



TO ALL DISPLACED PEOPLE
LIVING IN CAMPS IN THE
WESTERN CAPE

03 OCTOBER 2008

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RAPID STATUS DETERMINATION

By now you will all be aware of the way in which the Rapid Status Determination process was executed last week. From all three camps there have been similar reports raising concerns with the way in which it was done. The following problems were mentioned:

- Despite assurances that translators would be provided by the Department of Home Affairs (DHA), these services were either not available or were inadequate. Some people living in the camps offered to help, but not all languages were represented, and the camp translators did not understand all of the questions. The tents were so crowded that translation became impossible.
- The officials conducting the interviews wrote down information that was different to what they were being told. They attempted to put words and statements in people's mouths, despite these people stating that that was not what they wanted to say.
- The interviews took only minutes, whereas they normally take several hours to conduct.
- Not everyone understood why they were queuing, and what the process meant.
- It was not explained what would happen to the temporary cards (6 months) issued at the camps, and whether these would still be valid should the applications be rejected.
- The tents where the interviews were being conducted were very crowded. In some camps people had to share private or confidential information in front of other residents of the camp.
- At times, monitors were not allowed in to the tents to monitor the process or offer legal advice.
- Some people reported seeing the interviewer write the word 'unfounded' on their form immediately.
- No pamphlets or information materials about the process were made available. There was one in English, but this was neither circulated nor translated.

These are just some of the issues that raised the concern that the process was not properly executed, and that displaced people did not have a fair chance to explain their reasons for requesting refugee status. TAC has already written letters of complaint to the Deputy Director General of Immigration at the DHA raising these complaints, with the intention of getting the process and results declared invalid.

APPEALS

Within a couple of days, the results of the RSD process started coming in. Based on what had happened in the Gauteng camps, where 98% of applications were rejected, it was expected that a high rejection rate would happen in the Western Cape, as the team conducting the interviews had come from Gauteng.

Initial figures prove this to be true: Out of 890 applications at Harmony Park, 10 were granted refugee status. At Blue Waters, it appears that nobody received refugee status, although some people who already had status before the interviews were granted status again.

DON'T PANIC!

Lawyers and legal consultants working with TAC and civil society have assured us that there is no need to panic. All previously granted permits and cards are still valid. Nobody can be deported until all avenues of appeal are exhausted, and this process can take months. The official position is that the appeals must be applied for and conducted within 30 days, but it seems unlikely that DHA will be able to adhere to this timeframe, as their Nyanga office is swamped.

It has not been confirmed whether or not a mobile team will be coming to the camps to conduct the appeals, or if people must travel to the Nyanga Refugee Reception Office to lodge an appeal and return for a hearing. The initial promise was made that teams would be coming to the camps, but this remains uncertain.

Lawyers from UCT Law Clinic are due to come to all three camps to provide help to displaced people preparing appeals. This help would include explaining the reasons for rejection, and preparing documents that would support an appeal. The proposed dates for these visits from UCT Law Clinic are:

Blue Waters- Thurs/Fri 2nd and 3rd Oct
Harmony Park- Mon/Tues 6th and 7th Oct
Youngsfield- after Thurs/Fri 9th and 10th Oct
If you would like more advice, you can call their office:
UCT Law Clinic: 021 650 3775

If you hear of anyone being moved to a detention centre or being deported without having had the chance to appeal, you can call:

UNHCR: HOTLINE 071 687 3091
Legal Resources Centre: 021481 3000
UCT Law Clinic: 021 650 3775
AIDS Law Project: 021 422 1490
SA HUMAN RIGHTS COMMISSION: 132 Adderley Street, Cape Town, 8000 Tel: 021 426 2277 Fax: 021 426 2875

As was previously mentioned, civil society and legal partners will be trying to get the RSD process declared invalid, and will continue to assist displaced people with all appeals, and will continue to monitor the situation for any infringement of people's rights. Should this be observed, civil society will take it up with DHA and the UNHCR.

WHAT TO DO IF YOU HAVE RECEIVED A LETTER FROM THE DEPARTMENT OF HOME AFFAIRS INDICATING THAT AN APPLICATION FOR ASYLUM HAS BEEN REJECTED

The decision of the RSDO takes the form of a letter, usually 2-3 pages in length, on a Department of Home Affairs letterhead and signed by that RSDO. If you disagree with this decision, there are ways for you to respond. The wording in the letter determines how you must respond to the decision, so it is important that you read the letter carefully.

If your application is rejected, there are two possibilities:

- Your application may be rejected on the grounds that it is manifestly unfounded, abusive or fraudulent, in terms of Section 24 (3) (b) of the Act. The key words here are 'manifestly unfounded'.
- Or your application may be rejected on the grounds that it is unfounded in terms of Section 24 (3) (c) of the Act.

It is extremely important that you know whether your appeal has been rejected because it is unfounded or manifestly unfounded.

If your rejection has been rejected as manifestly unfounded:

- The RSDO will send the decision to the Standing Committee for Refugee Affairs (SCRA) to review the decision.
- If no new information is brought before the SCRA, the decision will almost certainly be upheld. If this happens, you will have 14 days in which to leave the country, or you will risk being deported.
- It is recommended that you write a letter to the SCRA requesting an opportunity to appear before it to explain why you believe the decision was wrong and make out a case for you to be granted refugee status. You must explain why you disagree with the RSDO's reasons.
- Although this letter must be addressed to the SCRA, you must deliver this letter to the refugee office that is listed on your rejection letter. You can fax the letter to the SCRA as well. It would be good to keep a copy of your letter.
- This process must be completed within 14 working days of your receiving the rejection letter, so you must move fast.

If your application has been rejected as unfounded:

- You have 30 calendar days in which to file your "notice to appeal"- a letter indicating that you wish to appeal against the RSDO's decision to reject your application. You may have got a form to do this when you received your rejection letter.
- Although this letter must be addressed to the Refugee Appeal Board it must be hand-delivered to the Refugee Reception Office listed on your rejection letter.
- Once you have done this, you will receive a "notice of hearing" which will give you the date on which you must appear before the Refugee Appeal Board for your appeal hearing.

Whether your rejection was rejected as manifestly unfounded or unfounded, you are still entitled to your Section 22 permit, and so may reside legally in South Africa, until your case has been finalized by either the SCRA or the Refugee Appeal Board.

A MESSAGE FROM THE LEGAL TEAM: HOW WE CAN ASSIST YOU:

- We can assist with preparing you for your appeal before the Refugee Appeal Board.
- If your application has been rejected as unfounded and you have received your appeal date, we can consult with you, and prepare documents for you to take with you to your appeal.
- We can advise you on any questions you may have on submitting a letter to the SCRA if your application was rejected as manifestly unfounded.
- If you are threatened with having your permit or registration card taken away by Camp Management, Police or Home Affairs officials, please contact us and we can intervene if this was done unlawfully.

Remember that you have rights which can be exercised. As displaced persons, you also receive additional protections in line with the UN Guiding Principles on Internal Displacement. The right to enter and lawfully remain in SA is granted through an immigration status, or provided through human rights and refugee law in the form of the principle of *non-refoulement* – *that is* not being deported to a country where there is a significant threat to the safety and security of an individual owing to political instability or other factors.

- The following factors should be considered if you agree to the interview for status determination: You have the right to legal assistance during the assessment procedure and the appeal process. It is the mandate of the UNHCR and its' implementing partners to ensure that your rights are protected.
- You have the right to apply for asylum seeker status: You cannot lose this right just because you are in a camp far from a Refugee Reception Office.
- Have you been given enough information about the process that you can understand what will happen to you if your application is unsuccessful?

- Is the information clear and easy to understand?
- Are UNHCR officials available to advise and assist you?
- Are there sufficient monitors?
- Has information been translated into your home language/has an interpreter been made available to you? This is essential, so that you can enjoy a fair hearing, and so that there is no confusion about the possible outcomes.
- Have you been given a chance to tell your story? People have had different experiences that have brought them to South Africa, and you should be able to talk about your own personal experience in a way that DHA officials can understand your perspective.
- Have you been pressured to make choices which you are not comfortable with? At all times, you should have the freedom to choose the option which will provide protection of human rights for you and your family.
- You have the right to appeal, should your application be rejected.
- You may not be deported if you have claimed your right to appeal at the Refugee Appeals Board, and have been given a date for this appeal hearing.

GAUTENG

In Gauteng, the camps are being closed down (from Tuesday 30 September). People who have been given money to reintegrate are being told that they must leave, and others are being taken to Deportation Centres. Some people have been forced to take their belongings and live on the streets, as they have nowhere to go. This is despite a court order stating that the camps should stay open for longer. Food and water supplies at the Gauteng sites have decreased, also putting pressure on people to leave.

The Western Cape has also heard of government officials saying that Western Cape camps will be closed by mid-October. This is in two weeks time. Although not confirmed, there is a strong possibility that this will happen, and that it will force people to move out of the camps, even though they have nowhere else to go, and are not ready or are too afraid to reintegrate. This is particularly a problem for people whose applications for refugee status have been rejected, as they will not be protected by government of the UNHCR.

You should be prepared for this possibility. We have been unable to get confirmation, but government is highly likely to close the camps without consulting displaced people or civil society. Obviously, TAC and other organisations will do everything we can to get an extension date for the camps to remain open, especially until appeals and or repatriation have taken place.

CONDITIONS IN CAMPS

An article appeared in the Mail and Guardian last week (Friday 26 September). Marti Weddepohl, Camp Coordinator at Blue Waters spoke of the terrible conditions there, and also of how she has been intimidated for speaking out.

TAC/ALP pledges their support to Marti for this courageous act and the upcoming difficulties she may face because of it. As a government employee, Marti has taken great risk by speaking out about camp conditions, and also for confirming the information civil society has been reporting for months. We salute her courage for coming forward and speaking to media, even after great intimidation.

TAC's lawyers have sent a letter to the State attorney asking why government are not providing humanitarian relief according to the norms and standards they claim to have adopted. The TAC court case was dropped in August after these norms and standards were made public by government, and yet they have not been implemented. TAC continues to seek better conditions for people living in the camps.