



COUNTRY REPORT
IMMIGRATION DETENTION IN
SOUTH AFRICA: STRICTER CONTROL
OF ADMINISTRATIVE DETENTION,
INCREASING CRIMINAL
ENFORCEMENT OF MIGRATION

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THE GLOBAL DETENTION PROJECT MISSION

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

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Front cover images: Management personnel overlook Strandfontein Camp, a tented facility set up by Cape Town authorities in response to the pandemic, and which was used to confine hundreds of homeless migrants–April 2020
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CONTENTS

Glossary	5
Key Findings	6
1. Introduction	7
2. Laws, Policies, Practices	11
2.1 Key Norms	11
2.2 COVID-19 Response	12
2.3 Grounds for Administrative Migration-Related Detention	14
2.4 Criminalisation	15
2.5 Asylum Seekers	16
2.6 Children and Other Vulnerable Groups	20
2.7 Length of Detention	21
2.8 Procedural Standards	22
2.9 Non-Custodial Measures ("Alternatives to Detention")	23
2.10 Detaining Authorities and Institutions	24
2.11 Regulation of Detention Conditions and Regimes	24
2.12 Domestic Monitoring	25
2.13 International Monitoring	26
2.14 Privatisation	28
3. Detention Infrastructure	31
3.1 Summary	31
3.2 List of Facilities Used for Immigration-Related Detention as of 2021	31
3.3 Conditions of Detention	33
3.3a Overview	33
3.3b Lindela Repatriation Centre	33
3.3c Ad Hoc Facilities	35
3.3d Criminal Facilities	36



GLOSSARY

BMA	Border Management Act
CAT	UN Committee against Torture
DHA	Department of Home Affairs
LHR	Lawyers for Human Rights
NAP	National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance
RRO	Refugee Reception Office
SAHRC	South African Human Rights Commission
SCA	Supreme Court of Appeal



KEY FINDINGS

- Advances in judicial control over migration-related detention cases, due in part to victories in important legal cases,¹ even as the detention system continues to lack formalised, independent oversight.
- The unequal treatment of foreigners with respect to COVID-19 measures even as the pandemic feeds long-standing xenophobia.
- The continued use of police stations and jails for immigration detention purposes.
- Poor conditions in detention facilities and prisons, including inadequate health care provision.
- Increasing application of criminal procedures in immigration cases as a result of tightening control over administrative immigration detention.
- Frequent arrests of newly arriving asylum seekers and failure to properly apply refugee instead of immigration laws in such cases.
- The persistence of detention of children, even though the numbers have decreased.
- Rampant disregard for detention time limits and procedural safeguards.
- Corruption allegations in asylum proceedings and amongst operators of privatised prisons and detention centres.
- Recent amendments to the Refugees Act and Refugees Regulations have created new barriers to accessing the asylum system, increasing the vulnerability of asylum seekers and refugees to unlawful detention and *refoulement*.

¹ See, for example, *Lawyers for Human Rights v Minister of Home Affairs & Others* (CCT38/16) [2017] ZACC 22.



1. INTRODUCTION²

South Africa, an important destination for migrants and refugees from across Africa and Asia, has long viewed cross border movements through the lens of national security, social instability, and criminality. This posture was underscored in 2017, when the country adopted its most recent White Paper on International Immigration, setting out the country's long-term policy framework and strategies.³ Key elements of this strategy were included in the country's Border Management Act, adopted in July 2020, which observers contend could encourage an expansion of migration-related detention in South Africa and in nearby countries in Africa.

On the other hand, recent reports by civil society actors indicate that over the past several years there has been a noticeable improvement in the Department of Homeland Affairs' (DHA) "compliance with the law governing immigration detention," as Lawyers for Human Rights says in a 2020 report.⁴ This has been spurred in part by a series of important legal cases that have circumscribed the government's detention powers and strengthened protections for detainees, including improved judicial oversight of immigration detention.⁵

The DHA's 2017 White Paper on International Immigration offers several important constructive policy suggestions concerning the role of migration in development, the need to provide protection for refugees, and the benefits of visa-free travel regimes. However, these agendas are framed in the context of purported threats to national security posed by migration and refugee movements. Thus, the White Paper emphasises that South Africa is a "destination for illegal immigrants (undocumented migrants, border jumper, over-stayers, smuggled and trafficked persons) who pose a security threat to the economic stability and sovereignty of the country."⁶ Since the DHA paper was published, say observers, the country

² The Global Detention Project (GDP) would like to thank Lawyers for Human Rights for the helpful comments and corrections they provided to an early version of this report. Any errors in the report are those of the GDP.

³ Scalabrini, "What is the White Paper on International Migration?" 18 September 2019, <https://www.scalabrini.org.za/news/what-is-the-white-paper-on-international-migration/>

⁴ Lawyers for Human Rights, "Monitoring Policy, Litigious And Legislative Shifts In immigration Detention In South Africa," 2020, <http://www.lhr.org.za/wp-content/uploads/2020/06/Detention-Report-Final-Final-Digital-1.pdf>

⁵ See, for instance, "Case Study: Lawyers for Human Rights v Minister of Home Affairs and Others," in Lawyers for Human Rights, Monitoring Policy, Litigious And Legislative Shifts In immigration Detention In South Africa, 2020, pp. 43-45, <http://www.lhr.org.za/wp-content/uploads/2020/06/Detention-Report-Final-Final-Digital-1.pdf>

⁶ Department of Home Affairs, "White Paper on International Migration for South Africa," July 2017, <http://www.dha.gov.za/WhitePaperonInternationalMigration-20170602.pdf>

has largely disregarded a protection-based approach to managing vulnerable non-citizens in favour of a “risk-based approach.”⁷

Detention and deportation figure prominently in the paper’s proposed agenda, which emphasises the adoption of policies that can improve enforcement while reducing its costs. It states: “Enforcement of compliance, in the form of detentions and the deportations, is not sustainable since detentions and deportations require a substantial amount of funding.”⁸ Among its concrete proposals for achieving more efficient immigration and asylum management, the paper calls for:

- combining a “risk-based” deportation model that “prioritises deportation of high risk over low risk migrants” with a skills-based system for granting long-term residency;
- adopting laws that criminalise non-compliance and repeat offenders;
- building more dedicated “Immigration Repatriation Facilities” at the provincial level so as to avoid relying on police and correctional facilities;
- constructing “Asylum Seeker Processing Centres” along the country’s northern border that may allow “low-risk” asylum seekers “to enter or leave the facility under specified conditions”;
- excluding asylum seekers who fail to apply for asylum in “safe third countries” before arriving in South Africa;
- encouraging visa-free travel in the region in exchange for more return agreements with countries in Africa and other security measures.

Notably, the White Paper lambasts “human rights organisations and legal practitioners,” who it accuses of exploiting “loopholes in the system to secure the release of the illegal immigrants, at the expense of the government.”⁹

Regarding the paper’s proposals to boost South Africa’s migrant and asylum detention capacities, the Scalabrini Centre commented: “We fear that creating detention centres in remote areas of the country will result in the long-term detention of vulnerable people without adequate support or adequate conditions. Such detention is unconstitutional and contrary to international law. Aside from being expensive, research shows that encampment policies do not deter migration—and could cause resentment from local South African citizens.” They added: “We have deep and grave concerns around the changes to the asylum system in South Africa, which we believe will result in unconstitutional ‘camps’ on the borders, where thousands of asylum seekers will risk having their most fundamental human rights abused. More generally, the terms used in the White Paper (such as ‘illegal migrant’ rather than ‘undocumented person’) contributes to the unnecessary criminalization of migrants.”¹⁰

⁷ Lawyers for Human Rights, “Monitoring Policy, Litigious and Legislative Shifts in Immigration Detention in South Africa,” May 2020, <https://www.lhr.org.za/wp-content/uploads/2020/06/Detention-Report-Final-Final-Digital-1.pdf>

⁸ Department of Home Affairs, “White Paper on International Migration for South Africa,” July 2017, <http://www.dha.gov.za/WhitePaperonInternationalMigration-20170602.pdf>

⁹ Department of Home Affairs, “White Paper on International Migration for South Africa,” July 2017, <http://www.dha.gov.za/WhitePaperonInternationalMigration-20170602.pdf>

¹⁰ Scalabrini, “What is the White Paper on International Migration?” 18 September 2019, <https://www.scalabrini.org.za/news/what-is-the-white-paper-on-international-migration/>

In July 2020, South Africa adopted a Border Management Act (BMA 2020) that reiterates many of the securitisation priorities spelled out in the White Paper.¹¹ Framed as a law that will “remedy the [country’s] fragmented border management model,” the BMA 2020 created a new Border Management Authority, which concentrates various border management responsibilities under one agency operating under the authority of the Department of Home Affairs. Some observers noted the similarities between the BMA 2020 and securitisation trends in the European Union (EU), especially since Europe’s refugee “crisis,” which they argue could result in a “new paradigm” whereby “millions will be detained in facilities across Africa or condemned to die along land and water borders,” as two scholars opined in *The New Humanitarian*.¹²

South Africa’s embrace of restrictive immigration and asylum policies dates at least as far back as the early 1990s, when the country adopted the Aliens Control Act No. 96 (later replaced with the Immigration Act 2002), which initially provided for indefinite migration-related detention without judicial review.¹³ Deportations began increasing at that time, reaching their peak in 2007, when 312,733 people were removed from the country.¹⁴ Numbers have since fallen: 29,376 in 2019/2020 and 11,787 in 2020/2021.¹⁵

The country’s migration-related detention policies have drawn criticism for many years, in particular the operations and conditions at its only long-standing dedicated immigration detention centre—the privately-operated Lindela Repatriation Centre—its use of police stations and prisons to hold people for immigration purposes, and the endemic corruption in police and immigration bureaucracies that operate detention sites and administer the asylum process. Numerous reports over the years have highlighted allegations of abuses at detention facilities, prolonged detention periods, and repeated accusations of arbitrary detention, as well as overcrowding and poor sanitation, among other problems.

An important enabler of South Africa’s securitised migration regime is the country’s endemic racism and xenophobia—both of which have been exacerbated by social tensions that emerged as a result of the COVID-19 pandemic. As unemployment soared in the months after the onset of the crisis in early 2020, large demonstrations were held in cities including Johannesburg and Pretoria demanding the mass deportation of foreigners.¹⁶

¹¹ South African Government, “Parliament Welcomes Signing Into Law of Border Management Authority Bill,” 22 July 2020, <https://www.gov.za/speeches/parliament-welcomes-signing-law-border-management-authority-bill-22-jul-2020-0000>

¹² L. Landau and C. Kihato, “Securitising Africa’s Borders is Bad for Migrants, Democracy, and Development,” *The New Humanitarian*, 5 July 2017, <https://www.thenewhumanitarian.org/fr/node/259499>

¹³ Department of Home Affairs, “White Paper on International Migration for South Africa,” July 2017, <http://www.dha.gov.za/WhitePaperonInternationalMigration-20170602.pdf>

¹⁴ G. Mthembu-Salter, R. Amit, et al, “Counting the Cost of Securitising South Africa’s Immigration Regime,” *Migrating Out of Poverty Consortium*, September 2014, <http://migratingoutofpoverty.dfid.gov.uk/files/file.php?name=wp20-mthembu-salter-et-al-2014-counting-the-cost.pdf&site=354>

¹⁵ Parliamentary Monitoring Group, “Question NW417 to the Minister of Home Affairs,” 8 March 2021, <https://pmg.org.za/committee-question/15619/>

¹⁶ G. Gatticchi and L. Maseko, “Xenophobia Surges as Covid-19 Slams South African Economy,” 20 December 2020, <https://www.bloomberg.com/news/articles/2020-12-20/xenophobia-surges-as-covid-19-slams-south-african-economy>

These underlying tensions are long-standing. A 2018 public survey found that 44 percent of respondents agreed that foreigners should not be allowed to live in the country because “they take jobs and benefits away from South Africans.”¹⁷ Xenophobic violence periodically erupts, leading to the death and injury of foreigners, as well as the destruction of their property and businesses. During one notorious spate of violence in 2015, some 6,400 non-nationals were forced from their homes and businesses.¹⁸

In March 2019 the government launched the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP). In the Foreword to the plan, President Cyril Ramaphosa wrote, “The time has come for us to shed all shackles of prejudice and discrimination so that we can fulfil the promise of building a united, non-racial, non-sexist and prosperous country in which all who live in it are not just entitled to equality, but experience equality in their daily lives.”¹⁹ Among other plans, the NAP foresaw the creation of mechanisms to facilitate migrants’ integration; to ensure that they receive the services they are entitled to; to embrace a more humane approach to managing migration; and to consider drafting a policy framework related to the eradication of statelessness.²⁰

However, soon after the action plan was adopted, major incidents of xenophobic violence erupted.²¹ In September 2019, unrest in Johannesburg saw foreign-owned shops looted and burned, several deaths, and police using teargas and rubber bullets to disperse armed protestors shouting anti-immigrant chants.²² Police were also accused of raiding migrant-owned businesses and detaining hundreds of people, many of whom were taken to the Lindela detention centre.²³

¹⁷ Foundation for Human Rights, “SEJA Baseline Survey,” 2018, https://static.pmg.org.za/SEJA_Report.pdf

¹⁸ Amnesty International, “Annual Report: South Africa 2015/2016,” <https://www.amnesty.org/en/countries/africa/south-africa/report-south-africa/>

¹⁹ Republic of South Africa, “National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance,” March 2019, https://www.gov.za/sites/default/files/gcis_document/201903/national-action-plan.pdf

²⁰ Republic of South Africa, “National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance,” March 2019, https://www.gov.za/sites/default/files/gcis_document/201903/national-action-plan.pdf

²¹ See: Human Rights Watch, “‘They Have Robbed Me Of My Life’ – Xenophobic Violence Against Non-Nationals in South Africa,” 17 September 2020, <https://www.hrw.org/report/2020/09/17/they-have-robbed-me-my-life/xenophobic-violence-against-non-nationals-south>

²² J. Burke, “‘We Are a Target’: Wave of Xenophobic Attacks Sweeps Johannesburg,” 10 September 2019, <https://www.theguardian.com/world/2019/sep/10/we-are-a-target-wave-of-xenophobic-attacks-sweeps-johannesburg>

²³ DW, “South African Government Accused of Xenophobia Over its Treatment of Migrants,” 13 August 2019, <https://www.dw.com/en/south-african-government-accused-of-xenophobia-over-its-treatment-of-migrants/a-49997237>



2. LAWS, POLICIES, PRACTICES

2.1 Key norms

Core pieces of national legislation providing a framework for immigration detention	<ul style="list-style-type: none">• Immigration Act (13 of 2002)• Immigration Regulations (GN 413 GG 3769 of 22 May 2014)• Refugees Act (130 of 1998)• Refugees Amendment Act (11 of 2017)• Refugees Regulations (GN 1707 GG 42932 of 27 December 2019)
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South Africa’s legal norms relating to migration-related detention and expulsion are contained in several pieces of legislation: the [Immigration Act](#) (13 of 2002), the Regulations to the Immigration Act, the Refugee Act, the Refugees Amendment Act, and the Refugees Regulations.

Section 2 of the Immigration Act highlights one of its primary objectives as “detecting and deporting illegal foreigners.” Section 32 provides that any “illegal foreigner” is to be deported, while section 34 establishes the grounds and procedures for detention and deportation.

The Refugees Act provides that an individual with an asylum seeker “permit,” which is given while they await the outcome of their asylum procedure, may be detained until the asylum procedure is concluded (Section 23).

South Africa’s Constitution provides that rights, including the right to freedom and security of person, apply to all persons within the Republic’s borders, regardless of their nationality or immigration status. Discussing the Constitution’s limits to the executive’s detention power, Lawyers for Human Rights (LHR) highlights Section 35(2) of the Constitution, which provides protections against all forms of arbitrary detention, and the right to be brought before a Court within 48 hours of arrest and to contest the reasons for detention. However, according to LHR, only recently was this right afforded in practice to immigration detainees.²⁴

²⁴ Lawyers for Human Rights (LHR), “Monitoring Policy, Litigious and Legislative Shifts in Immigration Detention in South Africa,” May 2020, <https://www.lhr.org.za/wp-content/uploads/2020/06/Detention-Report-Final-Final-Digital-1.pdf>

2.2 COVID-19 Response

Did authorities issue a moratorium on new detention orders?	No
Were any immigration detainees released during the pandemic?	No
Were deportations ceased?	No

In March 2020, shortly after the onset of the COVID-19 pandemic, South Africa announced plans to construct a 40-kilometre fence between South Africa and Zimbabwe, which was intended to “ensure that no undocumented or infected persons cross into the country.”²⁵ However, observers have pointed out that COVID cases have been far higher in South Africa than Zimbabwe, suggesting that authorities utilised the pandemic to justify its wider securitisation agenda.²⁶

According to various experts and observers, the COVID-19 pandemic deepened the unequal treatment of non-nationals in South Africa.²⁷ Indeed, while authorities initially announced that South African-owned and operated small shops (*spaza* shops) could remain open during the nationwide lockdown, those that are foreign owned and operated could not.²⁸ This discriminative policy was only corrected on 6 April 2020.²⁹

Similarly, while authorities acknowledged the dangers that the virus poses to confined populations and took steps to release 20,000 low-risk prison inmates, they simultaneously stepped up the arrest and detention of migrants for petty crimes, and continued to arrest, detain, and deport undocumented migrants (despite announcing on 25 March that asylum seekers whose visas expired after 16 March would not be penalised or arrested)—justifying such actions as necessary measures to contain the spread of the virus.³⁰ As the International Detention Coalition (IDC) wrote, “This proves that the preventative measures that were put in place in prisons and detention facilities were tailored only towards natural citizens of the state and further amplifies the dehumanization of migrants in South Africa.”³¹

²⁵ Al Jazeera, “South Africa to Build 40km Fence Along Zimbabwe Border,” 20 March 2020, <https://www.aljazeera.com/news/2020/3/20/south-africa-to-build-40km-fence-along-zimbabwe-border>

²⁶ See, for example, F.L. Zanker and K. Moyo, “The Corona Virus and Migration Governance in South Africa: Business As Usual?” *Africa Spectrum*, 55(1), 20 May 2020, <https://journals.sagepub.com/doi/full/10.1177/0002039720925826>

²⁷ F.C Mukumbang, A.N Ambe, & B.O Adebisi, “Unspoken Inequality: How COVID-19 Has Exacerbated Existing Vulnerabilities of Asylum-Seekers, Refugees, and Undocumented Migrants in South Africa,” *Equity Health*, 20 August 2020, <https://equityhealthj.biomedcentral.com/articles/10.1186/s12939-020-01259-4>

²⁸ T. Kubheka, “SA Lockdown: Govt Working on Relief Package for Informal Sector,” 26 March 2020, <https://ewn.co.za/2020/03/26/sa-lockdown-govt-working-on-relief-package-for-informal-sector>

²⁹ F.L. Zanker and K. Moyo, “The Corona Virus and Migration Governance in South Africa: Business As Usual?” *Africa Spectrum*, 55(1), 20 May 2020, <https://journals.sagepub.com/doi/full/10.1177/0002039720925826>

³⁰ Global Detention Project, “South Africa: COVID-19 Updates,” 6 May 2020, <https://www.globaldetentionproject.org/countries/africa/south-africa#covid-19-updates>

³¹ International Detention Coalition (IDC), “COVID-19 Impacts on Immigration Detention: Global Responses,” 2020, <https://idcoalition.org/wp-content/uploads/2020/10/COVID-19-Impacts-on-Immigration-Detention-Global-Responses-2020.pdf>

Meanwhile, Refugee Reception Offices (RROs) were closed as part of the nationwide lockdown, leaving non-nationals unable to renew permits and register births, and vulnerable to harassment by law enforcement agencies.³² In December 2020, however, DHA announced that permits issued to refugees and asylum seekers would remain valid until 31 January 2021, which was extended until 31 March 2021.³³ As of May 2021, valid permit holders were permitted to request permit extensions online.³⁴

Non-nationals were placed in already overcrowded facilities where social distancing was impossible (according to the IDC, prisons and detention facilities were already operating at 200 – 300 percent capacity at the start of the pandemic.)³⁵ Ad hoc facilities also appear to have been used to hold non-nationals. According to media reports, police rounded up hundreds of homeless migrants at the start of the crisis, transferring them to Strandfontein Camp—a tented facility set up by Cape Town authorities in response to the pandemic. Conditions in this camp were quickly flagged by the South African Human Rights Commission, which documented severe movement restrictions, poor quality bedding, insufficient hygiene levels, and the inability to social distance. Although the facility closed on 20 May, a group of 180 who had been confined in the facility were reportedly moved at night to an un-serviced site under a highway overpass in Culemborg, central Cape Town.³⁶

In May 2020, authorities also designated correctional facilities as temporary immigration detention sites during the pandemic. The “Determination of Correctional Facilities as Places of Detention of Illegal Foreigners Pending Deportation” provides that “illegal foreigners” may be placed in such facilities prior to their deportation or transfer to the Lindela facility “for the duration of the period of the national state of disaster as declared in terms of the Disaster Management Act, 2002 (Act No. 57 of 2002).”³⁷

Although borders were closed, authorities continued to conduct deportations during the pandemic. In May 2020, the country’s Minister of Home Affairs ordered deportations to be stepped up following an escape attempt from Lindela Repatriation Centre and several riots.

³² F.C Mukumbang, A.N Ambe, and B.O Adebisi, “Unspoken Inequality: How COVID-19 Has Exacerbated Existing Vulnerabilities of Asylum-Seekers, Refugees, and Undocumented Migrants in South Africa,” *Equity Health*, 20 August 2020, <https://equityhealthj.biomedcentral.com/articles/10.1186/s12939-020-01259-4>

³³ Department of Home Affairs, “Validity of Asylum Seeker and Refugee Permits During the Lockdown Period,” 11 December 2020, <http://www.dha.gov.za/index.php/notices/1398-validity-of-asylum-seeker-and-refugee-permits-during-the-lockdown-period>; Department of Home Affairs, “Extension of Validity of Asylum Seeker and Refugee Permits to 31st March 2021,” 29 January 2021, <http://www.dha.gov.za/index.php/notices/1410-extension-of-validity-of-asylum-seeker-and-refugee-permits-to-31st-of-march-2021>

³⁴ Department of Home Affairs, “Online Extension of Asylum Seekers and Refugees Visas,” 19 May 2021, <http://www.dha.gov.za/index.php/notices/1441-online-extension-of-asylum-seekers-and-refugees-visas>

³⁵ International Detention Coalition (IDC), “COVID-19 Impacts on Immigration Detention: Global Responses,” 2020, <https://idcoalition.org/wp-content/uploads/2020/10/COVID-19-Impacts-on-Immigration-Detention-Global-Responses-2020.pdf>

³⁶ Lawyers for Human Rights, “Strandfontein Homeless Committee Takes on City of Cape Town,” 19 May 2020, <https://www.lhr.org.za/lhr-news/strandfontein-homeless-committee-takes-on-city-of-cape-town/>; NRRRTT National Rapid Response Task Team, Twitter – 23 May 2020, <https://twitter.com/DhsNRRRTT/status/1263940690804948997>

³⁷ Republic of South Africa, “Immigration Act (13/2002): Determination of Correctional Facilities as Places of Detention of Illegal Foreigners Pending Deportation,” 7 May 2020, <https://edit.laws.africa/works/akn/za/act/gn/2020/512/media/publication/za-act-gn-2020-512-publication-document.pdf>

On 7 May 2020, 94 Lesotho nationals were deported, followed by 527 Zimbabwean nationals two days later.³⁸

2.3 Grounds for Administrative Migration-Related Detention

Are grounds for administrative migration-related detention provided in law?	Yes
Key grounds for detention	<ul style="list-style-type: none"> • Detention to establish/verify identity and nationality • Detention to effect removal

Administrative migration-related detention is regulated by the Immigration Act. The Refugee Act also contains provisions for detaining asylum seekers in certain cases (see 2.5 Asylum Seekers). Additionally, the country has laws providing for criminal prosecution and incarceration for certain migration-related offenses (see 2.4 Criminalisation).

The overall framework and particular provisions related to migration-related detention and removal are contained in the chapter of the Immigration Act titled “Enforcement and Monitoring,” which includes Sections 32-36, with Section 34 providing the specific regulation for detention. Section 41 outlines the steps that must be taken to verify those who can be detained. As outlined in these provisions, migration-related detention is primarily justified as a tool for removing unauthorised migrants.

Section 32 identifies the subject of enforcement measures: “Illegal foreigners.” It stipulates: “(1) Any illegal foreigner shall depart, unless authorised by the Department to remain in the Republic pending his or her application for a status. (2) Any illegal foreigner shall be deported.”

Section 33 provides the procedures for establishing the authorities that are responsible for undertaking enforcement measures (see 2.10 Detaining Authorities and Institutions) and details the key steps in investigating suspected “illegal foreigners” and the issuance of warrants.

Section 34, “Deportation and detention of illegal foreigners,” authorises immigration officers to detain an individual for the purposes of deportation if the person cannot provide a valid identification document. Valid documents, which an officer should have taken reasonable steps to obtain, must demonstrate that the prospective detainee is either a citizen, permanent resident, visitor with a visa, refugee, or asylum seeker (or that the person came to South Africa to seek asylum). The section provides that immigration officers may “arrest an illegal foreigner or cause him or her to be arrested, and shall, irrespective of whether such foreigner is arrested, deport him or her or cause him or her to be deported and may,

³⁸ Times Live, “Government Bends Lockdown Rules to Repatriate Foreigners After Riots at Lindela,” 7 May 2020, <https://www.timeslive.co.za/news/south-africa/2020-05-07-government-bends-lockdown-rules-to-repatriate-foreigners-after-riots-at-lindela/>; J. Richardson, “Zimbabweans Unhappy with Arrival of Lindela Repatriation Group,” *The South African*, 9 May 2020, <https://www.thesouthafrican.com/news/zimbabwe/zimbabweans-unhappy-lindela-repatriation-group/>

pending his or her deportation, detain him or her or cause him or her to be detained in a manner and at the place under the control or administration of the Department determined by the Director-General.” Section 34 further stipulates procedural standards for detention orders and the time limits for various phases of detention measures (see 2.8 Procedural Standards).

While the detention power is articulated in Section 34, the process for verifying who can be detained, “illegal foreigners,” is provided in Section 41. According to Lawyers for Human Rights: “Once a foreign national is arrested under the suspicion of not being in the country lawfully, the immigration officer has a duty to verify the individual’s documents. Section 41, read with regulation 37 of the 2014 Immigration Regulations, provides that prior to any detention in terms of section 34, an immigration officer is expected to assist with the verification of such person’s identity or status. Only after verification of their immigration status, if necessary, can a person be detained in terms of section 34.”³⁹ Detention for the purposes of verification can be ordered without a warrant, and the individual cannot be held for more than 48 hours.

In addition to these detention grounds, the Immigration Act authorises the DHA to request that a detainee cover the cost of their detention and removal. Section 34(3) provides, “The Department may order a foreigner subject to deportation to deposit a sum sufficient to cover in whole or in part the expenses related to his or her deportation, detention, maintenance and custody and an officer may in the prescribed manner enforce payment of such deposit.”

2.4 Criminalisation

Does the country provide specific criminal penalties for immigration-related violations?	Yes
Does the country provide criminal incarceration for immigration-related violations?	Yes

South Africa’s Immigration Act provides criminal penalties, including fines and imprisonment, for violations of the act or failure to comply with immigration orders. Importantly, the country’s 2017 White Paper on International Immigration, which sets out the country’s long-term policy framework and strategies, explicitly calls for increasing application of criminal penalties for migration violations.⁴⁰

According to Lawyers for Human Rights (LHR), prior to 2017, detention was nearly always part of an administrative procedure aimed at ensuring deportation; only rarely were people brought before a court for immigration violations. However, since a 2018 Constitutional Court ruling that found that detention for immigration violations without judicial oversight was unconstitutional, LHR reports that they are “seeing most immigration violations being

³⁹ Lawyers for Human Rights (LHR), “Monitoring Policy, Litigious and Legislative Shifts in Immigration Detention in South Africa,” May 2020, <https://www.lhr.org.za/wp-content/uploads/2020/06/Detention-Report-Final-Final-Digital-1.pdf>

⁴⁰ Scalabrini, “What is the White Paper on International Migration?” 18 September 2019, <https://www.scalabrini.org.za/news/what-is-the-white-paper-on-international-migration/>

processed through the criminal justice system” before eventually being transferred over to administrative deportation procedures.⁴¹

Section 34(4) of the Immigration Act provides fines or imprisonment for up to 12 months for anyone who fails to provide a deposit to cover the costs associated with their detention and deportation.

Section 34(5) provides for fine or imprisonment not exceeding 12 months for foreigners who fail to comply with an expulsion order, who return to the country following their removal, or who enter the country following a refusal of admission.

Section 34(7) stipulates that “Any illegal foreigner convicted and sentenced under this Act may be deported before the expiration of his or her sentence and his or her imprisonment shall terminate at that time.”

Section 49(1) of the Immigration Act provides that anyone who enters or remains in South Africa in contravention of the Immigration Act, or who fails to leave the country when ordered to do so, is liable to a fine or prison term of up to three months.

These imprisonment provisions are part of a criminal process that includes police investigation, trial, and sentencing, which often include both imprisonment and fines. A deportation procedure is confirmed as part of the sentencing process. The person is then transferred to Lindela to await deportation.⁴²

2.5 Asylum Seekers

Is the detention of asylum seekers provided in law?

Yes

Although they are generally protected from detention measures, asylum seekers can be detained in specific instances. In particular, they can be detained when authorities deem that they have violated specific criteria, resulting in removal of their asylum seeker “permit,” which they are provided with while their asylum application is processed. Additionally, observers report that police routinely ignore provisions of the Refugee Act that protect “newcomer asylum seekers” from detention and instead apply provisions of the Immigration Act that authorise the initial detention of people by police.⁴³

Provisions and procedures concerning the detention of asylum seekers are contained in the Refugees Act, the Refugees Amendment Act, and the Refugee Regulations. Although the Refugees Act provides various protections for asylum seekers, the enactment of the Refugees Amendment Act and its accompanying regulations dramatically altered the

⁴¹ Wayne Ncube (Lawyers for Human Rights), Correspondence with Michael Flynn (Global Detention Project), 16 June 2021.

⁴² Charne Tracey (Lawyers for Human Rights), Correspondence with the Global Detention Project, 6 June 2021.

⁴³ Lawyers for Human Rights (LHR), “Monitoring Policy, Litigious and Legislative Shifts in Immigration Detention in South Africa,” May 2020, <https://www.lhr.org.za/wp-content/uploads/2020/06/Detention-Report-Final-Final-Digital-1.pdf>

landscape for asylum seekers in South Africa, in particular since the entry into force of amendments to these laws in 2020.⁴⁴

Section 21(4) of the Refugees Act stipulates that “Notwithstanding any law to the contrary, no proceedings may be instituted or continued against any person in respect of his or her unlawful entry into or presence within the Republic if a) such person has applied for asylum in terms of subsection (1), until a decision 35 has been made on the application and, where applicable, such person has had an opportunity to exhaust his or her rights of review or appeal in terms of Chapter 4; or (b) such person has been granted asylum.”⁴⁵

However, Section 23, “Detention of asylum seeker,” provides that authorities “may” decide to detain a person if they have had their asylum seeker permit” removed. The grounds for removing the permit are:

- (a) the applicant contravenes any conditions endorsed on that permit; or
- (b) the application for asylum has been found to be manifestly unfounded, abusive or fraudulent; or
- (c) the application for asylum has been rejected; or
- (d) the applicant is or becomes ineligible for asylum in terms of section 4 or 5 (which specify when a person is excluded from refugee status or ceases to qualify).

If a decision it made to withdraw a person’s asylum permit, they must be dealt with as an “illegal foreigner” as per section 32 of the Immigration Act.⁴⁶

According to the Refugees Amendment Act and the Refugee Regulations, arrivals are to state an intention to apply for asylum at one of the country’s ports of entry. As per Section 23 of the Immigration Act, the asylum seeker is to be provided with an Asylum Transit Visa—a requirement that is further confirmed by section 4(1)(i) of the Refugees Amendment Act, which requires an asylum seeker to report to a Refugee Reception Office (RRO) within five days of entering the country. At the RRO, the applicant must submit their Asylum Transit Visa alongside their asylum application, thereby proving legal entry into the country.⁴⁷ Where this is not possible, the applicant must provide good cause for their illegal entry or stay, and undergo an interview with an immigration officer “to ascertain whether valid reasons exist as to why the applicant is not in possession of such visa.”⁴⁸

While applicants await a decision on their application, they are provided with a limited Section 22 Permit, which is renewable every six months. This permit protects its holder against deportation, and grants them the right to work and study.⁴⁹

⁴⁴ Charne Tracey (Lawyers for Human Rights), Correspondence with the Global Detention Project, 6 June 2021.

⁴⁵ Republic of South Africa, “Refugees Act, 1998,” 1998, https://www.gov.za/sites/default/files/gcis_document/201409/a130-980.pdf

⁴⁶ Charne Tracey (Lawyers for Human Rights), Correspondence with the Global Detention Project, 6 June 2021.

⁴⁷ Refugee Regulations, *supra* note 7 at reg 7(3).

⁴⁸ Refugees Act *supra* note 33 at s 1B.

⁴⁹ International Detention Coalition (IDC), “COVID-19 Impacts on Immigration Detention: Global Responses,” 2020, <https://idcoalition.org/wp-content/uploads/2020/10/COVID-19-Impacts-on-Immigration-Detention-Global-Responses-2020.pdf>

If an asylum seeker's transit permit expires before they reach a RRO, or their asylum documentation expires, they will become an "illegal foreigner" and be subject to detention and deportation. According to observers, many asylum seekers are vulnerable to falling foul of the new requirements—in large part due to the difficulties they may face in reaching an RRO in such a short time frame. Lawyers for Human Rights (LHR) also highlights that some RROs have specific days set aside to process applications from set nationalities (ostensibly due to the presence of translators on these days). "An example is that the Somali nationality day is currently scheduled for Thursdays across the country. Thus, if a Somali newcomer asylum seeker enters the country on a Thursday through a land port of entry, and is provided with the five-day Asylum Transit Visa, she would have to wait until the following Thursday before being permitted to enter the RRO, as that is the Somali nationality day. As such, she would automatically have violated the five-day prescribed time period, and would thus risk being excluded as a result. This would place the asylum seeker at risk of detention and deportation, which could amount to *refoulement*."⁵⁰

In recent years, the South African asylum system has been dogged by accusations of corruption and criticised for the glacial speed at which it processes applications. According to a 2015 Migration Policy Institute article, backlogs and high demand at that time allowed "systemic corruption to flourish in the asylum system," with asylum seekers often required to pay bribes to even enter RROs and acquire the necessary documents for their applications—a process that should be free of charge.⁵¹ More recently, in a 2020 report on corruption, LHR reported that incidences of corruption and extortion have included requirements to pay money to submit asylum applications, as well as payment for the renewal of documents, the services of an interpreter, the issuing of documentation, and the assistance of a Refugee Status Determination Officer. Reportedly, some asylum seekers were also offered refugee status documentation in exchange for payment.⁵²

The closure of several RROs have arguably contributed to these corruption issues. Between 2011 and 2012, the RROs in Johannesburg, Cape Town, and Port Elizabeth were closed, leaving RROs operating only in Pretoria, Musina, and Durban.⁵³ Office closures have led to dramatic increases in applications at other offices, which in turn has led to higher levels of corruption⁵⁴ and made it nearly impossible for many asylum seekers to obtain or maintain their status because of the difficulties associated with travelling to other RROs in far-off areas of the country.⁵⁵ The Department of Home Affairs (DHA) reported that closures were part of plans to relocate all RROs to the country's borders, although construction had been

⁵⁰ Lawyers for Human Rights, "Monitoring Policy, Litigious and Legislative Shifts in Immigration Detention in South Africa," May 2020, <https://www.lhr.org.za/wp-content/uploads/2020/06/Detention-Report-Final-Final-Digital-1.pdf>

⁵¹ R. Amit, "Paying for Protection: Corruption in South Africa's Asylum System," *Migration Policy Institute*, 5 November 2015, <http://www.migrationpolicy.org/article/paying-protection-corruption-south-africas-asylum-system>

⁵² Lawyers for Human Rights, "Costly Protection: Corruption in South Africa's Asylum System," 2020, <https://www.lhr.org.za/wp-content/uploads/2020/09/Corruption-Report-V4-Digital.pdf>

⁵³ Lawyers for Human Rights, "Costly Protection: Corruption in South Africa's Asylum System," 2020, <https://www.lhr.org.za/wp-content/uploads/2020/09/Corruption-Report-V4-Digital.pdf>

⁵⁴ Lawyers for Human Rights, "2013 Annual Report," 2015, <http://www.lhr.org.za/publications/2013-annual-report>

⁵⁵ R. Amit, "Paying for Protection: Corruption in South Africa's Asylum System," *Migration Policy Institute*, 5 November 2015, <http://www.migrationpolicy.org/article/paying-protection-corruption-south-africas-asylum-system>

delayed for nearly four years.⁵⁶ Since the closures began, court rulings had ordered the DHA to reopen the Port Elizabeth RRO and Cape Town RRO.⁵⁷

More recently, in May 2021 a Western Cape High Court judge found that the DHA was in breach of a Supreme Court of Appeal (SCA) ruling and ordered the re-opening of the Cape Town RRO. The judge ordered the DHA to file monthly reports detailing its progress in re-opening, including details of office premises, operational budget, personnel, and timelines.⁵⁸ Previously, in 2017 the SCA had found the DHA's decision to shutter the facility unlawful, and had ordered it to reopen the facility by March 31 2018.)⁵⁹

In July 2017, the DHA released its “White Paper on International Migration,” which included plans to overhaul the country's asylum processing system. In particular, the paper proposed the establishment of “asylum seeker processing centres” on the country's northern borders, where all newly arrived asylum seekers would be “accommodated” while their applications are processed. Rights groups such as Scalabrini have condemned these plans, arguing that “creating detention centres in remote areas of the country will result in the long-term detention of vulnerable people without adequate support or adequate conditions.”⁶⁰ The plans were also highlighted with concern by the UN Committee against Torture in 2019.⁶¹

As of January 2020, the DHA reported that there were 188,296 asylum seekers in the country,⁶² and 80,758 registered refugees.⁶³ It is worth noting, however, that DHA statistics have previously been criticised as “flawed, inaccurate, and sharply contradictory.” LHR also notes that the number of asylum seekers will be much higher, given the barriers that new arrivals face—such as the closure of RROs.⁶⁴

⁵⁶ Lawyers for Human Rights, “Press Statement: Constitutional Court Upholds Ruling the PE Refugee Reception Office be Reopened,” 6 August 2015, <http://www.lhr.org.za/news/2015/press-statement-constitutional-court-upholds-ruling-pe-refugee-reception-office-be-reopene>

⁵⁷ Lawyers for Human Rights, “Press Release: Home Affairs Ordered to Reopen Refugee Office in Port Elizabeth,” accessed 21 June 2016, <http://www.lhr.org.za/news/2015/press-release-home-affairs-ordered-reopen-refugee-office-port-elizabeth>; Lawyers for Human Rights, “Court Orders CT Refugee Reception Office to Accept New Asylum Applicants,” 9 April 2013, <http://www.lhr.org.za/case/court-orders-ct-refugee-reception-office-accept-new-asylum-applicants>

⁵⁸ M. Charles, “Victory for Refugees After High Court Orders Reopening of Home Affairs Reception Office,” 19 May 2021, <https://www.news24.com/news24/southafrica/news/victory-for-refugees-after-high-court-orders-reopening-of-home-affairs-reception-office-20210519>

⁵⁹ M. Charles, “Victory for Refugees After High Court Orders Reopening of Home Affairs Reception Office,” 19 May 2021, <https://www.news24.com/news24/southafrica/news/victory-for-refugees-after-high-court-orders-reopening-of-home-affairs-reception-office-20210519>

⁶⁰ Scalabrini, “What is the White Paper on International Migration?” 18 September 2018, <https://www.scalabrini.org.za/news/what-is-the-white-paper-on-international-migration/>

⁶¹ UN Committee against Torture (CAT), “Concluding Observations on the Second Periodic Report of South Africa,” CAT/C/ZAF/CO/2, 7 June 2019, <https://bit.ly/2Pqfd0Z>

⁶² Parliamentary Monitoring Group, “Question NW202 to the Minister of Home Affairs,” 18 March 2020, <https://pmg.org.za/committee-question/13290/>

⁶³ Parliamentary Monitoring Group, “Question NW811 to the Minister of Home Affairs,” 27 May 2020, <https://pmg.org.za/committee-question/13510/>

⁶⁴ Lawyers for Human Rights, “Costly Protection: Corruption in South Africa's Asylum System,” 2020, <https://www.lhr.org.za/wp-content/uploads/2020/09/Corruption-Report-V4-Digital.pdf>

2.6 Children and Other Vulnerable Groups

Is the detention of children provided in law?	Yes
Have children been detained in practice?	Yes

The Immigration Act provides that children may be detained as a matter of last resort (Section 34). The Refugee Act (Section 29.2) also contains a provision specifically authorising the detention of a child, which the law says “must be used only as a measure of last resort and for the shortest appropriate period of time.”

In practice, according to Lawyers for Human Rights, “the number of minors found in detention over the last few years has notably decreased. While children are at times still identified in Lindela and detained in the holding cells at police stations, the numbers of detained children that LHR has encountered have significantly decreased from those identified in the early 2010s.”⁶⁵

The “Minimum Standards of Detention” (set out in Annexure B of the Immigration Regulations)⁶⁶ provide that detained children should be separated from unrelated adults. However, observers have highlighted instances in which this provision has been violated. In 2014, Lawyers for Human Rights reported discovering a child detained in the same cell as adults in the Benoni Police Station, “without regard for his age or the fact that children are only to be detained as a last resort.” The child was then transferred to the Lindela facility while the Department of Social Development worked to verify the child's age and find an alternative “placement.” LHR stated that the case demonstrated a lack of emphasis on the issue of detention of minors.⁶⁷

In 2004 the country’s High Court issued a decision stating that migrant children can only be detained as a matter of last resort.⁶⁸ Although the country reported to the UN Global Study on Children Deprived of Liberty (2019) that it does not detain children for migration-related reasons,⁶⁹ migrant rights NGOs have reported that the Department of Home Affairs (DHA) and the South African Police Service continue to detain unaccompanied children for immigration violations in contravention of the High Court rulings.⁷⁰

⁶⁵ Lawyers for Human Rights, “Monitoring Policy, Litigious and Legislative Shifts in Immigration Detention in South Africa,” May 2020, <https://www.lhr.org.za/wp-content/uploads/2020/06/Detention-Report-Final-Final-Digital-1.pdf>

⁶⁶ Republic of South Africa, “Annexure B: Minimum Standards of Detention,” 22 May 2014, <https://www.vfsglobal.com/dha/southafrica/pdf/final-Immigration-Regulations-2014-1.pdf>

⁶⁷ Lawyers for Human Rights, “Press Statement: LHR Responds to Detention of Immigrants at Police Stations and SAPS’ Incorrect Interpretation of Immigration Laws,” 21 October 2014, <http://www.lhr.org.za/news/year/2014>

⁶⁸ M. Garcia Bochenek, “Children Behind Bars: The Global Overuse of Detention of Children,” *Human Rights Watch*, 2016, <https://www.hrw.org/world-report/2016/children-behind-bars>

⁶⁹ M. Nowak, “The United Nations Global Study on Children Deprived of Liberty,” November 2019, <https://omnibook.com/view/e0623280-5656-42f8-9edf-5872f8f08562/page/2>

⁷⁰ US Department of State, “Country Reports on Human Rights Practices for 2015: South Africa,” <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=252729>

According to the South African Human Rights Commission, between 2016 and 2017 a Médecins Sans Frontières (MSF) pediatrician working at the Lindela facility identified 50 minors at the centre.⁷¹ More recently, Lawyers for Human Rights (LHR) reported that it had observed a decrease in the number of detained children—although did continue to identify some.⁷²

The Immigration Act does not contain any specific provisions allowing or prohibiting the detention of any other vulnerable groups.

2.7 Length of Detention

Maximum length for administrative immigration detention in law

120 days

Under the Immigration Act, people detained on suspicion of not having permission to be in the country can be held for an initial period of no more than 48 hours. Once in a deportation procedure, people can be detained for up to 30 days, which can be extended by 90 additional days upon issuance of a court warrant stating there are “good and reasonable grounds” for the extension. However, according to the African Centre for Migration and Society, “Immigration officials have routinely failed to obtain the required warrants to extend detentions beyond 30 days,” and individuals are often detained longer than the legal maximum of 120 days despite past legal rulings stating that these practices are unlawful.⁷³

The length of time for which an individual is detained in police custody prior to their transfer to the Lindela Repatriation Centre must be included within the total 120-day limit. However, according to Lawyers for Human Rights, authorities have tended to operate on the basis that the limit commences upon arrival at the facility—thus exposing detainees to significantly longer detention periods.⁷⁴ In 2014 for example, the South African Human Rights Commission reported one case in which an individual had been detained for 524 days.⁷⁵

⁷¹ South African Human Rights Commission, “Children Illegally Detained Under Bosasa’s Watch at Lindela as Healthcare Crumbles,” 13 December 2017, <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1075-children-illegally-detained-under-bosasa-s-watch-at-lindela-as-healthcare-crumbles>

⁷² Lawyers for Human Rights, “Monitoring Policy, Litigious and Legislative Shifts in Immigration Detention in South Africa,” May 2020, <https://www.lhr.org.za/wp-content/uploads/2020/06/Detention-Report-Final-Final-Digital-1.pdf>

⁷³ R. Amit, “Understanding Immigration Detention and Deportation in South Africa: A Summary of Law, Practice and Human Rights Violations at the Lindela Detention Centre,” *African Centre for Migration & Society*, June 2015, <http://www.migration.org.za/uploads/docs/acms-issue-brief-11---understanding-immigration-detention.pdf>

⁷⁴ Lawyers for Human Rights, “Monitoring Policy, Litigious and Legislative Shifts in Immigration Detention in South Africa,” May 2020, <https://www.lhr.org.za/wp-content/uploads/2020/06/Detention-Report-Final-Final-Digital-1.pdf>

⁷⁵ South African Human Rights Commission, “Investigative Reports – Volume 4,” 2014, <https://www.sahrc.org.za/home/21/files/4%20SAHRC%20Investigative%20Reports%20VOLUME%20FOUR%2025062015%20to%20print.pdf>

2.8 Procedural Standards

What basic procedural standards are required by law?	• Notified in writing of detention for the purposes of deportation
Are detainees guaranteed access to legal representation?	No

Procedural standards and safeguards are set out in Section 34 of the Immigration Act. Many of these procedures have been impacted by decisions in key legal cases in front of the Constitutional Court.

Section 34 establishes that detainees must be notified in writing that they have been detained for the purposes of deportation and, upon request, must be provided with confirmation that they have been issued a court warrant. If the detainee is not issued this confirmation of their illegal status within 48 hours of them being detained, then they must be released. Although the burden is generally on the detainee to provide documentation demonstrating legal status, police and immigration officers must take all reasonable steps to assist detainees in confirming their immigration status. If the Department of Home Affairs (DHA) is unable to confirm that an individual has legal status in South Africa, that individual will be deemed an “illegal foreigner.”⁷⁶

In an important 2017 ruling in a case brought by Lawyers for Human Rights (LHR), the Constitutional Court found that provisions in Section 34 of the Immigration Act that allowed people to be detained for up to 30 days without a court order were unconstitutional because they failed to provide judicial oversight over immigration detention. According to LHR, the court “ordered that the legislature correct the offending provisions within 24 months of the date of the order. In the interim, the Court held that a suspension of the declaration of invalidity was appropriate, imposing an interim regime allowing all detainees access to the courts within 48 hours of their arrest. At the date of publication of this report the corrective legislation had not yet been finalised despite the deadline having been 24 months from 29 June 2017 – thus the amendments to the Immigration Act, as mandated by the Constitutional Court should have been passed and in effect by no later than the end of June 2019.”

Observers have also repeatedly reported that immigration detainees experience difficulties in accessing legal representation. At Lindela, 48-hour notice is required before a client consultation. According to LHR, “detainees are very rarely informed of or prepared for such consultations. Thus the 48 hours’ notice does not serve any rational or legitimate purpose for the client, and no purpose has been adequately provided by Lindela management, despite

⁷⁶ R. Amit, “Understanding Immigration Detention and Deportation in South Africa: A Summary of Law, Practice and Human Rights Violations at the Lindela Detention Centre,” *African Centre for Migration & Society*, June 2015, <http://www.migration.org.za/uploads/docs/acms-issue-brief-11---understanding-immigration-detention.pdf>

queries in this respect.”⁷⁷ LHR also reports that officials in police stations have routinely denied or limited detainees’ access to legal representation.⁷⁸

2.9 Non-Custodial Measures (“Alternatives to Detention”)

Does migration law require consideration of non-custodial measures as part of detention procedures?	No
Non-custodial measures in use	None
Number of persons granted alternatives to detention	Not applicable

Officially regulated non-custodial measures (or “alternatives to detention”) are not provided in South Africa’s immigration or asylum laws and regulations. However, NGOs and international organisations like the UN High Commissioner for Refugees have consulted with the government on ways to release vulnerable people. In its final progress report for its “Global Strategy Beyond Detention: 2015-2019,” UNHCR reported: “Although no specific pilot projects were implemented in several instances, through UNHCR’s consultative interventions and recommendations, the immigration authorities have assisted released persons of concern by providing instructions to the Refugee Reception Office to document the individuals. UNHCR also works with the Government to expand ATDs based on UNHCR’s recommendations of resettlement for specific persons of concern who are detained and who meet the criteria for resettlement.”⁷⁹

Additionally, according to Lawyers for Human Rights, “The constitution (section 35 (1)(f)) provides for detainees to be released from detention if the interests of justice permit, subject to reasonable conditions. This is done in the form of bail however a customary part of bail is verification of documentation and practically excludes immigration detainees from accessing bail since the primary cause of their detention is a lack of valid documentation. Once detainees serve out the statutory limit for detention or if they bring a legal challenge regarding their documentation in the form of appealing a decision made regarding their refugee or immigration status, they are given a form requiring them to periodically report to a DHA office.”⁸⁰

⁷⁷ Lawyers for Human Rights, “Monitoring Policy, Litigious and Legislative Shifts in Immigration Detention in South Africa,” May 2020, <https://www.lhr.org.za/wp-content/uploads/2020/06/Detention-Report-Final-Final-Digital-1.pdf>

⁷⁸ Lawyers for Human Rights, “Monitoring Policy, Litigious and Legislative Shifts in Immigration Detention in South Africa,” May 2020, <https://www.lhr.org.za/wp-content/uploads/2020/06/Detention-Report-Final-Final-Digital-1.pdf>

⁷⁹ UNHCR, “Global Strategy Beyond Detention: 2105-2019,” <https://www.unhcr.org/protection/detention/5fa26ed64/unhcr-global-strategy-beyond-detention-final-progress-report-2014-2019.html>

⁸⁰ Wayne Ncube (Lawyers for Human Rights), Correspondence with Michael Flynn (Global Detention Project), 16 June 2021.

2.10 Detaining Authorities and Institutions

What authorities are responsible for detention and other migration-control measures?	<ul style="list-style-type: none"> • Department of Home Affairs • Police
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Sections 33 and 34 of the Immigration Act provide for the establishment of authorities that are responsible for undertaking immigration procedures and stipulate who is authorised to enforce measures. The sites at which immigration detention can take place are also identified within legislation.

Section 33(59) of the Immigration Act provides that an “immigration officer” may take steps to investigate and apprehend “illegal foreigners.” Section 34 of the Immigration Act empowers the Department of Home Affairs (DHA) to detain illegal foreigners “in a manner and at a place determined by the Director-General.”

Additionally, Section 41 establishes the role of the police in immigration enforcement, stating: “When so requested by an immigration officer or a police officer any person shall identify himself or herself as a citizen, resident or foreigner when so requested by an immigration officer or a police officer, and if on reasonable grounds such immigration officer or a police officer is not satisfied that such person is entitled to be in the Republic, such immigration officer or a police officer may take such person into custody without a warrant and if necessary detain him or her in a prescribed manner and place.”⁸¹

The Immigration Act’s Determination of Places of Detention of Illegal Foreigners Pending Deportation (2019) lists the police stations in which foreigners can be held prior to their transfer to Lindela Repatriation Centre,⁸² and the Determination of Correctional Facilities as Places of Detention of Illegal Foreigners Pending Deportation (2020) determines the various prisons in which non-nationals can be held during the COVID-19 pandemic.⁸³

2.11 Regulation of Detention Conditions and Regimes

Does the country’s law provide for the use of criminal facilities for immigration detention?	Yes
Does the country’s law regulate conditions and treatment in detention?	Yes

⁸¹ See also: R. Amit, “Understanding Immigration Detention and Deportation in South Africa: A Summary of Law, Practice and Human Rights Violations at the Lindela Detention Centre,” *African Centre for Migration & Society*, June 2015, <http://www.migration.org.za/uploads/docs/acms-issue-brief-11---understanding-immigration-detention.pdf>

⁸² Republic of South Africa, “Immigration Act 2002, Section 34(1), Determination of Places of Detention of Illegal Foreigners Pending Deportation,” *Government Gazette*, 8 August 2019, https://www.gov.za/sites/default/files/gcis_document/201908/42622gon1046.pdf

⁸³ Republic of South Africa, “Immigration Act 2002, Section 34(1), Determination of Correctional Facilities as Places of Detention of Illegal Foreigners Pending Deportation,” *Government Gazette*, 7 May 2020, https://www.gov.za/sites/default/files/gcis_document/202005/43292gon512.pdf

South Africa’s legislation provides that non-nationals can be detained in criminal facilities—including police stations and, within the context of the COVID-19 pandemic, correctional facilities.⁸⁴

Section 34(1) of the Immigration Act stipulates that people should be detained “in a manner and at the place under the control or administration of the Department determined by the Director-General” and “in compliance with minimum prescribed standards.” The regulation of detention conditions, in Annexure B of regulation 33(5) of the Regulations, stipulates that detainees are to be provided with adequate space, lighting, ventilation, sanitary installations, and access to health facilities; each detainee should be provided with a bed, mattress, and blanket; unrelated male and female detainees are to be detained separately, and detained children are to be separated from unrelated adults; detainees “of a specific age” or who fall into particular health or security categories, are to be confined separately; and each detainee is to be provided with an adequate balanced diet, which takes into account the nutritional requirements of those who require special diets.⁸⁵

2.12 Domestic Monitoring

Has the country designated a National Preventive Mechanism (NPM)?	Yes
Does the NPM carry out visits?	Yes
Do NGOs carry out visits?	Yes

South Africa has both official domestic monitoring bodies and an active non-governmental community that monitors detention facilities.

In 2019, South Africa ratified the Optional Protocol to the UN Convention against Torture (OPCAT) and subsequently designated the South African Human Rights Commission (SAHRC) to act as the coordinator of the National Preventive Mechanism, together with other bodies such as the Judicial Inspectorate for Correctional Services, and the Independent Police Investigative Directorate.⁸⁶

SAHRC has had an active detention monitoring initiative at the Lindela detention centre called the “Lindela Monitoring Framework.” According to UNHCR, which participates in this initiative: “The Framework monitors the Government’s overall compliance with detention immigration standards and humane detention conditions. In particular, the monitoring aims to ensure that no foreign national is held for the purposes of immigration detention for a

⁸⁴ Republic of South Africa, “Immigration Act 2002, Section 34(1), Determination of Places of Detention of Illegal Foreigners Pending Deportation,” *Government Gazette*, 8 August 2019, https://www.gov.za/sites/default/files/gcis_document/201908/42622gon1046.pdf; Republic of South Africa, “Immigration Act 2002, Section 34(1), Determination of Correctional Facilities as Places of Detention of Illegal Foreigners Pending Deportation,” *Government Gazette*, 7 May 2020, https://www.gov.za/sites/default/files/gcis_document/202005/43292gon512.pdf

⁸⁵ Republic of South Africa, “Proclamations and Government Notice,” 22 May 2014, http://www.dha.gov.za/images/final_Immigration_Regulations_2014_1.pdf

⁸⁶ South African Human Rights Commission, “Media Statement: Launch of the National Torture Preventive Mechanism (NPM),” 17 July 2019, <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/2009-media-statement-launch-of-the-national-torture-preventive-mechanism-npm>

period exceeding 120 days, without being furnished with a notice indicating the intention to detain the foreign national beyond the standard 30- day period. Members of the Framework conduct monitoring of pre- and post-detention centers, including designated police stations, across the country.”⁸⁷

Lawyers for Human Rights (LHR) also has an active detention monitoring programme, which includes visiting detention centres, undertaking strategic litigation, representing detainees at immigration hearings, training legal practitioners on immigration detention, advocating for improved detention standards, and monitoring immigration hearings. Based on nearly a decade of detention monitoring, LHR states in a 2020 report that it found “a high incidence of unlawful detention, including a high frequency of the detention of minors, repeated disregard for statutory limits of detention, a high frequency of detention of asylum seekers with pending asylum claims and a disregard for court orders.”⁸⁸

2.13 International Monitoring

Have international monitoring bodies reviewed immigration detention practices?	Yes
Is the country party to the Optional Protocol to the UN Convention against Torture	Yes
Has the country received visits from the UN Subcommittee on the Prevention of Torture?	No

Many international organisations have assessed South Africa’s migration-related detention policies and practices, as well as monitored places of detention in the country. Notably in this regard is UNHCR, which has actively participated in a joint monitoring initiative with South African organisations focusing on the Lindela Repatriation Centre (see 2.12 Domestic Monitoring for more details) and included South Africa as a focus country in its “Global Strategy Beyond Detention: 2015-2019.”⁸⁹

South Africa has ratified several important UN treaties relevant to immigration detention, including the Convention against Torture, the Convention on the Rights of the Child, and the Convention on the Elimination of all Forms of Racial Discrimination. Critically however, to-date the country has not ratified the Convention on the Protection of the Rights of all Migrant Workers—despite several states urging the country to ratify this convention during the third cycle of the Universal Periodic Review in 2017.⁹⁰ During this same review, several states also encouraged authorities to improve conditions in immigration detention facilities, to

⁸⁷ UNHCR, “Global Strategy Beyond Detention: 2105-2019,” <https://www.unhcr.org/protection/detention/5fa26ed64/unhcr-global-strategy-beyond-detention-final-progress-report-2014-2019.html>

⁸⁸ Lawyers for Human Rights, “Monitoring Policy, Litigious and Legislative Shifts in Immigration Detention in South Africa,” May 2020, <https://www.lhr.org.za/wp-content/uploads/2020/06/Detention-Report-Final-Final-Digital-1.pdf>

⁸⁹ UNHCR, “Global Strategy Beyond Detention: 2105-2019,” <https://www.unhcr.org/protection/detention/5fa26ed64/unhcr-global-strategy-beyond-detention-final-progress-report-2014-2019.html>

⁹⁰ UN General Assembly, “Report of the Working Group on the Universal Periodic Review -South Africa,” A/HRC/36/16, 18 July 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/216/43/PDF/G1721643.pdf?OpenElement>

ensure that non-nationals have access to health care, psychological assistance, and “appropriate physical infrastructure and sanitation,” and to tackle xenophobia and racism in the country.⁹¹

Following its second periodic review of South Africa, in 2019 the UN Committee against Torture (CAT) raised several concerns regarding the country’s detention of non-nationals. Issues raised included: allegations that some immigration officers refuse to provide asylum seekers with asylum transit visas at ports of entry, exposing them to immediate risk of detention and deportation; the fact that the 2002 Immigration Act provides for the holding of an “illegal foreigner” in custody for prolonged periods without a court hearing; the prolonged detention of asylum seekers at the Lindela Repatriation Centre, “in inadequate conditions that include overcrowding and a lack of hygiene and medical services”; and a proposal in the 2017 Department of Home Affairs (DHA) White Paper on International Migration to create detention facilities at the country’s borders that would confine asylum seekers while their applications are processed. CAT urged South Africa to cease the prolonged detention of non-nationals at Lindela without warrant, to apply alternatives to detention, and to ensure adequate living conditions in all detention facilities.⁹²

In 2016, the UN Human Rights Committee noted its concerns regarding the use of police stations and prisons for immigration detention purposes; lengthy detention periods at Lindela without warrants; the protracted detention of stateless persons and their deportation to countries where they are not recognised as citizens; and poor detention conditions at Lindela. The committee thus urged South African authorities to ensure that detention pending deportation is used only as a measure of last resort; that they only detain non-nationals in dedicated immigration detention facilities; and that efforts are made to ensure adequate living conditions.⁹³

UNHCR reported: “Although no specific pilot projects were implemented in several instances, through UNHCR’s consultative interventions and recommendations, the immigration authorities have assisted released persons of concern by providing instructions to the Refugee Reception Office to document the individuals. UNHCR also works with the Government to expand ATDs based on UNHCR’s recommendations of resettlement for specific persons of concern who are detained and who meet the criteria for resettlement.”⁹⁴

In 2005, the UN Working Group on Arbitrary Detention (WGAD) visited South Africa, during which it visited the Lindela Repatriation Centre. Amongst various concerns identified by the delegation was their observation that some immigration detainees had been arbitrarily detained, ill-treated, and unable to contest the validity of their detention—leaving them

⁹¹ UN General Assembly, “Report of the Working Group on the Universal Periodic Review -South Africa,” A/HRC/36/16, 18 July 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/216/43/PDF/G1721643.pdf?OpenElement>

⁹² UN Committee against Torture (CAT), “Concluding Observations on the Second Periodic Report of South Africa,” CAT/C/ZAF/CO/2, 7 June 2019, <https://bit.ly/2Pqfd0Z>

⁹³ UN Human Rights Committee, “Concluding Observations on the Initial Report of South Africa,” CCPR/C/ZAF/CO/1, 27 April 2016, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/ZAF/CO/1&Lang=En

⁹⁴ UNHCR, “Global Strategy Beyond Detention: 2105-2019,” <https://www.unhcr.org/protection/detention/5fa26ed64/unhcr-global-strategy-beyond-detention-final-progress-report-2014-2019.html>

vulnerable to deportation without recourse or review.⁹⁵ During a visit to the country in 2011, the UN Special Rapporteur on the human rights of migrants also visited Lindela facility and noted that six years on from the WGAD’s report, similar concerns remained. The rapporteur also raised his concerns regarding the privatisation of Lindela facility, questioning the ability of detainees to claim asylum or protection under the Refugee Act given that interactions are with a private company rather than the Department of Home Affairs. The rapporteur also heard complaints regarding access to health care and culturally appropriate diets.⁹⁶

2.14 Privatisation

Is detention centre management privatised?

Yes

South Africa has long faced criticism for its controversial prison privatisation schemes involving both local and transnational security firms, which date back to the 1990s. As of 2021, the country had at least two privately operated prisons—the Mangaung Correctional Centre and the Kutama Sinthumule Correctional Center—and one privately operated immigration detention centre, the Lindela Repatriation Centre, located near Johannesburg.

The Lindela Repatriation Centre, South Africa’s sole dedicated immigration detention centre, has a long history of management by controversial private entities. When it was opened in 1996, Lindela was jointly operated by the Department of Home Affairs (DHA) and the Dyambu Trust, an organisation created by the African National Congress’s Women’s League, as an experimental centre for holding undocumented immigrants slated for deportation.⁹⁷ A few years after operations began at Lindela, Dyambu Trust changed its name to Bosasa, which operated Lindela until December 2019.⁹⁸

Since its earliest days, Bososa—which by 2019 had adopted yet a new name, African Global Operations—has been plagued with allegations of corruption, mismanagement, and abuse of detainees. The U.S. State Department has even highlighted the case in its annual global human rights reports, stating that “allegations of corruption and abuse of detainees by officials at the overcrowded Lindela Repatriation Center. ... Officers from Lindela were among those convicted by the DCS [Department of Correctional Services] of corruption or abuse.”⁹⁹

⁹⁵ UN Working Group on Arbitrary Detention, “Civil and Political Rights, Including the Question of Torture and Detention - Report of the Working Group on Arbitrary Detention, Addendum* Visit To South Africa (4-19 September 2005),” E/CN.4/2006/7/Add.3, 29 December 2005, <https://undocs.org/E/CN.4/2006/7/Add.3>

⁹⁶ UN General Assembly, “Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante – Addendum – Mission to South Africa,” A/HRC/17/33/Add.4, 2 May 2011, <https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-33-Add4.pdf>

⁹⁷ M. Flynn and C. Cannon, “The Privatization of Immigration Detention: Towards a Global View,” Global Detention Project, 1 September 2009, <https://www.globaldetentionproject.org/the-privatization-of-immigration-detention-towards-a-global-view-2>

⁹⁸ For a brief history of Bosasa’s Lindela operations, see: Helen Suzman Foundation, “Lindela and SA’s defective deportation regime,” 15 November 2019, <https://hsf.org.za/publications/hsf-briefs/lindela-and-south-africa2019s-defective-deportation-regime>; N. Shange, “Lindela Refugee Centre Sold for R60m as Part of Bosasa Auction,” *Times Live*, 5 December 2019, <https://www.timeslive.co.za/news/south-africa/2019-12-05-lindela-refugee-centre-sold-for-r60m-as-part-of-bosasa-auction/>

⁹⁹ U.S. State Department, “Country Reports on Human Rights Practices,” U.S. State Department, February 2009.

A key long-standing focus of criticism has been Bosasa's close relations with the government. In 2007, for instance, when a subsidiary of Bosasa, Leading Prospect Trading, was awarded a controversial 10-year contract to manage Lindela, observers pointed to how Bosasa had been "accused of receiving special treatment from the government in the past," as one newspaper noted at the time, adding: "In a surprise twist, Home Affairs Minister Nosiviwe Mapisa Nqakula's communications adviser, Stephen Laufer, is also a Bosasa spokesperson. The Lindela contract, awarded to a 100 percent Bosasa owned subsidiary, Leading Prospect Trading, has attracted the wrath of the Auditor-General and Parliament's standing committee on public accounts."¹⁰⁰

A related problem has been the challenge of ensuring proper oversight of operations at the centre, which stems in part from the fact that it is managed by a private entity. In a 2008 report, Lawyers for Human Rights (LHR) said, "By pointing to Bosasa as the entity responsible for the treatment of detainees, DHA seeks to avoid accountability under the provisions of the Constitution and the Bill of Rights, South African administrative law, and international human rights instruments. At the same time, enforcement of these provisions against Bosasa is hindered by the status of Bosasa as a private entity that is not eager to cooperate in human rights monitoring and oversight efforts." At that time, according to LHR, while prisons fell under the monitoring mandate of the judicial inspectorate, Lindela operated under a separate authority with no such monitoring mandate.¹⁰¹ As of June 2021, the South African Human Rights Commission (SAHRC) regularly monitored conditions at Lindela and made recommendations on its observations, however there was still no independent oversight body for the facility.

Former Bosasa employees have also alleged that the company constantly strove to drive up detainee numbers in order to increase revenue streams from DHA, and several reports have highlighted instances in which Bosasa guards assaulted, and even killed, detainees (for more on these incidents, see 3.3b Lindela Repatriation Centre).¹⁰² During an inquiry in 2019, Bosasa's former Chief Operations Officer claimed that the organisation had been paying hefty bribes to politicians, government officials, and journalists. Shortly after, the company went into liquidation.¹⁰³

By 2020, a new private company, EnviroMongz Projects, had charge of operations at Lindela.¹⁰⁴ The company soon found itself mired in controversy when, in May 2020, 37

¹⁰⁰ Janine Stephen and Angela Quintal, "Lucrative Lindela contract under fire," Independent Online, 24 June 2007, <https://www.iol.co.za/news/south-africa/lucrative-lindela-contract-under-fire-359014>

¹⁰¹ Lawyers for Human Rights, *Monitoring Immigration Detention in South Africa*, December 2008.

¹⁰² J. Bornman, "How Lindela Became Bosasa's Meal Ticket," 11 December 2019, <https://mg.co.za/article/2019-12-11-00-how-lindela-became-bosasas-meal-ticket/>

¹⁰³ J. Bornman, "How Lindela Became Bosasa's Meal Ticket," 11 December 2019, <https://mg.co.za/article/2019-12-11-00-how-lindela-became-bosasas-meal-ticket/>

¹⁰⁴ C. Mahamba, "'Negligent' Guards Blamed for Escape of 27 Undocumented Migrants at Lindela," *IOL News*, 8 May 2020, <https://www.iol.co.za/the-star/news/negligent-guards-blamed-for-escape-of-37-undocumented-migrants-at-lindela-47711783>

foreign nationals escaped from the facility after security guards left their posts.¹⁰⁵ Seven guards were charged with aiding the escapees, although the National Prosecuting Authority refused to enrol the case, citing insufficient evidence.¹⁰⁶ The company's contract was due to expire in November 2020¹⁰⁷ and according to Lawyers for Human Rights, during recent visits to Lindela in 2021 they were informed that there were new guards at the facility from a new company, but it was unclear which company.¹⁰⁸

As in many other countries, the privatisation of immigration detention in South Africa preceded efforts to privatise prisons.¹⁰⁹ When Lindela was established in 1996, South Africa had yet to pass enabling legislation that would allow for the privatisation of penal institutions. However, by 2001, authorities had negotiated contracts with two major transnational prison companies, Wackenhut (then known as SA Custodial Services in South Africa) and Group 4 Securitas (later redubbed G4S), to manage the country's largest prisons, in Louis Trichardt and Bloemfontein, respectively.¹¹⁰

By 2021, the Mangaung Correctional Centre in Bloemfontein remained under the operation of G4S, even though it had temporarily lost control of the facility in 2013 after an outbreak of violence and lengthy strikes by employees.¹¹¹ The Kutama Sinthumule Correctional Centre in Limpopo was under the management of the U.S. prison company the GEO Group.¹¹² Both GEO and G4S, in addition to their private prison operations, have been heavily involved in running immigration detention centres in other countries.¹¹³

In her 2020 book *The Misery Merchants: Life and Death in a Private South African Prison*, investigative reporter Ruth Hopkins documents the history of G4S operations at Mangaung, including its abusive treatment of detainees and use of antipsychotic drugs to pacify

¹⁰⁵ C. Mahamba, "Negligent' Guards Blamed for Escape of 27 Undocumented Migrants at Lindela," *IOL News*, 8 May 2020, <https://www.iol.co.za/the-star/news/negligent-guards-blamed-for-escape-of-37-undocumented-migrants-at-lindela-47711783>

¹⁰⁶ News24, "NPA Refuses to Enrol Case Against Security Guards who Allegedly Helped with Lindela Escape," 19 May 2020, <https://www.news24.com/news24/southafrica/news/npa-refuses-to-enrol-case-against-security-guards-who-allegedly-helped-with-lindela-escape-20200519>

¹⁰⁷ News 24, "How Lindela Became Bosasa's Meal Ticket," 10 December 2019, <https://www.news24.com/news24/SouthAfrica/News/how-lindela-became-bosasas-meal-ticket-20191210>

¹⁰⁸ Charne Tracey (Lawyers for Human Rights), Correspondence with the Global Detention Project, 6 June 2021.

¹⁰⁹ M. Flynn and C. Cannon, "The Privatization of Immigration Detention: Towards a Global View," Global Detention Project, 1 September 2009, <https://www.globaldetentionproject.org/the-privatization-of-immigration-detention-towards-a-global-view-2>

¹¹⁰ J. Berg, "Accountability in Private Corrections: Monitoring the Performance of Private Prisons in South Africa," *South African Journal of Criminal Justice* 14, 2001; S. Nathan, Stephen, "The European Market for Privatised Correctional Services: Developments and Implications," Workshop at the EPSU Standing Committee on National and European Administration on Prison Services, Luxembourg, 19 May 2005;

¹¹¹ R. Hopkins, *The Misery Merchants: Life and Death in a Private South African Prison*, Jacana Media 2020, <https://jacana.co.za/product/the-misery-merchants-life-and-death-in-a-private-south-african-prison/>

¹¹² GEO Group, "Kutama Sinthumule Correctional Center," <https://www.geogroup.com/facilitydetail/facilityid/87>

¹¹³ M. Flynn, "Statement to the Working Group on the Use of Mercenaries Panel on "PMSCs in places of deprivation of liberty and their impact on human rights," Global Detention Project, 27 April 2017, <https://www.globaldetentionproject.org/statement-to-the-working-group-on-the-use-of-mercenaries-panel-on-pmscs-in-places-of-deprivation-of-liberty-and-their-impact-on-human-rights>

inmates, its mistreatment of prison staff, and the lack of accountability or proper enforcement by government agencies.¹¹⁴

¹¹⁴ R. Hopkins, *The Misery Merchants: Life and Death in a Private South African Prison*, Jacana Media 2020, <https://jacana.co.za/product/the-misery-merchants-life-and-death-in-a-private-south-african-prison/>



3. DETENTION INFRASTRUCTURE

3.1 Summary

Immigration detainees are held in a range of facilities across South Africa, including police stations, ad hoc facilities run by the police service, prisons, and one dedicated immigration detention centre, the Lindela Repatriation Centre. During the COVID-19 pandemic, the government listed an additional 15 correctional facilities to be used as temporary sites for the detention of foreigners for the duration of the pandemic-related “national state of disaster.”¹¹⁵

3.2 List of Facilities Used for Immigration-Related Detention as of 2021¹¹⁶

Province	Name	Facility Typology
Gauteng	Lindela Repatriation Centre	Administrative
	Police Stations (x53)	Criminal
	Atteridgeville Correctional Centre (temporary)	Criminal
North West	Police Stations (x32)	Criminal
	Correctional Facilities (temporary)	Criminal
	<ul style="list-style-type: none"> • Losperfontein • Potchefstroom Correctional Centre • Lichtenburg 	
Limpopo	Police Stations (x72)	Criminal
	Correctional Facilities (temporary)	Criminal
	<ul style="list-style-type: none"> • Lichtenburg 	

¹¹⁵ Republic of South Africa, “Immigration Act (13/2002): Determination of Correctional Facilities as Places of Detention of Illegal Foreigners Pending Deportation,” 7 May 2020, <https://edit.laws.africa/works/akn/za/act/gn/2020/512/media/publication/za-act-gn-2020-512-publication-document.pdf>

¹¹⁶ Republic of South Africa, “Determination of Places of Detention of Illegal Foreigners Pending Deportation,” 8 August 2019, https://www.gov.za/sites/default/files/gcis_document/201908/42622gon1046.pdf; Republic of South Africa, “Immigration Act (13/2002): Determination of Correctional Facilities as Places of Detention of Illegal Foreigners Pending Deportation,” 7 May 2020, <https://edit.laws.africa/works/akn/za/act/gn/2020/512/media/publication/za-act-gn-2020-512-publication-document.pdf>

	<ul style="list-style-type: none"> • Tzaneen Correctional Centre • Polokwane Female Unit 	
Northern Cape	Police Stations (x30)	Criminal
	Correctional Facilities (temporary) <ul style="list-style-type: none"> • Kimberley Correctional Centre • Upington Correctional Centre 	Criminal
Western Cape	Police Stations (x32)	Criminal
	Prins Albert Correctional Facility (temporary)	Criminal
Free State	Police Stations (x38)	Criminal
	Wepener Correctional Centre (temporary)	Criminal
KwaZulu-Natal	Police Stations (x44)	Criminal
	Correctional Facilities (temporary): <ul style="list-style-type: none"> • Durban Medium C • Pietermaritzburg Medium B 	Criminal
Mpumalanga	Police Stations (x50)	Criminal
	Correctional Facilities (temporary): <ul style="list-style-type: none"> • Nelspruit Correctional Centre • Witbank Correctional Centre 	Criminal
Eastern Cape	Police Stations (x78)	Criminal
	Port Elizabeth Correctional Facility (temporary)	Criminal

As well as the above list of facilities officially designated by the government as sites for the detention of foreigners, observers such as Lawyers for Human Rights (LHR)¹¹⁷ report that detainees are also often placed in facilities that have not been officially designated as immigration detention sites. These include:

- The Desmond Tutu Refugee Reception Office (Pretoria)
- Sunnyside Police Station (Pretoria)
- Vereeniging Police Station
- Makhado Police Station
- Westville Prison (Durban)
- Pollsmoor Prison (Cape Town)

¹¹⁷ Lawyers for Human Rights, "Monitoring Policy, Litigious and Legislative Shifts in Immigration Detention in South Africa," May 2020, <https://www.lhr.org.za/wp-content/uploads/2020/06/Detention-Report-Final-Final-Digital-1.pdf>

3.3 Conditions of Detention

3.3a Overview

Although the country's law provides for specific conditions in detention (see 2.11 Regulation of Detention Conditions and Regimes), observers have regularly highlighted violations of these provisions including overcrowding, inadequate access to health care services, poor nutrition, and the detention of migrants, refugees, and asylum seekers alongside criminals.¹¹⁸ Excessive use of force by authorities and limitations in access to legal representation have also repeatedly been flagged.

3.3b Lindela Repatriation Centre

The Lindela Repatriation Centre, located 30 kilometres from Johannesburg, is a privately run facility established in 1996 by the Department of Home Affairs (DHA) and the Dyambu Trust (an organisation established by the African National Congress Women's League). Lindela is South Africa's only designated immigration detention facility.¹¹⁹ The centre is located on the site of a former mining camp, and its facilities were initially converted huts that could hold some 1,000 people.¹²⁰

As of 2020, the Lindela facility has a capacity of up to 4,000, although overcrowding has regularly been noted and several reports have described groups of 30 male detainees sharing one sink, shower, and toilet, and cells housing 45-60 people at once.¹²¹

As well as overcrowding, the centre has been dogged by criticisms regarding the conditions detainees face. In a 2020 report by Lawyers for Human Rights (LHR), the NGO notes that detainees have repeatedly complained of insufficient food provision (two meals per day) and management's failure to cater for religious or dietary requirements. It also notes that detainees are provided with unwashed bedding; are not provided with necessary toiletries; and that some have reported fleas in their beds. Critically, LHR also reports that health care

¹¹⁸ See, for example: Lawyers for Human Rights, "Monitoring Policy, Litigious and Legislative Shifts in Immigration Detention in South Africa," May 2020, <https://www.lhr.org.za/wp-content/uploads/2020/06/Detention-Report-Final-Final-Digital-1.pdf>; International Detention Coalition, "Alternatives to Immigration Detention in Africa," 2016, <https://www.refworld.org/pdfid/5a5f55e04.pdf>

¹¹⁹ R. Amit, "Understanding Immigration Detention and Deportation in South Africa: A Summary of Law, Practice and Human Rights Violations at the Lindela Detention Centre," June 2015, <http://www.migration.org.za/uploads/docs/acms-issue-brief-11---understanding-immigration-detention.pdf>

¹²⁰ Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Mr. Maurice Glèlè-Ahanhanzo, "Report by Mr. Glèlè-Ahanhanzo, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance," submitted pursuant to Commission on Human Rights resolution 1998/26, Addendum: Mission to South Africa (24 February – 5 March 1998), E/CN.4/1999/15/Add.1, 27 January 1999.

¹²¹ Lawyers for Human Rights, "Monitoring Policy, Litigious and Legislative Shifts in Immigration Detention in South Africa," May 2020, <https://www.lhr.org.za/wp-content/uploads/2020/06/Detention-Report-Final-Final-Digital-1.pdf>

provision remains inadequate at the centre and that detainees face a “grave threat” to their health. Citing a 2012 investigation by Justice Cameron, LHR identifies various issues, including the fact that many detainees have lacked access to the medical clinic; that detainees received the same medication for different ailments; that no mental health care is provided; and that there is no TB or antiretroviral medication available.

Many of these concerns were similarly iterated by Doctors Without Borders (MSF) in a 2018 complaint submitted to the Office of Health Standards Compliance. Noting that many of their criticisms concerning the provision of medical care had long-been ignored, MSF wrote: “Today, the Lindela health services do not prioritise access to HIV and tuberculosis care. Communicable diseases are treated outside of national protocol, and main health needs of those detained are largely neglected.”¹²²

In recent years, there have been several reports of the facility’s guards assaulting and even killing, detainees. In 2002, five staff members were arrested for allegedly beating and killing a Nigerian detainee following an escape attempt, and investigators found that attempts had been made to wash blood from the walls and floor of the room in which the assault was reported to have occurred.¹²³ More recently, in October 2014, detainees alleged that they had been beaten with batons and shot with rubber bullets by guards attempting to force them to end a hunger strike (which itself was orchestrated to highlight the poor conditions in the centre).¹²⁴

Until 2019, the facility was owned by a private company—the now liquidated After African Global Operations (formerly Bosasa)—and leased to the Department of Home Affairs (DHA). However, in December 2019 the Department of Public Works and Infrastructure purchased the facility for 60 million Rand (approximately 4.1 million USD).¹²⁵ Until 2019, the management of the facility was also outsourced to Bosasa, but in 2019 management was taken over by EnviroMongz Projects (for more, see 2.14 Privatisation).

In 2014, South Africa's home affairs minister invited the South African Human Rights Commission (SAHRC) to establish an office at Lindela following pressure from the country’s parliament amid reports of human rights violations at the facility.¹²⁶ Reported human rights violations included physical and verbal abuse, corruption, insufficient food, lack of access to medical care, and lack of recreational activities for those detained there.¹²⁷ A 2014

¹²² J. Bornman, “How Lindela Became Bosasa’s Meal Ticket,” 11 December 2019, <https://mg.co.za/article/2019-12-11-00-how-lindela-became-bosasas-meal-ticket/>

¹²³ iol News, “Nigerian’s Death Sparks Arrests at Lindela,” 10 March 2002, <https://www.iol.co.za/news/south-africa/nigerians-death-sparks-arrests-at-lindela-83117>

¹²⁴ South African Catholic Bishops’ Conference Parliamentary Liaison Office, “The Lindela Repatriation Centre,” February 2015, <http://www.cplo.org.za/wp-content/uploads/2015/02/BP%20374%20Lindela%20Repatriation%20Centre%20Feb%202015.pdf>

¹²⁵ N. Shange, “Government to Cease Leasing Lindela Repatriation Centre After Buying the Former Bosasa-Owned Property,” 20 December 2019, <https://www.timeslive.co.za/politics/2019-12-20-government-to-cease-leasing-lindela-repatriation-centre-after-buying-the-former-bosasa-owned-property/>

¹²⁶ Rapula Moatshe, “SAHRC Invited to Set Up Shop in Lindela,” *Mail and Guardian*, 21 October 2014, <http://mg.co.za/article/2014-10-21-sa-human-rights-commission-invited-to-set-up-shop-in-lindela>

¹²⁷ US Department of State, “Country Reports on Human Rights Practices for 2015: South Africa,” <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=252729>; R. Amit, “Understanding Immigration Detention and Deportation in South Africa: A Summary of Law, Practice and Human

investigation by the SAHRC revealed specifically a lack of supplies for tuberculosis testing and an unavailability of tetanus vaccines.¹²⁸ The UN's Human Rights Committee meanwhile noted in March 2016 that the SAHRC, the Parliamentary Portfolio Committee on Home Affairs, and the International Committee of the Red Cross had jurisdictional oversight over the Lindela Repatriation Centre, with each organisation visiting and inspecting the centre regularly.¹²⁹

Also in 2014, the South Gauteng High Court in Johannesburg ruled that the protracted detention of migrants at the Lindela Repatriation Centre was unconstitutional, finding that the DHA had violated the 2002 Immigration Act both by detaining migrants for longer than 30 days without obtaining the necessary warrant permitting extended detention, and by detaining migrants for longer than the maximum statutory limit of 120 days.¹³⁰ It has been reported that the DHA has generally complied with the 120-day limit, but that compliance with the specific requirement to obtain a warrant to detain migrants for longer than 30 days was poor.¹³¹

3.3c Ad Hoc Facilities

In the town of Musina, located close to the border with Zimbabwe, the South African police service runs the Soutpansberg Military Grounds (SMG) Detention Centre, which the Global Detention Project classifies as an "ad hoc" detention site because police detain people there without proper authorisation from immigration authorities.¹³² SMG was initially little more than an exposed, fenced-in camp but, after significant public outcry, detainees were then transferred to the camp's former sports facility.¹³³ In late 2008, the Department of Home Affairs (DHA) withdrew its staff thereby leaving the South African police service to manage the site, despite the fact the police are not legally authorised to detain undocumented migrants and asylum seekers for the purpose of deportations.¹³⁴ According to some reports, as many as 15,000 people have been deported in a single day from Musina.¹³⁵ In May 2009, a court ordered the closure of the centre and, although the centre continued to be used in

Rights Violations at the Lindela Detention Centre," June 2015, <http://www.migration.org.za/uploads/docs/acms-issue-brief-11---understanding-immigration-detention.pdf>

¹²⁸ South African Government, "Rights to Health of Lindela Detainees Violated – SAHRC," 18 September 2014, <http://www.gov.za/rights-health-lindela-detainees-violated-sahrc>

¹²⁹ UN High Commissioner for Human Rights, "Human Rights Committee Reviews the Report of South Africa," 8 March 2016, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17175&LangID=E>

¹³⁰ Human Rights Watch, "World Report 2015: South Africa, Events of 2014," <https://www.hrw.org/world-report/2015/country-chapters/south-africa#4cd794>

¹³¹ US Department of State, "Country Reports on Human Rights Practices for 2015: South Africa," <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=252729>

¹³² David Cote (Lawyers for Human Rights), Telephone conversation with Michael Flynn (Global Detention Project), 11 February 2009; Z. Venter, "Notorious Detention Facility Closes," *Pretoria News*, 11 November 2008.

¹³³ David Cote (Lawyers for Human Rights), Telephone conversation with Michael Flynn (Global Detention Project), 11 February 2009.

¹³⁴ David Cote (Lawyers for Human Rights), Telephone conversation with Michael Flynn (Global Detention Project), 11 February 2009; Z. Venter, "Notorious Detention Facility Closes," *Pretoria News*, 11 November 2008.

¹³⁵ David Cote (Lawyers for Human Rights), Telephone conversation with Michael Flynn (Global Detention Project), 11 February 2009.

spite of that court order, in 2013 it was reported that a new “holding camp” had been constructed next to the SMG.¹³⁶

3.3d Criminal Facilities

Two prisons run by South Africa’s Department of Correctional Services (DCS) are regularly used to confine unauthorised immigrants on warrant from the DHA, Westville Prison in Durban and Pollsmoor Prison in Cape Town.¹³⁷ Typically, detainees at these prisons are held for less than a week, until immigration officials are able to transport them to Lindela or they are released.¹³⁸ At the same time, there have been reports of asylum seekers being detained and deported from these prisons,¹³⁹ as well as allegations of severe overcrowding. In one such example, a media report about a 2007 investigation undertaken by a regional correctional services commissioner found that Westville Prison had allegedly seen a “high level of corruption and malpractice.” That same report added that prison cells meant to accommodate 2,137 inmates were in fact being used to house 4,337 while the facility’s C block, meant to hold migrants awaiting trial or deportation, was also very over-crowded.¹⁴⁰

Police stations and border posts across the country are also regularly used to confine suspected “illegal foreigners.”¹⁴¹ Although individuals are not meant to be detained for extended periods of time in police stations, LHR stated in 2014 that it was not aware of Immigration Act procedures related to time constraints being followed in police stations.¹⁴² The rights group also reports that officials at police stations have routinely denied or limited detainees’ access to legal representation.¹⁴³ At the Benoni Police Station, LHR reported found that “nearly 200 people from Zimbabwe, Malawi, Mozambique, Ethiopia, Lesotho and Nigeria had not been advised of their legal rights and were detained in deplorable conditions,” while dozens were “crammed into an extremely small space, with many being unable to lie down or having to sleep in the showers.”¹⁴⁴

There have been additional reports of abuses committed at police station lock-ups, including summary deportation of asylum seekers, physical abuse, protracted detention, detention of

¹³⁶ B. Derman and R. Kaarhus (eds.), *In the Shadow of a Conflict: Crisis in Zimbabwe and its Effects in Mozambique, South Africa and Zambia*, Weaver Press, 2013.

¹³⁷ David Cote (Lawyers for Human Rights), Telephone conversation with Michael Flynn (Global Detention Project), 11 February 2009.

¹³⁸ Lawyers for Human Rights, “Monitoring Immigration Detention in South Africa,” December 2008.

¹³⁹ U.S. Committee for Refugees, “*World Refugee Survey 2008*,”; Lawyers for Human Rights, “Monitoring Immigration Detention in South Africa,” December 2008.

¹⁴⁰ A. Naidoo, “Prisons Overcrowded, Courts Overloaded in KZN,” *The Mercury*, 6 March 2007.

¹⁴¹ L. B. Landau, K. Ramjathan-Keogh, and G. Singh, “Xenophobia in South Africa and Problems Related to It,” *Forced Migration Studies Programme*, University of Witwatersand, January 2005; David Cote (Lawyers for Human Rights), Telephone conversation with Michael Flynn (Global Detention Project), 11 February 2009.

¹⁴² Lawyers for Human Rights, “Press Statement: LHR Responds to Detention of Immigrants at Police Stations and SAPS’ Incorrect Interpretation of Immigration Laws,” 21 October 2014, <http://www.lhr.org.za/news/year/2014>

¹⁴³ Lawyers for Human Rights, “Monitoring Policy, Litigious and Legislative Shifts in Immigration Detention in South Africa,” May 2020, <https://www.lhr.org.za/wp-content/uploads/2020/06/Detention-Report-Final-Final-Digital-1.pdf>

¹⁴⁴ Lawyers for Human Rights, “Press Statement: LHR Responds to Detention of Immigrants at Police Stations and SAPS’ Incorrect Interpretation of Immigration Laws,” 21 October 2014, <http://www.lhr.org.za/news/year/2014>

minors, inadequate food provisions, and other allegations.¹⁴⁵ Detention at police stations and border posts is not considered ad hoc when a person is detained under warrant from the DHA, or when the length of detention for suspected immigration violations (without warrant from the DHA) is less than 48 hours — the amount of time given authorities to investigate allegations under the Criminal Procedures Act.¹⁴⁶

¹⁴⁵ Human Rights Watch, “Keeping Your Head Down: Unprotected Migrants in South Africa,” February 2007; Lawyers for Human Rights, “Monitoring Immigration Detention in South Africa,” December 2008; David Cote (Lawyers for Human Rights), Telephone conversation with Michael Flynn (Global Detention Project), 11 February 2009.

¹⁴⁶ David Cote (Lawyers for Human Rights), Telephone conversation with Michael Flynn (Global Detention Project), 11 February 2009.



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