



LAWYERS FOR
HUMAN RIGHTS

SOUTH AFRICA

INFORMATION ON THE LIST OF ISSUES PRIOR TO THE REPORTING FOR SOUTH AFRICA FOR
CONSIDERATION BY THE HUMAN RIGHTS COMMITTEE AT ITS 142nd SESSION ON 14 OCTOBER
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Introduction and information about the authors

1. Lawyers for Human Rights ('LHR') is an independent, non-profit human rights organization, started by a group of activist lawyers in 1979 and located in South Africa. LHR's programs undertake strategic work in six areas of human rights law, including a key focus on refugee and migrant rights, including immigration detention. LHR employs a holistic approach to social justice and human rights enforcement that includes strategic litigation, advocacy, law reform, human rights education, and community mobilization and support. This submission is based on the work and experience of LHR in its Detention Monitoring Unit based in its Penal Reform Programme. The Unit focus on advocacy, public interest litigation, legal advice and law reform on issues of immigration detention and the protection of the rights of those subjected to it.¹
2. 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. The GDP's 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 and to nurture policy-relevant scholarship on the causes and consequences of migration control policies.
3. LHR and the GDP present this submission in advance of the 142nd session of the Human Rights Committee ('the Committee') taking place between 14 October 2024 – 07 November 2024, for consideration by the Committee ahead of its adoption of the List of Issues Prior to Reporting ('LOIPR') for South Africa. LHR and the GDP wish to express their grave concern over the state and use of immigration detention in South Africa, including summary/arbitrary arrests of refugees and asylum seekers, detention of vulnerable groups, corruption, inadequate response to health needs, extended detention without review, refoulment of refugees and asylum seekers to countries where they will face persecution, misapplication of court judgements to justify arbitrary arrests, and poor detention conditions.
4. The key ICCPR provisions that serve as the basis for this submission—and for which there is evidence that South Africa is failing to adhere to in its treatment of migrants, refugees, and asylum seekers—are:
 - 4.1. **Article 2: Non-discrimination**, in light of South Africa's persistently discriminatory practices targeting migrants, refugees, and asylum seekers, including arbitrary arrests and detentions that disproportionately target these groups, which are occurring in a social and political context characterised by systemic xenophobia and institutional biases.
 - 4.2. **Article 6: Right to life**, with particular attention on threats to life that migrants, refugees, and asylum seekers have faced when in official immigration or other law enforcement custody,

¹ See LHR's most recent report on the Status of Immigration Detention in South Africa published on 11 December 2023: <https://www.lhr.org.za/lhr-resources/status-of-immigration-detention-in-south-africa/>

as well as resulting from deportations to situations where their lives are at severe risk due to conflict, persecution, or other forms of violence.

- 4.3. **Article 7: Right not to be tortured or subject to cruel, inhuman or degrading treatment or punishment**, with particular attention to widespread reports of mistreatment that migrants, refugees, and asylum seekers have faced while in custody, as well as resulting from deportation to situations where they face persecution.
 - 4.4. **Article 9: Right to liberty and freedom from arbitrary arrest or detention**, with particular attention on the widespread summary arrests of non-citizens conducted by South Africa's Department of Home Affairs ('DHA') as well as warrantless raids by the South African Police Services ('SAPS'). Migrants, refugees, and asylum seekers are frequently detained without proper legal basis or judicial oversight. These arrests often occur without warrants or sufficient cause, disregarding due process. The arbitrary nature of these detentions underscores the failure of South Africa to uphold the fundamental right to liberty and security of person, as enshrined in Article 9.
 - 4.5. **Article 10: Humane treatment of all people deprived of their liberty**, elements of which South Africa systematically violates by subjecting migration detainees to conditions that fail to meet basic standards, including detention in overcrowded and unsanitary prisons and detention centres, failure to provide detainees adequate healthcare, abusive treatment by guards, failure to separate children from adults in detention, and widespread use of criminal justice facilities for immigration purposes that do not separate immigration detainees from criminal detainees.
 - 4.6. **Article 12: Right to freedom of movement**, which is widely denied or threatened as non-citizens face growing xenophobia and anti-migrant public attitudes, which restricts ability of migrants, refugees, and asylum seekers to safely transit their communities.
 - 4.7. **Article 13: Right not to be expelled arbitrarily**, in light of reports of South Africa's violation of its non-refoulement obligations and hasty deportations of asylum seekers.
 - 4.8. **Article 14: Right to fair trial and due process**, which is frequently denied refugees and asylum seekers in South Africa when they are subjected to prolonged detention, often without the opportunity for a fair hearing. Genuine asylum seekers, particularly, are at risk of being detained indefinitely for administrative purposes, with some held in detention centres for extended periods without proper adjudication of their cases.
 - 4.9. **Article 26: Equality before the law**, which is a growing concern in South Africa due to reports of the misapplication of legal judgements concerning the status of migrants and asylum seekers, as well as the inherent challenges that non-citizens face in getting legal assistance during enforcement proceedings.
5. In addition to the specific provisions in the ICCPR, this submission takes into account authoritative interpretations of relevant human rights norms provided in key standards-setting documents, including the **Human Rights Committee's General comment No.35 on Article 9, Liberty and security of person**, which *inter alia* provides that detention for immigration control must in every instance "be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time" (paragraph 18); the **Working Group on Arbitrary Detention's Deliberation No. 5 on the deprivation of liberty of migrants**, which *inter alia* provides that "The right to personal liberty is fundamental and extends to all persons at all times and circumstances, including migrants and asylum seekers, irrespective of their citizenship, nationality or migratory status" (paragraph 7) and that "Arbitrary detention can never be justified, including for any reason related to national emergency, maintaining public security or the large movements of immigrants or asylum seekers" (paragraph 8); and **Joint General comment No. 23 (2017) of the Committee on**

the Rights of the Child and No. 4 (2017) of the Committee on Migrant Workers concerning the human rights of children in the context of international migration, which *inter alia* establishes that immigration detention of children is in all cases a child rights violation and must be immediately brought to end, stating: “Every child, at all times, has a fundamental right to liberty and freedom from immigration detention. The Committee on the Rights of the Child has asserted that the detention of any child because of their or their parents’ migration status constitutes a child rights violation and contravenes the principle of the best interests of the child. In this light, both Committees have repeatedly affirmed that children should never be detained for reasons related to their or their parents’ migration status and States should expeditiously and completely cease or eradicate the immigration detention of children. Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.”

Background and context

6. Immigration detention in South Africa - the deprivation of a person’s liberty for migration-related reasons / based on their documentation status – is used as an administrative measure but can also be imposed as a criminal punishment and can be used at various stages of a migrant’s time in the country. Under Sections 34(1), 34(2), and 41(1) of the Immigration Act 13 of 2002 (‘Immigration Act’), it is primarily used to detain a person pending deportation. Section 49 of the Immigration Act further criminalises violations of immigration laws, adding to the use of detention as an enforcement mechanism of the Immigration Act.²
7. Historically, South Africa’s refugee protection regime has evolved significantly, with the Refugees Act³ marking a critical departure from prior restrictive and discriminatory legislation. Before its enactment, the Aliens Control Act⁴ primarily regulated the movement of people to and from South Africa. However, the Immigration Act was a vestige of apartheid policies, designed to restrict the entry of non-nationals and maintain territorial segregation. It severely curtailed the rights of migrants, refugees, and asylum seekers, allowing the arbitrary removal of individuals without adequate judicial oversight.
8. The Refugees Act sought to align South Africa’s policies with the principles of the 1951 Refugee Convention⁵ and its Protocol,⁶ moving towards a more humane and inclusive system. Additionally, the Immigration Act aimed to abolish the remaining discriminatory elements of the Aliens Control Act. Despite these legislative advancements, challenges persist in the implementation of both the Refugees Act and the Immigration Act. These issues, outlined in the sections below, underscore the retrogressive approaches in practice, which continue to undermine the rights of refugees, migrants, and asylum seekers, particularly in immigration detention settings.
9. In recent years, troubling developments such as the 2017 White Paper on International Migration, the Border Management Act of 2020, amendments to the Refugees Act and the

² Immigration Act 13 of 2002 https://www.gov.za/sites/default/files/gcis_document/201409/a13-020.pdf

³ Refugee Act 130 of 1998 https://www.saflii.org/za/legis/consol_act/ra199899.pdf

⁴ Aliens Control Act 76 of 1995 [Repealed] <https://www.gov.za/documents/aliens-control-amendment-act>

⁵ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol.189, p 137, available at: <https://www.refworld.org/docid/3be01b964.html> (“1951 Convention on Refugees”).

⁶ UN General Assembly, Protocol Relating to the Status of Refugees, 31 January 1967, United Nations, Treaty Series, vol. 606, p 267, available at: <https://www.refworld.org/docid/3ae6b3ae4.html> (“1967 Protocol”).

2024 White Paper on Citizenship, Immigration and Refugee Protection⁷ have signalled a rise in institutionalised xenophobia. Immigration detention has become an all-too-common experience for migrants, regardless of their documentation status. Far from providing the protections envisaged in South Africa's progressive legal framework, the enforcement of these laws has been marred by corruption, systemic delays, and significant obstacles to obtaining legal documentation. This environment has left migrants in constant fear of arbitrary arrest and detention, contradicting the vision of equitable justice set forth in the post-apartheid era.

10. South Africa's commitment to international human rights is demonstrated by its ratification of the International Covenant on Civil and Political Rights (ICCPR) in 1998, following its signing in 1994.⁸ This landmark move reflected the country's transition from apartheid to democracy, enshrining fundamental civil and political rights as key pillars of its governance framework. The ICCPR, adopted by the United Nations in 1966, guarantees essential freedoms, including the right to life, freedom of expression, and protection against arbitrary detention. These rights are essential to the realisation of a just and equitable society, which South Africa aspired to build post-apartheid but in the context of protection of migrants' rights, has wholly fallen short of.

Issues for consideration by the Committee ahead of the adoption of the LOIPR

11. We set out below a summary of LHR and GDP's concerns in relation to the implementation of the ICCPR in South Africa, specifically in the context of immigration detention and the violation of the rights of migrants, asylum seekers and refugees.

Arbitrary and summary arrests of asylum seekers and refugees at Refugee Reception Office ('RROs'): (Article 9,10,12)

12. The issues around the accessibility of the asylum seeker system in South Africa is not new. After the Covid-19 pandemic saw the closure and then subsequent reopening of the system in 2021⁹, there was increase in arrests and detention of asylum seekers at the RROs. This is due to the practices below:

- 12.1. **The closure of RROs and the inability asylum seekers and refugees to apply for, and/or renew their documentation:** During the COVID-19 pandemic, RROs were closed, resulting in asylum seekers and refugees being unable to apply for and renew their documentation and carrying expired documentation. The closure of the RROs and the subsequent reopening that was largely digitised (as discussed below), a lot of asylum seekers and refugees struggled to navigate a partial digital and in-person application system. This resulted in several arrests by the SAPS and Metro Police in cities such as Durban, Cape Town, Pretoria and Johannesburg where persons found themselves at the RROs with expired documentation where they were likely to be arrested pending verification of their documentation status or verification that they did in fact apply for the renewal and did not receive their documents.¹⁰

⁷ White Paper on Citizenship, Immigration and Refugee Protection: Towards a complete overhaul of the Migration System in South Africa published in the Government Gazette number 50530 on 17 April 2024: https://www.dha.gov.za/images/gazettes/ANNEXURE_A_Gazette-50530.pdf (accessed 27 September 2024)

⁸ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en (accessed 22 September 2024)

⁹ <https://www.corruptionwatch.org.za/home-affairs-to-open-refugee-offices-after-two-year-closure/> (accessed 22 September 2024)

¹⁰ Press Release: Scalabrini Centre of Cape Town and Lawyers for Human Rights to Challenge Unlawful Arrests of New Asylum Seekers <https://www.scalabrini.org.za/press-release-unlawful-arrests-of-new-asylum-seekers/> (accessed 22 September 2024)

- 12.2. **Summary/arbitrary arrests at RROs:** Under the Refugees Act, when asylum seekers first seek to have their asylum claims adjudicated, they are given a temporary asylum seeker visa in terms of section 22 of the Refugees Act. This visa allows for an asylum seeker to be legally resident in South Africa pending the adjudication of their asylum claim. Once the asylum seeker's claim has been finally adjudicated upon, they usually receive a final decision from Refugee Appeals Authority of South Africa ('RAASA') or the Standing Committee on Refugee Affairs ('SCRA') who are *functus officio* in all asylum claims when they reach their decision.¹¹ Unfortunately in some instances where an asylum seeker's claims are finally rejected, they present themselves at an RRO under the impression that they are being called upon to only receive a decision on their applications but they are then arrested and detained in terms of Section 34 of the Immigration Act. The purported reasoning behind this practice is that once an asylum application has been denied, a person is an illegal foreigner and must undergo deportation proceedings in terms of Section 34 of the Immigration Act and be detained for the purposes of deportation. This practice has resulted in asylum seekers being detained and immediately deported without warning or opportunity to wrap up their affairs in South Africa, arrange for the repatriation of their families or be afforded the opportunity to review the RAASA or SCRA decisions in a court.
- 12.3. **Stringent application of the Refugees Amendment Act 11 of 2017 ('RAA'):** The RAA purported to deal with the influx of asylum seekers and refugees into South Africa¹² but resulted in a number of problematic amendments. One of these amendments is that it requires that asylum seekers must present themselves to the nearest RROs within 5 days of arrival from the country of origin but also further states that the asylum seeker must present a transit visa upon arrival at the RROs. This poses three challenges:
- 12.3.1. The 5-day requirement instead of the previous 14-days is too short seeing that the ports of entries, outside of Musina are far from the RROs.
 - 12.3.2. The 1951 Convention prohibits punishment or denial of asylum based on the lack of travel and transit documents because of the nature of asylum.
 - 12.3.3. If a person does not present themselves to the RRO within 5 days and/or without a transit visa, they are detained at the Refugee Reception Office while the immigration officers' questions them for justification of not using the designated port of entry or being without a transit visa.
- 12.4. **Digitisation of the asylum seeker application process:** After the Covid-19 pandemic, the DHA introduced a digital system where people renewed or made new applications for asylum online¹³ LHR's clients' experiences was that the system is difficult to navigate especially for groups of people who do not have a command of the English language or required digital and technological skills. As a result, asylum seekers, as of 2024, are left with a hybrid system that is unclear. In terms of digitisation, asylum seekers find themselves having to employ the services

¹¹ Parliamentary Monitoring Group | South Africa
<https://pmg.org.za/files>

¹² Refugee Amendment Act https://www.saflii.org/za/legis/consol_act/ra199899.pdf

¹³ Online extension of asylum seekers and refugee visas <https://www.dha.gov.za/index.php/notices/1441-online-extension-of-asylum-seekers-and-refugees-visas> (accessed 22 September 2024)

of churches, community-based organisations and small businesses such as internet cafes to assist them with their applications. These small businesses charge for these services which is strictly prohibited by the Refugee Act.¹⁴

13.

13.1. **The requirement to show ‘good cause’:** Another amendment brought about by the RAA is the requirement for asylum seekers that fail to enter the country through a designated port of entry and obtain an asylum transit visa at the border to show good cause for having done so. If asylum seekers fail to do so, they are barred from applying for asylum, arrested, detained and then deported. The failure to enter the country through a designated port of entry and obtain an asylum transit visa are also listed as grounds for excluding persons from refugee status.

13.1.1. The DHA relies on Sections 4(1)(f), 4(1)(h), 4(1)(i) and Section 21(1B) of the Refugee Act read together with regulation 8(1)(c) (1), 8(2) and 8(4) of the Refugees Act.¹⁵

13.1.2. These regulations have empowered the DHA to bar foreign nationals from applying for asylum in cases where they are unable to provide a valid transit visa, unless they provide ‘good cause’ or ‘compelling reasons’.

13.1.3. This process effectively denies individuals access to the asylum system, leaving them vulnerable to deportation to their home countries, where they face persecution, violence, war, detention, or even death. Such actions are a direct violation of the principle of non-refoulement, the cornerstone of international refugee protection.¹⁶

14.

14.1. **Verification of documentation status:** Section 41 of the Immigration Act allows police and immigration officers to detain and verify the status of a person suspected of not being entitled to be in South Africa. The law mandates that the verification of immigration status should be carried out promptly and should be based on ‘reasonable grounds’. Individuals are often arrested without reasonable suspicion, often perpetuated by xenophobia and anti-migrant sentiments or profiling.

14.1.1. Furthermore, DHA and SAPS frequently delay or fail to verify detainees’ immigration status promptly, unlawfully holding people, including asylum seekers with pending claims. This gives rise to pervasive bribery with detainees often released only after paying bribes, exacerbating human rights violations.

14.1.2. If people are unable to pay the bribes or consult with their families, leading to arbitrary detentions, prolonged beyond legal limits, violating the right to freedom and security.

Detention of children in immigration detention settings

15. As a signatory of the 1989 Convention on the Rights of the Child,¹⁷ South Africa is internationally obligated to pass and implement laws for the realization of children’s interests.

¹⁴ Lack of digital literacy: A cry from refugees and asylum seekers who are unable to keep their digital footprint in South Africa <https://africachinareporting.com/lack-of-digital-literacy-a-cry-from-refugees-and-asylum-seekers-who-are-unable-to-keep-their-digital-footprint-in-south-africa/> (accessed 22 September 2024)

¹⁵ Refugee Act Regulations https://www.gov.za/sites/default/files/gcis_document/202001/42932rg11024gon1707.pdf

¹⁶ This requirement is being challenged through litigation: <https://www.lhr.org.za/lhr-resources/scalabrini-centre-of-cape-town-another-v-minister-of-home-affairs-others-high-court-case-no-8486-2024/#:~:text=On%2013%20September%202024%2C%20the.until%20their%20asylum%20application%20is>

¹⁷ <https://www.justice.gov.za/policy/african%20charter/afr-charter03.html#:~:text=Convention%20on%20the%20Rights%20of,it%20on%2016%20June%201995.> (accessed 22 September 2024)

At the same time, Section 28 of the South African Constitution establishes the duty to protect, fulfil, and promote children's rights, and the Children's Act 38 of 2005 gives effect to those rights and sets principles for children's care and protection. As neither document distinguishes between foreign and South African children, South Africa is duty-bound to protect all children regardless of nationality or status.

16. In 2004, the Centre for Child Law instituted a case in response to the detention of over 100 children at Lindela Repatriation Centre including some who were held with adults. The Pretoria High Court held that detention of such minors was unlawful and shameful transgression against children's rights and interests.¹⁸
17. This issue has reared its ugly head again in 2023/2024 with reports that children are being arrested and kept at police stations to be charged with ordinary immigration detention charges. In LHR's experience, these arrested minors usually end up in one of two circumstances – in the event that the minor is able to furnish some form of identification (e.g. A birth certificate) they will be processed for detention as a minor and sentenced to juvenile detention. In the event that the minor is unable to furnish any form of documentation, SAPS will involve the Department of Social Development (DSD). The DSD will be responsible for conducting age assessment test to confirm/ascertain the age of the arrested minor. Once it is confirmed that the minor is indeed a minor, they will be processed as a minor as indicated above. In the event that the age assessment test indicates that the detainee is not a minor child but an adult, they will be processed for detention as an adult. In both these circumstances however, the detainee will still be at risk of deportation (regardless of their age/results of the age assessments test). LHR has observed a situation where a minor child, upon completing his sentence at a Juvenile detention, was taken back to the police station to be processed for deportation. This indicates that despite the 2004 High Court judgment referred too above, migrant minors still stand the risk of being processed for deportation in the same way that adult migrants are – even more problematic is that this, is only after having already being kept in detention.
18. To be noted further is that the process of being transferred to the DSD for purposes of age ascertainment test not only prolongs the duration in which the minor will be deprived of liberty, but also prolongs the duration that an already traumatised migrant minor is subjected to further traumatic circumstances.

Access to the asylum seeker system (Article 13)

19. As briefly mentioned above, the asylum seeker system is plagued with inadequate provision of service which leads to long waiting time. The waiting time for the appointments leaves the applicants vulnerable to arrests and deportation to countries where they will face persecution. Administrative bottlenecks in the asylum system are creating problems for the South African state and the asylum seekers themselves. The RAASA suffers from a large backlog.¹⁹ The backlog affects the quality of decision-making processes which results in many rejections as opposed to recognition of refugees in South Africa.

¹⁸ Centre for Child Law and Another v Minister of Home Affairs and Others <https://iarmj.africa/case-summary/centre-child-law-and-another-v-minister-home-affairs-and-others> (accessed 22 September 2024)

¹⁹ <https://help.unhcr.org/southafrica/2022/04/14/appeals-backlog-project/>

20. The rights of asylum seekers and refugees in South Africa, as outlined in legal frameworks and policies, are increasingly being undermined in various ways. The process is not adequately explained to newcomers, with translation services frequently lacking or poorly executed. The asylum process being primarily digital, the effect is that asylum seekers who may not speak or understand English are placed at a significant disadvantage in navigating the complexities of the refugee status application process. This issue is exacerbated by the fact that most asylum seekers lack legal representation to assist them if their claims are rejected. Consequently, these failures force asylum seekers to live without permanent status for extended periods, negatively impacting their financial stability, physical health, and psychological well-being. The inability to maintain valid documentation restricts their access to decent employment, education, and healthcare while increasing their vulnerability to harassment, arrest, and detention.

Inadequate immigration detention facilities (Articles 7, 10)

21. South Africa only has the Lindela Repatriation Centre that is specifically mandated to detain people for the purposes of immigration detention. However, South Africa also has a list of police stations and designated places of detention for this purpose.²⁰ What LHR has picked up however, is that in these places of designation, the immigration detainees are also detained together with criminal offenders.

22. Furthermore, after the 26 February – 9 March 2023 monitoring visit to South Africa, the Subcommittee on Prevention of Torture (‘SPT’) noted that there is a high number of remand detainees and overcrowding in detention places reflect deficiencies in the criminal justice system and the judiciary²¹. The delegation received allegations of corruption within facilities. They also observed entrenched inhuman practices, ill-treatment, and poor detention conditions.

23. The SPT visited public and private penitentiaries, police stations, military detention barracks, youth care centres, psychiatric hospitals, drug rehabilitation institutions, and a migrant detention camp (Lindela), where they conducted confidential interviews with staff members and people held in these institutions. It calls upon South Africa to fully comply with the international obligations to prevent torture and provide adequate detention facilities for detainees.

Perpetuation of xenophobic sentiments and anti-migrant rights rhetoric (Article 2, Article 12)

24. 2024 was an election year in South Africa and the political landscape had increasingly seen migrants, refugees, and asylum seekers being used as scapegoats, particularly in the context of electoral campaigns.²² This trend not only exacerbates xenophobic sentiments but also poses significant risks to the safety and well-being of migrant groups. Politicians often conflate

²⁰ determination of places of detention of illegal foreigners pending deportation

“in terms of section 34(1) of the Immigration Act, 2002 (Act No. 13 of 2002), the following Stations of the South African Police Service has been identified as places of detention of illegal foreigners pending deportation or transfer to Lindela Holding Facility for purposes of deportation:”

<https://www.dha.gov.za/index.php/immigration-services/places-of-detention-for-those-pending-deportation> (accessed 22 September 2024)

²¹ <https://southafrica.un.org/en/222937-south-africa-must-fully-comply-international-obligations-prevent-torture-experts-urge-after>

²² South Africa: Toxic Rhetoric Endangers Migrants

Stop Scapegoating Foreign Nationals Ahead of Elections <https://www.hrw.org/news/2024/05/06/south-africa-toxic-rhetoric-endangers-migrants> (accessed on 22 September 2024)

refugees and migrants, leveraging this confusion to rally support by portraying immigrants as a threat to national security and social stability.

25. The manipulation of public sentiment against migrants undermines the principles of dignity and protection enshrined in South Africa's constitution and international human rights obligations, highlighting the need for a more compassionate and informed discourse surrounding migration.

Previous Recommendations

26. **We note that there are previous recommendations that remain outstanding or only partially fulfilled which must be reiterated to South Africa.** The following recommendations were issued in the Committee's Concluding Observations on the initial report of South Africa (CCPR/C/ZAF/1) on its 116th session in 2016:²³

26.1. **In relation to Systematic racism, xenophobia and discrimination:**

26.1.1. It should redouble its efforts to prevent and eradicate all manifestations of racism and xenophobia.

26.1.2. Protect all communities in South Africa against racist and xenophobic attacks and improve policing responses to violence against non-nationals.

26.1.3. Effective investigations into alleged racist and xenophobic attacks and other hate crimes should be conducted systematically, perpetrators should be prosecuted and, if convicted, punished with appropriate sanctions, and victims should be provided with adequate remedies.

26.1.4. South Africa should also pass appropriate legislation explicitly prohibiting hate crimes and hate speech as soon as possible.

26.1.5. The Committee is concerned about the number of reported cases of violence, including sexual violence, excessive use of force, torture and other forms of ill-treatment against detainees, as well as deaths resulting from actions of police and prison officials.

26.2. **In relation to detention conditions:**

26.2.1. Reduce overcrowding, particularly by promoting alternatives to detention, the loosening of bail requirements, revising arrest quotas as indicators of police performance, and by ensuring that bail determinations are made promptly and that persons on remand are not kept in custody for an unreasonable period.

26.2.2. Increase efforts to guarantee the right of detainees to be treated with humanity and dignity and ensure that conditions of detention in all the country's prisons, including those operated by private contractors, are compatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

26.2.3. Ensure that de facto solitary confinement measures, including segregation, are used only in the most exceptional circumstances and for strictly limited short periods of time.

26.3. **In relation to access to a refugee status determination procedure:**

²³ <https://digitallibrary.un.org/record/1317444?ln=en&v=pdf> (accessed on 22 September 2024)

26.3.1. The State party should facilitate access to documentation and fair procedures for asylum seekers, including translation services and, where the interests of justice so require, access to legal representation. It should ensure that asylum applications are processed expeditiously and that the principle of non-refoulement is respected under all circumstances.

26.4. **In relation to immigration detention and detention of children**

26.4.1. The State party should ensure that detention pending deportation is applied as a last resort only, with special regard being given to the needs of particularly vulnerable persons, and that individuals detained for immigration-related reasons are held in facilities specifically designed for that purpose. The State party should also strengthen its efforts to ensure adequate living conditions in all immigration centres by reducing overcrowding, providing adequate health-care services and ensuring proper sanitary conditions.

26.4.2. The State party should allocate adequate funding to community-based diversion programmes for children and reduce the number of children held in child and youth care centres. It should also ensure that children in conflict with the law are separated from children in need of care. When raising the age of criminal responsibility to 12 years, the State party should ensure that the current level of protection afforded to children aged between 12 and 14 years is maintained.

27.

Current Questions and Concerns

28. We strongly urge the Committee to raise the following questions with the government of South Africa:

- 28.1. What plans does the government have to decrease the backlog at the DHA to ensure that officials are fully capacitated to handle the volume of asylum seekers in the country?
- 28.2. What is the government doing to bridge the interpretation gap between the Refugee Act, its amendments, the Immigration Act and the international obligations in terms of treatment of undocumented migrants, asylum seekers and refugees in South Africa?
- 28.3. Can South Africa provide detailed information on the conditions of detention facilities for migrants and refugees, particularly regarding compliance with international human rights standards?
- 28.4. To improve transparency and accountability in the treatment of non-citizens in custody for immigration-related reasons, what steps will the government take to provide an up-to-date list of all prisons and police stations that are temporarily in use for confining non-citizens for immigration-related reasons? And, in line with recommendations of the Working Group on Arbitrary Detention, can the government produce a comprehensive national registry of arrests and detentions that records all persons in any form of detention or confinement?
- 28.5. Is the State Party planning to offer any directive to its officials in respect of the asylum seeker process that should be adopted where a person does not use the recognised port of entry? If so, will these guidelines seek to limit the discretion of

the immigration official in respect of detention of asylum seekers who are without a transit visa?

- 28.6. What plans does the government have to bring an end to the immigration detention of children and their families and what interim measures will the government take to ensure the protection of children in immigration detention settings?
- 28.7. What steps is the state going to take to ensure prosecution of punishment of hate crime and xenophobic utterances that perpetuate anti-migrant sentiments and largely contributes to extortion, bribery and incitement of violence against migrants, refugees and asylum seekers?
- 28.8. What specific steps has the government taken to protect all vulnerable groups, in addition to children and asylum seekers, from arbitrary detention and ensure their best interests are prioritised?
- 28.9. What mechanisms are in place to enhance coordination among various government departments responsible for immigration control and human rights protection to ensure comprehensive compliance with international obligations?