



## The Lindela Repatriation Centre

### 1. Introduction

At the beginning of September 2014 the South African Human Rights Commission (SAHRC) released a new report<sup>1</sup> on conditions at the Lindela Repatriation Centre. The report identified certain specific problems, including inadequacies in the healthcare system, a general failure to properly inform detainees of their legal rights, and detainees being held for excessively long periods of time.

The report was commissioned following complaints by various organizations, including the highly respected international humanitarian organization Doctors Without Borders (*Medicins Sans Frontieres*, or MSF). MSF alleged that they had been denied access to the facility, which they needed in order to monitor the quality of healthcare being provided.

This Briefing Paper will review South Africa's legal framework around the detention of immigrants, the history of Lindela to date, and the responses to this latest report by both the Department of Home Affairs and the Portfolio Committee on Home Affairs.

### 2. A Troubled History

Lindela Repatriation Centre is located in Krugersdorp, on the West Rand. It is the centralised detention and processing centre for undocumented migrants in South Africa. Migrants who are due to be deported or who are fighting deportation are kept at this centre while they are processed. It falls under the purview of the Department of Home Affairs, but management of the centre has been outsourced to Bosasa Operations, a private company. Lindela is not the only migrant centre administered by the Department of Home Affairs (DHA) – there are

also Refugee Reception Centres in places such as Durban, Musina and Pretoria – but it is the major detention centre for migrants awaiting deportation.

Lindela has been the centre of multiple allegations of human rights abuses in the past: there have been repeated complaints and lawsuits over the length of time that detainees have been held there, as well as the conditions that they have to endure.

In 1999 and 2000 the SAHRC released two separate reports finding that there had been human rights abuses at Lindela, and questioning the procedures and administration of the facility by the then-contractor, Dyambu Operations<sup>2</sup>. In February 2000 the High Court found that Lindela had been detaining migrants for illegally long periods of time, beyond the maximum 120 days permitted by the Act.

A 2008 report by Lawyers for Human Rights stated that:

“LHR is unable to fully report on conditions at Lindela because DHA continues to deny monitoring visits. Consultations with clients, however, reveal that little has been done to alleviate problems documented in the past. These include routine violence, corruption and bribery, insufficient food, overcrowding, lack of reading and writing materials, denial of access to medical care, and indefinite detentions without judicial review.”<sup>3</sup>

Following a series of complaints and another lawsuit by the SAHRC, in partnership with a group of NGOs including MSF, a High Court ruling in August 2014 again found that detainees had had their rights violated by being held for too long a period of time. As a result:

“The court ordered Lindela Repatriation Centre to, without delay, cease all practices that result in non-compliance with the Immigration Act, such as those experienced by the individuals in this matter. It further ordered that Lindela allow the SAHRC access to the facility on a regular basis and that regular reports on the number and status of detainees at Lindela be issued.”<sup>4</sup>

Most recently, in October 2014, detainees at Lindela alleged that they had been beaten with batons and shot with rubber bullets by security guards in order to force them to end a hunger strike.<sup>5</sup> They were engaging in this hunger strike in order to draw attention to the poor conditions at Lindela.

It should be noted that this is by no means an exhaustive list of all the court cases, adverse findings, and allegations of brutality, illegal detentions and deportations involving the DHA and Lindela. These incidents are indicative of the general array of problems that exist with the detention of migrants at the Centre. It is safe to say that Lindela is a deeply troubled institution with a history of serious human rights abuses.

### 3. The Latest Report

The SAHRC’s September 2014 report is troubling due to the fact that it confirms that Lindela still falls short of the standards that should be maintained. However, the response by both the Department and the Parliamentary Committee has been quite vigorous, which gives some cause for hope that, while Lindela has problems, these are at least being engaged with and debated by the responsible institutions.

The investigation leading to the 2014 report was triggered by a letter written to the SAHRC by four NGOs<sup>6</sup> which had been involved in advocacy and legal cases surrounding Lindela. The data collection that informed the report included a site visit to and inspection of Lindela, questionnaires being administered to some<sup>7</sup> of the detainees, and interviews with management and employees.

The inspection found that “Lindela appeared to be overall clean and ordered” and that “officials appeared co-operative and approachable”.<sup>8</sup> Furthermore, the clinic was adequately equipped with the drugs needed “to treat detainees at a primary health care level”.<sup>9</sup> However, specific

health-care deficits were found within the institution:

- Within the clinic, a complete absence of counselling during HIV tests was noted, although testing was conducted once a week. This falls significantly short of the accepted standard of HIV/Aids voluntary counselling and testing, which includes counselling as an indispensable part of HIV/Aids testing.
- There was no counsellor or psychologist available to the detainees for any other counselling or psychological treatment that they might require.
- No provision was made for condom distribution within the facility.
- There were also unanswered questions around follow-up on HIV or TB positive detainees who were released from the facility. In managing HIV/Aids and TB, continuous, uninterrupted treatment is critical.
- At least 25 of the surveyed detainees<sup>10</sup> reported being given painkillers (without any medical assessment) in response to illnesses.
- Some detainees who were on chronic medication before being arrested indicated that they did not continue to receive their medication while in Lindela<sup>11</sup>. This is highly dangerous, and completely unacceptable.

Medical issues aside, another worrying problem noted by the SAHRC was that the vast majority of detainees were not aware of their rights. Approximately 75% claimed that they had not been informed of their rights upon detention. In addition, some 26 out of the 109 detainees surveyed claimed that they did in fact have legitimate asylum seeker status. If, as the survey indicates, detainees are not being informed of their rights, it is quite plausible that migrants with legitimate documentation are being detained and deported.

Past patterns of detainees being held for excessive amounts of time seem to have remained the same. Official detainee lists sourced from Bosasa indicated that 52 detainees had been held in

Lindela for longer than the requisite 120 day limit, with four of them having been held for over 300 days. One detainee had been kept at Lindela for over a year – 402 days at the time of the report.<sup>12</sup> In response to this, the Commission found that “such detentions are extra-legal and amount to a violation of the right to freedom and security of such persons.”<sup>13</sup>

When questioned about the excessive length of some of the detentions, officials claimed that it was due to a lack of cooperation from either the relevant embassies (who need to be involved when deporting migrants back to their countries) or from the detainees themselves, who allegedly were refusing to identify their home countries or present any documentation, so that they could wait out the 120 day limit in hopes of being released instead of deported.

### **3.1. Legal issues related to the detention of undocumented immigrants**

Detention of undocumented migrants takes place under the Immigration Act 13 of 2003, and Chapter 2, Section 35 of the Constitution of South Africa.

The Constitution states that:

(1) Every person who is detained, including every sentenced prisoner, shall have the right-

(a) to be informed promptly in a language which he or she understands of the reason for his or her detention;

(b) to be detained under conditions consonant with human dignity, which shall include at least the provision of adequate nutrition, reading material and medical treatment at state expense;

[...]

(e) to challenge the lawfulness of his or her detention in person before a court of law and to be released if such detention is unlawful.

It is important to note that this section of the Constitution protects not just prisoners or South African citizens but also foreign detainees. “Every person” includes foreign nationals, including ones who may be in the country without the correct documentation.

The Immigration Act empowers the DHA, in co-operation with the Police Service, to “(g) apprehend, detain and deport any *illegal foreigner*.” The specific details of detention and deportation of undocumented foreigners are dealt with in section 34, which allows immigration officers to arrest and deport undocumented migrants without a warrant. Pursuant to this, migrants may be held in facilities run by the DHA. However, people being detained in such a fashion may be held for a maximum of 30 days, which may be extended for a further 90 days by a valid court order. In addition, they must be informed of their rights, are entitled to legal counsel, and may only be held under conditions that are in “compliance with minimum prescribed standards protecting his or her dignity and relevant human rights.”<sup>14</sup>

Detention processes at Lindela have clearly been in violation of the Immigration Act. Lengthy detentions have resulted in numerous court cases, with detainees being held for far longer than the maximum permitted 120 days (30 initial plus a 90 day court ordered extension). Moreover, as noted, the SAHRC found that many detainees were not aware of their rights, which suggests very strongly that the Department failed to notify detainees adequately about their rights in accordance with the Act. Finally, there is compelling evidence that human rights, as protected by the Constitution and the Act, have been violated both at Lindela and at similar institutions.

## **4. Government Responses to the Report**

The SAHRC report received responses from both the DHA and Parliament’s Portfolio Committee on Home Affairs.

The Minister of Home Affairs, Mr Malusi Gigaba, offered to provide office space at the Lindela Centre for the SAHRC to engage in ongoing monitoring. He made this announcement in mid-October 2014, at a press conference at Lindela.

The Portfolio Committee (PC) on Home Affairs noted the SAHRC’s report with alarm, and undertook to follow up on its findings with better oversight. In its initial press release it stated that:

“The Committee is concerned that the centre is turning into a place of human rights abuses which cannot be condoned. These two findings seem to further suggest that the overall practices at the centre are questionable and undermine the mainstay

of South Africa's democracy, the Bill of Rights, which protects everyone within the borders of the country."<sup>15</sup>

To its credit, the PC followed up on this matter with alacrity. It conducted an oversight visit late last year during which it noted some problems, including inadequate toilet and shower facilities. The PC also included Refugee Reception Centres in Marabastad and Tirro in its inspection visits, and found that conditions there were unacceptable.<sup>16</sup>

Despite these issues, on the whole the PC felt that the state of affairs at Lindela itself had been misrepresented by the media. In particular, it released a statement noting that "The Committee is satisfied with the level of cleanliness of the centre as well as the provision of services and primary healthcare."<sup>17</sup> Furthermore, the PC was "disappointed that the South African Human Rights Commission has not occupied the office space at the centre provided to the Commission by the Department of Home Affairs to enable their day-to-day monitoring of conditions at the centre."

In its press release the PC also noted (but did not elaborate upon) additional issues relating to the speedy implementation of a Border Control Agency, poor conditions at Refugee Reception Centres, and questions around detainees allegedly misrepresenting their nationalities to officials in a bid to stave off deportation.

Why the Portfolio Committee's view on Lindela – and in particular on healthcare provision at the facility – differs so greatly from the SAHRC is unclear, since it has not yet released a full report on its oversight visits. It intends tabling this report before Parliament, probably sometime in the first quarter of 2015, and full access to this report should hopefully clarify matters.

The DHA has responded with apparent vigour to the SAHRC's report, which hopefully indicates that under the new minister the Department will be taking its responsibilities towards detainees seriously. However, due to Lindela's extremely long history of poor conditions and human rights abuses, on no account should external scrutiny be relaxed at this point. The Committee did not report obvious, major abuses taking place while they were there, but 'cleaning up' for an inspection or two is not the same as creating a culture of human rights. Furthermore, the issue of detainees

being adequately informed of their rights has not been at all satisfactorily addressed.

Finally, the simple fact of detainees being kept for so long is hugely problematic. The time limits laid down in the law are very clear and should be non-negotiable.

The claim that detainees are intentionally 'running down the clock' by refusing to identify their country of origin is hard to assess at this point, but a clearer and more detailed explanation of the extent of this problem would be helpful. Are there isolated cases of this, or is it a widespread practice? Weak deportation mechanisms cannot be used as an excuse to evade the Department's responsibilities, both in terms of law and of humanitarian decency.

## 5. Conclusion

The NGOs involved in the lawsuits and investigations concerning Lindela should be commended for their hard work and their long and continuous engagement with this problem. Going forward, they should maintain their scrutiny of this institution in order to determine if the envisaged changes turn out to be merely cosmetic improvements, or if they constitute a real sea-change in the treatment of detainees.

The SAHRC should seriously consider taking up the offer of office space at Lindela, or explain why it is not possible for it to do so. If it is a case of capacity then they should consider either co-operating with civil society on this topic, or lobbying central government for the necessary additional resources.

It should always be remembered that undocumented migrants are, by and large, simply trying to do the best they can for themselves and their families. An exclusionary migration policy will result in large numbers of people having their presence criminalised, which results in detentions and deportations. Undocumented migrants do not enter the country out of malice, but as a survival strategy. Laws must be enforced, but laws should also be humane, and should avoid unnecessarily criminalising large sectors of society.

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<sup>1</sup> SAHRC Investigative Report into conditions of detention at Lindela Repatriation Centre. Available at: <http://www.lhr.org.za/publications/sahrc-investigative-report-conditions-detention-lindela-repatriation-centre>  
Future references to this report will just use the page number.

<sup>2</sup> <http://www.queensu.ca/samp/migrationresources/xenophobia/reports/sahrc1.pdf>

<sup>3</sup> Monitoring Immigration Detention in South Africa. Lawyers for Human Rights. December 2008. Page 4. Available at: <http://www.lhr.org.za/sites/lhr.org.za/files/LHR%20detention%20monitoring%20report%2010%20Dec%2008.pdf>

<sup>4</sup> <http://www.sahrc.org.za/home/index.php?ipkArticleID=292>

<sup>5</sup> <http://mg.co.za/article/2014-10-09-hunger-strikers-they-shot-us-in-the-head-at-lindela>

<sup>6</sup> Medecins Sans Frontieres (MSF), Section 27, Lawyers for Human Rights (LHR), and People Against Suffering, Oppression and Poverty (PASSOP)

<sup>7</sup> The SAHRC administered anonymous questionnaires to 109 detainees.

<sup>8</sup> SAHRC 2014 Report Pg. 12

<sup>9</sup> SAHRC 2014 Report Pg. 13

<sup>10</sup> The report surveyed 109 detainees.

<sup>11</sup> SAHRC 2014 Report Pg. 23

<sup>12</sup> SAHRC 2014 Report Pg. 24

<sup>13</sup> SAHRC 2014 Report Pg. 57

<sup>14</sup> Immigration Act Section 34, (1)

<sup>15</sup> [http://www.parliament.gov.za/live/content.php?Item\\_ID=6520](http://www.parliament.gov.za/live/content.php?Item_ID=6520)

<sup>16</sup> Unfortunately no further details on this, or the rest of their report, are available yet.

<sup>17</sup> <http://www.gov.za/troubles-lindela-not-reported>

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