status and are using their own Mozambican names and are being rejected on the grounds that their names are different.

6. Inconsistent dates in applications are a problem. It is difficult for illiterate applicants (especially the elderly) to be accurate about dates. Often such applicants do not know when they were born or when they entered the country. Some applicants are being rejected on grounds of inconsistent dates. It is important that these applicants be assisted on appeal, through other strategies of interrogation (eg. specialised interviews using PRA strategies such as time-lines to identify dates - the war, floods, drought etc. which are familiar to the applicant). These genuine applicants should not be penalised on the grounds of their lack of numeracy.

7. Delays in the processing of applications due to the slow intervention support of the Mozambican Consulate. There is a need to look at strategies to circumvent this delay and to meet the original deadline for the processing of applicants with the extra support of the DHA.