



## A Troubling Pattern at Home Affairs

### 1. Introduction

The Lindela Detention Centre at Krugersdorp is a blot on South Africa's conscience. It has a long history of controversy, and most recently has drawn additional attention as part of an urgent court application brought against the Department of Home Affairs by the SA Human Rights Commission (SAHRC), the refugee-rights organisation PASSOP, and 30 detainees. The applicants are demanding that the detainees be released since their detention has gone past the 120 days permissible under the Migration Act. In response, the Department of Home Affairs (DHA) released a statement denying any plans to deport the detainees in question, while simultaneously claiming that "the department will continue to ensure that those illegal foreign nationals that are in the care of the Lindela transit centre are treated as humanely as possible while ensuring they do not stay over 120 days."<sup>1</sup> The DHA also attempted to shift the blame onto the detainees by arguing that many of them have been uncooperative, and that this has resulted in their prolonged detentions. Eventually, the DHA backtracked, releasing all but two of the detainees.

### 2. The Lindela Centre

Unfortunately, the incident just described is not an isolated one. The Lindela Repatriation Centre has been the subject of attention since as far back as 2000 when the SAHRC slated it in a report that found evidence of "unsatisfactory apprehension processes as well as violations in terms of length of detention, abuse of power, assault and inadequate physical conditions."<sup>2</sup> In 2009, the SAHRC issued a report on the government's handling of the 2008 refugee crisis and its aftermath, in which it documented cases of

refugees being illegally deported from Lindela. Some refugees who were not deported were put out of the centre, and left on the R28 road without transport or assistance; when they did not move, they were arrested for obstructing the road.<sup>3</sup>

In May 2012, an alliance of NGOs, consisting of Section 27, Medicins Sans Frontieres (MSF), People Against Suffering and Oppression (PASSOP) and Lawyers for Human Rights, wrote to the SAHRC asking it to conduct an urgent investigation into the conditions of health services at the Lindela Repatriation Centre. This was after Lindela denied a request by MSF to allow them to conduct an assessment of its health services. MSF made this request due to Lindela's extremely troubled history, and after multiple reports had found that conditions at Lindela were severely sub-standard, and that detainees were denied access to adequate medical care.

In June of 2012 Lindela was in the news yet again, after detainees there engaged in violent protests over being held for too long. Multiple reports about Lindela from a variety of sources have highlighted issues surrounding inadequate medical care, violence against detainees, and detentions extending beyond the legal time period.

### 3. Other Home Affairs Problems

This is not the only matter over which the SAHRC has engaged the Department of Home Affairs. On a separate issue, they were successful in bringing an application concerning the Home Affairs office in Foreshore, Cape Town. In this case, the DHA had told refugees applying for asylum in Cape Town to apply in Durban or Johannesburg instead. The SAHRC argued that this was unjust, since refugees could not reasonably be expected

to travel across the country to apply for their visas. The court agreed, with Judge Dennis Davis ordering the DHA to accept applications at its Foreshore office.

Legally, it is quite clear that the DHA has acted unlawfully towards asylum-seekers, both as to their detention and the places where they can apply for refugee status. Despite the DHA sometimes pre-empting court decisions by releasing the detainees, the length of detention of refugees, as well as the conditions under which they are held, remains problematic.

However, there is a much more serious underlying problem here. Quite simply, the DHA is failing to operate effectively and with due consideration for the rights of the refugees and asylum seekers that it deals with. These failings are particularly well documented in a report entitled "Breaking the Law, Breaking the Bank: The Cost of Home Affairs' Illegal Detention Practices" in which it was shown that the DHA spends millions of rands every year on defending legal challenges from refugees who have been mistreated or illegally deported.<sup>4</sup>

Furthermore, the SAHRC has had to constantly badger the DHA to act, and when this fails, they have had to resort to court applications to get action out of the Department. It is surely unacceptable that the DHA has consistently failed to respond to basic, fundamental issues of human rights that have been raised by the SAHRC and by refugee organisations. Even if the existing policy allows for detention, cases should be finalised as rapidly as possible; 120 days should be an absolute maximum. Indeed, detaining someone for four months so that administrative procedures can be followed is highly problematic, and extending this period because of departmental incompetence and negligence is simply unconscionable.

#### **4. The Scope of the Challenge**

It is important to acknowledge the difficult operations under which the Department of Home Affairs operates. In 2010 and 2011 South Africa received more asylum applications than any other country in the world. Critics concede that the DHA is operating under tremendous pressure, with limited resources; however, this does not excuse its current failings. The recently-appointed Minister, Naledi Pandor, must make significant and substantial reforms (though she has as yet given little indication of how she plans to go about doing

so.) The previous Minister, Nkosazana Dlamini-Zuma, had managed to stabilise the DHA in some aspects. Corruption was brought under control, if not eliminated, and waiting times for critical documents have generally been shortened. The Zimbabwean Documentation Project was a well-conceived and reasonably well-executed programme. However, the continued failings in handling deportations, and the sordid and ongoing saga of the Lindela Repatriation Centre are still major problems, and leadership from the new Minister at this juncture would be welcome. An action-plan indicating how she plans to reform the deportation process and resolve the problems at Lindela would be an excellent start. Additionally, the culture of refusing to respond to legitimate concerns until forced to do so by court action must be eliminated. The DHA should reach out to NGOs and the SAHRC as a matter of urgency, and find ways in which they can work together. For example, MSF should be allowed to investigate the medical care at Lindela, and possibly advise or assist the DHA in dealing with any shortcomings.

#### **5. The Role of Non-State Actors**

The SAHRC is to be lauded for its work in acting as a watchdog for such a vulnerable group. Their court actions are well within their remit as a Chapter 9 organisation, and allying with PASSOP is strategically sound. Civil society and NGOs have an important role to play, both as watchdogs in their own right, but also as eyes and ears for the Chapter 9 organizations. Indeed, as Public Protector Thuli Madonsela pointed out at a press conference last year, although they can and do initiate their own investigations, a large amount of their work comes about as a result of problems being reported to them, by individuals and civil society organisations. They then investigate and follow up if need be. Chapter 9 institutions like the SAHRC are not as well funded as they could be, and temporary alliances with NGOs are a good way of extending their ability to detect problems and fulfill their mandates. In an ideal world they would have the resources needed to maintain an extensive network of their own, but this is currently not the case.

Unfortunately, these positive initiatives come against a backdrop of both ANC and DA representatives making increasingly hawkish statements on migration issues. In July of this year former Minister Nkosazana Dlamini-Zuma called for stronger immigration laws.<sup>5</sup> Across the aisle, the DA's shadow Minister of Home Affairs, Manny

De Freitas, recently stated that "You can't accept every Tom, Dick and Harry – which frankly is what South Africa has been doing. You need to put in certain measures to say, we need to sift you out. South Africa has been accepting everybody and that's part of the problem."<sup>6</sup>

This statement runs the risk of being seen as 'anti refugee', even if that was not the intention behind it. South Africa is obliged, both by the UN Convention on Refugees, and by basic principles of morality and justice, to accept and aid refugees and asylum seekers who are genuinely in danger if they are deported. And, in terms of the Church's social teaching, it might well be argued that South Africa, as the region's richest country, has a duty to assist even those whose primary purpose in coming here is to improve their lives economically, rather than to escape overt violence or oppression.

## 6. Conclusion

The Department of Home Affairs still has some significant problems. Despite laudable reforms in

relation to corruption and inefficiency, it is still woefully mishandling refugees and migration issues. It consistently refuses to 'do the right thing' until the lawyers arrive. The recent appointment of Minister Naledi Pandor, however, provides scope for improvement. While she has been called upon to stay the course with regard to the reforms initiated by the former Minister, strong leadership from her on migration issues would be greatly appreciated. The conditions at Lindela Repatriation Centre need to be addressed as a matter of urgency. The Department of Home Affairs also needs to reach out to civil society and the South African Human Rights Commission, and begin seeking ways in which to co-operate with these organizations, rather than remaining locked into its current defensive patterns.

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<sup>1</sup> Department of Home Affairs, 6 November 2012. "Statement by the Department of Home Affairs, on alleged deportation of foreign nationals". Polity.org.za. <<http://www.polity.org.za/article/sa-statement-by-the-department-of-home-affairs-on-alleged-deportation-of-foreign-nationals-06112012-2012-11-06>>

<sup>2</sup> South African Human Rights Commission, December 2000. "Lindela at the Crossroads for Detention and Repatriation". <<http://www.info.gov.za/view/DownloadFileAction?id=70338>> p 8

<sup>3</sup> South African Human Rights Commission. 2009. "Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity arising out of the 2008 Public Violence against Non-Nationals" p 53

<sup>4</sup> Amit, Roni. September 2012. "Breaking the Law, Breaking the Bank: The Cost of Home Affairs' Illegal Detention Practices." *African Centre for Migration and Society Research Report*.

<sup>5</sup> *Biz Community*, 6 July 2012. "Home Affairs calls for tighter immigration laws" <http://www.bizcommunity.com/Article/196/524/78090.html>

<sup>6</sup> *The South African*, 16 July 2012. "Home Affairs Shadow Minister calls for immigration crackdown". <http://www.thesouthafrican.com/news/home-affairs-shadow-minister-calls-for-immigration-crackdown.htm>