Lost in the Vortex: Irregularities in the Detention and Deportation of Non-Nationals in South Africa
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FMSP Report

June 2010
Acknowledgements

This research report was produced by the Forced Migration Studies Programme at the University of the Witwatersrand, Johannesburg.

This report was written by Roni Amit with statistical analysis conducted by Roni Amit and Tamlyn Monson. Hwikwon Ham provided statistical guidance. Tamlyn Monson edited the report and Tara Polzer provided valuable comments on the content and structure. The core research team included Tesfalem Araia, Roni Amit, Tamlyn Monson and Darshan Vigneswaran. Tesfalem Araia deserves special credit for managing the survey research at Lindela. We would also like to acknowledge our fieldworkers, respondents and administrative staff for their valuable participation and assistance. Finally, we are grateful to the Department of Home Affairs for facilitating the research by providing our researchers with access to Lindela’s facilities and residents. We hope that this document will assist in the Department’s continued efforts to improve the services it provides to all who live, however temporarily, in South Africa.

This report is made possible by the generous funding of Atlantic Philanthropies.

The Forced Migration Studies Programme (FMSP)

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Executive Summary

Introduction
The Lindela Detention Centre, located approximately 40 kilometres northwest of Johannesburg in Krugersdorp, is a holding facility for the temporary detention of ‘illegal foreigners’ while they await deportation. The centre was established under the Department of Home Affairs’ (DHA) authority to detain and deport illegal foreigners, found in the Immigration Act (No. 13 of 2002).

In March 2009, the Forced Migration Studies Programme (FMSP) began conducting a survey at Lindela in order to better inform DHA’s efforts to address administrative problems at the centre. Over the next ten months, FMSP researchers interviewed 734 detainees during two phases. The research team questioned detainees on their arrest, documentation, detention prior to arriving at Lindela, procedural processes at Lindela, prolonged detentions, and conditions of detention, including medical care and basic needs, as well as experiences of corruption and violence. Detainees discussed interactions with the DHA, the police, and Bosasa, the private contractor responsible for daily operations at Lindela. Most of the survey questions were quantitative and tracked adherence to the law. A small number of qualitative questions also afforded detainees the opportunity to talk about their experiences in more detail. The research findings present a comprehensive window onto the experiences of detainees—information that can assist DHA to carry out its mandate in a manner that is both legal and cost effective, while minimizing legal challenges to detention.

The Law
The Immigration Act authorizes DHA to identify, detain, and deport illegal foreigners. These processes, however, must be procedurally fair and adhere to certain legal protections. The Constitution, the Promotion of Administrative Justice Act (No. 3 of 2000) (PAJA) and the Immigration Act provide a legal framework to ensure that the fundamental rights of illegal foreigners are not violated during the arrest, detention, and deportation processes.
The Constitution and PAJA set out the general requirements for just administrative action. The Immigration Act and accompanying Regulations include a more detailed set of procedures that must be followed in order to ensure that the detention and deportation of illegal foreigners adheres to the requirements of just administrative action. These procedures include prescribed notification forms that advise detainees about their legal status, the processes that will be followed, and their rights of review and appeal.

Key Findings
Despite DHA’s efforts to improve operations at the facility, there continue to be systematic violations of the law at Lindela. The survey uncovered several lapses in following proper procedures. These include irregularities in the classification of illegal foreigners and failures to use the legally prescribed forms to notify individuals of their legal status and rights related to this status. DHA’s failure to follow proper procedures has also resulted in prolonged and indefinite detentions without judicial oversight. These lapses mean that many detentions and deportations are, in effect, occurring illegally.

As a result of these lapses, detainees at Lindela were largely unaware of their rights and were extremely frustrated by their situation. Many detainees expressed disgruntlement and dismay at their prolonged and indefinite detention, and the lack of information about their situation. A number of them were either wholly unaware of their rights, or did not know how to exercise them. Still others described being prevented from exercising these rights. Respondents complained that they had no access to important DHA mechanisms while inside Lindela, despite the fact that it is a DHA holding facility. Instead, their primary and often exclusive point of contact was with the Bosasa security guards; these guards were neither trained nor authorized to make decisions in response to detainees who wished to challenge their legal status in accordance with their rights under the law. Corruption was also a common theme.

DHA is also detaining asylum seekers at Lindela. Both international and South African law prohibit the return of an asylum seeker to a country where his or her life may be in danger. This non-refoulement principle applies to all asylum
seekers, regardless of the status of their documentation. The irregularities and lack of access to review and appeal mechanisms inside Lindela create acute risks of refoulement for asylum seekers and refugees. The fact that asylum seekers at Lindela are largely cut off from DHA officials and only have access to Bosasa security guards greatly increases the risk of refoulement.

**Summary of Key Issues**

Some of the key issues identified in the survey are highlighted below.

**Initial Arrest and Detention**
- ✓ Arrest and detention of foreigners with valid documents.
- ✓ Irregularities in the process of verifying the status of an illegal foreigner.
- ✓ Irregularities in the notification process when someone has been declared an illegal foreigner.
- ✓ Bureaucratic problems at DHA offices, with the effect of both obstructing individuals from maintaining valid documents and contributing to the arrest and detention of individuals with legal status.

**Detention at Lindela**
- ✓ Detention of individuals who have not been properly classified as illegal foreigners.
- ✓ Failure to give effect to the legal protections found in the Immigration Act, including notifying individuals of their legal status and their rights of appeal and review.
- ✓ Continuing detentions after thirty days without following the steps required under the law in order to extend the detention beyond this initial period.
- ✓ Indefinite detentions in excess of the maximum 120-day period allowed by law.
- ✓ Detention and possible deportation of asylum seekers, in violation of domestic and international prohibitions against refoulement.
- ✓ Improper delegation of authority to Bosasa staff, creating barriers for detainees to exercise their legally prescribed rights of review and appeal and increasing the potential for rights violations.
Conditions of Detention

- Time periods between meals in excess of the legally prescribed maximum.
- Failure to adhere to the minimum standards of detention prescribed by law, including inadequate provision of soap, clean clothes, and clean bedding, resulting in violations of human dignity.
- Inadequate access to medical facilities and necessary medications.
- Violence committed by both detainees and Lindela staff.

Significance of the Findings

The issues identified in the research findings have several implications in terms of DHA’s ability to reform. Only by taking these findings seriously can the Department carry out its mandate in a way that is cost effective, adheres to the law, and demonstrates respect for human rights.

Implications for Rights and the Rule of Law: A functioning democracy requires respect for the rule of law and human rights. Detentions and deportations that occur outside of the law, without procedural fairness or judicial oversight, violate the Constitution, result in human rights abuses, and jeopardize the democratic character of the state.

Cost Implications: DHA has devoted significant resources to defending itself against legal actions brought on behalf of individuals who were illegally detained. Many of these cases have resulted in cost orders against the Department. In addition, there are costs associated with every individual in detention. Thus, in addition to incurring legal costs from illegal detentions, DHA is spending unnecessary money on the detentions themselves.

Implications for Planned Improvements to DHA Performance: Since taking office in 2009, Minister of Home Affairs, Dr. Nkosazana Clarice Dlamini-Zuma, has publicly called for improving systems within the Department. Given the fundamental issues that are at stake, ensuring proper adherence to the law in the detention and deportation process must be a priority in any reform process.
Recommendations
The following recommendations are aimed at protecting the rights of detainees, ensuring adherence to the law, and minimizing both legal costs and costs of detention that arise when proper legal procedures are not followed.

Arrest and Initial Detention

✓ Address illegal practices by implementing accountability and disciplinary measures against officers who arrest individuals carrying valid immigration documents.

✓ Avoid the costs of unnecessary detentions by taking measures to encourage police and immigration officers to allow suspected illegal foreigners to retrieve documents that verify their immigration status when these are nearby.

✓ Avoid the costs of unnecessary detentions by allowing individuals to contact family members and others who can assist in verifying their status.

✓ Centralize record keeping from the various DHA offices to ensure that police and immigration officers can easily verify an individual's status within the legally required 48-hour period.

✓ Streamline operations at DHA offices so that individuals are able to access these offices and maintain valid documents without encountering bureaucratic obstacles.

✓ Make sure that all illegal foreigner classifications are done properly and are accompanied by the required notification. Classifications that do not follow regular procedures and are not accompanied by notifications are in effect arbitrary.

By creating a more efficient verification process, implementation of the above measures will minimize both the time that administrative detainees are held together with regular criminals, and the occurrence of illegal and unnecessary detentions.
Detention at Lindela

✓ Implement checks to ensure that all illegal foreigner classifications have been done in accordance with the legal requirements of the Immigration Act. This means that the classification must be done by an immigration officer and the individual must receive the required notification form before being admitted to Lindela.

✓ Release all individuals at Lindela who are not being held for the purposes of deportation. This includes detained asylum seekers who, by law, cannot be deported until final adjudication of their asylum claim.¹

✓ Alleviate illegal practices by providing every detainee with the notice of deportation form and allowing detainees to freely select from the options on the form, including challenging their deportation, without the threat of indefinite detention.

✓ Stop the illegal denial of rights by providing detainees with the means and opportunity to exercise their legally mandated rights, including their rights of appeal and review. This includes:

  o Taking steps to ensure that they understand their rights,
  o Providing access to pen and paper,
  o Facilitating access to legal counsellors and others,
  o Eliminating institutional barriers and providing a mechanism for detainees to lodge their appeals and requests for review from inside Lindela.

✓ Establish judicial oversight of all detentions in excess of 30 days.

✓ Eliminate illegal detentions by ensuring that the proper warrants are obtained before any detention is extended.

✓ Release all detainees held in excess of 120 days.

¹ The Supreme Court of Appeal has recently confirmed this view and explained that this includes exhausting all rights of review and appeal under both the Refugees Act and the Promotion of Administrative Justice Act. Mustafa Aman Arse v Minister of Home Affairs and Two Others, Case No. 025/2010, at Para 19, and Para 2(b) of the Order (24 February 2010).
✓ Avoid the illegal delegation of authority by making sure that all detainees have access to immigration officials inside Lindela, particularly individuals who claim that they will face grave danger if deported and are protected by the non-refoulement principle.

✓ Train Bosasa staff on the law and the rights of detainees so that they do not improperly and illegally prevent detainees from exercising their rights.

✓ Hold Bosasa staff accountable for rights violations and contraventions of the law.

**Conditions of Detention**

 ✓ Provide detainees with three meals per day at the legally prescribed intervals.

 ✓ Increase the provision of basic items to enable detainees to meet the minimum standards of cleanliness and to have access to clean and sufficient bedding.

 ✓ Ensure that detainees on chronic medications receive these medications while in detention.

 ✓ Improve access to and quality of care at the clinic, including the range of available medicines.

 ✓ Establish monitoring and oversight of Lindela and Bosasa staff to prevent violence against detainees.
Introduction

“I do not know why I have not been deported. I do not know if I’m going to die here or when they will ever let me go. I am so tired and disappointed.” Detainee at Lindela Detention Centre

The Lindela Detention Centre, located approximately 40 kilometres northwest of Johannesburg in Krugersdorp, serves as a temporary holding centre for those individuals who have been deemed illegal foreigners, pending their deportation. The centre was established as part of the Department of Home Affairs’ (DHA) mandate to enforce the Immigration Act (No. 13 of 2002).

Under this mandate, the Department is empowered to detain and deport illegal foreigners. These detention and deportation processes, however, must strictly adhere to the law. The South African Constitution, the Promotion of Administrative Justice Act (PAJA) (No. 3 of 2000) and the Immigration Act provide a legal framework that protects the rights of detainees at Lindela. The Refugees Act (No. 130 of 1998) further protects refugees and asylum seekers from detention and prevents their deportation to a country where they may face danger, ratifying the international prohibition against refoulement. Because Lindela is a temporary holding facility for administrative detentions, rather than a prison whose occupants are ‘prisoners,’ the extensive protections found in the Correctional Services Act (No. 111 of 1998) do not apply.

In March 2009, the Forced Migration Studies Programme (FMSP) began conducting a survey—repeated twice over a 10-month period—that asked detainees at Lindela about their experiences. The questions were aimed at obtaining information that would assist DHA in carrying out its duties in accordance with the law, while also enabling the Department to become more cost effective. The research team questioned detainees on a range of issues, including their story of arrest, their documentation, procedural issues at Lindela, and conditions of detention, as well as violence and corruption. The survey covered detainee interactions with the Department of Home Affairs (DHA), the
police (SAPS and Metro), and Bosasa (the private contractor responsible for daily operations at Lindela).

**Key Findings**

As reflected in the quote at the start of this report, the survey found that the experience of many detainees at the centre is one of frustration, uncertainty, and legal limbo. Many basic legal protections were not upheld during the various stages from arrest to eventual deportation, allowing for abuses of power and extra-legal activities. Detainees expressed frustration at their prolonged and indefinite detention, which was generally accompanied by a lack of information about their legal situation. A large number were unaware of their rights to challenge their situation through review or appeal. Others had some awareness of these rights, but did not know how to realize them, while still others described being unable to exercise their rights because of institutional barriers. Despite the fact that it is a DHA holding facility, many detainees complained that they had no access to immigration officials while inside Lindela. Instead, they only had contact with Bosasa staff, who were responsible for daily operations inside the centre, and who prevented detainees from exercising their rights of review and appeal under the Immigration Act. Corruption was also a common theme.

FMSP’s researchers encountered a number of asylum seekers in Lindela. This situation raises serious concerns, as it creates the possibility that DHA is sending people at risk of persecution back to their countries of origin in violation of the international prohibition against refoulement. Some respondents also described being released from Lindela and told to report to a refugee reception office. When they arrived at these offices, they were re-arrested, indicating a lack of effective communication between Lindela and the reception offices.

**Significance of the Findings**

The issues highlighted by the research findings have several implications. The findings should play a critical role in the Department’s efforts to address its administrative shortcomings and fulfil its mandate in a cost effective and legal manner that upholds the rights of all individuals.
Implications for Rights and the Rule of Law: The defects at Lindela have broad implications for the character and future of South African democracy. The abuses and extra-legal processes jeopardize the rule of law, respect for which is an essential component of a functioning democracy. In addition, they violate the human rights of detainees. Both international and South African law guarantee these rights to all individuals, regardless of their immigration status, and democratic South Africa is based on respect for human rights.

Cost Implications: On an immediate and practical level, violations of the law have cost implications for DHA. Lawyers for Human Rights (LHR), the only organization that makes regular visits to Lindela, has brought a series of cases on behalf of individuals who are being illegally detained there. Most of these cases have resulted in cost orders against the Department, and one has even given rise to punitive damages against DHA. Moreover, detention costs are associated with every individual detainee. The presence of illegal detentions raises the overall costs of detention. Thus, it is in the government’s financial interest to ensure a properly functioning process.

Implications for Planned Improvements to DHA Performance: Since her appointment in 2009, the Minister of Home Affairs, Dr Nkosazana Clarice Dlamini-Zuma, has expressed her intention to improve the functioning of the Department. Because adherence to the law in the detention and deportation process is fundamental to rights protection and the democratic process, the treatment of illegal foreigners at Lindela must be prioritized in these reform efforts. The results detailed below can help to inform this process and ensure that the laws are properly followed in the detention and deportation of illegal foreigners.

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2 See, e.g., Mustafa Aman Arse v Minister of Home Affairs and Two Others, Case No. 025/2010, at Para 19, and Para 2(b) of the Order (24 February 2010); AS and 8 Others v Minister of Home Affairs and 3 Others, South Gauteng High Court, Case No. 2010/101 (17 March 2010); Hooman Hassani and Hootan Hassani v The Minister of Home Affairs and 2 Others, South Gauteng High Court, Case No. 10/01187 (5 February 2010); Kanyo Aruforse v Minister of Home Affairs and 2 Others, South Gauteng High Court, Case No. 2010/1189 (25 January 2010).

3 Jean Paul Ababson Bakumundo v Minister of Home Affairs and 2 Others, South Gauteng High Court, Case No. 2009/22309 (15 July 2009).

What the Law Says
Detentions and deportations are governed primarily by the Immigration Act. As administrative detentions, immigration detentions for the purposes of deportation are not subject to the normal judicial safeguards provided through the trial process. This does not mean, however, that these detentions are unconstrained by law. Rather, in order to safeguard against abuse, administrative detentions are regulated by certain provisions of the Constitution and PAJA.

The Immigration Act
The Immigration Act directs the arrest, detention and deportation of illegal foreigners. Together with the Regulations, it lays out a host of procedures that ensure a fair legal process. The Regulations also require that a number of prescribed forms be used in order to give effect to the administrative justice guarantees provided for in the Act.

The key provisions of the Act and Regulations are summarized below.

Arrest and Detention for Verification Purposes (Immigration Act and Regulations)
- Police and immigration officers
  - May detain an individual in order to confirm his or her immigration status (Section 41).
  - Must take reasonable steps to assist such an individual to verify his or her status (Section 41). These include: 1) accessing readily available documents, 2) contacting relatives or other people who can confirm the individual’s status, and 3) accessing relevant departmental records (Regulation 32).
  - May not detain an individual for longer than 48 hours for the purposes of verification (Section 34).
- The Act does not authorize police officers to declare an individual an illegal foreigner for the purposes of deportation.

Detention for the Purpose of Deportation (Immigration Act and Regulations)
- Individuals who are declared illegal foreigners
  - Must be given written notice of the decision to deport them, and of their right to appeal the decision (Section 34(1)(a)).
- May at any time request from any officer that their detention for the purpose of deportation be confirmed by a warrant of the court (Section 34(1)(b)).
- Must be immediately released if such a warrant is not issued within 48 hours (Section 34(1)(b)).
- The individual must be informed of the above rights upon arrest. This notification should be done in a language that the individual understands, when possible, practicable and reasonable (Section 34(1)(c)).
- Individuals may be detained for up to 30 days under these provisions (Section 34(1)(d)).
- Individuals may not be detained for longer than 30 days without a warrant of the court. The warrant may, on good and reasonable grounds, extend the detention for an adequate period, but this extension may not exceed 90 days (Section 34(1)(d)).
- The Regulations include prescribed forms that must be used in order to give effect to the above provisions.
- The conditions of detention must adhere to minimum prescribed standards respecting dignity and human rights (Section 34(1)(e)). These standards are prescribed in Annexure B of the Regulations.

The Constitution and PAJA

As administrative actions, measures taken to enforce the Immigration Act are subject to the legal provisions governing administrative justice. These provisions are found in the Constitution and in PAJA. In the absence of judicial proceedings, these provisions, as well as those in the Immigration Act, are designed to ensure that administrative detentions occur within a legal framework and do not take on the character of extra-legal or indefinite detentions.

The most relevant provisions of the Constitution and PAJA are summarized below.

Provisions under the Constitution & Protection of Administrative Justice Act (PAJA)
- Under the Constitution and PAJA, everyone is entitled
  - To lawful, reasonable and procedurally fair administrative action (Section 33 of the Bill of Rights). Specific requirements of just administrative action are laid out in PAJA.
  - To be given written reasons if their rights are adversely affected by administrative action (Section 33 of the Bill of Rights).
- Under Section 35(2) of the Bill of Rights, all detained individuals, including those held in
administrative detention, are entitled

✓ To be promptly informed of the reasons for detention.
✓ To be promptly informed of the right to consult with a legal practitioner of choice.
✓ To challenge the lawfulness of the detention in person.
✓ To conditions of detention consistent with human dignity, including the provision of adequate accommodation, nutrition, reading material and medical treatment.
✓ To communicate with and have visits from a spouse, partner, next of kin, religious counsellor, or medical practitioner.

The Lindela Detention Centre Facility

Lindela is a DHA holding facility established under Section 34 of the Immigration Act, which authorizes the Department to detain illegal foreigners. DHA has delegated daily operations of the centre to Bosasa, a private contractor that owns the property. Bosasa currently holds a ten-year contract with DHA that is set to expire in 2015. Its wholly owned subsidiary, Leading Prospect Trading 111 (Pty) Ltd, runs day to day operations at the centre, which includes responsibility for meals, accommodation, and security.

DHA officials put the facility’s capacity at 6-7000, while Bosasa estimates that the centre holds a maximum of 4000 people. During the research period, the population of detainees at Lindela hovered around 1000, with a maximum of 2286 (March 2009) and minimum of 732 (May 2009).

The appointment of a contractor to run the centre has blurred important lines of accountability and responsibility at the facility, to the detriment of administrative justice. Although DHA officials continue to staff the outer realms of the centre, it appears to have ceded to Bosasa control of activities within the inner realm, where detainees are housed. By disavowing authority over this area, DHA is able to avoid accountability—raising the possibility that DHA’s authority has been unlawfully delegated to Bosasa. Under the law, only immigration officers are entitled to make decisions regarding the immigration status of a foreigner and his or her detention. Foreigners who wish to challenge their status or make asylum claims, however, often only have contact with Bosasa employees inside the

6 Tesfalem Araia, Lindela Field Notes.
facility. As a result, these employees are dealing with procedures of appeal, asylum, or even possible refoulement—areas that are outside of their legal and technical authority.

**Research Process**

The research team administered a survey covering both procedural issues and conditions of detention, including access to medical care and other basic needs, and experiences of corruption and violence. The questions were designed to measure adherence to the legal provisions laid out above, beginning with the initial arrest. The survey questions were predominantly quantitative in scope, but a few qualitative questions were included to allow detainees to elaborate on their experiences. All of the quotes included in this report are taken from detainee responses to these qualitative questions.

In some instances, respondents did not answer every question in the survey—either because the questions were not relevant to their situation or because they did not have a response. Unless otherwise indicated, the disclosed percentages for each question described below represent the proportion of respondents who answered that particular question. All percentages have been rounded.

The questions were divided into the following issue areas: 1) demographic information, 2) process of arrest, 3) documentation and verification during arrest, 4) conditions of detention prior to arrival at Lindela, 5) procedures and notifications at Lindela, and 6) conditions of detention at Lindela.

Employing proportional random sampling, the research team relied on weekly country lists of all detainees provided by DHA to randomly select respondents by country of origin. This enabled the team to ensure that respondents were included from what are generally considered both refugee and non-refugee producing countries. Quotas were imposed to avoid over-representation of any particular country. The research team administered the surveys in English, French, Portuguese, and Shona. In some instances, sampled respondents could not be interviewed in any of the survey languages. These individuals were

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7 The team employed a combination of systematic random sampling and randomly generated numbers.
excluded from the sample, as were sampled respondents who did not wish to participate. In total, researchers interviewed 734 detainees.

FMSP designed the Lindela research project to cover two separate phases over a one-year period. Because detention patterns may vary over time, a repeated-measures approach was chosen to make the overall findings more reliable as an indication of general conditions at the detention centre.

The first phase took place from mid-March to early July 2009. The team interviewed 444 respondents during this phase.

FMSP presented the preliminary findings from the first phase in a constructive dialogue with DHA and Lindela staff in October 2009. FMSP intended to use the findings as a baseline to notify DHA of areas of concern and to track changes in detention conditions over time.

The second phase of research began at the end of September 2009 and continued until 4 December 2009. Following a suspension for the holiday period, Phase 2 resumed in mid January. The research was arbitrarily halted on 11 February 2010 when Lindela officials refused to allow the team further access. No reasons were provided, despite a formal request for an explanation. As a result, the second phase included only 290 respondents.
Demographics

The majority (96%) of respondents were male. Among the detainees the team interviewed, the primary countries of origin are represented below.

![Primary Countries of Origin](image)

In early April 2009, DHA announced that it would halt deportations of Zimbabweans. As a result, Zimbabweans were excluded from the research sample after 9 April 2009. The proportion of Zimbabweans included above represents those in detention prior to the moratorium.

Other countries represented included Pakistan, Uganda, Angola, Ghana, Cameroon, Swaziland and India, as well as small samples from China, Thailand, Sri Lanka, Somalia, Eritrea and Rwanda, among others. One percent (0.96%) of respondents claimed South African nationality.

The average age of the respondents was 30. The most commonly spoken language was Swahili (primarily detainees from Tanzania or DRC), followed by Chewa (detainees from Malawi), Igbo (detainees from Nigeria), Lingala (detainees from DRC) and Bangla (detainees from Bangladesh). One percent of respondents reported speaking a South African language as their first language. Twenty-five percent of respondents reported that they were unable to speak English comfortably and fluently.

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8 Respondents were asked to report both their country of birth and their nationality. This graph represents nationality, but results did not vary significantly for country of birth.
Arrest and Initial Detention

Arrest

“I was surprised by how I was treated by the police during my arrest. Firstly I called the police after being attacked by thieves who stole my phone, wallet and a copy of my immigration papers. But when they came instead they were interested in the fact that I am a foreigner. They forcefully arrested me and in the process they tore my clothes. They said things had changed and that all foreigners, especially Nigerians, were going to leave the country... The intimidation I have received in South Africa is the worst I have experienced in my life so far and I would be glad to leave South Africa because of this.”

“When the police knocked at my door they instantly started to beat me – stating that I am a foreigner and I should go back to my country – without asking for my ID document.”

Both police and immigration officials are authorized to arrest suspected illegal foreigners. Of those surveyed at Lindela, DHA carried out the highest proportion of arrests (50%), followed by SAPS (43%) and then Metro police (2%). As the above quotes reflect, xenophobic attitudes were a factor motivating arrest in some cases.

The findings suggest some areas of concern during the arrest process and at the police stations. Over a quarter (29%) of respondents said that they were not told why they were being arrested, and 10% reported being injured during the arrest. Those arrested by SAPS were more than twice as likely to have suffered an injury during arrest.
Most respondents (67%) tried to inform somebody about their detention after being arrested. Of these, half (50%) stated that the police did not allow them to do so. Individuals arrested by immigration officials were allowed to make calls more often (57%) than those arrested by SAPS (41%). Where respondents did not attempt to inform anyone, almost half (43%) said it was because they did not have access to a phone. Without this access, detainees are unable to exercise their right to communicate, as laid out in Section 35(2) of the Bill of Rights. Money was also a factor, as 4% said they did not attempt to inform anyone because they did not have airtime, while 3% said it was because they did not have money for the payphone.

One respondent described asking to make a phone call from detention at the police station:

"In the cells, we told them we wanted to make calls, but they couldn’t bring the phone. So there was a Ugandan who was irritated and making noise, so they took him and beat him up badly. We told them again we wanted to call and then they beat us up and told us that we had no rights. One police was saying that Zimbabweans were thieves and we should go back to Zimbabwe."
Determination of Legal Status
Systemic failures came into play during the post-arrest determination that an individual was an illegal foreigner. Deficiencies in the verification process, both prior to arrival at Lindela, and at the centre itself, resulted in the detention of individuals with valid documents.

Documentation
Detainees at Lindela were arrested with a variety of documents. The chart below details the documents respondents reported having at the time of arrest, and the percentage of respondents who reported that their documents were valid:

Many people with valid documents at the time of arrest expressed concern that their documents would expire while they were being detained at Lindela.
**Verification**

The above chart reveals that a substantial proportion (36%) of detainees surveyed at Lindela claimed to have valid documentation at the time of arrest. This data suggests problems with the verification process when individuals are arrested on suspicion of being illegal foreigners. Of particular concern are those individuals detained as illegal foreigners despite stating that they hold valid refugee IDs, South African IDs, and asylum seeker permits.

Because of deficiencies in the verification process, many individuals are being sent to Lindela not because they are illegally in the country, but rather because their legal status has not been or cannot be verified. Often these individuals are not afforded an opportunity to prove that they are legally in the country, as the data in the following section reveals.

**Taking Reasonable Steps to Verify**

Just over one quarter (26%) of respondents who had valid documents were not carrying them at the time of arrest. In such instances, the Immigration Act requires immigration and police officers to take reasonable steps to assist an individual to verify his or her status before detaining him or her as an illegal foreigner (Section 41 (1)). ‘Reasonable steps,’ defined in Section 32 of the Regulations, include

- Allowing the individual to access documents that may be easily available,
- Contacting relatives or others who could aid in verification, and
- Attempting to verify the individual’s status through DHA records.

The survey findings indicated that these steps are not being taken by arresting officers.

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9 This percentage is based on the proportion of all survey respondents, rather than the proportion of those who answered the question. Because there was a significant difference in the two proportions, a percentage of all respondents was used to avoid over-representation of those with valid documents.
Of those who had valid documents but were not carrying them at the time of arrest, an overwhelming 97% were not allowed to collect these, even if they were nearby. One detainee who was not permitted to retrieve documents he had at home was told by police, “You foreigners, we are going to deal with you.” As mentioned, other detainees also reported encountering xenophobic attitudes their arrest.

Of those who requested that the arresting officials verify their status with DHA, 20% reported that the officials had refused to do so. Another 21% said that officials had ignored their request, while in 1% of cases DHA was not able to locate the individual’s information, as illustrated by the chart below.

Even where police may be willing to conduct the necessary verification, the process is hampered by the fact that some DHA offices, particularly refugee reception offices, do not have adequate records, and are consequently unable to verify the status of an individual who applied at their office. Accordingly, asylum seekers and other legal migrants who did obtain proper documentation are treated as illegal foreigners because of poor record keeping by DHA.10 This

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problem is compounded by the refusal to allow individuals to obtain their documents where reasonably possible.

Verification of Status for Arrested Refugees and Asylum Seekers

Detention of Individuals with Valid Documents
Of the 16 individuals in the sample who claimed that they held refugee identification documents at the time of arrest, 11 said that these documents were valid when they were arrested, and six were carrying them at the time of arrest.

Just over one third of detainees surveyed (37%)\(^{11}\) reported that they held asylum documents when they were arrested, although only about half of these documents (53%) were valid at the time. A total of 83% of detained asylum seekers said that they were carrying these valid permits with them at the time of their arrest.

This data is particularly troubling in its implications. Refugees and asylum seekers are protected by the international norm against refoulement, which prohibits returning an individual to a country where he or she may face persecution or a life-threatening situation, as defined by refugee law. This protection applies to all asylum seekers, even those without valid documents, until a final decision has been made on their asylum claim.\(^{12}\) Yet, 257 refugees and asylum seekers were detained at Lindela for the purposes of deportation. The fact that these individuals faced deportation to their home countries without having their refugee status revoked, or receiving a final determination on their asylum claim, violates the legal prohibition against refoulement.

\(^{11}\) When taken as a percentage of all respondents (as opposed to respondents who answered the question), the proportion is 33%.

\(^{12}\) The Supreme Court of Appeals recently ruled that once an individual receives an asylum seeker permit, "[h]e or she can no longer be regarded as an 'illegal foreigner' and no proceedings may be instituted or continued against such a person in respect of his or her unlawful entry into or presence in the country until a decision has been made on his or her application or he or she has exhausted his or her rights of review or appeal." Arse at para. 19 (judgment cited in footnote 1).
Barriers in Obtaining and Maintaining Valid Permits
Among asylum seekers, 47% had expired documents at the time of arrest. Close to half (45%) of asylum seekers who reported holding expired documents when arrested said that their permit had expired after they were unable to access a refugee reception office as a result of long queues. These respondents visited a DHA office an average of five times to attempt to renew their documents.

An additional 58 individuals had attempted unsuccessfully to apply for asylum in South Africa. Close to a third (32%) of these individuals were unable to apply because of difficulties getting into a refugee reception office.

Some asylum seekers also encountered bureaucratic problems at DHA offices. These included lost files and appeal requests, inaccurate record-keeping, and problems replacing lost documents.

The experiences of some respondents echo these findings:

“*I am not happy with the Home Affairs administration. I don’t understand how two letters of appeal could go missing from the file, and now I am detained because they claim that I did not appeal. I even know the person I gave the letter to, but still my letters were not found in the file.*”

“*I am not wrong and my name is in the system. I don’t know why they are holding me here. The reason why I was arrested, I guess, is just to show the power of Home Affairs officials. I have a proper document and they put me here.*”

“*I went to DHA to get a new permit, since my permit had been stolen. I had an affidavit from the police, but they just arrested me. Being a foreigner, I wanted my documents to be in good order, only to be arrested and thrown into Lindela to rot.*”

The experiences of detainees highlight the ways in which administrative failures at DHA offices, particularly the refugee reception offices, are resulting in the detention and deportation of refugees and asylum seekers, as well as others who have attempted to comply with the law. Some of the issues reported in relation to administrative justice include:
 **Administrative Incoherence:** Several individuals said that they were carrying affidavits confirming that they had been unable to replace or renew their documents at the time of their arrest. The arresting officers did not recognise the legitimacy of these affidavits, resulting in their classification as illegal foreigners. These individuals both attempted to comply with the law, and obtained sworn affidavits to confirm their efforts.

 **Arbitrary and Abusive Arrests:** Some individuals reported being arrested at DHA offices when they attempted to replace lost documents. The stories told by respondents suggest that the decision to conduct an arrest at a reception office is usually an arbitrary one, often suggestive of corruption and abuse of power. As one detainee recounted:

  “I was on the queue with others waiting to renew my permit. People were disturbing the line, so the guard came and was pushing and hitting people. So I asked him why he was being unfair. He took me from the queue and said that I wanted to teach him how to do his job. He took my papers and went inside. Instead of renewing, he brought a document for me to sign and said I have to go to Lindela for my appeal. Since I did not understand English, I signed the papers and was brought to Lindela.”

 **Failure to Give Notice of Claim Rejection:** Many individuals arrived at a refugee reception office for renewal only to be told that their asylum claim had been rejected. They were then immediately arrested, rather than being given the standard 30-day period to sort out their affairs and leave the country.

 **Inconsistent Practices and Dubious Fraud Claims:** Other individuals who had applied for asylum at a DHA refugee reception office and believed their documents to be authentic were told that their documents were not genuine or carried a fraudulent stamp.

 **Lost and Delayed Appeals:** In a few instances, asylum seekers were arrested after having lodged appeals of their initial decisions. Because the
Refugee Appeal Board has waiting times stretching beyond a year,\textsuperscript{13} asylum seekers must repeatedly renew their permits while waiting for an appeal, or even an appeal date. Some respondents reported being arrested after they went to renew their permits and the refugee reception office could not locate their appeal request.

Experiences such as these suggest that asylum seekers and those wishing to apply for asylum are being detained and sent to Lindela for deportation, in violation of the international and domestic prohibition against refoulement. This situation, due to administrative failures and abuse, places these individuals at risk of grave human rights abuses.

**Detention Prior to Arrival at Lindela**

Under the Immigration Act, individuals may be held for up to 48 hours while their status as a legal or illegal foreigner is verified. The Act specifies that no one may be held for longer than 48 hours for purposes other than deportation (Section 34 (2)). The detention of an individual pending his or her classification as an illegal foreigner is subject to this 48 hour limit.

A large number of detainees (61\%), however, reported being detained for over 48 hours, in contravention of the law. On average, respondents spent 10 days in detention at a police station before being sent to Lindela.\textsuperscript{14} The vast majority of Lindela detainees we interviewed (90\%) spent some time in a police station before being taken to Lindela. Approximately 15\% of these individuals were taken to a second police station.

\textsuperscript{13} The overwhelming demand for appeals of asylum claims is in part the result of flawed decision-making by refugee status determination officers (for more information on the quality of status determination decisions in South Africa, see Amit, Roni. 2010. *Protection and Pragmatism: Addressing Administrative Failures in South Africa’s Refugee Status Determination Decisions*. Johannesburg: FMSP).

\textsuperscript{14} A small proportion (11\%) of detainees at Lindela were arrested for committing a crime rather than for their suspected immigration status. As these individuals were likely to have been detained for longer periods prior to their arrival at Lindela, they were eliminated from the sample for these questions. Additionally, respondents reporting 300 or more days in detention were treated as outliers and eliminated from the sample to avoid skewing of the average detention time.
Despite not being charged with any crime, close to one third (34%) of those held at a police station or prison after their arrest as suspected illegal foreigners were held together with ordinary prisoners or those awaiting trial. The areas used to hold those awaiting trial are particularly problematic in terms of overcrowding and non-adherence to the minimum standards of detention.\footnote{Lawyers for Human Rights. 2008. Monitoring Immigration Detention in South Africa. [Online] Available from: \url{http://www.lhr.org.za/sites/lhr.org.za/files/LHR%20detention%20monitoring%20report%202008.pdf}} Some respondents described being beaten by other prisoners. As one detainee recounted:

\begin{quote}
I was detained together with people who were not illegal migrants, who demanded money from me. When I failed to give them, they beat me up.
\end{quote}

Eleven percent of Lindela detainees reported suffering violence during their detention prior to arriving at Lindela.

Perpetrators of Violence Against Suspected Illegal Foreigners Detained at a Single Police Station

For detainees who were held at a single facility, police officers were the most likely to inflict violence, as shown in the pie chart above. For those held at two or more facilities, other detainees become the primary perpetrators of violence.
Those individuals on ARVs said that they were not receiving these medications during their initial detention. Individuals with a variety of other illnesses also did not receive the necessary medication. These illnesses included heart condition, rheumatism, and malaria.

Of 59 individuals who were on medications that they had to take regularly, only 10 respondents reported being able to take these medications while detained at the police station. In other words, 86% of those requiring regular medication did not receive it during their detention prior to arriving at Lindela.

**Classification as an Illegal Foreigner**

The Immigration Act specifies that an individual must be informed of:

- His or her classification as an illegal foreigner, and
- The accompanying right to request that the classification be reviewed.

Under the Regulations:

- In order to fulfil the above classification provisions of the Immigration Act, individuals must receive a prescribed form: Notification Regarding Right to Request Review by Minister (Form 1).

As described, Lindela operates under DHA’s authority to detain illegal foreigners. Accordingly, only those individuals who have been classified as illegal foreigners may be held at Lindela. DHA is not authorized under the law to detain at Lindela those individuals who have not been deemed illegal foreigners.
Irregularities in the Classification of Detainees

However, close to half (47%) of detainees surveyed were not told that they had been classified as illegal foreigners prior to being moved to Lindela. The fact that they were not informed of their status suggests that the required classification by an immigration official did not take place, though it is impossible to say with certainty. Procedural fairness, however, requires transparency in the decision to classify someone an illegal foreigner. A decision that occurs in the absence of notification, without any knowledge of the decision or the decisionmaking process, violates the administrative justice protections found in the Constitution and in PAJA and is essentially arbitrary.

Where the lack of notification does in fact indicate a failure to conduct the necessary classification, this, in part, is the result of two bureaucratic shortcomings:

✓ Because of resource constraints, immigration officers are not always available to go to police stations in order to classify someone as an illegal foreigner before he or she is sent to Lindela.16
✓ Problems with centralized record keeping at DHA offices often make it impossible for immigration officers to verify an individual’s status in response to an inquiry from a police officer.17

As a result of these problems with the verification process, individuals with valid immigration status may suffer extended detention periods and also may find themselves transported to Krugersdorp unnecessarily.

Irregularities in the Classification and Notification Process

Among those individuals who were classified as illegal foreigners before being sent to Lindela, the survey results suggest procedural irregularities in the classification process. Under the law, only immigration officers are authorized to

16 DHA officials confirmed that individuals were being sent to Lindela for verification of status because of resource constraints (Interim Lindela Feedback Meeting, 19 October 2009).
decide that someone is an illegal foreigner. In 40% of cases, however, a police officer told a detainee that he or she was being detained as an illegal foreigner.

The Immigration Regulations stipulate that a particular form must be used to inform detainees of their classification and of the right to request a review: Notification Regarding Right to Request Review by Minister (FORM 1). Of those 53% of respondents who were informed that they were being detained as an illegal foreigner before being sent to Lindela, 90% received no written notification and 84% said that they received no information regarding their right to appeal the decision to classify them as an illegal foreigner.

![Pie chart showing officials responsible for informing detainees of their classification as illegal foreigners.](chart.png)

**Officials Responsible for Informing Detainees of their Classification as Illegal Foreigners**

**Arrest and Initial Detention: Key Issues**
The arrest experiences recounted by detainees highlight various issues, including:

- Arrest and detention of foreigners with valid documents.
- Failure to take reasonable steps to verify immigration status.
- Failure to inform suspected illegal foreigners of the reason for their arrest.
Physical harm during the arrest process, and while in administrative detention.

Lack of access to phones and refusal to allow detained suspects to contact family or friends.

Systemic problems with DHA record-keeping and communication between DHA and the police, contributing to the arrest and detention of individuals with legal status.

Detention of suspected illegal foreigners for more than 48 hours, in violation of the law.

Detention of people held for immigration violations alongside criminals.

Failure to provide necessary medications in detention.

Irregularities in the classification process, including the failure to notify individuals of their classification as illegal foreigners and of their right to review the decision to classify them as illegal foreigners.

Failure to classify individuals as illegal foreigners before transporting them to Lindela.

These issues illustrate that problems in the detention and deportation process are not limited to the actions of DHA alone. Accordingly, reform will require coordination and cooperation with other departments, particularly the police.

Key among the problems identified is the lack of effective verification of an individual’s immigration status prior to being sent to Lindela. This is due to a variety of causes, including corruption and abuse of power, insufficient resources, and the failure to adhere to the legal requirement affording individuals an opportunity to confirm their status with supporting documents where reasonable and practicable.

As a result of these problems, individuals with legal immigration status often find themselves at Lindela. This increases the burden on DHA, in terms of verification, transport, and administration.
Detention at Lindela

“I am worried because I don’t know what is happening. I don’t have any information about my case and I don’t know who to see for any follow up. The problem is that they don’t tell people what is happening. We sign documents without understanding them. I don’t have any contact with the people who can assist me (my friends and family). No one also is trying to check my status with the DHA.”

The Constitution, PAJA, and the Immigration Act all contain procedural guarantees ensuring that the rights of those held in detention, including illegal foreigners, are protected. Yet, interviews with detainees revealed general confusion about their situation and their legal rights in detention at Lindela. Few were exposed to proper procedures or provided with the necessary notifications as required by law. Findings revealing irregularities at each stage of the detention and deportation path are presented below. They show that DHA does not regularly follow the administrative processes established by law, with the result that detentions at Lindela are taking on an extra-legal character.

Classification as an Illegal Foreigner

As disclosed in the previous section, close to half of detainees arrive at Lindela without being informed of their classification as illegal foreigners. DHA officials have acknowledged that some individuals are sent to Lindela without being classified as illegal foreigners, but they stated that immigration officers at Lindela conduct the verification process and classify individuals as illegal foreigners or release them within 48 hours of their arrival at the detention centre.\(^\text{18}\)

Failure to Verify at Lindela

Survey results, however, indicate that the verification process does not always take place once an individual arrives at Lindela, resulting in the detention of those legally in the country, and increasing the risk of refoulement. Of 322

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\(^\text{18}\) Interim Lindela Feedback Meeting, 19 October 2009
respondents who arrived at Lindela without being informed of their classification as an illegal foreigner, only 53 (16%) were subsequently informed of the classification. Overall, 39% were never informed of their classification. Presumably, they remained unaware of the exact nature of their legal situation, or the accompanying procedures and rights.

**Adherence to Legal Procedures at Lindela**

“I have just to point out that the immigration officers do not know and are not aware of their duties because when we ask them our rights, they do not answer. What they do best is to ill-treat us through insulting us and violence.”

The research findings reveal that many of the procedural requirements applicable to persons detained for the purpose of deportation are not being carried out. In particular, the requirements found in Section 34 of the Immigration Act are regularly neglected. This provision empowers an immigration officer to detain an individual pending deportation subject to the following conditions:

- The individual must be notified in writing of the decision to deport him or her, and of his or her right to appeal the decision.
- The individual can request at any time that his or her detention for the purposes of deportation be confirmed by a warrant of the court.
- The individual should be released immediately if a warrant is not issued within 48 hours.
- The individual should be informed of these rights immediately upon arrest or immediately thereafter, and in a language the individual understands when practicable.

In order to uphold these rights, the Immigration Act and Regulations set out a number of prescribed forms. Foreigners who are less familiar with the laws and procedures of the country are particularly in need of these procedural guarantees that ensure that they are aware of their rights. Unfortunately, these forms did not appear to be in regular use, and a large number of detainees were not familiar with the forms, or with the rights they describe. Those who were aware
of their rights nonetheless experienced difficulties, either because they did not know how, or were unable, to exercise these rights.

In addition, the Act requires that the rights be communicated in a language the detainee understands where possible. Yet, despite the fact that a quarter of detainees reported not being comfortable in English, translation services are not provided to detainees at Lindela.

**Procedural Failures in Notifications to Detainees**

**Notification of Reasons for Detention and Rights of Review**

As noted in the section on initial arrest and detention, only a small margin (6%) of surveyed detainees at Lindela received the statutory notification of their classification as an illegal foreigner and their right to request a review of their classification prior to arriving at Lindela. In addition, close to half (47%) were not told that they were being taken to Lindela for the purpose of deportation.

The majority of detainees remained uninformed even after their arrival at Lindela. Of those detainees who had not previously been informed of their classification as an illegal foreigner, most (84%) still were not informed of their classification after arrival at Lindela. Of those who had not previously been
informed that they were being taken to Lindela for the purpose of deportation, 64% were not informed once they arrived at Lindela. Overall, an overwhelming majority of respondents (92%) said that they had not received the statutory notification of their classification as an illegal foreigner and the right to request review, and 90% said that they had received no information regarding their rights to appeal the decision to classify them as an illegal foreigner.

Detainees remained largely uninformed about their situation and accompanying rights. An overwhelming 94% of surveyed detainees were not told anything about their rights with respect to the deportation process. As a result, 64% did not even know that they had a right to appeal the decision to deport them.

**Notice of Deportation**

Under the Regulations, detainees should be provided with a Notice of Deportation (Form 29) to comply with the requirements of Section 34 of the Immigration Act. This notice informs the detainee of the rights described above, and requires him or her to choose among the following options:

- ✓ Remain in custody to await deportation at the first reasonable opportunity,
- ✓ Appeal the deportation decision, or
- ✓ Have the detention confirmed by a warrant of the court.

Most respondents (77%) did not receive this form, while 94% of respondents said that they were not told anything about their rights with respect to the deportation process. The lack of notification, combined with inadequate communication of rights, contributes to the high proportion (64%) of surveyed detainees who were unaware of their right to appeal the decision to deport them.

Among those who did receive a notice of deportation, 87% said that they were not given the opportunity to choose from the options on the form. In addition, 71% of those who signed the notice of deportation did not understand what they were signing.
Irregularities in Issuing of Notices of Deportation

A number of detainees who received a Notice of Deportation indicated that they were forced or intimidated into signing, in many cases through threats of indefinite detention. While the quantitative questions did not directly ask detainees whether they were forced to sign, a review of the qualitative responses indicates that at least 13% of detainees were forced to sign the notice of deportation.

Did the officials say anything about what would happen to you if you did not sign this document? [Researcher shows respondent a copy of the Notice of Deportation Form]

“The Immigration Officer slapped me when I refused to sign the papers which say I must be deported. The Immigration Officer forced me to sign the papers.”

“The official said that if I did not sign the form, he would sign it for me, so I just signed.”

“They forced me to sign it with one hand in handcuffs. I didn’t have an option to choose or reject. I didn’t even know what I was signing, as I was not allowed to read.”

“They said if I refused to sign, I would be detained forever.”
“They said if I don’t sign the papers, I would stay at the police station for one year and nothing would happen to me, particularly if I chose to appeal against the decisions.”

“They told me if you don’t sign it, we’re gonna beat you up.”

“They said that if I do not sign the form, I would remain in custody until I die.”

**Review of Detention**

As described earlier, the Immigration Act entitles a detainee to request from any officer at any time that his or her detention be confirmed by a warrant of the court. This right becomes meaningless, however, if detainees are unaware of it or are not able to avail themselves of the review procedure. An overwhelming 75% of respondents were not aware that they could ask a court to review their detention. Among the other 25%, 17 respondents reported that they had asked a court to review their detention. None of them, however, had seen a warrant confirming their detention or received any indication that a court had in fact reviewed their detention. The Immigration Act further states that an individual must be released within 48 hours of making such a request if no warrant is produced, but 11 of these individuals had been waiting for over 48 hours and still remained in detention.

Of the quarter of detainees who were aware of the right to request a court review, 91% did not make such a request. Some expressed reluctance to institute court proceedings for fear that it would prolong their detention indefinitely. Others failed to request a review because

- They didn’t know how to,
- They were not allowed to, or
- They did not have access to a pen and paper.

As the quotes below reveal, many detainees are unaware of their rights and officials at Lindela are not informing them about the process. Moreover, those detainees who are aware of their rights are unable to exercise them.

*Could you tell me why you never asked a court to review your detention?*
“I have asked, but they shouted at me and refused me from doing anything. They said they cannot do anything; they are only here to deport people.”

“I have no chance to communicate to the court. There is no way for us to do so. They don’t even say anything to us. I don’t know how the process works.”

“Because I am locked here and I cannot go out to do that. I don’t know also how to do it from here. No one explained how the process works.”

“I did not know that the court facility is available. I did not go to anyone who knows about these facilities. The main problem is communication. I do not know or understand English.”

“Because I do not want to indefinitely remain in detention.”

“Because I have never been given a chance to address the court or write something for a judge.”

“Nobody has explained that to me and I have never given any forms or chance to do so.”

Prolonged and Indefinite Detention

“I have frustrations with the deportation process. When people get arrested, they are promised that they will get deported as early as possible. But the detainees stay here more than the promised time of deportation. It is really sickening and frustrating. Whenever one asks why they take as long as three months in detention, there is no proper explanation to the question.”

The Immigration Act and Regulations specify that:

✓ No one may be held for more than 30 days without the detaining officer obtaining a warrant of the court (Section 34 of Immigration Act).
✓ Such a warrant must be based on good and reasonable grounds, and may only extend such a detention for a maximum period of 90 days, for a total of 120 days (Section 34 of Immigration Act).
✓ An immigration officer who wishes to extend a detention under this provision must inform the detainee of the officer’s intention to extend the detention (Immigration Regulation 28(4)(a)).
The detainee must also be informed of his right to make written representations as to why his or her detention should not be extended (Form 31: Notification of Extension of Detention Whilst Awaiting Deportation).

**Provision of Notice for Detentions Over 30 Days**

FMSP encountered 218 individuals who had been held in detention for over 30 days. As stated above, the law demands that detainees receive written notice of the intention to extend their detention. Only 8 of them (five percent of all detainees held over 30 days) had ever received the required written notice that officials intended to obtain a warrant to extend their detention.

While 25% of detainees were aware that they could write something for a judge or magistrate explaining why their detentions should not be extended, they would nonetheless be unable to exercise this right if the detaining officials did not provide the required notice of the intention to extend the detention.

**Extra-Legal Detention Periods**

FMSP’s researchers interviewed 38 individuals who had been held at Lindela for over 120 days. This number doubles when counted from the time of arrest. Allowing for the 48 hour verification period, 76 respondents were held for over 122 days.¹⁹ Yet, only 6 of them said that they had received information about how long they would be detained or when they would be deported. None were aware of any judicial process or oversight of their detentions.

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¹⁹ Detainees who were initially detained for a criminal offense were excluded from these calculations.
As a consequence of their prolonged detention, many detainees worried about whether their children or spouses were managing to survive without them. Many also expressed concern over the fate of their businesses, or their possessions and accommodation, while they were being detained.

According to these numbers, 5% of detainees have been in Lindela for over 120 days, while 10% have been in detention for over 122 days since the time of arrest. An analysis of the detainee lists provided by DHA during the research period confirms these results. These lists show that, on average, 6% of detainees held at Lindela have been there for over 120 days. An average of 16 detainees (1.4%) in detention on any given day have been held for over a year. The longest period of detention lasted for approximately 1050 days, or close to three years.²⁰ Details from these lists are included in the appendix.

²⁰ Because lists were not obtained for every day, the exact release date could not be ascertained. This number is based on the calculation from the date of the last list on which the detainee’s name appears. The next list was dated one month later.
Detentions not for the Purpose of Deportation

The detainees lists also revealed that detentions of Zimbabweans continued even after the DHA’s announcement in April, 2009 that it was halting deportations to Zimbabwe. During the nine months following this announcement, an average of 248 Zimbabweans were in detention at Lindela on any given day. Many were held for several weeks and some were held for longer. These details are also included in the appendix.

The continued detention of Zimbabweans highlights policy failures in DHA’s attempts to address the migration flows resulting from the humanitarian crisis in Zimbabwe. While DHA took positive steps to prevent the deportation of Zimbabweans, no effort was made to provide these migrants with legal status. As a result, they remained subject to arrest and detention as illegal foreigners. This created a legally ambiguous situation: Lindela is authorized only for detentions pending deportation, but Zimbabweans who were detained there as illegal foreigners could not be deported.

Release and Re-Arrest

In a disturbing trend, 18 people reported being released from Lindela and then being immediately re-arrested. While the reason for this practice is not clear, it could allow immigration officials to re-start the ‘detention clock’ with a new admission date. This would allow them to circumvent implementation of the procedures that are required after the running of certain time periods.

The failure to adhere to the required legal procedures means that detentions at Lindela are effectively occurring outside of the law, with no judicial oversight or accountability. Despite the prolonged and indefinite periods of detention, 97% of respondents said that they had never appeared in court, or before a judge or magistrate. In the absence of judicial oversight or adherence to proper procedures, such detentions are at risk of becoming extra-legal.
Asylum Seekers in Lindela and the Risk of Refoulement

“My father was kidnapped by the rebels in 2004 because he was a mechanic. When the refugee camp was attacked, my father’s body was found among the bodies at the camp. Since then, they have come to our home to say that since my father was in the refugee camp, they thought I was also part of the rebels and the government was after me. That is why I left my country. Deporting me back to Burundi means death to me.”

“I am scared to be deported since back home in Ethiopia my family was killed. I am sure that if I go home they will kill me. I wish something could be done so that I remain here where I feel safe. I was once arrested during the time when my father was killed. I only survived by escaping from the hospital where I was admitted. My brother was killed also and our house was burnt down.”

Asylum seekers inside Lindela face a particularly precarious situation as a result of the lack of legal processes inside the facility. Unable to exercise their rights, they risk being sent back home before a final decision is made on their asylum claim. This practice goes against the protections found in both South Africa’s refugee legislation and in international law. It also risks subjecting them to human rights abuses.

Detention of Asylum Seekers

A total of 257 surveyed detainees (40%) identified themselves as asylum seekers or refugees.21 When all respondents were asked what would happen to them if they were returned to their country of origin, 29% reported that their lives would be in danger or that they would be persecuted, as shown in the pie chart below. Some of those who chose the “other” category also indicated that it was not safe for them to return to their home country.

21 This statistic is based on answers given to a survey question that enquired about detainees’ documentation at the time of arrest. When taken as a percentage of all respondents (not just those who answered the question), the proportion is 35%.
Among those who anticipated persecution or a threat to their life if returned to their country of origin, 39% attempted to explain their fear to an official. Respondents reported the following primary responses by officials:

- The majority (51%) were ignored by officials.
- Nine percent were told by officials that their fate after deportation was of no consequence.
- Four percent could not convince officials to believe their story.
- Four percent were told that they would not be deported, but they continued to be held at Lindela and their legal status remained unclear.

Officials at Lindela stated that they take detainees from the centre to the refugee reception offices twice a week, and that they take about 15-20 people a month. Among the respondents that FMSP interviewed, 58 said that following their detention, they told detaining officials that they could not return to their home countries and that they wished to apply for asylum. Only 14 people – less than a

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22 Meeting with DHA officials at Lindela, 27 January 2009.
quarter (24%) of those who expressed a desire to seek asylum – were able to apply. Of these 14 people, eight obtained an asylum seeker permit, but they continued to be held in detention at Lindela.

The Risk of Refoulement

As the previous section indicates, both asylum seekers and individuals who wish to claim asylum are being detained at South Africa’s detention facility for illegal foreigners. This poses a risk that these individuals will be subjected to refoulement – returned to a country where they face danger or persecution.

Violation of the non-refoulement principle poses a grave human rights concern. The prohibition against refoulement applies to all asylum seekers, regardless of the validity of their documents. This means that no asylum seeker can be returned to his or her country of origin, where he may face persecution, until a final decision has been reached on his or her asylum claim.

Particularly troubling is the fact that, once inside Lindela, detainees generally have regular contact only with the security guards employed by Bosasa. These guards become, in effect, gatekeepers between detainees and the DHA systems that guard against refoulement. As one respondent observed:

“Here, we are just kept without knowing what will happen to us. Whenever you try to talk to DHA officials, they send a security guard to either push you back or beat and spray you if you do not agree with them.”

Bosasa employees are not trained in immigration law, nor are they authorized to implement the provisions of the Immigration or Refugees Acts. Yet, these employees control the fate of detained individuals who claim asylum, exposing them to deportation and refoulement without taking steps to ensure that a proper status determination process takes place prior to deportation, as required
by law. As a result, individuals with valid asylum claims may be returned to life threatening situations without undergoing the proper legal procedure.\textsuperscript{23}

Moreover, recent legal cases suggest that individuals with asylum seeker status often require legal intervention to secure their release.\textsuperscript{24} This increases the possibility that many asylum seekers are being illegally deported and returned to the persecution from which they fled – in violation of both international and domestic law.

**Detention at Lindela: Key Issues**

The experiences recounted by detainees highlight various issues, including:

- Irregularities in the classification of illegal foreigners and notification of their rights of review.
- Failure to give effect to the requirements of Section 34 of the Immigration Act, including:
  - Failure to notify detainees in writing of the decision to deport him/her.
  - Failure to release detainees if a warrant confirming their detention is not issued within 48 hours of a request.
  - Failure to inform detainees of their rights of review and appeal under Section 34 of the Immigration Act.
  - Failure to use the statutory forms provided by the Immigration Regulations.
  - Abuses of due process in the issuing of notices of deportation, including coercive strategies to ensure that detainees select unconditional deportation rather than a warrant of confirmation or appeal.
  - Extension of detentions beyond 30 days without the proper warrants and notifications.
- Prolonged and indefinite detentions, including
  - Detentions without any procedural checks or judicial oversight.

\textsuperscript{23} In the *Bakumundo* case (cited in footnote 3), the court found that the applicant was illegally deported, despite being an asylum seeker, in violation of the non-refoulement principle.

\textsuperscript{24} See cases cited in footnotes 2 and 3 above.
- Detention periods that exceed the legislated 120-day maximum
- Detention and possible deportation of asylum seekers, in violation of the prohibition against refoulement.
- Improper delegation to Bosasa staff, who act as gatekeepers between detainees and DHA processes.
Conditions at Lindela are generally satisfactory. However, room for improvement remains. Many detainees complained of dirty blankets and problems with lice. In addition, detainees often arrived at Lindela with only the clothes they were wearing when arrested, and many complained about not having access to clean clothes.

Annexure B of the Regulations sets out the Minimum Standards of Detention. The most relevant provisions are summarized below.

### Minimum Standards of Detention (Immigration Regulations, Annexure B)

- Every detainee
  - Shall have access to basic health facilities (Section 1(a)).
  - Shall be provided with a bed, mattress, and at least one blanket (Section 1(b)).
  - Shall be provided with an adequate balanced diet (Section 2(a))
- The diet shall make provisions for detainees who require a special diet because of their physical condition (Section 2(b)).
- Food should be served at intervals not less than four and a half hours and not more than 14 hours between the evening meal and breakfast during a 24 hour period (Section 2(d)).
- The Department shall provide the means for every detainee to keep his or her person, clothing, bedding and room clean and tidy (Section 3).

### Food

Lindela officials have stated that detainees receive three meals a day, but most respondents (89%) reported receiving only 2 meals a day. This is because lunch and supper are served together. According to Lindela officials, breakfast is served at 6 and lunch/supper is served between 1-4 pm.\(^{25}\)

The Minimum Standards of Detention state that breakfast should be served no more than 14 hours after the evening meal (Section 2(d)). Any individual who is

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\(^{25}\) Meeting with DHA officials at Lindela, 29 January 2009.
served before 4 pm in the above interval would face more than 14 hours before breakfast, in violation of these standards.

Almost one-third (32%) of respondents said that they had special dietary requirements based on culture, religion, or medical condition. While a majority said that their dietary needs were met, 47% of those who had special requirements said that the food at Lindela did not meet these requirements.

Access to Basic Items in Detention

Although Lindela provides standard necessities, detainees complained about having to purchase additional quantities of basic goods and having no money with which to make these purchases. Less than a quarter of detainees (23%), for example, had enough money to use the phone.

Access to Basic Items at Lindela Detention Centre

The Minimum Standards also require DHA to provide detainees with the means to keep their person, clothing, bedding, and room clean. While most detainees
were provided with these items, several said the provisions were not sufficient, and some had to buy additional quantities, as illustrated in the bar chart above.

Clean clothes were particularly problematic because many detainees arrived at Lindela without a change of clothes and had no opportunity to acquire additional clothing. This creates a privacy dilemma when such detainees wish to wash their single set of clothes. Detainees also complained about sleeping on bare mattresses, with only one blanket.

**Accommodation of Religious Practice**

The majority of respondents (96%) said that they were religious. Of this religious group, most (91%) said that they were able to pray regularly. The remaining nine percent cited lack of privacy and quiet places, as well as the need to be clean and have clean clothes, as obstacles to regular prayer.

**Medical Care**

Many respondents expressed concern over the provision of medical care at Lindela. Over half (59%) had tried to go to the facility’s clinic, with the following results:

- ✓ 3% did not get access because officials ignored their request to go to the clinic.
- ✓ 16% did not get access to the clinic and were given medication or bandages by the Lindela/Bosasa staff.
- ✓ 12% saw a doctor.
- ✓ 29% saw a nurse.

A total of 29% of detainees who sought assistance from the clinic received pain medication without any attempt to diagnose their condition. Among respondents who are on chronic medication, including ARVs, 62% reported that they did not have access to these medications at Lindela.

Of those who tried to seek medical care, 54% did not feel that their condition had received adequate attention. Many complained about the lack of diagnosis and the provision of inappropriate medication, as detailed in the box below:
Incidents of Violence

Lindela has been plagued by riots in the past few years, often motivated by detainees’ frustrations over prolonged detentions and a lack of clear information regarding their situation. Security guards react to these riots with rubber bullets and beatings, and these responses, though often brutal, are not subject to any outside monitoring.  

Violence between detainees is also an issue. A total of 79 people (11% of the sample) reported being hurt physically since arriving at Lindela. Most of these incidents (76%) involved Bosasa staff, while 4% involved DHA staff and another 18% involved other detainees.

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See, e.g., "Mayhem at Lindela Deportation Centre" at http://www.thestar.co.za/?fSectionId=&fArticleId=nw20100128164303486C723481 (28 January 2010).
Perpetrators of Violence Against Detainees at Lindela

Below are some of the experiences of violence recounted by respondents:

Can you explain what happened [when someone hurt you physically]?

“I was asking about our rights. I told them I want to go to DHA, but was not allowed by Lindela staff. I requested that Home Affairs should come to Lindela so that we would get our asylum, but they beat me up for saying that.”

“One day I was very sick. I was sleeping and I was told to go out for counting. When I told them that I was unable to do so, they beat me up with a belt and a baton.”

“One guy came to me and claimed that I had stolen his money, so he told the officials and they just came to me and clapped me. Then they took off my clothes at the office and left me naked and they told me to go outside. I slept the night naked.”

“The security guard hit/slapped me in the face when I requested for a blanket.”

“The security sometimes apply violence on us because we are foreigners. If you try to speak to them they shout at you.”

“I was taken to a hidden room and beaten up by a guard for being rude and shouting at him after he refused to take me to immigration officials.”

“The other day I came out of the cell without my card and when the Bosasa security found out they beat me. They were four of them that did this.”
Conditions of Detention: Key Issues

With regard to conditions during detention, the survey found generally satisfactory conditions, subject to the following exceptions:

- Failure to adhere to the legally required time periods between meals.
- Inadequate provision of certain basic items such as bath soap and clean clothes, in violation of human dignity.
- Insufficient bedding.
- Inadequate provision of chronic medication to detainees.
- Problems with access and quality of care at the clinic.
- Reports of violence, primarily inflicted by Lindela staff.
Incidents of Corruption

Corruption was reported at multiple points in the arrest and detention process. Many asylum seekers referred to Lindela in particular as a money-making enterprise.

Slightly less than a quarter of detainees (21%) said that they had been asked for money at some point since first being stopped in order to avoid being detained, deported or physically harmed. These requests were made by a police officer (50%), a DHA official (35%) or a Bosasa employee (8%). At Lindela, respondents reported being asked for money both to secure their release, and to assure a speedier deportation to avoid waiting for months to be deported.

Respondents describe some of their experiences with corruption:

27The categories ‘Other’ and ‘Lindela/Bosasa Staff’ in the above chart both totalled 7.5, resulting in a total of 101% after rounding.
Can you explain what happened [when someone asked you for money to avoid being detained, deported or physically harmed]?

“I went to the Home Affairs Pretoria to drop off my friend. A DHA official asked me for R50 but when I told him that I did not have he ordered me to go inside and he locked me up until the afternoon. Then I was taken to Lindela. My asylum was still valid.”

“A Lindela staff member told me for R20,000 I could be released but I couldn’t afford to pay this amount.”

“At Home Affairs just before I was arrested the immigration officer asked for R20,000. I told him I only had R5,000 and he refused to have that amount. That is when he said that I was going to be arrested.”

“At Jeppe we were told this is the last place to make a plan and if we didn’t we would go to Lindela. I had no money to give them at the time. So we were taken to Lindela. Those with money were released.”

“The Home Affairs official told me that if I had money he can make a plan so that I will be released.”

“The police officer who arrested me wanted some money in order to release me. He took away my valid permit after I told him that I don’t have money. He never returned it to me.”

“When I arrived at Lindela, before getting access to the cells, one immigration officer proposed to let me go if I could provide R4,000 or R5,000. Unfortunately, I could not.”

“A Home Affairs Officer at Crown Mines asked me for R2,000 so that she can give me Section 22 permit.”
Many detainees expressed defeat as a result of their situation. Worn down by the uncertainty of their situation, they longed for deportation to put an end to their seemingly endless detentions. For others, the uncertainty and lack of legal procedures led to great anxiety that they would be returned to the dangers from which they had fled as asylum seekers.

The law makes no provision for indefinite or prolonged administrative detention. To the contrary, administrative detentions for immigration purposes are governed by very specific legal procedures. The fact that these procedures are not being implemented has given rise to a situation of detentions occurring outside of the law. As a result, DHA is subjecting individuals to prolonged, indefinite detentions without any judicial oversight or access to the courts. Few detainees are able to exercise the rights afforded them in the law. By identifying the gaps in the administrative process, the research findings described above can assist DHA to carry out its duties under the Immigration Act in accordance with the law, ensuring an administrative process that is both cost-effective and procedurally fair.

Procedural protections hold little meaning if the individuals that they are meant to protect are either unaware of these protections, or unable to exercise them—rendering futile the well-developed system of administrative justice. If legal provisions designed to protect the rights of individuals against the government are not given effect, South Africa risks returning to the extra-legal detentions practiced by the pre-democratic regime – this time targeting foreigners rather than citizens. The Constitution extends the rights protections of the democratic
state to all individuals, citizen and foreigner alike. While the country is entitled to manage migration by detaining and deporting illegal foreigners, it is not entitled to abandon the law in order to do so.

Summary of Key Issues

**Arrest and Initial Detention**

- Arrest and detention of foreigners with valid documents.
- Failure to take reasonable steps to verify immigration status.
- Failure to inform suspected illegal foreigners of the reason for their arrest.
- Physical harm during the arrest process, and while in administrative detention.
- Lack of access to phones and refusal to allow detained suspects to contact family or friends.
- Systemic problems with DHA record-keeping and communication between DHA and the police, contributing to the arrest and detention of individuals with legal status.
- Detention of suspected illegal foreigners for more than 48 hours, in violation of the law.
- Detention of people held for immigration violations alongside criminals.
- Failure to provide necessary medications in detention.
- Irregularities in the classification process, including the failure to notify individuals of their classification as illegal foreigners and of their right to review the decision to classify them as illegal foreigners.
- Failure to classify individuals as illegal foreigners before transporting them to Lindela.

**Detention at Lindela**

- Irregularities in the classification of illegal foreigners and notification of their rights of review.
- Failure to give effect to the requirements of Section 34 of the Immigration Act, including:
  - Failure to notify detainees in writing of the decision to deport him/her.
Failure to release detainees if a warrant confirming their detention is not issued within 48 hours of a request.

Failure to inform detainees of their rights of review and appeal under Section 34 of the Immigration Act.

Failure to use the statutory forms provided by the Immigration Regulations.

Abuses of due process in the issuing of notices of deportation, including coercive strategies to ensure that detainees select unconditional deportation rather than a warrant of confirmation or appeal.

Extension of detentions beyond 30 days without the proper warrants and notifications.

✓ Prolonged and indefinite detentions, including
  o Detentions without any procedural checks or judicial oversight
  o Detention periods that exceed the legislated 120-day maximum

✓ Detention and possible deportation of asylum seekers, in violation of the prohibition against refoulement.

✓ Improper delegation to Bosasa staff, who act as gatekeepers between detainees and DHA processes.

**Conditions of Detention**

✓ Failure to adhere to the legally required time periods between meals.

✓ Inadequate provision of certain basic items such as bath soap and clean clothes, in violation of human dignity.

✓ Insufficient bedding.

✓ Inadequate provision of chronic medication to detainees.

✓ Problems with access and quality of care at the clinic.

✓ Reports of violence, primarily inflicted by Lindela staff.

**Recommendations**

The following recommendations are aimed at protecting the rights of detainees, ensuring adherence to the law, and minimizing both legal costs and costs of detention that arise when proper legal procedures are not followed.
Arrest and Initial Detention

✓ Address illegal practices by implementing accountability and disciplinary measures against officers who arrest individuals carrying valid immigration documents.

✓ Avoid the costs of unnecessary detentions by taking measures to encourage police and immigration officers to allow suspected illegal foreigners to retrieve documents that verify their immigration status when these are nearby.

✓ Avoid the costs of unnecessary detentions by allowing individuals to contact family members and others who can assist in verifying their status.

✓ Centralize record keeping from the various DHA offices to ensure that police and immigration officers can easily verify an individual’s status within the legally required 48-hour period.

✓ Streamline operations at DHA offices so that individuals are able to access these offices and maintain valid documents without encountering bureaucratic obstacles.

✓ Make sure that all illegal foreigner classifications are done properly and are accompanied by the required notification. Classifications that do not follow regular procedures and are not accompanied by notifications are in effect arbitrary.

By creating a more efficient verification process, implementation of the above measures will minimize both the time that administrative detainees are held together with regular criminals, and the occurrence of illegal and unnecessary detentions.

Detention at Lindela

✓ Implement checks to ensure that all illegal foreigner classifications have been done in accordance with the legal requirements of the Immigration Act. This means that the classification must be done by an immigration
officer and the individual must receive the required notification form before being admitted to Lindela.

✓ Release all individuals at Lindela who are not being held for the purposes of deportation. This includes detained asylum seekers who, by law, cannot be deported until final adjudication of their asylum claim.28

✓ Alleviate illegal practices by providing every detainee with the notice of deportation form and allowing detainees to freely select from the options on the form, including challenging their deportation, without the threat of indefinite detention.

✓ Stop the illegal denial of rights by providing detainees with the means and opportunity to exercise their legally mandated rights, including their rights of appeal and review. This includes:

  o Taking steps to ensure that they understand their rights,
  o Providing access to pen and paper,
  o Facilitating access to legal counsellors and others,
  o Eliminating institutional barriers and providing a mechanism for detainees to lodge their appeals and requests for review from inside Lindela.

✓ Establish judicial oversight of all detentions in excess of 30 days.

✓ Eliminate illegal detentions by ensuring that the proper warrants are obtained before any detention is extended.

✓ Release all detainees held in excess of 120 days.

✓ Avoid the illegal delegation of authority by making sure that all detainees have access to immigration officials inside Lindela, particularly individuals who claim that they will face grave danger if deported and are protected by the non-refoulement principle.

28 The Supreme Court of Appeal has recently confirmed this view and explained that this includes exhausting all rights of review and appeal under both the Refugees Act and the Promotion of Administrative Justice Act. Mustafa Aman Arse v Minister of Home Affairs and Two Others, Case No. 025/2010, at Para 19, and Para 2(b) of the Order (24 February 2010).
✓ Train Bosasa staff on the law and the rights of detainees so that they do not improperly and illegally prevent detainees from exercising their rights.

✓ Hold Bosasa staff accountable for rights violations and contraventions of the law.

**Conditions of Detention**

✓ Provide detainees with three meals per day at the legally prescribed intervals.

✓ Increase the provision of basic items to enable detainees to meet the minimum standards of cleanliness and to have access to clean and sufficient bedding.

✓ Ensure that detainees on chronic medications receive these medications while in detention.

✓ Improve access to and quality of care at the clinic, including the range of available medicines.

✓ Establish monitoring and oversight of Lindela and Bosasa staff to prevent violence against detainees.
## Demographics

### Phase 1 (March 2009 – July 2009)

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malawi</td>
<td>2%</td>
</tr>
<tr>
<td>DRC</td>
<td>2%</td>
</tr>
<tr>
<td>Lesotho</td>
<td>3%</td>
</tr>
<tr>
<td>Angola</td>
<td>4%</td>
</tr>
<tr>
<td>Mozambique</td>
<td>4%</td>
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<tr>
<td>Bangladesh</td>
<td>5%</td>
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<tr>
<td>Burundi</td>
<td>11%</td>
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<tr>
<td>Tanzania</td>
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<tr>
<td>Nigeria</td>
<td>16%</td>
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<tr>
<td>Zimbabwe</td>
<td>23%</td>
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### Phase 2 (September 2009 – February 2010)

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Lesotho</td>
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<tr>
<td>Mozambique</td>
<td>5%</td>
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<tr>
<td>Pakistan</td>
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<tr>
<td>Nigeria</td>
<td>10%</td>
</tr>
<tr>
<td>DRC</td>
<td>13%</td>
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</table>
Arrests of Detainees

**Phase 1**
- SAPS: 52%
- DHA: 38%
- Metro: 4%
- Other: 6%

**Phase 2**
- SAPS: 27%
- DHA: 66%
- Metro: 1%
- Other: 3%
Documentation

**Phase 1**

<table>
<thead>
<tr>
<th>Primary documentation held by Arrestees (% Valid Represented by White Bar)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transit Permit</td>
</tr>
<tr>
<td>Refugee ID</td>
</tr>
<tr>
<td>Work Permit</td>
</tr>
<tr>
<td>SA ID Book</td>
</tr>
<tr>
<td>Spousal Permit</td>
</tr>
<tr>
<td>Other</td>
</tr>
<tr>
<td>Tourist Visa</td>
</tr>
<tr>
<td>Undocumented</td>
</tr>
<tr>
<td>SA passport</td>
</tr>
<tr>
<td>Asylum Permit</td>
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</table>

**Phase 2**

<table>
<thead>
<tr>
<th>Primary documentation held by Arrestees (% Valid Represented by White Bar)</th>
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<tbody>
<tr>
<td>Transit Permit</td>
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</tr>
<tr>
<td>Undocumented</td>
</tr>
<tr>
<td>Asylum Permit</td>
</tr>
</tbody>
</table>
Adherence to Legal Procedures at Lindela

**Phase 1**

- Did Not Receive Notification Regarding Right to Request Review by Minister: 92%
- Did Not Receive Notice of Deportation: 79%
- Not Informed of Right to Appeal Classification as Illegal Foreigner: 88%
- Not Aware of Right to Request Court Review of Detention: 77%

**Phase 2**

- Did Not Receive Notification Regarding Right to Request Review by Minister: 93%
- Did Not Receive Notice of Deportation: 75%
- Not Informed of Right to Appeal Classification as Illegal Foreigner: 82%
- Not Aware of Right to Request Court Review of Detention: 73%
Due Process for Respondents in Prolonged Detention

Phase 1

Held at Lindela for Over 30 days

Held at Lindela for Over 120 days
Held at Lindela for Over 30 days

- Total: 109 Detainees
  - No Notification of Extension: 96%
  - Never appeared before a judge or magistrate: 99%

Held at Lindela for Over 120 days

- Total: 24 Detainees
  - No Notification of extension: 96%
  - Never Appeared before a judge or magistrate: 100%
The bar graph above shows the number of detainees held for over 120 days as compared to the total Lindela population on days for which the research team received detainees lists. The line graph below provides a more accurate graphic representation of the pattern of prolonged detentions over time, by using standardised time intervals.
Prolonged Detentions Tracked Over Time (as a Proportion of Total Lindela Population)

Zimbabweans in Detention Tracked Across Phases

- **Total Number of Zimbabweans in Detention**

Numbers of Zimbabweans Held at Lindela Over an 11-Month Period
Asylum Seekers in Detention

Phase 1

(133 Asylum Seekers)

- Other, 17%
- Nothing will happen to me, 31%
- I have no family there, 7%
- I will not have a job/money, 19%
- I will be persecuted/mistreated, 4%
- My life will be threatened, 21%

Expected Fate of Detainees should they be Returned to Country of Origin

Phase 2

(110 Asylum Seekers)

- Other, 14%
- Nothing will happen to me, 28%
- I have no family there, 14%
- I will not have a job/money, 13%
- I will be persecuted/mistreated, 8%
- My life will be threatened, 25%

Expected Fate of Detainees should they be Returned to Country of Origin
The Forced Migration Studies Programme

The University of the Witwatersrand, Johannesburg

Founded in 1993, the Forced Migration Studies Programme at Wits University is Africa’s premier institution for research and training on migration, displacement, and social transformation. With an internationally trained staff and students from across the continent and around the world, it critically investigates human mobility and responses to it. An active member of the University community, the FMSP offers rigorous academic training and field-research experience to students and research services for international organisations, governments, and civil society.

www.migration.org.za