



LAWYERS FOR HUMAN RIGHTS

*Monitoring Immigration
Detention in South Africa*

September 2010

<i>1. Introduction</i>	2
Lawyers for Human Rights	2
Detention centres in South Africa	3
Previous reporting on detention	4
<i>2. Framework of immigration detention in South Africa</i>	5
General legal framework	5
Specific legal provisions of the Immigration Act	6
Asylum-seeker and refugee legal framework	6
Specific legal provisions of the Refugees Act	7
Asylum seekers at Lindela	7
<i>3. Litigation</i>	9
Litigation background	9
DHA responses to litigation	10
Contempt for the court process	11
Recent judgments	12
<i>4. Recent trends in detention policy following litigation</i>	16
Continued detention of Asylum seekers	16
Prolonged detention of asylum seekers and others	16
Lack of procedural safeguards	17
Representation at appeal hearings in Lindela	18
<i>5. Additional areas of concern</i>	19
Obstacles to providing assistance at Lindela	19
The need for independent monitoring of Lindela	20
Renewed deportations of Zimbabweans	20
<i>6. Condition of detention at Lindela</i>	21
General detention conditions	21
Health care	21
Food	21
Use of force	22
<i>7. Activities of the Detention–monitoring programme in Musina</i>	23
Background of SMG	23
The SMG case	24
Conditions of detention at SMG	24
Detentions and renewed deportations at Musina	25
<i>8. Conclusion</i>	26
<i>9. Recommendations</i>	27
<i>10. Annexure — Summary of cases</i>	28

1. Introduction

Despite a strong rights-based legal framework, refugees, asylum seekers, and other categories of migrants have yet to realise the full extent of their rights in South Africa. The passage of the Immigration Act in 2002 (No 13 of 2002) was intended to eliminate the exclusionary policies that had been carried over from apartheid in the form of the Aliens Control Act (No 96 of 1991). The more progressive legislation, however, has not had the intended effect. Instead, the detention and deportation processes continue to focus on exclusion and control, while disregarding the procedural and substantive protections put in place by the Immigration Act. Although these violations have continued since the passage of the Act, very little has been done to address the systemic deficiencies and the gaps between law and practice.

Public and private actors alike have both violated and failed to give effect to many of the rights guaranteed under the law. Though problems exist in a variety of realms, the detention and deportation of 'illegal foreigners' has given rise to an alarming pattern of regular and repeated rights violations. The system of immigration detention has fewer procedural safeguards than that of criminal detention, and is entirely lacking in external oversight or monitoring.

Lawyers for Human Rights (LHR) provides free legal assistance to asylum seekers, refugees and other categories of migrants whose rights have been violated in the detention process.

Persons arrested as 'illegal foreigners' generally are not charged with an offence and therefore lose the procedural safeguards of the criminal justice system. 'Illegal foreigners' who are not charged with an offence do not appear in court. As a result, they do not

benefit from judicial oversight that could ensure that the procedural safeguards governing administrative detentions are followed.

With the exception of detainees who can afford and are able to access private attorneys, asylum seekers and other categories of migrants in detention have virtually no recourse through which to exercise their legally guaranteed rights. Lawyers for Human Rights (LHR) provides free legal assistance to asylum seekers, refugees and other categories of migrants whose rights have been violated in the detention process.

Lawyers for Human Rights

LHR's Detention Monitoring Programme has been monitoring the arrest, detention and deportation of foreign nationals at local detention centres, primarily the Lindela Holding Facility and the Musina Detention Centre (SMG), for the past decade. In certain instances, the organisation also intervenes in detentions occurring at police stations, prisons, or at the OR Tambo International Airport. The Detention Monitoring Programme operates mainly from LHR's Johannesburg and Musina offices. LHR's law clinics in Pretoria and Durban also assist asylum seekers who are detained at police stations or at the refugee reception offices (RROs).

LHR is the only organisation that regularly visits Lindela and provides *pro bono* legal representation to detainees. Through these consultations, we are able to identify immigration trends and legal issues confronting detainees, as well as shifts in the policies of the Department of Home Affairs (DHA) and the South African Police Services (SAPS). Our consultations with detainees also provide us with information about conditions at the facility and the treatment of detainees—an important window into the detention experience given the lack of any independent monitoring.

LHR conducts weekly visits to Lindela to consult with detainees. This includes initial consultations, and follow-up meetings with those detainees whom we have taken on as clients. Our initial consultation list is based on referrals from friends or family members of detained persons, along with referrals from other direct service NGOs who do not have regular access to the facility. Although priority is given to cases involving the detention of refugees and asylum seekers, LHR also endeavours, when possible, to assist South African citizens, permanent residents, and detainees with straightforward immigration problems, as these individuals may have no other access to cost-free legal assistance.

LHR also conducts daily visits to the SMG detention facility in Musina. The organisation informs detainees of their rights, ensures that they are taken to the RRO to apply for asylum when necessary and that individuals with valid documents are released. In addition, LHR intervenes in the detention of vulnerable detainees, such as unaccompanied minors and pregnant women.

This report is based on LHR's findings through its consultations with detainees, and its ongoing litigation brought against the Department in the period from January 2009 to August 2010.

Detention centres in South Africa



Lindela Repatriation Centre

Under the Immigration Act, the DHA is authorised to detain illegal foreigners for the purposes of deportation at a designated detention centre. The Lindela Detention Centre, located outside of Johannesburg, is a designated facility for the temporary detention of illegal foreigners while they await deportation. Individuals generally arrive at Lindela after being detained at a police station or being arrested at a RRO.

DHA has delegated day to day operations of the facility to the private contractor Bosasa, operating as Leading Prospect Trading. While the exact terms of the delegated authority remain uncertain because DHA has not disclosed the contract, Bosasa has stated that it has the following responsibilities:

- Provision of a facility for accommodation
- Security services
- Provision of meals
- Maintenance of the facility, including cleaning and laundry services
- Provision of medical care through a clinic with nurses and a doctor

Bosasa denies any responsibility for decisions with respect to detentions, deportations, procedural protections, or release. The level of detainee access to immigration officers inside the facility is unclear.

SMG Detention Facility

The SMG facility, an old sports hall located on the Soutpansberg Military Grounds (SMG) in Musina just south of the Beitbridge border, is not a designated DHA detention facility. The facility is run by the SAPS, which uses it to detain, and previously, to deport, suspected illegal foreigners. Although a court ordered the closure of the facility in 2009, SAPS has continued using SMG as an extension of its holding cells. DHA is not involved with the facility, but detainees are generally taken from SMG to the RRO in Musina to apply for asylum. A new structure with separate facilities for men, women, and children is currently under construction.

Previous reporting on detention

While the South African Human Rights Commission and other human rights organisations have recognised that the detention and deportation of illegal foreigners is characterised by violations of

the law, comprehensive reporting on immigration detention in South Africa has been limited, in part because of problems with access to the facilities.

Below is a list of previous reporting on detention.

LHR

Report on the Monitoring of the Lindela Repatriation Centre (December 2003).

Monitoring Immigration Detention in South Africa (December 2008)¹

South Africa Human Rights Commission (SAHRC)

Illegal? Report on the arrest and detention of persons in terms of the Aliens Control Act (1999)

Lindela At the Crossroads for Detention and Repatriation, An Assessment of the conditions of Detention by the South African Human Rights Commission (December 2000).

The Forced Migration Studies Programme (FMSP)

FMSP has recently released a report based on survey research conducted at Lindela:

Lost in the Vortex: Irregularities in the Detention and Deportation of Non-Nationals in South Africa (June 2010).²

1 Accessible at: <http://www.lhr.org.za/sites/lhr.org.za/files/LHR%20detention%20monitoring%20report%2010%20Dec%2008.pdf>

2 Accessible at: http://www.migration.org.za/sites/default/files/reports/2010/Lost_in_the_Vortex-_Irregularities_in_the_Detention_and_Deportation_of_Non-Nationals_in_South_Africa_0.pdf

2. Framework of immigration detention in South Africa

*'A detained person has an absolute right not to be deprived of his freedom for one second longer than necessary by an official who cannot justify his detention.'*³

General legal framework

Detention for the purpose of deportation is the primary tool of immigration enforcement deployed by the DHA. Detentions of this nature constitute administrative detentions, in contrast to detentions prior to or following a criminal trial. While DHA's power to detain is established under the Immigration Act, administrative detentions are also subject to the Bill of Rights provisions of the Constitution, and to legislation governing administrative justice.

The constitutional order established in 1994 sets out a series of administrative and judicial protections to ensure that detentions and deportations are conducted fairly in accordance with fundamental human

While the SCA rulings affirm the notion that immigration officials are strictly bound to follow the rules and regulations in the Refugees and Immigration Acts, immigration officials have not heeded this instruction.

rights. Section 35(2) of the Bill of Rights targets arbitrary detentions and sets out basic protections that apply to all detained individuals, including those in administrative detention. Administrative detentions are also subject to the Bill of Rights guarantee of lawful, reasonable and

procedurally fair administrative action (Section 33). This fundamental right is given effect through the Promotion of Administrative Justice Act (PAJA) (No 3 of 2000). Finally, the Immigration Act itself sets out a series of procedural guarantees governing the process of detention and deportation and ensuring that these processes are carried out fairly.

The permissive language of Section 34(1) of the Immigration Act establishes the power to detain as a discretionary one, an approach that has been confirmed in two recent decisions of the Supreme Court of Appeal (SCA)—*Jeebhai*⁴ and *Ulde*.⁵ Immigration officials, however, have failed to employ their discretion, and have instead adopted a general policy of detaining all suspected illegal foreigners pending deportation. Moreover, while the SCA rulings affirm the notion that immigration officials are strictly bound to follow the rules and regulations in the Refugees and Immigration Acts, immigration officials have not heeded this instruction. As a result, rights violations and unlawful arrests and detentions have continued unabated.

3 *Silva v Minister of Safety and Security 1997 (4) SA 657 (W)* at 661E – H, cited in *Aruforse v Minister of Home Affairs and Others* (1189/10) SGHC (25 January 2010) at para 18.

4 *Jeebhai v Minister of Home Affairs (139/08) [2009] ZASCA 35*. The court stressed that the consequences of detention are far-reaching, affecting an individual's livelihood, security, freedom and, at times, his very survival. For this reason, the court ruled that immigration officials are bound to strictly observe the administrative justice safeguards found in the Immigration Act. Because 'every deprivation of liberty is presumptively unlawful,' the court emphasised that the government has an obligation to establish sufficient facts to justify its actions with respect to arrest and detention.

5 *Ulde v Minister of Home Affairs (320/08) [2009] ZASCA 34*. The court confirmed the constitutional right of foreigners not to be arbitrarily detained. The court further held that Section 34(1) of the Immigration Act does not obligate immigration officers to detain every illegal foreigner. Instead, officers must exercise their discretion, and this discretion should be construed in favour of liberty. LHR acted as *amicus curiae* in the case.

Specific legal provisions of the Immigration Act

The Immigration Act sets out a series of administrative procedures that protect the rights of suspected illegal foreigners during the detention and deportation process. The most important provisions are summarised below:

- Police and immigration officers may detain an individual for up to 48 hours for the purposes of verifying his or her immigration status (Section 34, 41).
- No one may be detained for longer than 48 hours for purposes other than deportation, such as for purposes of verification (Section 34).
- Individuals must be given written notice of the decision to declare them an illegal foreigner and of their right to request that this classification be reviewed (Section 34).
- Illegal foreigners must be given written notice of the decision to deport them, and of their right to appeal this decision (Section 34).
- Individuals may at any time request that their detention for the purpose of deportation be confirmed by a warrant of the court, and must be immediately released if such a warrant is not issued within 48 hours (Section 34).
- Individuals must be informed of the above rights, and this notification should be done in a language the individual understands where possible, practicable, and reasonable (Section 34).
- Individuals may not be detained for longer than 30 days without a warrant of the court. The court may, on good and reasonable grounds, extend the detention for a period not to exceed 90 days (Section 34).
- Individuals must be notified of the intention to extend their detention, and must be given an opportunity to make representations as to why the detention should not be extended (Immigration Regulation 28).

Most of these provisions are contained in Section 34 of the Immigration Act. The accompanying Immigration Regulations contain the prescribed forms that must be used to give effect to these rights of notice and appeal.

Asylum-seeker and refugee legal framework

South Africa has signed and ratified the main international instruments protecting refugees: the 1951 UN Refugee Convention and the 1967 Protocol. It has also signed and ratified the regional 1969 OAU Refugee Convention by the Organisation of African Unity. The country's domestic refugee legislation implements these conventions.

The Refugees Act (No 130 of 1998) establishes a parallel legal framework, separate from the Immigration Act, which sets up its own procedures for the detention of asylum seekers and refugees and prohibits their detention as illegal foreigners under the Immigration Act. Accordingly, asylum seekers and refugees do not fall within the purview of the Immigration Act. Yet, despite the existence of a separate legal regime for asylum seekers and refugees, the Department has applied the Immigration Act to asylum seekers and refugees, arresting them as illegal foreigners and subjecting them to arbitrary, indefinite and unlawful detention pending deportation. These activities fall outside of the Department's authority over illegal foreigners established under the Immigration Act, as the detention of asylum seekers and refugees falls under the scope of the Refugees Act.

Moreover, both the international refugee conventions and the domestic Refugees Act uphold the principle of non-refoulement, which prohibits the return of an asylum seeker to a country where he or she may face persecution. Where the Department's detention of asylum seekers and refugees ends in deportation, the Department is violating this universal prohibition against *refoulement*, a prohibition whose *ius cogens* status in international law places it alongside prohibitions against slavery and genocide.

South African law does not provide for the mandatory detention of asylum seekers. The SCA has recently clarified further that the right of asylum seekers to 'sojourn' in the country, a right established under

the Refugees Act, cannot be exercised in detention.⁶ To the contrary, asylum seekers may only be detained under certain exceptional circumstances, and only after certain procedures have been followed, as set out in the Refugees Act. These procedures, which are described below, include judicial oversight. In practice, however, the Department has employed detention as a punitive measure against asylum seekers who have not met one of their permit obligations, often as a result of problems at the RROs. Moreover, not only has DHA improperly applied the Immigration Act to individuals who remain asylum seekers, it also has done so without following the necessary procedural justice requirements.

Specific legal provisions of the Refugees Act

Several provisions of the Refugees Act clarify the legal regime that governs asylum seekers and refugees, highlighting that they are subject to a process that is separate from the one for illegal foreigners set out in the Immigration Act. Some of the most relevant provisions are summarised below:

- No proceedings may be instituted or continued against a person who has applied for asylum in respect of his or her unlawful entry or presence in the country (Section 21(4)).
- The asylum permit lapses if an individual leaves the country without the permission of the Minister (Section 22(5)).
- The Minister may withdraw an asylum permit if the holder contravenes any of the conditions on the permit, the application is rejected, or the application is found to be manifestly unfounded, abusive, or fraudulent (Section 22(6)).
- After withdrawing an asylum permit, the Minister may cause the individual to be arrested and detained pending final adjudication of the asylum claim in the manner and place determined by him or her (Section 23).
- No one should be detained for a period longer than is reasonable and justifiable. A judge of the High Court must review the detention every 30 days (Section 29).

These provisions make clear that an asylum seeker may only be detained by order of the Minister following withdrawal of the permit, and that such an individual remains an asylum seeker during this period. According to the Act, the only situation under which an asylum permit lapses and the individual can no longer be considered an asylum seeker is if the asylum seeker leaves the country without permission.

Asylum seekers at Lindela

Detainees at Lindela often are unable to exercise both their Constitutional rights, and the substantive and procedural statutory rights contained in the Refugees and Immigration Acts. In realisation of the principle that any detained person is entitled to legal advice and assistance, LHR seeks to consult with and to assist, where appropriate, as many detained individuals as resources will allow. Priority is given to refugees and asylum seekers. When possible, LHR also assists South African citizens, permanent residents, and detainees with straightforward immigration problems, as these individuals may otherwise have no access to cost-free legal assistance.

Through its interventions, LHR has become particularly concerned with the arbitrary and often unlawful detention of asylum seekers. The failure to adhere to the procedural safeguards established by law is especially troubling in the case of asylum seekers because of the human rights implications stemming from their deportations. Asylum seekers who are deported before a final determination has been made on their asylum claims face the risk of being returned to the situation of grave danger from which they fled.

None of the more than 200 asylum seekers LHR has consulted with in Lindela over the past year and a half has been notified of any proceedings to withdraw his or her asylum permit. None has been provided with notice, written reasons, or an opportunity to be heard in terms of PAJA, or the provisions of the Immigration Act—all necessary procedural requirements for a detention to be legal.

⁶ *Mustafa Aman Arse v Minister of Home Affairs 2010 (7) BCLR 640 (SCA)*

Many asylum seekers have ended up in Lindela as a result of expired permits or stamps that DHA claims were fraudulently obtained.⁷ Neither of these constitutes grounds to withdraw an asylum-seeker permit. Only the failure to appear at a RRO or to comply with the specified conditions of the asylum permit, *without just cause*, may constitute grounds for a withdrawal (Regulation 8(1)). The Refugees Act and Regulations thus emphasise that the decision to withdraw an asylum permit is discretionary, and that the decision maker must consider the circumstances that led to the failure to meet the specified conditions. Asylum seekers have reported problems accessing RROs and obtaining the required services. These problems were well-documented in 2008⁸ and a large number of LHR's recent cases involved clients who experienced similar problems in 2009. These asylum seekers, who made good faith efforts to renew their permits, have been penalised because of corruption and inefficiency at the reception offices. By detaining these asylum seekers, immigration officers, in addition to acting outside of their authority under the Immigration Act, have also failed to exercise the required discretion to consider whether asylum seekers who did not fulfil their permit obligations had just cause for these lapses.

7 LHR's clients who were detained for fraudulent stamps have denied any wrongdoing. Part of the confusion stems from the fact that DHA reforms require all permits to be renewed electronically, but several RROs have continued to renew them manually. Individuals with manual stamps are then accused of having obtained them fraudulently.

8 National Survey of the Refugee Reception and Status Determination System in South Africa, FMSP Research Report, February 2009.

3. Litigation

*The rights contained in the Bill of Rights apply to all persons within South Africa's borders, irrespective of whether they came to be here legally or not*⁹

The majority of provisions in the Bill of Rights apply to all persons in South Africa, regardless of nationality. Foreigners, whether documented or not, have a right to human dignity as entrenched in Section 10 of the Constitution. Section 12(1)(a) further protects the fundamental rights of all persons by guaranteeing 'the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause.' This constitutional guarantee entrenches a long-standing principle in South African law that any interference with personal liberty is *prima facie* unlawful.¹⁰ The burden rests on the state to justify any detention:

A detainee need only allege that there has been a deprivation of liberty and the State bears the onus to justify both the procedural and substantive aspects of detention of an individual.¹¹

Lending further support to these principles, the SCA has declared that 'a detained person has an absolute right not to be deprived of his freedom for one second longer than necessary by an official who cannot justify his detention.'¹²

State actors have a particular obligation to comply with the law. Ideally, state institutions should be instrumental in the implementation and enforcement of human rights provisions. Where this is not the case, public interest litigation and an independent judiciary play a vital role in holding the government to account.

Litigation background

Many detentions at Lindela violate the fundamental principles described above. Since February 2009, LHR has brought more than 60 urgent High Court applications seeking the release of asylum seekers detained at Lindela. In all but two of these cases, LHR obtained a court order demanding that the detainee be released with the appropriate documentation.¹³ LHR's interventions resulted in the release

⁹ *Lawyers for Human Rights and Another v Minister of Home Affairs and Another 2004 (4) SA 125 (CC)* at paragraphs 26-27; *Minister of Home Affairs and Others v Watchenuka and Another 2004 (4) SA 326 (SCA)* at para 25

¹⁰ *Arse v Minister of Home Affairs (25/10) [2010] ZASCA 9 (12 March 2010)*. See also, *Zealand v Minister of Justice and Constitutional Development 2008 (4) SA 458 (CC)* at para 25 citing *Ingram v Minister of Justice 1962 (3) SA 225 (WLD)* at 227; [1962] 3 All SA 76 (W) at 79; *Boland Bank Bpk v Bellville Munisipaliteit en Andere 1981 (2) SA 437 (C)* at 444; [1981] 2 All SA 9 (C) at 14; *Shoba v Minister van Justisie 1982 (2) SA 554 (C)* at 559; [1982] (4) All SA 153 (C) at 155; *Minister of Law and Order and Others v Hurley and Another 1986 (3) SA 568 (A)* at 589; [1986] 2 All SA 428 (A) at 443; *During NO v Boesak and Another 1990 (3) SA 661 (A)* at 673-4; [1990] 2 All SA 347 (A) at 355; *Masawi v Chabata and Another 1991 (4) SA 764 (ZH)* at 771-2; [1991] 4 All SA 544 (ZH) at 550; *Minister of Justice v Hofmeyr 1993 (3) SA 131 (A)* at 153; [1993] 2 All SA 232 (A) at 244; *Moses v Minister of Law and Order 1995 (2) SA 518 (C)* at 520; [1995] 3 All SA 98 (C) at 98; *Robbertse v Minister van Veiligheid en Sekuriteit 1997 (4) SA 168 (T)* at 172; and *Bentley and Another v McPherson 1999 (3) SA 854 (E)* at 857; [1999] 2 All SA 89 (EC) at 91.

¹¹ *Zealand supra* at paragraph 25 – 26, 33; *Minister van Wet en Orde v Matshoba 1990 (1) SA 280 (A)*; *Minister of Law and Order v Hurley 1986 (3) SA 586 (A)*.

¹² *Silva v Minister of Safety and Security 19976 (4) SA 657 (W) 661H-I*.

¹³ The two exceptions were in the matters of:

(i) *Mohamed Salim v Minister of Home Affairs and 2 Others (36983/09) SGHC (9 September 2009)*: Mr Salim, a Bangladeshi national, spent over 672 days in detention. He was apparently arrested in possession of a fake asylum permit and detained at Lindela. LHR was able to halt his deportation and ensure his hearing before the Appeal Board. His appeal hearing, however, took 9 months to schedule as immigration officers at Lindela delayed in bringing Mr Salim before a RRO in order to re-lodge his claim after his file had been lost. LHR launched an urgent application for his release from Lindela on 28 August 2009, after Mr Salim had already had his appeal hearing in Lindela. The Appeal Board finally rejected Mr.

of several additional individuals via settlement agreements with the Department before the beginning of court proceedings, sometimes at the doors of the courtroom. These last minute settlement agreements were made orders of the court.

In most cases, the unlawful detention of asylum seekers resulted from the following circumstances:

- i) Asylum seekers were prevented from renewing their asylum-seeker permits because of long queues outside of the DHA RROs.
- ii) Asylum seekers were arrested before being able to launch their asylum applications.
- iii) Asylum seekers were accused of renewing their permits with a fraudulently obtained DHA stamp.
- iv) Asylum seekers failed to lodge notices of their intention to appeal against negative status determination decisions within 30 days.¹⁴
- v) Asylum seekers did not appear before the Refugee Appeal Board on the date of their scheduled appeal hearing, often because they were either unaware that a hearing had been scheduled, or had been denied entry into the RRO.¹⁵

While the asylum seeker may sometimes be responsible for these lapses, they frequently result from problems of service provision at the RROs. In addition, these offices often do not adequately communicate to the asylum seeker the rights and obligations stemming from his or her asylum-seeker status. In any case, the non-refoulement principle applies to all asylum seekers, regardless of adherence to specific permit requirements. The failure to properly obtain documents does not negate the fundamental right to human dignity, which carries with it the freedom from being returned to a situation of grave human rights abuse.

DHA responses to litigation

In each of its court cases, LHR attempted to avoid litigation and to resolve the matter by writing at least one, and sometimes as many as three, letters of demand to DHA prior to the launching of a court application. These letters demanded that DHA either justify the asylum seeker's detention, as required by the Constitutional Court's holding in *Zealand*,¹⁶ or release him or her immediately.

In many instances, DHA did not respond or even acknowledge receipt of the letter. As LHR's applications continued, DHA began to respond more regularly to letters. These responses, however, were generally inadequate. Most simply acknowledged receipt of LHR's correspondence. Some promised to look into the situation of the particular detainee, but no subsequent response ever followed. All of the Department's replies failed to address the following issues:

- The grounds for arresting and detaining asylum seekers;
- The grounds for detentions beyond the 48 hours allowed for the purposes of status verification;
- The lack of proper legal procedures in detentions extending beyond 30 days;
- The failure to meet the general obligation of justifying any deprivation of liberty.

Salim a week before his scheduled court hearing. The court was not willing to grant his release in order for him to wrap up his affairs, as he could not provide a guarantee that he would leave the country of his own accord. The court granted an order by settlement between the parties that Mr Salim would be deported within 10 days of the court order, failing which he should be immediately released. Mr Salim was deported on 18 September 2009.

(ij) *Jean Paul Ababason Bakumundo v Minister of Home Affairs and 2 Others (17271/09) SGHC (12 May 2009)*: discussed below. Although LHR received a judgment in Mr. Bakumundo's favour, Home Affairs had already unlawfully deported him.

14 LHR has assisted a number of clients from the Marabastad and TIRRO RROs to lodge condonation applications to the Refugee Appeal Board for the late filing of their appeal notices. These clients were unaware that their appeals had to be lodged within 30 days and their asylum permits were issued for 90 days. When they returned to a RRO to extend their permits after 90 days, they were summarily arrested for failing to lodge their appeals on time.

15 A number of our clients in detention have been unaware of their scheduled appeal hearings. This is partly due to language and literacy difficulties, and partly due to what appears to be a failure by refugee reception officers to explain procedures adequately to asylum seekers. Among those asylum seekers with language and literacy difficulties, the common understanding seems to be that the extension of their asylum permit is paramount, while they understand little else about the procedures of the asylum process.

16 *Zealand v Minister of Justice and Constitutional Development 2008 (4) SA 458 (CC)*.

In all of these instances, the Department continued to oppose the court application.

Contempt for the court process

The Department has not only opposed court applications; it also has failed to implement court judgments. DHA has demonstrated a pattern of contempt for the court process through a variety of actions, including failing to fully implement court orders, engaging in frivolous legal arguments, and attempting to circumvent the court process. In the past 18 months, this pattern of contempt has included the deportations of applicants in contravention of an interim court order staying deportations, deporting asylum seekers prior to their court hearing, and non-compliance with court orders. These lapses have occurred despite the fact that representatives from the Department's legal services office and the state attorney's office were present in court when the orders were made, and despite the fact that LHR sent the court orders directly to officials at Lindela immediately following the court proceedings.

General pattern of contempt

Frequently, LHR has had to continue acting on behalf of clients following resolution of their court cases to ensure that DHA complied with the court order. In at least nine cases, clients were released without the asylum permit required by the court order, rendering them vulnerable to re-arrest, detention and deportation. The Department has suggested both that it lacks the capacity to provide the permit upon release, and also that the immediate provision of these permits to those released from unlawful detention in some way constitutes queue jumping, to the detriment of other asylum seekers. In other instances, the Department has delayed release of detainees on the grounds that it was unable to facilitate the attainment of the asylum permit on that day. One client was detained for an additional week following a court order demanding his immediate release.

Constructive contempt: The Bakamundo Case

One particularly troubling example of the Department's disregard for the court process is the 2009 case of a Congolese asylum seeker. This matter began in May 2009 as the fifteenth of LHR's series of detention release applications and has come to represent DHA's flagrant disregard for asylum seeker rights and the judicial process.¹⁷

The applicant spent 63 hours over 6 days standing in the queue outside of the Crown Mines RRO in Johannesburg to renew his permit, but he could not gain access to the office. He was eventually arrested because of his expired permit and sent to Lindela. After consulting with the detainee, LHR

Frequently, LHR has had to continue acting on behalf of clients following resolution of their court cases to ensure that DHA complied with the court order. In at least nine cases, clients were released without the asylum permit required by the court order, rendering them vulnerable to re-arrest, detention and deportation.

wrote two letters of demand to DHA requesting his immediate release and the re-issuing of his asylum seeker permit. When DHA did not respond, LHR launched an urgent application seeking his release and a stay of his deportation until his asylum claim was finally determined.

DHA opposed the application but initiated settlement negotiations with

LHR in the days leading up to the scheduled court hearing. LHR agreed to withdraw the case once DHA provided proof of the client's release with the proper documentation, which the Department failed to provide. Arriving in court on the day of the hearing, LHR discovered that the applicant had been deported two days earlier, despite the pending court hearing and the active settlement negotiations, and in flagrant disregard of the principle of non-refoulement. Displaying a worrying disregard for the rule of law, the Department had circumvented the court process during a pending court application.

17 *Jean Paul Ababason Bakamundo v Minister of Home Affairs and 2 Others*, SGHC 17217/09 (12 May 2009)

LHR immediately brought a second court application seeking a declaration that the deportation was unconstitutional and demanding the return of the applicant and the final adjudication of his asylum claim.¹⁸ On 17 June 2009, Spilg JA, noting the potential danger faced by the applicant, decided to hold a hearing during the court recess. On 7 July 2009, after hearing oral arguments, Spilg, JA expressed concern that the Department's actions might constitute constructive contempt of the court process. He ordered DHA to file additional affidavits on this issue.

On 15 July 2009, the court ruled in favour of the applicant, declaring his deportation unlawful. The court ordered DHA to facilitate the applicant's return to South Africa, including any costs, and to allow him to continue his asylum application without prejudice. It also interdicted DHA from deporting Bakamundo unless and until final adjudication of his claim and the exhaustion of all rights of review or appeal.

Arguments then continued on the constructive contempt matter, and DHA and Bosasa officials were called to testify under oath. The proceedings were postponed several times as the court sought to identify the individual responsible for the deportation. Both DHA and Bosasa officials denied responsibility, highlighting the blurred lines of authority stemming from DHA's delegation of authority to Bosasa. This judgment is still outstanding.

LHR initially managed to contact Bakamundo in the DRC during the court proceedings, but then lost contact with him. We have no information regarding his whereabouts or well-being, and we have been unable to notify him of the ruling ordering his return.

Unnecessary litigation

The Department's refusal to resolve issues prior to the beginning of court proceedings, and its insistence on defending unlawful actions in court, has had significant cost implications for DHA and, ultimately, for the taxpayer. The Department's general policy of not responding to

or adequately addressing issues raised in letters from LHR has led to unnecessary litigation. In addition, the Department has chosen to oppose matters where the law is clearly established, prompting the SCA judges to question the Department's motives, as described in the *Arse* case below.

The Department maintained that, despite the legal framework, releasing asylum seekers, or other categories of migrants, would set a negative precedent and thwart immigration control. While offering these policy arguments in defence of its actions, DHA failed to provide any legal basis for the detentions.

Recent judgments

In January 2010, DHA adopted a new practice of opposing all court applications; it no longer offered to settle outside the doors of the court, as it had done previously. The Department justified its detention of asylum seekers on the basis that illegal immigration is a policy concern for government. It maintained that, despite the legal framework, releasing asylum seekers, or other categories of migrants, would set a negative precedent and thwart immigration control. While offering these policy arguments in defence of its actions, DHA failed to provide any legal basis for the detentions.

As a result of the Department's new approach, the merits of many detention cases began to be argued in court. The result is a series of judgments clarifying and upholding the rights of asylum seekers and migrants.

Detentions in excess of 120 days

Aruforse v Minister of Home Affairs (1189/10) SGHC (25 January 2010)

Hassani v Minister of Home Affairs (01187/10) SGHC (5 February 2010)

18 *Jean Paul Ababason Bakamundo v Minister of Home Affairs and 2 Others, SGHC 22309/09 (15 July 2009)*

Two different judges held that the Immigration Act prohibits the detention of any person for longer than 120 days, regardless of his or her status in South Africa, and ordered the immediate release of the applicants. In the case of *Aruforse*, the applicant, an asylum seeker from Burundi, alleged that he had lodged an asylum application at the Marabastad RRO. Because of recurring problems in locating asylum seeker files, DHA could not confirm this, and the applicant was released solely on the basis of the length of his detention.¹⁹

The court in the *Hassani* matter also ordered the release of the applicants, two brothers, because of the length of their detention. The applicants, asylum seekers from Iran, were arrested at OR Tambo airport en route to England, where their father is a recognised refugee, and where they had intended to apply for asylum. Because the brothers had not lodged asylum claims prior to their arrest, however, the decision was not based on the Refugees Act. The court nonetheless recognised that DHA had prevented them from applying for asylum while in detention, and ordered the Department to assist the applicants to lodge their asylum claims following their immediate release.

Detention of asylum seekers

Mustafa Aman Arse v Minister of Home Affairs (52898/09) SGHC (7 January 2010)

Mustafa Aman Arse v Minister of Home Affairs 2010 (7) BCLR 640 (SCA)

Kibanda Hakizimana Amadi v Minister of Home Affairs (19262/10) SGHC (1 June 2010)

In the *Arse* case, the applicant was arrested as an ‘illegal foreigner’ following several unsuccessful attempts to access the RRO in Port Elizabeth. After three months in Lindela, immigration officers assisted him to lodge an asylum application, but he remained in detention. LHR launched an urgent High Court application for his release. The High Court judge refused to release him without certain pre-conditions, which LHR rejected.

The judge acknowledged that ‘freedom of a person is undoubtedly a right of great importance enshrined in the constitution.’ He then held, however, that ‘the courts can take judicial notice of the fact that we have high levels of crime in this country and we have high levels of unemployment and we have high levels of illegal immigration into the country.’ The judge concluded that while the court ‘obviously has to have regard to the importance of a person having freedom, the court must also have regard to the practicalities that would arise in ordering the release of a person such as this.’ The judge’s decision turned on the fact that the applicant did not have R2000 to pay as security to the court for his release, and his refusal to accept certain additional conditions of release—none of which feature as requirements in asylum law. Despite his lawful status as an asylum seeker, and the length of time already spent in detention, the High Court effectively dismissed his application because he was indigent.

LHR immediately lodged an appeal that was heard on accelerated time frames before the SCA on 25 February 2010. The SCA overturned the High Court judgment in its entirety, and, importantly, held that asylum seekers have the right to sojourn in South Africa, outside of detention, pending finalisation of all appeal and review procedures related to their asylum claims, including judicial review. The court also reminded the Department that adherence with all procedural safeguards, including obtaining the necessary warrants, was an essential component of any lawful detention. Finally, the SCA decision confirmed the decisions in *Aruforse* and *Hassani* that a person could not be detained in excess of 120 days.

In a further rebuke to the Department, the SCA questioned why DHA had pursued the case when the law had previously been settled. The court asked whether the Department was ‘falling apart, whether it did not understand the law, or whether it just cocked its head at the law.’ The SCA also demanded

¹⁹ The applicant maintained that he had lodged an asylum application before he was arrested, but he could not recall his file reference number or when he had applied. The applicant was also unsure of his date of birth, and DHA could not locate his file. Upon his release, the applicant lodged an asylum application as a new applicant, but LHR secured an agreement from DHA that if he appeared on the RAD system when his fingerprints were taken, he would not be penalised for fraudulently lodging a second claim.

to know why DHA had opposed the initial High Court application, and had persisted in opposing the appeal to the SCA, all at taxpayers' expense.

Despite the SCA declaration that a person remains an asylum seeker until all review and appeal procedures have been finally exhausted, the Department has continued to argue that individuals cease to be asylum seekers following initial rejection of their claim, and can therefore be detained and deported. In *Amadi*, the court confirmed the SCA view and held that the applicant remained an asylum seeker even after receiving an initial decision rejecting his asylum application, despite failing to lodge an appeal within the required time period. After filing a condonation application with the Refugee Appeal Board for the late filing of Amadi's appeal request, LHR launched a court application for his release from Lindela—an application that DHA opposed on the grounds that he was no longer an asylum seeker.



The judge held that the applicant had remained an asylum seeker, and could therefore not be detained in excess of 48 hours, as he could not be detained for purposes of deportation. This judgment is significant in extending protection to asylum seekers who fail to lodge appeals within the required time period. In many instances, these asylum seekers are unaware of their initial rejection or are not informed about the appeal process. In other cases, their appeal requests are lost, or they are unable to access an RRO to lodge an appeal. Many of these asylum seekers are arrested and deported without the opportunity to apply for condonation with the Refugee Appeal Board. The deportation of these asylum seekers before final resolution of their claims violates the non-refoulement principle.

Detentions without the proper procedural guarantees

AS & 8 others v Minister of Home Affairs (101/10) SGHC (17 March 2010)

Under the Immigration Act, an immigration officer must obtain a warrant of detention from the court in order to extend any detention beyond the initial thirty days. In *AS*, the Department did not obtain the warrant within the required time frame. The court ruled that a warrant obtained after the detention had already exceeded thirty days could not serve to subsequently legalise a previously unlawful detention. The ruling emphasised that a warrant of detention must be issued in accordance with the procedural requirements of the Immigration Act in order for a detention to be lawful.

This application was brought on behalf of a family of eight asylum seekers from Afghanistan that was detained for more than four months by DHA. During this time, the Department made numerous attempts to deport the family. The two parents, their five minor children, and the oldest daughter's fiancé, also a minor, were arrested separately at the OR Tambo International Airport following attempts to join family members in France who were also refugees.

The oldest daughter and her fiancé first attempted to make their way to France in September 2009. After detaining them at the airport, DHA tried to deport the two minors back to Afghanistan. Despite a legal obligation to do so, the Department did not investigate whether, as children, they were in need of care and special protection. The children were flown as far as Istanbul before Turkish authorities

intervened and prevented their return to Afghanistan. They were then returned to South Africa and unlawfully detained for over two months before being moved to a place of safety for children. The parents and four younger children were intercepted at the airport six weeks later. While detained there, the parents made repeated requests to see the two older children, who were also being held at the airport. The Department ignored these requests and the family remained separated for two weeks.

DHA attempted to deport the family two more times, but failed to get the necessary clearance to fly through either Istanbul or Dubai. In November of last year, the family was again separated after the parents were transferred to Lindela and the children were sent to a place of safety.

Despite repeated requests by the family and LHR to lodge asylum applications, and even after LHR instituted legal proceedings for the family's release, DHA persisted in seeking to deport the family. DHA also levelled trafficking allegations against the parents in order to justify their continued detention. The Department made no attempt, however, to investigate these allegations or to initiate protective mechanisms for the children; instead, it remained eager to deport the parents together with the children they had allegedly trafficked. The wholly spurious trafficking allegation was not motivated by concern for the children, but represented a purely invented justification for an otherwise illegal detention. Nonetheless, the allegation required the family to undergo DNA testing, delaying the court process and prolonging the family's detention and the separation of the parents from the children.

After more than four months in administrative detention, the High Court declared the parents' detention unlawful because DHA had failed to follow the correct administrative procedures when the family was first detained. The court ordered the immediate release of the parents, and the return of the children to their care. The court also upheld the family's right to apply for asylum.

4. Recent trends in detention policy following litigation

While upholding the rights of migrants, particularly asylum seekers, the litigation described above has not resulted in significant policy changes within the Department. DHA has narrowly interpreted these rulings to apply to the case at hand, without changing the general practice or policy to coincide with judicial interpretations of the law. Instead, it has persisted in actions the courts have ruled unlawful. Although DHA has changed some of its practices in response to the litigation, not all of these changes have been positive.

Continued detention of asylum seekers

Despite the overwhelming success of the court applications and repeated court declarations that the detention of asylum seekers is unlawful, DHA has persisted in its policy of detaining asylum seekers.

Because DHA has not incorporated the legal interpretations stemming from judgments such as *Amadi* and *Arse* into its subsequent practice, LHR has challenged the general policy of detaining asylum seeker in the matter of the *Zimbabwe Exiles Forum v Minister of Home Affairs*.²⁰

Following extended delays, the case was heard on 4 August 2010. LHR was seeking an order declaring the practice and policy of detaining asylum seekers to be unlawful. DHA both denied that it had such a policy, and also stated that it would be improper for the court to make a general order declaring the policy unlawful. In its view, any court order placing a prospective obligation on the Department that extended beyond an individual case would constitute an undue burden on the Department. In other words, DHA believed that the courts could only rule on the merits of individual cases, and could not extend their rulings to cover general policies or practices, regardless of whether these policies and practices adhered to the law.



Prolonged detention of asylum seekers and others

The Department has also continued to detain asylum seekers and other categories of migrants for over 120 days, despite the SCA judgment in *Arse* declaring that such detentions are unlawful. It has even opposed their release in response to court challenges. Lacking any legal authority to defend

²⁰ *Zimbabwe Exiles Forum v Minister of Home Affairs* (TPD 27294/08)

these detentions, the Department has relied on arguments of necessity. The courts have rejected the Department's arguments, leading to the release of the individuals in question. Many other individuals, however, continue to be detained beyond the legally allowed 120 days until they too have their day in court.

In a sign of progress, DHA has gradually started releasing some detainees after 120 days. These detainees are released with notices to report back to Lindela once a month, for up to six months, during which time the person is expected to either leave the country by his or her own means, or to regularise his or her status. While this is a marked improvement, the Department has not adopted a standard policy of releasing every detainee held over 120 days, as required by law. Nor has it followed the procedural safeguards governing detentions that have not yet reached the 120-day threshold.

Lack of procedural safeguards

Under the Refugees Act, a High Court judge must review the detention of an asylum seeker every 30 days. Yet, none of the hundreds of asylum seekers with whom LHR has consulted had ever been informed or aware of any judicial review of their detention, nor had any ever been brought before a judge.

Despite the existence of a separate legal regime under the Refugees Act that governs the detention of asylum seekers, asylum seekers are being detained as 'illegal foreigners' under the Immigration Act. In addition to being incorrectly employed against asylum seekers who do not fall under its scope, detentions under this legal regime are problematic in their own right.

For the most part, the procedural protections put into place by the Immigration Act are not followed in the detentions at Lindela. This includes the requirements of Section 34:

- Individuals must be given written notice of the decision to deport them, and of their right to appeal the decision.
- Individuals may not be detained for more than 30 days without a warrant of the court.
- This warrant may, on good and reasonable grounds, extend the detention for a period not to exceed 90 days, resulting in a total detention time of 120 days.
- Individuals must be notified of the intention to extend their detention, and are entitled to make written submissions to the magistrate explaining why their detention should not be extended.
- Individuals may at any time request that their detention for purpose of deportation be confirmed by a warrant of the court, and must be released immediately if such a warrant is not issued.

Many detainees at Lindela are unaware of these rights, and are unable to exercise them. None of the detainees with whom LHR has consulted had ever been informed, or aware, of any magistrate's warrant extending their detention, nor had they been advised of their right to make written representations to a magistrate as to why their detention should not be extended.

In response to cases highlighting these lapses, DHA has begun to produce warrants of detention in court. These warrants purportedly extend the detention in question, but they often lack crucial information, making it difficult to confirm that they were issued in a proper and timely manner. In particular, there is no evidence that these warrants were issued on 'good and reasonable grounds,' as required by the Immigration Act. Additional provisions of the Act also were not complied with: 1) detainees were not notified of the intention to extend their detention; 2) detainees were not given an opportunity to make representations in this regard; 3) detainees were not aware that these warrants existed; and 4) detainees were not provided with reasons for the decision to extend their detention.

As a result of these issues, LHR has launched a substantive review of the magistrate's warrants that were presented in the *Rahman* case.²¹ This case involved two Bangladeshi asylum seekers who were arrested upon entry to South Africa. They applied for asylum from detention, but continued to be detained. The day before the court hearing, DHA for the first time informed LHR of the existence of

²¹ *Khusru Rahman and 1 Other v Minister of Home Affairs and 2 Others (6784/10) SGHC (2 March 2010)*

magistrate's warrants extending their detention. After this initial application was postponed to join the magistrate to the proceedings, LHR brought a separate urgent application based on the fact that the applicants had been detained for over 120 days, and the court ordered their immediate release.²²

Although the detainees have been released, the initial court action has continued. The case now centres on the manner in which magistrates at the Krugersdorp Magistrates Court have been extending warrants of detention, and their failures to conduct any individual assessment or to confirm that a detainee is aware of his rights with respect to such extensions. This application is still pending.

It is not clear, however, whether the issuing of a warrant under the Immigration Act can legalise the detention of an asylum seeker, given that such a detention falls outside of the purview of the Immigration Act. Because asylum seekers must be detained under the Refugees Act, an immigration officer does not have the authority to detain an asylum seeker under the Immigration Act. Accordingly, adherence to the procedural guarantees of the Immigration Act cannot legitimise a detention that was not authorised under this Act to begin with.

Representation at appeal hearings in Lindela

Because of DHA's apparent policy of detaining asylum seekers at Lindela until finalisation of their asylum claims, many detainees are awaiting appeal hearings, and appeal decisions from inside Lindela. LHR believes that appeal hearings heard while in detention are procedurally unfair due to the additional stress placed on the Appellant, the perception of wrong-doing created by the Appellant's detention, and the impossibility for the Appellant to properly prepare for his hearing while detained.

In pending release applications, LHR began requesting that the Refugee Appeal Board postpone the appeal hearing until after the asylum seeker was released, assuming the court application was successful. The Appeal Board generally agreed to these requests. In the case of Mohamed Salim, however, as well as in the Arse claim, the Board succumbed to Departmental pressures to finalise the matter while the client remained in detention. While Salim was rejected and deported, Arse's appeal decision is still outstanding.

In the *Amadi* case, the applicant had lodged a condonation application with the Appeal Board after failing to request an appeal within the required 30 days. DHA opposed the applicant's release, advising that it would liaise with the Appeal Board for an accelerated decision on the condonation request and insisting that Amadi should remain in detention during that time. The court agreed with LHR's position that any interference with *Amadi's* application to the Appeal Board by DHA would render the Board's decision reviewable. The court also ordered Amadi's immediate release on the grounds that he remained an asylum seeker.

²² *Khusru Rahman and 1 Other v Minister of Home Affairs and 2 Others (14198/10) (16 April 2010)*

5. Additional areas of concern

While LHR has used the courts to achieve significant legal victories and win the release of countless detainees, Lindela continues to suffer from serious deficiencies. Until these deficiencies are addressed, individuals will continue to be unlawfully detained, and will not have access to their legally guaranteed rights while in detention.

Obstacles to providing assistance at Lindela

LHR's efforts to consult with clients and provide legal assistance at Lindela have not been entirely obstacle-free. Officials at Lindela have required LHR to submit the lists of clients with whom it wishes to consult two days in advance, ostensibly to prepare for and facilitate access. Despite complying with this requirement to allow Lindela staff to make the necessary preparations, LHR is often forced to wait for up to two hours until clients are called into the consulting rooms. These delays severely limit LHR's consulting time and also limit the number of detainees who can be assisted. Officials at Lindela have also begun to limit consulting hours, at times requiring that they end at 4pm. Access to clients is further impeded by Bosasa's failure to call all of the names on LHR's consultation lists, depriving these detainees of their right to legal assistance. These actions suggest that officials may be seeking to interfere with and make LHR's access more difficult than necessary. Access to clients as well as the transmission of letters of demand and court orders are also hindered by frequent problems with the fax lines and with email at Lindela.

More fundamentally, detainees at Lindela are given no information about the legal rights governing their detention and deportation during the screening and admission process, nor are there any signs in these areas informing them of the detention and deportation process.

Detainees at Lindela also confront significant obstacles in exercising their rights and obtaining legal assistance. Some detainees have reported being told by Bosasa officials that LHR would not assist them until they had been detained for 120 days, thereby possibly prolonging unlawful detentions by interfering with the right to legal assistance. In addition, some

detainees who have sought to exercise their legally guaranteed rights, such as requesting a warrant confirming their detention, have been ignored or met with verbal abuse by Bosasa guards. Detainees also have been unable to exercise their rights of appeal or review, both by being denied access to pen and paper in order to make submissions, and by the failure to inform them of these processes.

More fundamentally, detainees at Lindela are given no information about the legal rights governing their detention and deportation during the screening and admission process, nor are there any signs in these areas informing them of the detention and deportation process. In addition, there are no translation services at Lindela, despite the high number of detainees who do not speak or understand English. Finally, detainees have contact primarily with Bosasa guards. These guards are not trained in immigration or asylum law, and are not familiar with the procedural rights of detainees. In the *Bakamundo* case described above, the Bosasa guard who was called to testify stated that he did not know what an asylum seeker was. These factors create a high likelihood that detainees are not being afforded their rights in detention.

The need for independent monitoring of Lindela

LHR is also concerned by the lack of independent monitoring and oversight at Lindela, particularly given the restrictions placed on LHR's access. South Africa has signed, but has not ratified, the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The purpose of OPCAT is 'to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment' (Article 1). LHR believes that the establishment of such an independent oversight mechanism is essential, and the organisation is participating in the Section 5 Committee in support of this goal. The Section 5 Committee, initiated by the South African Human Rights Commission, seeks to develop a practical proposal on what a national preventative mechanism would look like under OPCAT, and to encourage government to institute such a mechanism.

Renewed deportations of Zimbabweans

In April 2009, the then Minister of Home Affairs announced a special dispensation that would enable Zimbabweans to apply for a permit entitling them to remain in the country and work and study for a specified period of time. While this permit never came into effect, the Department did institute a moratorium on the deportation of Zimbabweans.

Although the deportation of Zimbabweans was halted during this period, they nonetheless continued to be arrested and detained at Lindela. Large numbers of Zimbabweans were held while their nationality was verified, a process that could take up to three weeks. There is no provision in the law that allows for such prolonged detentions for verification purposes. Moreover, the Immigration Act authorises detentions at Lindela for the purposes of deportation only. Because of the ban on deportations, Zimbabweans could not be held at Lindela for the purposes of deportation. Accordingly, DHA did not have the authority to detain them at Lindela.

On 2 September 2010, the Cabinet announced that it was ending the so-called special dispensation and that it would begin deportations again at the beginning of 2011. LHR is concerned that this situation will give rise to a new phase of mass deportations of Zimbabweans from Lindela, given the general failures to adhere to the procedural requirements of the law, combined with widespread arrests of Zimbabweans. From 2005-2007, the Department deported an average of 250,000 individuals a year. This number decreased significantly after implementation of the moratorium, but is likely to rise again when Zimbabwean deportations resume. The resumption of deportations increases the opportunity for human rights violations, making it crucial that the Department institute procedures to guarantee procedurally fair processes at Lindela.



Image: Courtesy Beeld

6. Conditions of detention at Lindela

General detention conditions

Lindela is divided into a male and female section. Each section consists of several rooms, or cells, with approximately 30 beds per cell. Many of these cells are unused, as detainees are often crowded together in a single area for the convenience of the guards. Detainees are moved to a separate section when they are within 48 hours of their deportation. Each detainee is given a bed and a blanket. Detainees are also given a supply of soap, but they are forced to buy additional supplies when the initial supply runs out. Many detainees have complained about dirty blankets, lice, and not having access to clean clothes or a phone. Cell phones are generally confiscated upon admission, but some detainees do have cell phones inside the Centre. Others are left to use the pay phone, which many complain is too expensive. Each cell also has its own television that is controlled by the guards. Detainees do not have access to reading²³ or writing materials, or other recreational facilities.²⁴

Health care

LHR is concerned about the provision of health care at Lindela. The facility houses a clinic staffed by resident nurses and a visiting doctor. But many detainees have complained to LHR both about problems accessing the clinic and about the level of care they receive there. According to detainees, the nurses provide the same painkillers to everyone, regardless of their particular ailment. There is no

Each detainee is given a bed and a blanket. Detainees are also given a supply of soap, but they are forced to buy additional supplies when the initial supply runs out. Many detainees have complained about dirty blankets, lice, and not having access to clean clothes or a phone. Cell phones are generally confiscated upon admission, but some detainees do have cell phones inside the Centre.

access to anti-retroviral treatment or to medicine for other chronic illnesses such as tuberculosis, inside Lindela. LHR has also received reports that the nurses have refused to treat individuals suspected of fighting with the guards.

LHR is particularly concerned over reports of a detainee with serious mental health issues. Several clients have expressed concern over the state of this detainee, but Lindela

has no provision for the treatment of mental health problems. LHR is also concerned that the detention may be exacerbating the detainee's mental health issues.

Food

According to the minimum standards of detention outlined in an annexure to the Immigration Act, food must be served at regular intervals, with no more than 14 hours between the evening meal and the subsequent morning meal. LHR is concerned that the provision of food at Lindela does not meet this requirement. Although officials at the facility maintain that detainees receive three meals a day, lunch and dinner are served at the same time. As a result, more than 14 hours may elapse between the evening meal—served in the afternoon—and breakfast the next day.

²³ Reading materials are banned for fear that drugs will be smuggled inside them, following an incident that happened several years ago.

²⁴ Detainees sometimes play soccer in outside, but they do not have access to a sports field.

Detainees have also complained about the quality and quantity of food. In addition, LHR has received reports that detainees sell food in order to get money for phone calls and cigarettes, and that this money is sometimes confiscated by the security guards.

Use of force

LHR has received several reports from detainees about the use of physical force by the security guards. The risk of abuse by guards is increased by the lack of any external oversight or accountability. Detainees remain under the control of these guards while in Lindela, and have no recourse to address abuses. LHR is now in the process of assisting a released detainee who was badly beaten by security guards while in detention.

In some cases, violence occurs between detainees. Without external monitoring, it is impossible to know whether the response by security guards to these incidents is adequate and proportionate. In addition, periodic riots have broken out at Lindela. These riots are often motivated by detainee frustrations over their prolonged detentions, as well as the conditions of detention. They are met by rubber bullets and beatings by the security guards. While LHR recognises that the guards must act to quell these riots, we are concerned that they provide an occasion for the guards to commit abuses and employ disproportionate responses, without any oversight or accountability.

7. Activities of the detention–monitoring programme in Musina

In August 2008, LHR opened an office in Musina to monitor detention and immigration enforcement activities in the border region, particularly the deportation and detention centre at the SMG in Musina. Lawyers in Musina visit the detention centre and Musina RRO daily.

Between August 2008 and May 2009, LHR performed regular, often daily, visits to SMG, with the exception of the period from 29 October 2008 through 18 December 2008, when the Musina Station Commissioner of SAPS denied LHR access. During its visits, LHR repeatedly appealed to both SAPS and DHA to improve the conditions and/or close the centre.



Background of SMG

Detainees deported from SMG were denied basic due process guarantees. Many did not have any contact with an immigration officer, despite these officers being the only ones authorised under the Immigration Act to declare someone an illegal foreigner and cause them to be deported. Detainees did not receive the required notices of detention or deportation. In addition, many individuals with valid asylum permits were deported. In some instances, these permits were confiscated and/or destroyed by SAPS or the South African National Defence Force (SANDF).

Conditions at SMG fell short of the minimum standards of detention. Only a makeshift barbed wire fence divided the men's and women's sections. Detainees were held in overcrowded conditions with inadequate and inaccessible toilet facilities, insufficient food and a limited supply of mats or blankets in lieu of beds. No provision was made for the special

nutritional needs of pregnant or breastfeeding women, infants, and children. Many of the detained children were unaccompanied minors. While the law requires unaccompanied minors to be turned over to a social worker from the Department of Social Development (DSD) in order to institute children's court proceedings, these children remained in SMG without any intervention from DSD. Instead, they were held together with adults and deported without arrangements for their care.

In April 2009, DHA announced a moratorium on the deportation of Zimbabweans. The police in Musina, however, persisted in their attempts to deport Zimbabweans. Following the Department's announcement, the police continued to hold a group of approximately 650 Zimbabwean nationals at SMG for deportation. When DHA refused to authorise the deportation, the police attempted to arrange the deportation directly with Zimbabwean officials, who refused to accept the deportees without DHA authorisation. The police then continued detaining these individuals at SMG, prompting LHR to bring an urgent high court application. The detainees were finally released following an agreement between the parties on 21 April 2009.

The SMG case

In February 2009, LHR launched an urgent application in the North Gauteng High Court for the closure of the SMG facility.²⁵

The use of the SMG facility as a detention and deportation centre was challenged on three bases:

1. The immigration detention facility was operated by the police and had not been designated as a detention facility by DHA, making it unlawful.
2. Conditions at SMG did not meet the minimum standards of human dignity and were therefore unlawful.
3. The state failed to meet its legal obligation to care for children and was unlawfully detaining and deporting them without any investigation into their status or safety needs.

On 15 May 2009, the court found that the facility was unlawful on all three of these grounds, and ordered its immediate closure.

The police, however, have continued to use the SMG facility to detain Zimbabwean and other nationals for up to 48 hours before they are released, or transported to the RRO. The police have characterised their actions as falling under the scope of section 41 of the Immigration Act, which authorises them to arrest an 'illegal foreigner' for up to 48 hours to confirm his or her status. Because they lack the capacity to hold all of these suspected illegal foreigners at the police stations, they have begun using SMG as an extension of their police holding cells, despite the court order demanding its immediate closure. Some of the detainees who are not Zimbabwean nationals are eventually transferred to Lindela for deportation, without the proper verification process taking place.

Conditions of detention at SMG

General conditions

Conditions at SMG have improved somewhat since the court ruling finding that they were unlawful and inhumane, but they remain problematic. The facility lacks beds or any other furniture. Both men and women now have access to toilet and washing facilities, but SAPS has not properly maintained these toilets, and they are often unhygienic. In general, the facility remains dirty and unhygienic.

LHR also remains concerned over the detention of women and children at SMG. Children continue to be detained together with adults at the facility. Many of these children are unaccompanied and should be in the care of a social worker from the Department of Social Development, which has thus far failed to fulfil its legal obligation. No children's court inquiries have been initiated in Musina, as required by law. In addition, pregnant woman and toddlers continue to be held at SMG, without access to proper nutrition or medical care.

Health care

SMG lacks any health care facilities, medical professionals, or even first aid kits. This absence is particularly troubling because of the detention of pregnant women. In addition, many migrants have been victims of violence and sexual and gender-based violence during the border crossing, and may be in need of medical attention and trauma counselling. Instead, they are immediately detained in SMG's unhygienic conditions, without any access to medical care. Many of these individuals also suffer from serious illnesses such as tuberculosis, raising the health risks to other detainees, as well as to the public in general if they are released without receiving adequate medical attention.

²⁵ *Lawyers for Human Rights v The Minister of Safety and Security and Seven Others* (5824/09) NGHC (15 May 2009).

Food

In addition to the hygiene issues, the provision of food at SMG remains inadequate, particularly on weekends when detainee populations are higher because individuals are not taken to the RRO.

Use of force

In the past, detainees at SMG were the victims of serious physical abuse by guards at the facility. This situation seems to have been addressed, and we have received no complaints of violence this year.

Detentions and renewed deportations at Musina

LHR continues to monitor the use of SMG and the practices in the border area and remains concerned about the continued detention of asylum seekers. Moreover, the lifting of the moratorium on deportations to Zimbabwe at the end of the year raises the spectre that SMG will once again be used as a deportation facility, in violation of the law. The detention of high numbers of Zimbabweans also increases the risk of mass deportations, without proper legal procedures being followed.

The use of SMG as a shelter violates the minimum standards of human dignity, and an alternative solution is needed. A new holding centre currently being built next to SMG is almost completed. LHR encourages the designation of this centre as a DHA detention facility; such a facility would be required to meet the minimum standards of detention included in the Immigration Act and Regulations. Moreover, with the resumption of deportations approaching, the need for a properly designated DHA facility is crucial in order to ensure that deportations are carried out under the proper authority and in accordance with the law.

8. Conclusion

The system of immigration detention in South Africa is plagued with problems, largely stemming from failures to adhere to the law. The passage of the Immigration Act ushered in a new era of immigration enforcement that established a series of procedural guarantees intended to bound the actions of government and avoid abuse. The failure to adhere to these laws, and to implement court orders upholding the rights of detainees in accordance with these laws, has set the stage for abuse. Detentions that occur outside of the law not only defeat the purpose of legislation, they also undermine the Constitution and the rule of law. Greater accountability and adherence to the law is needed both to protect the rights of individuals, and to ensure that public institutions live up to their obligation to uphold the law and to give effect to Constitutional guarantees.



9. Recommendations

LHR calls on government to undertake the following actions:

- Implement a system of independent monitoring visits to places of detention, ideally through ratification of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Provide greater transparency regarding the delegation of authority from DHA to Bosasa.
- Improve coordination between Lindela and the RROs to facilitate the immediate identification of asylum seekers.
- End the detention of asylum seekers, including the detention of asylum seekers with expired permits who have not exhausted all appeals and reviews, as well as those who have attempted to apply or indicated an intention to apply.
- Release all detainees who have been detained for over 120 days.
- Make sure that all procedures in the Immigration Act are followed, including:
 - Proper verification of status prior to admission, including connecting Lindela to the Refugee and Deportation (RaD) system at the RROs;
 - Notification of all rights of review and appeal;
 - Use of proper forms and notifications;
 - Proper procedures for detentions beyond 30 days, including notifying detainees of intention to extend detention, and acquisition of properly constituted magistrate's warrant;
- Ensure that court orders stemming from detention cases are properly and immediately implemented.
- Develop a system of accountability for immigration officers and Bosasa officials who fail to follow proper procedures.
- Develop an external complaint and monitoring system for incidents of violence inside Lindela.

Annexure – Summary of cases

2009

1. *M B v Minister of Home Affairs and 2 Others, NGHC, 2009/6312 (24 February 2009)*. M.B, a DRC national, was unable to access the Crown Mines Refugee Reception Office ("RRO") due to the long queues and his permit subsequently expired. After nine days spent waiting in the queue outside of the RRO without access to the office, M.B swore to an affidavit attesting to his attempts to renew his permit. M.B was arrested soon after, in possession of his permit and the affidavit and transferred to Lindela. Inquiries by LHR to Home Affairs went unanswered. M.B remained detained at Lindela for 67 days before he was released by order of court. The case was covered by the Pretoria Times on 25 February 2009 and by Legal Brief the following day.
2. *J A A v Minister of Home Affairs and 2 Others, NGHC, 2009/9167 (3 March 2009)*. J.A.A, a national of Ethiopia, was detained for 48 days, despite three letters written by LHR seeking his release and alerting Lindela to his life threatening medical conditions. J.A.A had been arrested by Immigration Officers inside the Crown Mines RRO when he went to renew his asylum permit. He was accused of fraudulently obtaining his last renewal stamp (which means obtaining a Home Affairs stamp that has been deemed invalid due to Home Affairs officers' corrupt use of the stamp). After 48 days, he was released the morning of his court hearing by a settlement of the parties, two days before his wife gave birth to their first child. He was unable to obtain a new permit for an additional 27 days after the settlement agreement.
3. *I M v Minister of Home Affairs and 2 Others, NGHC, 2009/10697 (10 March 2009)*. I.M, a DRC national, was unable to access the Crown Mines RRO due to the long queues and his permit subsequently expired. After queuing outside the RRO for two days, he swore to an affidavit attesting to his attempts to renew his permit. One week after his permit expired, he was visiting a friend detained at Lindela when he was asked for his documents. Despite his permit and sworn affidavit, he was arrested and immediately detained. In response to three letters from LHR, Home Affairs first confirmed that I.M would be released, and then sent a 'correction' letter 23 days later confirming that he would remain detained pending finalisation of his claim. I.M was detained at Lindela for 47 days before he was released by order of court.
4. *K J v Minister of Home Affairs and 2 Others, NGHC, 2009/10003 (10 March 2009)*. K.J.M, a national of DRC and resident of Capetown, was stopped by the police in Mossel Bay on a Sunday; the day after his permit had expired. He showed the officer a certified copy of his permit, but the officer told him that in Mossel Bay they do not accept certified copies, only original permits. Instead of verifying K.J.M's asylum seeker status as the Immigration Act requires, the officer arrested him and transferred him to Lindela, where he was detained. They also confiscated an amount of R2250 from him and issued him with a receipt containing the description 'Illegal Immigrant Recovery of Costs'. Home Affairs did not respond to LHR's letter demanding his release, after which LHR launched an urgent court application. Home Affairs filed a notice to oppose, but did not file any answering papers. The parties settled, confirmed by order of court, after K.J.M was released. K.J.M's money was returned to him two weeks after the deadline specified in the court order.
5. *N M v Minister of Home Affairs and 2 Others, SGHC 2009/10008 (17 March 2009)*. N.M, a DRC national, was displaced by the xenophobic violence that swept through South Africa in May 2008. Soon after, N.M spent five days waiting in the queue outside the RRO to renew his permit but could not access the office. N.M swore to an affidavit attesting to his attempts to renew his permit. He spent five more days queuing outside of the office, but still could not gain access. N.M was then arrested on suspicion of stealing a mobile phone. At the completion of his one month sentence, he was transferred to Lindela. In response to three letters from LHR, Home Affairs first confirmed that N.M would be released, and then sent a 'correction' letter 23 days later confirming that he would remain detained pending finalization of his claim. N.M was detained at Lindela for 109 days before he was released by order of court.

6. *S T v Minister of Home Affairs and 2 Others, SGHC, 2009/13818 (24 March 2009)*. S.T fled Sri Lanka and sought refuge in South Africa owing to his support of the Tamil Tigers. A year after applying for asylum, S.T traveled to the border town of Musina to meet his friend who was entering South Africa. The two were stopped by the police, and accused of having a fraudulent passport. They tried to explain that S.T, who speaks no English, had no passport at all, but a valid asylum seeker permit. They were charged and spent 39 days in police custody while the courts were closed for the festive season. When they appeared in court, the charges were immediately dismissed. Instead of releasing S.T the police transferred him to Lindela 12 days later, where he remained detained for an additional 55 days. After spending 106 days in detention, the court ordered S.T's release. Home Affairs did not release him for an additional 6 days. It then took an additional week after S.T's release before he was issued with his permit in compliance with the courts order. S.T was detained for a total of 112 days.
7. *O W v Minister of Home Affairs and 2 Others, NGHC 2009/13772 (17 March 2009)*. O.W, from Goma, DRC, was arrested on charges of fraud. He spent three and a half months detained at a police station awaiting trial, during which his permit expired. He was convicted and sentenced to a fine of R1500.00 or six months imprisonment. After serving two and a half months in prison, he was finally able to complete payment of the outstanding fine. Following payment, he was informed that his permit had expired while in custody and that he would not be released, but instead transferred to Lindela where he would remain detained. LHR wrote a letter to Home Affairs seeking O.W's release, and following no response launched an urgent application. Home Affairs filed a notice to oppose the application, but did not submit any answering papers. O.W was released by court order after spending 93 days detained at Lindela.
8. *T N v Minister of Home Affairs and 2 Others, SGHC, 2009/12154 (31 March 2009)*. Soon after T.N, a national of the DRC, entered South Africa: he went to a police station to ask where he could apply for asylum. Instead of assisting him with his application, the officers arrested him, detained him for 6 days, and then transferred him to Lindela. LHR wrote repeatedly to Home Affairs seeking T.N's release and their assistance with his asylum application, but received no response. T.N was detained for 163 days before he was released by order of court.
9. *T T v Minister of Home Affairs and 2 Others, SGHC, 2009/14059 (14 April 2009)*. T.T, a DRC national, was unable to access the Crown Mines RROs due to the long queues and his permit subsequently expired. After five days spent waiting in the queue outside the RRO without access, T.T swore to an affidavit attesting to his attempts to renew his permit. Nonetheless, he was stopped by the police and arrested two weeks later. LHR wrote a letter to Home Affairs on T.T's behalf, received no response and launched a court application soon after. T.T was released by order of court after spending 69 days detained at Lindela.
10. *G G and Another v Minister of Home Affairs and 2 Others, SGHC, 2009/14060 (16 April 2009)*. G.G and Mr. V, nationals of Rwanda, were stopped by a police officer the day after they entered South Africa before they were able to lodge asylum applications. Although both G.G and Mr. V speak very limited English, they were made to sign forms at the police station, which they later found out were Notices of Deportation. They were also ordered to deposit R2800.00 to cover expenses related to their detention and deportation. They were then transferred to Lindela. In response to LHR's inquiries, they were taken to an RRO to lodge asylum applications. Both of their claims were rejected the same day. Their appeal hearings were scheduled to take place in Lindela three weeks later. LHR launched an urgent court application seeking their immediate release and a stay of their deportation. Home Affairs filed opposing papers on the day of the hearing and postponed the matter for two days. When LHR submitted a replying affidavit, the matter was settled, and the settlement confirmed by order of court. G.G and Mr V were released after spending 71 days detained at Lindela.
11. *K M v Minister of Home Affairs and 2 Others, SGHC, 2009/15312 (21 April 2009)*. K.M, a national of DRC, waited in the queue outside the Crown Mines RRO for 11 hours a day for 4 days to renew his permit, but did not gain access. On the fourth day, on his way home from waiting in the queue outside of the RRO, the taxi he was riding in was stopped by the police. K.M was asked for his documents because he speaks limited English. The police officers arrested him despite his asylum permit and explanation. LHR sent Home Affairs two letters, received no response, and launched a court application. K.M was released by order of court, after spending a total of 48 days in detention.

12. *N C v Minister of Home Affairs and 2 Others, SGHC, 2009/14060 (21 April 2009)*. N.C, a national of Cameroon, was arrested at her home, at night, for no ascertainable reason and held for nine days at the Atteridgeville police station, despite her valid current asylum permit. After 4 days, she was taken to the Marabastad RRO, interviewed by a Refugee Status Determination officer and made to sign the decision. Five days later, she was taken back to the Marabastad RRO and told to note an appeal from that decision. She was then transferred to Lindela. LHR wrote once to officials at the Atteridgeville police station, and twice to officials at Lindela, demanding her release. LHR launched an urgent application and the court ordered N.C's release and re-issuance of her asylum permit. N.C was released the same day, after spending 155 days detained at Lindela. In contravention of the court's order, she was not re-issued her permit for an additional week.
13. *N T v Minister of Home Affairs and 2 Others, SGHC 2009/14337 (5 May 2009)*. N.T, a national of Cameroon, sought asylum in South Africa in 1999. For eleven years, N.T traveled from his home in East London to the RRO in Johannesburg every few months to renew his permit. N.T was waiting in the queue outside of the RRO to renew his permit when an Immigration officer asked to see it. He was accused of fraudulently obtaining his last renewal stamp and was immediately arrested and transferred to Lindela. N.T's application was first heard on 14 April 2009, but was postponed sine die. The judge commented about South Africa becoming a bad place to live in, if someone could be arrested out of the clear blue sky after eleven years in the country. LHR submitted supplementary papers, and the case was set down for 5 May 2009. N.T was released, by settlement of the parties, confirmed by an order of court, after spending 81 days detained at Lindela. Two weeks after the court's decision, approximately 20 other asylum seekers accused of fraudulently obtaining stamps were released from Lindela.
14. *I I Welcome v Minister of Home Affairs and 2 Others, SGHC, 2009/17270 (12 May 2009)*. I.I.W, a DRC national, was unable to access the Crown Mines RRO due to the long queues and his permit subsequently expired. LHR wrote to Home Affairs, who responded that although I.I.W was an asylum seeker, he would remain detained pending the finalization of his claim. LHR launched an application on I.I.W's behalf. Home Affairs opposed the application, but never submitted an answering affidavit. I.I.W was ordered released after spending 17 days in police custody and an additional 54 days detained at Lindela.
15. *J P A B v Minister of Home Affairs and 2 Others, SGHC, 2009/17271 (12 May 2009)*. J.P.A.B, a DRC national, spent 63 hours over 6 days standing in the queue outside of the Crown Mines RRO to renew his permit, but could not gain access to the office. The police subsequently arrested him on account of his expired permit. LHR wrote two letters to Home Affairs on J.P.A.B's behalf. When Home Affairs did not respond, LHR launched an urgent application seeking J.P.A.B's release and a stay of his deportation until his asylum claim was finally determined. Home Affairs filed a notice to oppose and was in active settlement negotiations with LHR leading up to J.P.A.B's court hearing. The morning of the court hearing, LHR was informed by the State Attorney, Home Affairs' representative, that J.P.A.B had been deported two days earlier. His case was covered by The Star on 15 May 2009 and by Legal Brief the following day.
16. *In J P A B v Minister of Home Affairs and 2 Others, SGHC, 2009/22309 (15 July 2009)*. LHR returned to court seeking an order that J.P.A.B's deportation was unlawful and requesting the court to order the State's assistance with his return to South Africa. On the Respondent's papers, the State attacked the lawfulness of Ms. E's fellowship at LHR and the lawfulness of her working in South Africa. The court struck these contentions out and ordered punitive costs against the state for that section. In addition the court held that J.P.A.B's deportation was unlawful and unconstitutional, and order that he be compensated for the costs of a return flight to South Africa, be admitted entry and re-issued and asylum permit in order to resume his asylum application. The court further requested the filing of additional papers by the state to defend whether it should be held in constructive contempt. The constructive contempt issue is still pending before the Johannesburg High Court. Since the court order for J.P.A.B's return was granted, LHR has been unable to contact J.P.A.B in the DRC, but is continuing to attempt to do so. The Department of Home Affairs has in addition appealed this decision, and we are awaiting a date for the appeal hearing, either before a full bench of the High Court, or the Supreme Court of Appeal.
17. *K-M v of Home Affairs and 2 Others, SGHC, 2009/22901 (11 June 2009)*. K-M, a DRC national, spent one month trying to renew his asylum permit at the Marabastad Refugee Reception Office, but was arrested by police and spent approximately 200 days in detention during which time he was almost deported twice. LHR addressed three letters of demand to the Respondents to halt his deportation and for his release from Lindela, and received a response from Refugee Affairs following

the second deportation attempt that he would be taken to lodge an asylum claim and thereafter released. He was not however released following Refugee Affairs' correspondence sent to Lindela on 5 May 2009. On 4 June 2009 LHR launched an application for his release to be heard on 17 June 2009. I was informed by client on 10 June 2009 that he had been released, but received no notice or response from Respondents. The application was removed from the roll on 11 June 2009.

18. *Y K v of Home Affairs and 2 Others, SGHC, 2009/22901 (17 June 2009)*. Y.K, a national of the DRC, spent 2 days attempting to renew his asylum permit at the Marabastad RRO unsuccessfully, before he was arrested by police and detained at Lindela, in possession of a permit that had expired 3 days prior. LHR addressed a letter of demand to the Respondents to halt his deportation and for his release from Lindela with a valid permit. LHR received a response from Refugee Affairs that he would be taken to Marabastad to finalize his asylum claim but that he would be kept in detention. On 4 June 2009 LHR launched an application for his release to be heard on 17 June 2009. I was informed by the client on 12 June 2009 that he had been released on 10 June 2009, but received no notice or response from Respondents. The application was removed from the roll in court on 17 June 2009. LHR is still seeking costs against the Respondents.
19. *A N v Minister of Home Affairs and 2 Others, SGHC, 2009/31418 (11 August 2009)*. A.N, a Burundian national, spent over 2 weeks standing in the queue outside of the Marabastad RRO to renew his permit, but could not gain access to the office. Once he was eventually picked from a queue, he was made to sign a RSDO decision but not given a copy of the decision, nor advised of his right to appeal the decision, but was promptly arrested and his asylum permit removed. Following one night at the Atteridgeville Police Station he was transferred to Lindela where he was detained for 143 days. LHR wrote two letters to Home Affairs on A.N's behalf. When Home Affairs did not respond, LHR launched an urgent application seeking A.N's release and a stay of his deportation until his asylum claim was finally determined. The court made an order that his detention was unlawful, that his deportation must be halted and that he be released with an asylum permit by close of business on 12 August 2009. LHR transmitted a copy of the order directly to the Respondents and to Lindela. On 13 August 2009 LHR was contacted by the Head at Lindela who advised that due to lack of transport A.N could not be transported to Marabastad on 13 August 2009 despite the court order and that he would be taken the following day. On 14 August 2009 when LHR happened to be consulting at Lindela, we saw A.N at Lindela and were informed by him that he was not being released as Mr T, the deputy centre manager at Crown Mines refused to renew his permit, despite the court order. We were not advised of this by the Respondents. Following verbal notice to the Head at Lindela and to the Respondents Legal Services that contempt proceedings would be launched imminently A.N was released from Lindela and transported back to Marabastad for issuance of his permit, which occurred after 18h00 on the 14th. He was however still not issued his permit until 11 September 2009.
20. *M S v Minister of Home Affairs and 2 Others, SGHC, 2009/36983 (9 September 2009)*. M.S, a Bangladeshi national spent over 672 days in detention. He was apparently arrested in possession of a fake asylum permit and detained at Lindela. LHR was able to halt his deportation and ensure his hearing before the Appeal Board, however his Appeal Hearing took 9 months to schedule as immigration officers at Lindela, while halting his deportation, delayed in bringing M.S before a Refugee Reception Office in order to re-lodge his claim, once his file had been lost. LHR launched an urgent application for his release from Lindela on 28 August 2009, after M.S had already had his appeal hearing in Lindela. M.S was finally rejected by the Appeal Board a week before his scheduled court hearing. The court was not willing to grant his release in order to wrap up his affairs as no guarantee could be provided that he would leave the country of his own accord. The court granted an order by settlement between the parties that M.S would be deported within 10 days of the court order, failing which he should be immediately released. M.S was deported on 18 September 2009.
21. *B M v Minister of Home Affairs and 2 Others, SGHC 2009/343340 (25 August 2009)*. B.M, an asylum seeker from Sierra Leone, was arrested in Johannesburg on 1 September 2007 and then transported to Lindela where he was detained in excess of 720 days, during which time he was never taken before a court for review of his ongoing detention. Following consultation with LHR, and numerous correspondences, he was taken on 24 July 2009 to Crown Mines for the first time to lodge an asylum application – despite numerous attempts to explain to immigration officials at Lindela that he sought asylum. Home Affairs however declared that he would remain in detention pending finalisation of his claim. On 14 August 2009 LHR launched an urgent court application for his release. Home Affairs released him 3 days prior to his court application with a 14 day permit. The matter was removed from the urgent roll with costs against Home Affairs.

22. *T M v Minister of Home Affairs and 2 Others, SGHC, 2009/52288 (22 December 2009)*. T.M, a national of DRC, obtained a section 23, 14-day transit permit on arrival in South Africa in May 2009 and soon after obtained a section 22 permit. After contracting Malaria, and due to no fault of his own, he failed to renew his permit. By 5 June 2009 and his permit expired. Once he had regained some health he returned to TIRRO to renew his permit, but was afforded no opportunity to explain his reasons for delay nor provide an affidavit in support of his indisposition with Malaria. His permit was seized and he was detained at Lindela from 15 July 2009. On 31 August 2009 LHR sent a letter demanding that deportation proceedings be halted and he be released with a section 22 permit. LHR received no response. Further, on 7 December 2009, whilst trying to seek medical attention for Malaria symptoms which had not been treated at Lindela, T.M was assaulted by security guards and laid an official complaint against Bosasa. Again, LHR has also received no response to this official complaint. On 22 December 2009 a High Court ordered T.M's immediate release from Lindela with a section 23 permit and ordered that his section 22 permit be re-issued on his arrival at a RRO within 14 days. On 22 December 2009 T.M was released from Lindela with a section 23 permit.
23. *W F K v Minister of Home Affairs and 2 Others, SGHC, 2009/52289 (22 December 2009)*. W.F.K, a Sierra Leone national, held a valid section 22 permit from 1998 when he first lodged his asylum claim. After relocating to Durban in 2004 he renewed his permit at Moor Road. W.F.K was detained in prison on 'suspicion of dealing drugs' during which time his permit expired due to no fault of his own. W.F.K was acquitted of the charges but was not released due to his permit having expired. He was detained at Lindela from 1 June 2009. On 22 December 2009, after being detained unlawfully for over 6 months, a High Court ordered W.F.K's release with a valid section 23 permit and ordered that he be allowed to renew his section 22 permit at the RRO. W.F.K was released on 22 December 2009 with a section 23 permit.
24. *T M B v Minister of Home Affairs and 2 Others, SGHC, 2009/52290 (22 December 2009)*. T.M.B, a national of the DRC, was attempting to make his way to Cape Town to lodge an asylum claim when he was arrested on a train on 30 June 2009. He was taken to Lindela on 2 July 2009. On 21 September 2009 LHR sent a letter to Home Affairs demanding all deportation proceedings be halted and he be immediately released in order to lodge an asylum claim. On 23 September 2009 he was taken to Marabastad to lodge a claim. He was interviewed by a RSDO and an unofficial 'interpreter', another Congolese asylum seeker, to assist in the interview. The interpreter spoke on a little French and no Lingala. The Congolese man completed T.M.B's form and told T.M.B that he was lying about his asylum claim and that he would only get a permit if he told the RSDO that he was seeking asylum due to economic and social problems. After a brief 7 minute interview the RSDO rejected his claim as manifestly unfounded. He was not advised he could make written representations and was not issued with a temporary asylum seeker's permit, despite his right of review in respect of the decision finding his claim manifestly unfounded. LHR submitted his application to the Standing Committee requesting condonation for late filing and was awaiting the decision of the Standing Committee thereof. Standing Committee was in turn, awaiting the file contents from the Pretoria RRO. LHR sent a second letter demanding the deportation be halted after T.M.B signed a deportation notice for fear of indefinite detention, despite his wish not to return to the DRC. On 22 December 2009 the South Gauteng High Court ordered T.M.B be released with a section 23 permit and ordered he be re-issued with a section 22 permit on arrival at Marabastad RRO. On 22 December 2009 T.M.B was released with a section 23 permit.
25. *K F v Minister of Home Affairs and 2 Others, SGHC, 2009/52291(22 December 2009)*. K.F, a Burundian national, lodged an asylum claim and was issued with a section 22 permit in 2001. On 20 November 2006 he was interviewed for his claim but received no decision at the time. On 29 January 2009 a decision was eventually taken rejecting K.F's asylum claim. However, he never received notice of this decision. On 17 March 2009 he was arrested on charges of assault and served the full month and a half sentence. On 1 May 2009 he was transported to Lindela. LHR sent a letter demanding his immediate release with a valid section 22 permit and a halt on all deportation proceedings. Home Affairs stated that although he did not appear on their system, despite his grant of a permit since 2001, he would be taken to lodge a claim. LHR responded stating that as he had already applied for asylum he would not be lodging a new claim, and he was never taken to renew his permit. Despite providing an undertaking to take K.F to renew his permit on 24 August 2009, this was not heeded to. Home Affairs advised LHR that K.F would be taken to lodge a new claim on 31 August 2009, which he was so taken, although his new permit contained his original asylum file number from 2001. After some investigation it was revealed that K.F's claim had been determined and he was rejected as unfounded, although he was never notified. He lodged an appeal against this decision and K.F, as represented by LHR, was heard in front of the Refugee Appeal Board on 25 September 2009. He awaits his Refugee Appeal Board decision. On 22 December 2009 the High

Court ordered that K.F be released with a section 23 permit and that he be re-issued with a section 22 permit within 14 days. K.F was released on 22 December 2009.

26. *E N v Minister of Home Affairs and 2 Others, SGHC, 2009/51131 (15 December 2009)*. E.N, from the DRC, was arrested on 21 July 2009 and detained at Lindela. A week after LHR sent a letter demanding he be taken to lodge an asylum claim at a RRO. E.N was taken to Pretoria to lodge a claim and received a section 22 permit, which was retained by immigration officers. On the same day, he was interviewed and informed the he had been rejected as unfounded. E.N lodged an appeal with the Refugee Appeal Board and at the time of his hearing was waiting a date for his Appeal Hearing. On 15 December 2009, after just short of 5 months in detention, the High Court ordered E.N be released with a valid section 22 permit and ordered the Respondents be interdicted from deporting E.N until his claim is finally determined. E.N was released on 17 December 2009 but with a section 23 (14 day) permit, in contempt of the court order. LHR sent a letter to Home Affairs advising of such contempt. Home Affairs merely acknowledged the release with the section 23 permit.
27. *I M v Minister of Home Affairs and 2 Others, SGHC, 2009/51132 (15 December 2009)*. I.M, a Burundian asylum seeker with a valid section 22 permit, was convicted of marijuana possession and sentenced to 3 months in prison. I.M served his full sentence, during which time his permit expired. He was released on 28 May 2009 and returned to Marabastad to renew his permit, which not renewed as per the provision of the Regulations, and he was given no opportunity to explain why his permit had expired. He was transported to Lindela on 29 May 2009. On 15 December 2009, after over 6 months at Lindela, a High Court ordered his release with a valid section 22 permit. On 17 December 2009 Mr Mayoya was released, but with a section 23 permit to report to a RRO within 14 days. On 18 December 2009, LHR sent a letter to Home Affairs advising of the incorrect issuance of the permit, and that this was in contempt of a court order. LHR never received a reply from Home Affairs.
28. *T S v Minister of Home Affairs and 2 Others, SGHC, 2009/51133 (15 December 2009)*. T.S, an 18 year old Sri Lankan, was arrested at OR Tambo Airport for attempting to fly to Germany using a fake Malaysian passport. He was detained at Kempton Park Police Station before being transported to Lindela on 12 May 2009. He was transported to the Sri Lankan Embassy in what he believes was an attempt to obtain a travel document for deportation, however the Embassy refused to recognize him. LHR sent a letter to Home Affairs on 24 August 2009 informing of his intention to apply for asylum and demand to halt deportation proceedings, but he was never assisted in lodging a claim. Instead, on 1 December 2009 he was once again taken to the Sri Lankan Embassy in what he believes, was a second attempt to obtain documentation to instigate deportation proceedings. Again the Embassy refused to recognize him. On 15 December 2009 the High Court ordered that T.S be released with a section 22 permit and ordered he not be deported unless and until his refugee status was finally determined. On 17 December 2009, he was released, however, with a section 23 permit. LHR sent a letter to Home Affairs advising of their contempt of a court order, to which the LHR received no reply.
29. *M K K v Minister of Home Affairs and 2 Others, SGHC, 2009/51134 (15 December 2009)*. M.K.K, from the DRC, was arrested at OR Tambo airport for using his brother's Dutch passport in an attempt to reach the Netherlands to seek asylum. Despite telling the Immigration Officials that he wished to seek asylum he was provided no assistance and transport to Lindela on 30 May 2009. At Lindela, he reiterated his intention to seek asylum and again received no help. LHR sent a letter to Home Affairs demanding deportation proceedings be halted and he be released to lodge an asylum claim. On 29 September 2009 M.K.K was taken to TIRRO and issued with a section 22 permit valid until 29 September 2009. On the same day he was interviewed by an RSDO and his claim was rejected as unfounded. He appealed this decision and remained in detention pending an Appeal Hearing date. On 15 December 2009, after 190 days in detention, the High Court ordered M.K.K be released with a valid section 22 permit. He was released on 17 December 2009, however, with a section 23 permit. LHR sent a letter to Home Affairs on 18 December 2009 advising of their contempt of court orders regarding the issuance of the incorrect permits. LHR sent a further letter on 6 January 2010 advising that should M.K.K not be issued with a section 22 permit on 7 January 2010 when he reports to TIRRO, the Applicant would proceed to the Court to order the Respondents be held in contempt. No reply was ever received.
30. *N O and M G v Minister of Home Affairs and 2 Others, SGHC, 2009/51135 (15 December 2009)*. N.O and M.G, young sisters from DRC, were arrested near the Mozambique-South Africa border. On 28 September, whilst at the police station, they were given and signed a "Notification

Regarding Right to Review by Minister" but were not told the contents or purpose thereof. After spending 4 weeks in prisons were eventually transported to Lindela on 22 October 2009. Despite attempting to explain their wish to seek asylum a few times, they were unassisted in doing so. A letter of demand was sent to Lindela, where after, on 24 November 2009, they were taken to TIRRO. They received section 22 permits valid until 24 December 2009, which were, however, retained by Immigration Officials and the clients were sent back to Lindela. On 15 December the High Court ordered their release with their valid section 22 permits. On 17 December 2009 the clients were released, apparently with their section 22 permits.

2010

31. *B N v Minister of Home Affairs & 2 others SGHC, 52898/09 (7 January 2010)*. B.N, an asylum seeker from the DRC, arrived in South Africa in August 2004 and applied for asylum at the then Braamfontein RRO. He continued to renew his permit, and never received a negative decision on his claim. On 12 July 2009 he was arrested for drunken driving, and sentenced to a fine of R4000. From court he was taken to 'Sun City' prison, where his brother paid his fine, he was not however then released from prison, but taken directly to Lindela on 20 August 2009 where he was detained until LHR launched a court application for his release on 24 December 2009. Home Affairs did not respond to the letter of demand for his release of 17 December 2009. He was released on 5 January 2010 as a result of his court application after being detained in excess of 4 months, during which time he was not screened, was not provided with a warrant for his detention, was not advised of his right to make representations in respect of such warrant, and never appeared before a court.
32. *Mustafa Aman Arse v Minister of Home Affairs & 2 others SGHC, 2009/52898 (7 January 2010)*. M.A.A, an ethnic Oromo asylum seeker from Ethiopia, was arrested as an 'illegal foreigner' following his unsuccessful attempts to access the RRO in Port Elizabeth. He had entered South Africa on 8 December 2008 and was issued a 14 day transit permit, but while living in Queenstown and commuting to Port Elizabeth, he was unable to lodge a claim for more than 5 months. He was arrested in Queenstown on 26 May 2009 and detained at a police station there before being transported to Lindela on 2 June 2009. He was detained at Lindela for three months before immigration officers assisted him to lodge an asylum application from detention, where he remained. LHR launched a High Court Application for his release on 18 December 2009. The application was dismissed on 7 January 2010. The High Court held that 'freedom of a person is undoubtedly a right of great importance enshrined in the constitution' however it then held that 'the courts can take judicial notice of the fact that we have high levels of crime in this country and we have high levels of unemployment and we have high levels of illegal immigration into the country'. The court held that while it 'obviously has to have regard to the importance of a person having freedom, the court must also have regard to the practicalities that would arise in ordering the release of a person such as this', which was said in response to the applicant not having R2000 to pay as security to the court for his release –which is not a requirement for any other lawful asylum seeker in South Africa. Despite his lawful status as an asylum seeker, and the length of time already spent in detention, the High Court effectively dismissed his application because he is indigent. LHR immediately sought leave to appeal, which was granted, and on accelerated time frames was able to have the appeal set down before the Supreme Court for hearing on 24 February 2010.
33. *Mustafa Aman Arse v Minister of Home Affairs & 2 others SCA 2010/25, (Court order: 24 February 2010; Judgment delivered: 12 March 2010)*. The SCA overturned this judgement in its entirety, and importantly held that asylum seekers have the right to sojourn in South Africa, outside of detention, pending finalisation of all appeal and review procedures of their asylum claims, including judicial review. It declared that the issue of detaining foreigners lawfully with the necessary warrants and procedural safeguards had already been settled by the court. The SCA also grilled senior counsel for Home Affairs questioning counsel whether he client was 'falling apart, whether it did not understand the law or whether it just cocked its head at the law'. The SCA also demanded to know why Home Affairs had opposed the initial High Court application, and had persisted in opposing the appeal to the SCA appeal, all at tax payers' expense. The SCA decision also confirmed the decisions in Aruforse and Hassani that a person cannot be detained in excess of 120 days.
34. *AS & 8 others v Minister of Home Affairs & 3 others, SGCH 2010/101 (12 January 2010). (Decision: 17 March 2010)* This application was launched on 5 January 2010 on behalf of a family of eight asylum seekers from Afghanistan who were detained for more than four months by Home Affairs, during which time numerous attempts were made by Home Affairs to deport them. The two parents, their five minor children, and the oldest daughter's fiancé, also a minor, were arrested

separately at the OR Tambo Airport following attempts to join family members in France who were also refugees. The oldest daughter and her fiancé first attempted to make their way to France in September last year. After detaining them at the airport, Home Affairs tried to deport the two minors back to Afghanistan without fulfilling their legal obligation to investigate whether, as children, they were in need of special protection. The children were flown as far as Istanbul before Turkish authorities intervened and prevented their return to Afghanistan. They were then returned to South Africa and detained for over two months before being moved to a place of safety for children. The parents and four younger children were intercepted at the airport 6 weeks later. While detained there, the parents made repeated requests to see the two older children, who were also being held at the airport. But they remained separated for two weeks. Home Affairs attempted to deport the family two more times, but failed to get the necessary clearance to fly through either Istanbul or Dubai. In November of last year, the family was again separated after the parents were transferred to Lindela and the children were sent to a place of safety. Despite repeated requests by the family and LHR to lodge asylum applications, and even after LHR instituted legal proceedings for the family's release, Home Affairs persisted in seeking to deport the family. Home Affairs also levelled trafficking allegations against the parents in order to justify their continued detention. The Department made no attempt, however, to investigate these allegations or initiate protective mechanisms for the children: instead, it remained eager to deport the parents together with the children they had allegedly trafficked. Accusing the parents of trafficking the children was a spurious allegation with no basis whatsoever. It was motivated not by concern for the children, but as a purely invented justification for an otherwise illegal detention. The trafficking allegations required the family to undergo DNA testing, delaying the court process and prolonging their detention and the parents' separation from the children. After more than 4 months in administrative detention, the High Court declared their detention unlawful because Home Affairs failed to follow the correct administrative procedures when the family was first detained. The court importantly held that a warrant of detention that was not issued in accordance with procedural requirements of the Immigration Act, in this case within the correct time frame, could not legitimize, after the fact, a detention that was initially unlawful. The court ordered the immediate release of the parents, and the return of the children to their care. The court also upheld the family's right to apply for asylum. Together with the Centre for Child Law, who joined the proceedings on behalf of the children, LHR is seeking an additional court order declaring that the separation of the family and the conditions of the children's detention at the airport and at the Kempton Park police station were unlawful. This application is still pending.

35. *Kanyo Aruforse v Minister of Home Affairs & 2 Others, SGHC 2010/01189 (19 January 2010)*. – K.A., an asylum seeker from Burundi, first arrive in South Africa in 2006 and applied for asylum at Marabastad. During xenophobic attacks he sought shelter at Akasia temporary protection site in Pretoria. During December 2008 he was arrested at Akasia on rape charges and detained at Newark Prison for 7 months before being acquitted, where after he was taken to Lindela where he was detained from 15 July 2009. On 23 December 2009 LHR sent a letter of demand to Home Affairs for his release with an asylum permit: receipt of which was acknowledged. On 14 January 2009 LHR launched an urgent application for his release which was opposed. The matter was postponed on 19 January 2010 until 21 January 2010 for Home Affairs to file an answering affidavit, and lengthy arguments ensued. The respondents' version had to be taken that K.A had never lodged an asylum claim as his details could not be found on the system at Marabastad, but regardless, in a precedent setting decision, Judge Meyer, disagreed with the High Court decision of Willis J in Arse and held that no detention beyond 120 days is lawful, and that the appropriate remedy is the applicant's immediate release. Home Affairs have sought, and been granted leave to appeal this decision, which they further sought to have heard with ten Arse matter, but was refused by the SCA as deemed not urgent as the K.A had already been released. It is unclear in light of the SCA ruling in Arse whether Home Affairs is still persisting with this appeal.
36. *Hooman & Hootan Hassani v Minister of Home Affairs & 2 Others, SGHC 2010/01187 (19 January 2010)*. The applicants, asylum seekers from Iran, were arrested at OR Tambo airport with fake Portuguese passports en route to England where their father is recognised as a refugee. They are arrested on 27 September 2009 and thereafter detained at Lindela. They were not assisted to apply for asylum, but instead were taken to the Iranian embassy for identification, where they pretended not to understand Farsi, in fear of deportation to Iran. On 22 December 2009 LHR sent a letter of demand to Home Affairs demanding that they be assisted to apply for asylum and that they be immediately release with asylum permits. Home Affairs responded that they would be taken to Crown Mines on 15 January 2010 to lodge applications but that they would be detained until their asylum claims were finalised. On 14 January 2010 LHR lunched an urgent court application for their release. On 15 January 2010 they were not taken to Crown Mines to lodge asylum applications. On 19 January 2010, Judge Meyer sought the filing of further affidavits, and the matter was postponed

for this purpose. It was then heard before Dukada AJ on 2 February 2010. On 5 February 2010 he ordered their immediate release, and in a precedent setting reportable judgment disagreed with the High Court decision of Willis J in *Arse* and held that no detention beyond 120 days is lawful, and that the appropriate remedy is the applicant's immediate release. He also ordered that Home Affairs must assist the applicants to apply for asylum. Home Affairs has filed an application for leave to appeal, but the application has yet to be heard by the judge, and will be opposed.

37. *N H v Minister of Home Affairs & 2 Others, SGHC 2010/01188 (19 January 2010)*. N.H., an asylum seeker from Burundi, arrived in South Africa in 2004 and lodged an asylum application at the then Braamfontein Refugee Reception Office. He continued to renew his permit from that time. In October 2009 he was arrested at his home on assault charges and appeared before the Jeppe Magistrate's Court, and was sentenced to 30 days at Leeukop Prison. After completion of his sentence he was transferred immediately to Lindela on 12 November 2009. From the time of his admission to Lindela he attempted to explain that he was still an asylum seeker, but he was not screened, or assisted in any way. On 23 December 2009 LHR sent a letter of demand to Home Affairs for his release with an asylum permit; Home Affairs only acknowledged receipt. On 14 January 2010 LHR launched an urgent court application for his release. He was released on 15 January 2010 after being detained in excess of 2 months, without being screened at Lindela, provided a warrant for his detention, advised of his right to make representations on such warrant, or brought before a court.
38. *K R and 1 other v Minister of Home Affairs & 2 Others, SGHC 2010/06784 (2 March 2010)*. This is a pending application brought on behalf of two asylum seekers from Bangladesh who were arrested on entry into South Africa at the border with Musina on 9 December 2009. They were prevented from lodging asylum applications but were detained at police stations in Limpopo before transported to Lindela on 17 December 2009. Since their detention at Lindela they again attempted to explain that they sought asylum but struggled to do so without speaking English. LHR was contacted by one of the client's family members, and thereafter sent a letter of demand to Home Affairs on 29 January 2010 for them to be assisted to lodge asylum applications and for their release with asylum permits, receipt of which was acknowledged, but no further correspondence was sent. On 11 February 2010 they were transported to Crown Mines to lodge asylum applications, where they remained the whole day, and were both interviewed twice. They were issued with asylum permits which were retained by the Lindela officials, and made to sign a number of other documents which they did not understand. LHR was provided copies of these documents on 17 February while consulting at Lindela, which were manifestly unfounded rejection letters. LHR subsequently assisted them to make representations to the Standing Committee for Refugee Affairs once file contents were obtained. While they were detained, the first applicant was severely beaten in a fight that took place amongst detainees in Lindela. He was so severely beaten that he was hospitalised for more than 3 weeks during which time he was operated on twice. LHR has reported the incident to Lindela and Bosasa but received no adequate response. On 22 February 2010 LHR launched an urgent court application for their release. On 1 March 2010, the day before the court hearing, Home Affairs for the first time, informed LHR that there were magistrates warrants for their ongoing detention until 14 April 2010, despite the applicants never having been informed of such warrants or been advised of their right to make representations to the magistrate why such warrants should not be extended. On the day of the court hearing, application was made to court to join the magistrate as the fourth respondent for the review of the warrants, and the matter was postponed sine die. The magistrate has since filed the record, and the application for review, and a declaration that the detention was unlawful is still pending, however another urgent application was brought for their release. See below.
39. *K R and 1 other v Minister of Home Affairs & 2 Others, SGHC 2010/14198 (16 April 2010)*. On 14 April 2009 LHR sent Home Affairs a letter of demand that the applicants had been detained in excess of 120 days, and that they should be released immediately or would be brought before court on expedited time frames on 16 April 2010. Home Affairs opposed the application, and even denied that the ruling in *Arse*, above, meant that no person could be detained in excess of 120 days, but the court ordered their immediate release.
40. *Z S v Minister of Home Affairs & 2 Others, SGHC 2010/08710 (16 March 2010)*. Z.S., an asylum seeker from the DRC, was arrested at Crown Mines on 5 October 2009, apparently for non-appearance at his appeal hearing, despite reporting to Crown Mines on the date of his scheduled hearing but being refused access by a security guard because his asylum permit was still valid. From the time of his admission to Lindela he attempted to explain to immigration officials that he was an asylum seeker and feared deportation to the DRC, and that in addition he is married to a Congolese

woman, with whom he has two children, who have been recognised as a refugee in South Africa. On 22 December 2009 LHR lodged a condonation application to the Appeal Board on his behalf for the non-appearance at his appeal hearing, and simultaneously sent Home Affairs a letter of demand for his release with an asylum permit. Apart from acknowledging receipt of the correspondence, Home Affairs took no further steps. On 8 March 2010 LHR launched an urgent court application for his release. He was released on 11 March 2010 with a 14 day permit, after spending in excess of 5 months in detention without judicial review or any screening processes at Lindela as to why he was detained, despite his repeated attempts to explain his situation to immigration officers.

41. *M I M v Minister of Home Affairs & 2 Others, SGHC 2010/08790 (16 March 2010)*. M.I.M., an asylum seeker from the DRC, arrived in South Africa on 2 May 2009 and lodged an asylum application at TIRRO on 4 May 2009, he was issued with an asylum permit and interviewed, but he never received a decision on that day. He was unable to return to TIRRO on 5 June 2009 due to a stomach virus, but returned on 7 June 2009 to renew his permit and lodge an appeal against his negative decision. Despite explaining why he was two days late, he was arrested and detained at Lindela. During June 2009 after a visit to Lindela with the Deputy Director of Deportation, a number of asylum seekers were release from Lindela after being taken to respective refugee reception offices for their status to be verified. M.I.M. was taken to TIRRO on 20 June 2009, but he was not assisted there, instead he was returned to Lindela where he was issued with a new Lindela card reflecting that he had only been admitted thereon 30 June 2009. On 16 September 2009 LHR sent a letter of demand to Home Affairs asking that he be released with an asylum permit and be scheduled an appeal hearing. Home Affairs only acknowledged receipt. On 17 September 2009 the Refugee Appeal Board responded that they could not confirm that he had lodged an appeal. LHR thereafter assisted M.I.M. to lodge an application for condonation for late filing of his appeal with the Refugee Appeal Board, which the appeal board acknowledged. On advice from LHR he requested immigration officer, Bongani Sithole for the warrant of his detention, but he was chased away. On 8 March LHR launched an urgent court application for his release. Prior to the hearing of the scheduled hearing of the application on 16 March 2010, he was released on 11 March 2010 after spending more than 9 months in detention, because he was arrested for lodging his appeal 2 days late.
42. *A I M v Minister of Home Affairs & 2 Others, SGHC 2010/08711 (16 March 2010)*. A.I.M., an asylum seeker from the DRC was arrested at the Marabastad Refugee Reception Office on 2 November 2009 when his negative RSDO decision was found in his file and he had failed to lodge an appeal, because he had agreed to pay an immigration officer R3000 to lose his decision, in order to receive a positive decision on his claim. From Lindela he assisted Home Affairs with an investigation. LHR assisted AIM with a condonation application to the Appeal Board for the late filing of his notice of appeal on his initial asylum claim, and upon expiry of 120 days launched an urgent court application for his release on 8 March 2010. He was released with a 14 day permit on 11 March 2010 after spending in excess of 4 months in detention without any compliance of procedural safeguards under the Refugee or Immigration Acts.
43. *M B v Minister of Home Affairs & 2 Others, SGHC 2010/12460 (13 April 2010)*. M.B., an asylum seeker from the DRC entered South Africa on 7 July 2009 to apply for asylum. He was arrested in Newcastle on arrival in South Africa, on 9 July 2009 and was thereafter detained at the Newcastle Police Station and Durban Westville prison before being transported to Lindela on 29 July 2009, despite repeatedly attempting to explain that he wished to apply for asylum from the time of his arrest. Once at Lindela he continued trying to explain that he wished to apply for asylum. After being detained in excess of 2 months, he was taken to Marabastad to lodge a claim. On 28 September 2009 he was interviewed and received a negative decision, advised to appeal, and be taken back to Lindela. He lodged an appeal and his appeal hearing was heard at Lindela on 6 November 2009. On 16 February 2010 LHR sent a letter of demand to Home Affairs for his release with an asylum permit, but received no response from Home Affairs. On 1 April 2010 LHR launched an urgent court application for his release from Lindela. He was released on 9 April 2010 after being denied an opportunity to lodge an asylum application on entry into South Africa, and being detained in excess of 8 months, without being provided a warrant for his detention, advised of his right to make representations in respect, or appear before a court.
44. *M A A v Minsiter of Home Affairs & 2 Others, SGHC, 2010/15489 (4 May 2010)*. M.A.A., an asylum seeker from Burundi, was arrested at Crown Mines on 25 September 2009, apparently due to his non-appearance at his appeal hearing, despite attending Crown Mines on the date of his scheduled hearing but being denied access to enter, and having his asylum permit extended thereafter. On 26 April 2010 LHR submitted a condonation application to the Appeal Board on his behalf for his non appearance and simultaneously launched an urgent court application for his

release with an asylum permit. He was released with a 14 day permit on 3 May 2010, the day before his scheduled court hearing, after being detained in excess of 6 months without any judicial review of his detention, or any screening procedures or assistance within Lindela.

45. *M Y v Minister of Home Affairs & 2 Others, SGHC 2010 / 15491 (4 May 2010)*. M.Y., an asylum seeker from the DRC was arrested on 27 May 2009 in Durban, where he had been unable to access the Refugee Reception Office to lodge his claim before the 14 day permit issued to him at the border in Musina, during May 2009, expired. From the time of his arrival at Lindela he attempted to explain to immigration officers that he entered South Africa to apply for asylum, but it was not until LHR had transmitted a letter to Home Affairs that he must be assisted to lodge an asylum application, that he was taken to Marabastad to lodge a claim on 23 September 2009 - 4 months after his arrest. He was provided with a decision on that day but did not understand the contents of it. He was then taken back to Lindela, where due to the length of his stay there, he elected to be deported, but once he was scheduled for deportation, and upon contacting his family, he learned he could not return home and sought LHR's assistance for his release. On 13 April 2010 LHR sent an urgent letter of demand to Home Affairs for his immediate release and to be provided with his RSDO decision, allowed to make the necessary appeal within 30 days of receipt of the decision, and be issued with an asylum permit. LHR received no response to this letter and on 26 April 2010 lodged an urgent court application for his release. He was released on 3 May 2010, the day before his court hearing, with a 14 day permit to report to a refugee reception office, after being detained in excess of 10 months.
46. *A T v Minister of Home Affairs & 2 Others, SGHC 2010/15490 (4 May 2010)*. A.T., an asylum seeker from Pakistan, was arrested at Marabastad on 17 August 2009 when he returned there to extend his asylum permit, apparently as he failed to lodge an appeal against his negative decision within 30 days, despite not being advised of this right in Urdu, and having his initial asylum permit issued for 3 months, which was the same day on which his claim was rejected and should have been advised to lodge an appeal within 30 days. On 26 April 2010 LHR submitted a condonation application to the Appeal Board on his behalf for the late filing of his notice of appeal and simultaneously launched an urgent court application for his release with an asylum permit. He was released with a 14 day permit on 3 May 2010, the day before his scheduled court hearing, after being detained in excess of 8 months without any judicial review of his detention, or any screening procedures or assistance within Lindela. In addition, LHR sent an urgent letter of demand for his release on 16 February 2010 and received a response letter from Home Affairs stating that his asylum claim was finalised on 18 January 2010, despite A.T. already having been detained in excess of 120 days, and never having been informed of such a decision.
47. *F C M v Minister of Home Affairs & 2 others, SGHC 2010/15493 (4 May 2010)*. F.C.M., an asylum seeker from the DRC, was arrested at TIRRO on 24 July 2009 when he had returned to renew his asylum permit, three months after lodging his claim, apparently as his asylum claim was rejected as manifestly unfounded. He was not provided with any opportunity to make representations on his claim, nor provided any advance notice to leave the country of his own accord before his arrest. On 26 April 2010 LHR submitted a condonation application to SCRA for the late filing of his representations to them, along with the representations and simultaneously launched an urgent court application for his release with an asylum permit. He was released with a 14 day permit on 3 May 2010, the day before his scheduled court hearing, after being detained in excess of 9 months without any judicial review of his detention, or any screening procedures or assistance within Lindela.
48. *M A R v Minister of Home Affairs & 2 others SGHC, 2010/16242 (11 May 2010)*. M.A.R., an asylum seeker from Burundi, entered South Africa in May 2005 and lodged an asylum application in Cape Town. His asylum permit expired in 2007 when he was unable to renew it when he had been ill. He sought the assistance of UCT law clinic and returned to the refugee reception office a number of times but could not renew his permit. On 26 August 2009 while at his home, police arrive because of a commotion outside, but when they saw him, asked for his documentation, which he gave them. He was arrested immediately and detained at two different police stations and in prison before being transported to Lindela in September 2009. On 18 March 2010 he was transported from Lindela to Crown Mines where he was interviewed and advised that his asylum claim was rejected, but he was not given a copy of the decision. He nevertheless prepared a letter of appeal inside Lindela, but he was not taken back to Crown Mines to lodge it after 30 days On 19 April 2010 LHR sent Home Affairs a letter of demand for his immediate release with an asylum permit; Home Affairs only acknowledged receipt. On 26 April 2009 LHR launched an urgent court application for his release. He was released on 3 May 2010 after being detained in excess of 8 months, during which time he

did not receive a warrant for his detention, was not advised of his right to make representations in respect thereof, and never appeared before a court.

49. *P K v Minister of Home Affairs & 2 others SGHC, 2010/16242 (11 May 2010)*. P.K., an asylum seeker from Pakistan, was arrested at the Crown Mines Refugee Reception Office, apparently for failing to appear at his appeal hearing, despite having attended at Crown Mines on the day of his appeal hearing and having his asylum permit extended on that day. He was detained at Lindela from 17 November 2009. On 26 April 2010 LHR lodged a condonation application on his behalf with the Refugee Appeal Board for his failure to appear at his appeal hearing, and thereafter sent a letter of demand to Home Affairs to halt his deportation and demanding his immediate release in possession of a valid asylum permit pending finalisation of his asylum application and condonation application before the Appeal Board. Home Affairs acknowledged receipt of the correspondence but took no further steps. On 3 May LHR launched an urgent court application for his release, scheduled for hearing 11 May 2010. On 6 May 2010 LHR received correspondence from Refugee Affairs that P.K. would be transported to Crown Mines for his permit to be extended and then be released, however he was released from Lindela with a 14 day permit. The matter was removed from the urgent court roll. Despite the launching of court proceedings to ensure his release, the letter from Refugee Affairs, and a letter from the Refugee Appeal Board confirming that he should be re-issued a section 22 permit pending the outcome of his application, LHR had to remain involved to ensure that P.K. was issued an asylum permit, as he was threatened with re-arrest at Crown Mines when he reported there for the re-issuance of his asylum permit.
50. *T P D M v Minister of Home Affairs & 2 others SGHC, 2010/16244 (11 May 2010)*. T.P.D.M., an asylum seeker from the DRC entered South Africa in 2008 and lodged an asylum application at Crown Mines. During May 2009 he was given a negative RSDO decision, to which he filed a notice of appeal on 22 June 2009 to an official, Khethiwe Langa (badge number 18648045). His permit was extended for another 6 months. On 22 December 2009 TPDM reported to Crown Mines to extend his permit, but he was summarily arrested as there was apparently no appeal notice in his file, despite the fact that his permit would not have been extended for a further 6 months had he not lodged an appeal within 30 days. He immediately called his brothers who brought his appeal notice to Crown Mines, but the refugee reception offers refused to accept it. On 26 April 2010 LHR lodged a condonation application with the Refugee Appeal Board on his behalf, copied to Home Affairs. Home Affairs never acknowledged receipt, or conducted any screening process of TPDM while he was at Lindela. He was never assisted at Lindela to continue his asylum application. He was never issued with a warrant of detention, advised of his right to make representations, or brought before a court. On 3 May 2010 LHR launched an urgent court application on his behalf. He was released on 6 May 2010. Despite his being released as a result of the court application, and a letter from the appeal board that he should be issued a new asylum permit, LHR had to remain involved to ensure that he was issued an asylum permit upon his release.
51. *F W v Minister of Home Affairs and 3 Others, SGHC, 2010/16245 (11 May 2010)*. F.W., an asylum seeker from the DRC, arrived in South Africa with his two daughters, aged 5 and 16, during November 2009. Before being able to lodge asylum claims, they were arrested at the border near Springbok, and detained at a police station for approximately 2 weeks, despite attempting to explain that they wished to apply for asylum. They were then moved to Upington Police Station for one night before being moved to Lindela on 8 December 2009. On arrival at Lindela FW again attempted to explain that they were seeking asylum, but instead they were taken to the Congolese Embassy in Pretoria for their nationality to be confirmed. Once they were returned to Lindela, his daughters were separated from him and taken to the Polokego Place of Safety in Krugersdorp. During the time of their detention, FW's daughters were only brought to see him once, despite no basis for their separation from their parent. On 30 March 2010 he was taken to Crown Mines to lodge an asylum application, and received a negative decision on the same day. He immediately lodged an appeal with immigration officer Jacob Lethuba and was scheduled to have his appeal hearing in Lindela on 13 April 2010, which was subsequently postponed to 7 May 2010, despite no basis for his detention, his inability to prepare adequately for his appeal while detained, and the unfair discrimination to have his asylum claim heard in detention despite the right of asylum seekers to sojourn outside of detention. On 20 April LHR sent a letter of demand to Home Affairs and the Department of Social Development for his immediate release and the return of his daughters to his care. Neither Home Affairs nor DSD provided any response. On 3 May 2010 LHR launched an urgent court application for their release. On 6 May 2010, while consulting with him at Lindela, he was informed that he was being released, and his daughters were brought to Lindela for his release. LHR remained involved to ensure interim accommodation for them and to ensure that he was issued an asylum permit. He was released after being separated from his daughters, and spending in excess of 5 months in detention, as he was

prevented from lodging a claim on arrival in the country. During his detention he was not issued with a warrant for his detention advised of his right to make representations on such a warrant or brought before a court.

52. *J D v Minister of Home Affairs and 2 Others, SGHC, 2010/16240 (11 May 2010)*. J.D., an asylum seeker from Burundi, entered South Africa in November 2008 and then lodged an asylum application at the Marabastad Refugee Reception Office. He thereafter struggled to extend his permit as he could not gain access to Marabastad. On 3 March 2009 he was robbed at his home in Pretoria. As he chased the thieves, he accidentally bumped another car, and was arrested and charged with damage to property. He appeared in court but does not understand what happened. He was detained since then, and then moved to Lindela on 22 September 2009. On 20 April 2009 LHR sent a letter of demand to Home Affairs for his release, but apart from clarifying the spelling of his name, Home Affairs provided no further response. LHR launched an urgent court application on 3 May 2010. He was released on 6 May 2010 after being detained at Lindela in excess of 7 months without any screening, without being provided a warrant for his detention or being advised of his right to make representations in respect thereof, and without ever appearing before a court.
53. *J F v Minister of Home Affairs and 2 Others, SGHC, 2010/16241 (11 May 2010)*. J.F., an asylum seeker from the DRC entered South Africa in September 2009 and lodged an asylum application at the Marabastad Refugee Reception Office and was issued with a permit valid for 3 months. He continued to extend his permit. On 24 March 2010 when he returned to Marabastad to extend his permit, after waiting the entire day he was told to return the following day, when he was arrested. He was made to sign papers he did not understand, taken to a police station for one night, and then transferred to Lindela on 26 March 2010. On 28 April 2010, LHR sent a letter of demand to Home Affairs that he be immediately released with an asylum permit. Home Affairs responded on 29 April 2010 that his asylum claim was rejected as manifestly unfounded and that the application was reviewed by the Standing Committee for Refugee Affairs. He maintained that he never received a decision, nor was he ever advised of his right to make representations to SCRA. On 29 April 2010, LHR sent a subsequent letter of demand to home affairs that in addition to being released, he be issued with his RSDO decision, and from the date of issuance of that decision be afforded the right to exhaust the review procedures available to him. No response was forthcoming. On 3 May 2010 LHR launched an urgent court application for his release. He was released on 6 May 2010.
54. *O M v Minister of Home Affairs and 2 Others, SGHC, 2010/16243 (11 May 2010)*. O.M., an asylum seeker from the DRC, entered South Africa in 2003 and lodged an asylum application at the then Braamfontein Refugee Reception Office. During 2008 she received an initial rejection from an RSDO and was advised to lodge an appeal within 30 days, which she duly did. She was scheduled for an appeal interview on 14 June 2009. When she arrived at Crown Mines for her appeal, her permit was merely extended for a further 6 months. On 14 December 2009 when she returned to Crown Mines to extend her permit, she was handed a final rejection from the Appeal Board and summarily arrested and detained at Lindela, despite to the best of her knowledge complying with all her obligations. On 26 April 2010 LHR assisted her with lodging a condonation application to the Refugee Appeal Board for her non-appearance at her appeal hearing, copied to Home Affairs, and transmitted a letter of demand to Home Affairs for her immediate release with an asylum permit, to which the Department did not respond. On 3 May 2010 LHR launched an urgent court application for her release. While consulting with her at Lindela on 6 May 2010 she informed LHR that she was being released, after being detained in excess of 4 months in detention, without screening, a warrant for her detention, being advised of her right to make representations in respect of such warrant or appearing before a court.
55. *P C v Minister of Home Affairs and 5 Others, SGHC, 2010/19551 (28 May 2010)*. P.C. is a Zimbabwean national and human rights activist who was arrested at the airport en route to Australia to attend a conference. He was apprehended at the airport by an Australian immigration official apparently as he did not resemble the photograph in his passport, notwithstanding his valid visa, and was handed to South African immigration. He was then detained at the Kempton Park police station for almost a week, despite that he was held in excess of 48 hours for his documentation to be checked, and as a Zimbabwean national, he could not be deported without conviction of a criminal offense. LHR was contacted by Amnesty International, London to assist him, and launch an urgent court application for his release within a week of his arrest. The application was opposed by the state, until it appeared, during court proceedings, that he resembled his passport photograph in every respect except for the fact that his ears protruded in the photograph. Home Affairs could not make out any defense, and had no explanation for not taking any steps within 48 hours to verify his status, but instead detained him (either indefinitely or for deportation), until he appeared in court

- when for the first time he was given an opportunity to explain that the passport photographer had advised him to stick paper behind his ears so that they were visible. The court ordered his immediate release and the return of his passport which still contained a valid entry visa to remain in South Africa.
56. *Kibanda Hakizimani Amadi v Minister of Home Affairs & 2 others, SGHC, 2010/19262 (1 June 2010)*. K.H.A., an asylum seeker from Burundi, was arrested at the Port Elizabeth Refugee Reception Office on 16 March 2010 when he received a final rejection letter from the Refugee Appeal Board due to his non appearance at his appeal hearing. LHR assisted him with lodging a condonation application to the Appeal Board for his non appearance, requesting the re-hearing of his appeal which was lodged on 17 May 2010. On 18 May 2010 sent a letter of demand to Home Affairs for his immediate release with an asylum permit, which was acknowledged, but no action was taken. On 25 May 2010 LHR launched an urgent court application for his release which was opposed by Home Affairs on a number of grounds, including that a Magistrate had extended his warrant of detention beyond 30 days, and that he should remain in detention until the Appeal Board had decided on his condonation application. In a precedent setting case, Makume AJ ordered that he should be released immediately with an asylum permit, as he could not be detained for purposes of deportation as he remained an asylum seeker. LHR is still waiting for the written reasons. To date Home Affairs has not sought leave to appeal.
57. *A U v Minister of Home Affairs & 2 others, SGHC, 2010/20695 (8 June 2010)*. A.U., an asylum seeker from Uganda fleeing forced constriction to the LRA, entered South Africa in February 2008 and thereafter lodged an asylum application at Marabastad. When xenophobic violence broke out in May 2008 he sought shelter at the Akasia temporary protection sight in Pretoria. In February 2009 he was accompanied with a number of asylum seekers to Marabastad, where he was interviewed and received a negative decision which he was advised to appeal within 30 days. He then returned to Akasia where he remained until the camp inhabitants were evicted to Ebenezer Care Centre on 2 March 2009. During this time he never left the camp, or Ebenezer, apart from the one accompanied visit to Marabastad in February 2009. On 18 December 2009, he was transported with a group from Ebenezer to TIRRO where a UNHCR representative explained their situation to the Centre manager. He submitted his notice of appeal with letters from UNHCR and Ebenezer, but the official refused to accept it, where after he was arrested and transported to Atteridgeville Police Station before being transferred to Lindela where he was detained from 22 December 2009. During his detention at Lindela he repeatedly attempted to explain to immigration officers that he is an asylum seeker and cannot be detained for deportation. Around February 2010 he gave a copy of his asylum permit and his letter from Ebenezer to immigration officer Bongani Sithole, and wrote a statement explaining his history. He was interviewed but nothing more ever happened. Around April 2010 he gave copies of his asylum permit and letter from Ebenezer to immigration officer Jacob Lethuba, and wrote a statement explaining why he could not return to Uganda, but he was told he had to be deported. On 25 May 2010 LHR submitted a condonation application to the Refugee Appeal Board, copied to Home Affairs. On 3 June LHR launched an urgent court application for his release, as a result of which he was released on 7 May 2009 after being detained in excess of 4 months, without any adequate screening, without a warrant for his detention, being advised of his right to make representations on such a warrant, or ever having been brought before a high court.
58. *M J v Minister of Home Affairs & 2 others, SGHC 2010/21824 (15 June 2010)*. M.J., an asylum seeker from Burundi, entered South Africa in March 2007 and lodged an asylum application at the Marabastad Refugee Reception Office, and continued renewing his permit. During May 2009 he was interviewed at Marabastad, with another asylum seeker from the DRC translating to Swahili. He was handed papers on that day, which were not explained to him, and his asylum permit was extended for another 3 months. When he returned to extend his permit 3 months later he was arrested and taken to the Atteridgeville Police Station where he was detained for four days before being released. During December 2009 he returned to Marabastad to extend his permit, when he was arrested and taken to Lindela, because he had not lodged an appeal within 30 days. On 2 June 2010, LHR submitted an application for condonation for the late filing of his appeal on his behalf, which was copied to Home Affairs. On 10 June 2010 LHR launched an urgent court application for his release. He was released on 17 June 2010 after being detained in excess of 6 months during which time he was not screened at Lindela, assisted to lodge a condonation application there, provided with a warrant for his detention, advised of his rights to make representations in respect of such warrant, nor brought before a court.
59. *P N v Minister of Home Affairs & 2 others, SGHC 2010/23539 (29 June 2010)*. P.N., an asylum seeker from Burundi, entered South Africa in September 2008 and thereafter lodged an asylum

application at Crown Mines. He did not recall receiving a negative decision, but in mid-2009 when attending Crown Mines to extend his permit, was informed by official to submit an appeal letter, which he then understood as writing the reasons he fled Burundi on a blank page and submitting it to an official. He thereafter continued to renew his permit. On 16 December 2009 when his asylum permit expired he was unable to attend at Crown Mines due to being ill. When he reported on 21 December 2009 he was arrested and transported to Lindela the same evening. He speaks virtually no English, but was told to sign a number of documents at the time of his arrest, as well as in Lindela during May 2010, when he was told to sign documents by a female immigration officer who said it was necessary to prepare his case for LHR – despite it having nothing to do with LHR. On 8 June 2010 LHR sent a letter of demand to Home Affairs to halt his deportation and for his immediate release from Lindela with an asylum permit; Home Affairs did not respond. On 22 June LHR launched an urgent court application for his release. He was released on 25 June after being detained in excess of 6 months, without a warrant for his detention, being advised of his right to make representations on such warrant, or appearing before a court. Despite the settlement proposed by the state attorney's office, he was released from Lindela with a notice to report back to Lindela weekly. LHR had to remain involved to ensure that he was issued with an asylum permit and did not need to report to Lindela weekly.

60. *K M F D v Minister of Home Affairs & 2 others, SGHC 2010/23538 (29 June 2010)*. K.M.F.D., an asylum seeker from the DRC, arrived in South Africa in February 2008 and lodged an asylum application at the Crown Mines Refugee Reception Office, but when lodging his claim, was told his name was too long by an immigration official there, and was told to use his first two names. Later that year he received a negative decision, and lodged an appeal within 30 days. In November 2008 his wallet was stolen with his permit inside, he made an affidavit and returned to Crown Mines for a new permit, but was then told by the immigration officer who advised him that to make an affidavit, that he needed a photocopy of his permit or he would not assist him. He continued trying to renew his permit but he was not assisted. In early 2009, the same immigration officer told him that he could assist him with an extension if he changed his name and paid a fee of R2000, which he did. He continued extending that permit, and lodged an appeal against that negative decision until his arrest on 2 October 2009. On that day he was told to pay a fine of R2000, which he could not pay that day, he was then charged and convicted with fraud. After he served 2 weeks of his sentence at Leeukop Prison, he was taken to Lindela on 18 February 2010. In Lindela, he read the pamphlet "Know your rights: Immigration Detention" which LHR gives to detainees, and then asked immigration officer, Bongani Sithole for a warrant for his detention, but he was chased away. On 28 May 2010 LHR sent a letter of demand to Home Affairs for his immediate release with an asylum permit, to which they only acknowledged receipt. On 11 June 2010 he had an appeal hearing before the Appeal Board in Lindela, where he was represented by Fedasa – LHR considered withdrawing as an attorney of record, but Fedasa was not assisting with his release, and LHR has now taken the position that appeal hearings at Lindela are procedurally unfair if the asylum seeker is being detained unlawfully. On 22 June 2010 LHR launched an urgent court application for his release. He was released on 25 June after being detained in excess of 4 months, without a warrant for his detention, being advised of his right to make representations on such warrant, or appearing before a court. Despite the settlement proposed by the state attorney's office, he was released from Lindela with a notice to report back to Lindela weekly. LHR had to remain involved to ensure that he was issued with an asylum permit and did not need to report to Lindela weekly.

61. *L S v Minister of Home Affairs & 2 others, SGHC 2010/23537 (29 June 2010)*. L.S., a South African national, born in Namibia in 1975 while Namibia was under South African rule. He moved to South Africa in 1988 with his father and grew up there. On 21 March 1990, when Namibia gained independence, he was a resident in South Africa. He was assisted by his stepmother to obtain South African ID in 1992, though it stated he was born in South Africa. He attempted to correct the error, but the officials at Wynberg Home Affairs told him it was not a problem because he had been in South Africa a long time. He subsequently married a South African woman and had two children with her. In 1997 he applied for a passport which since expired in 2006 when he was issued with a new one, on which he has travelled extensively as a seaman working on vessels. In August 2009 when returning from one of his trips to Reunion Islands, he was questioned by officials at OR Tambo airport, when his passport was seized. He thereafter reported to Home Affairs in Cape Town on 3 October 2009 when he was summarily arrested. At no time after his arrest did immigration officials conduct any investigations into his identity or status in South Africa, despite his documents being readily available. Instead, since his arrest he was transported to the Namibian embassy 3 times, and each time officials there told Home Affairs that he could not be deported to Namibia. On 4 June 2010 LHR sent a letter of demand to Home Affairs for his release, and the return of his passport, but never received any response. On 22 June 2010 LHR launched an urgent court application for his

release. On 25 June 2010 state attorney contacted LHR to advise that they would not be opposing the application and that he would be released. On the day before the court hearing LHR was again advised telephonically that he would be released, but did not provide written confirmation of his release until the day of the court hearing. He was however released without his passport, and with a notice to report to Lindela every Friday for further investigation, despite being detained in excess of 9 months when no such investigation was conducted, despite his family being in Cape Town. LHR is now assisting him with a damages claim against the state.

62. *O K v Minister of Home Affairs and 2 Others, SGHC, 2010/33476* (August/September 2010) O.K., a national of Burundi lost his asylum permit which was still valid during an eviction at Blue Waters Temporary Protection Site in Cape Town. During the eviction he was taken to Strandfontein Police Station where he reported his asylum permit missing. He was not assisted to make an affidavit that he had lost his permit. He was arrested in Springbok on 7 May 2010 and was informed that he was charged with being an illegal immigrant, despite explaining that he was still an asylum seeker. He was transferred to Lindela on 27 May 2010. LHR sent a letter demanding deportation to be halted after he was forced to sign a deportation notice on 16 August 2010. On 1 September 2010 the South Gauteng High Court ordered that he be released with a section 23 permit and ordered that he be re-issued with a section 22 permit at any Refugee Reception Office in South Africa. On 1 September 2010, he was released with a section 23 permit.
63. *A M v Minister of Home Affairs and 2 Others, SGHC, 2010/34372* (September 2010) A.M., a national of the DRC, entered into South Africa on 20 June 2010 for purposes of applying for asylum. He was arrested on 9 July in Johannesburg before he could access the Refugee Reception Office. LHR sent a letter demanding that his deportation be halted and that he be afforded an opportunity to lodge his asylum application. He was released from Lindela.
64. *G G B M v Minister of Home Affairs and 20 Others, SGHC, 2010/32559* (August 2010) G.G.B.M., a national of the DRC, entered South Africa in 2005 for purposes of seeking asylum. He was granted an asylum permit at Crown Mines Refugee Reception Office. In July 2009 he received a negative decision to his asylum application. He lodged an appeal and was given a date in July 2010 for his appeal hearing. His asylum permit was extended until July 2010. He was arrested in Boksburg on 23 March 2010, during a police raid and his asylum permit was removed by the police on the pretext that it was going to be sent to immigration for verification. After more than two weeks of detention at Boksburg Police Station, he was transferred to Lindela Holding Facility. LHR sent a letter demanding that his deportation be halted and that he be released from Lindela with an asylum permit, pending his appearance before the Refugee Appeal Board. On 19 August 2010, LHR lodged an urgent application in the South Gauteng High Court to halt deportation and for his release from Lindela with a valid asylum seeker permit. He was released from Lindela on 20 August 2010 with a notice to report to Lindela during December 2010, with traveling documents for deportation. The matter was removed from the roll. LHR sent a letter requesting confirmation from the Respondents that he would be re-issued an asylum permit and that he would not be required to report to Lindela, as per Notice to Report.
65. *Y K v Minister of Home Affairs and 2 Others, SGHC, 2010/36014* (September 2010) Y.K., a Burundian national entered into South Africa in 2006 and he obtained his asylum permit from Cape Town Refugee Reception Office. His asylum permit expired during the time when he sought temporary shelter at Blue Waters Temporary Protection Site and he was under the impression that UCT-Law Clinic was assisting him to renew his permit. He was arrested in Springbok on 7 May 2010 and was detained at Springbok Police Station for almost a month. He was taken to Cape Town Police Station where he spent two nights and was later transferred to Polsmoor Prison wherefrom he was taken to Lindela on 18 June 2010. On 1 September 2010, LHR sent a letter demanding that his deportation be halted and that he be released from Lindela and be re-issued with an asylum seeker permit. On 14 September 2010, LHR lodged an urgent application in the South Gauteng High Court to halt deportation and for his release from Lindela. On 17 September 2010, the South Gauteng High Court ordered that he be released and that he be re-issued an asylum permit. He was released from Lindela on 17 September 2010. On 20 September 2010, LHR sent a letter requesting re-issuance of his asylum permit to Crown Mines Refugee Reception Office.
66. *A H v Minister of Home Affairs and 2 Others, SGHC, 2010/36015* (September 2010) A.H., a national of Burundi entered into South Africa in 2005 and lodged an asylum claim; he was granted an asylum permit, File No. CTRB15606008. He was arrested on 15 April 2010 at Blue Waters Temporary Protection Site, together with other people who were evicted from the same site, and was charged with inciting public violence. He was later released and re-arrested in Wynberg on 2

May 2010, with more than 30 people and was charged with loitering. Charges against him were later withdrawn. On 7 May 2010 he was arrested again in Springbok. He had a valid asylum permit at the time of arrest which was due to expire on 6 June 2010. His permit was removed from him by the police. He was detained first at Springbok Police Station, then Sea Point Police Station and Cape Town Police Station. He was later taken to Polsmoor Prison, wherefrom he was transferred to Lindela on 18 June 2010. On 16 August 2010, he was forced to sign a notice of deportation and he was beaten up by security officials at Lindela. He suffered a broken rib and was taken to Leratong Hospital for treatment after complaining of pains. On 01 September 2010 LHR sent a letter demanding that his deportation be halted and that he be released from Lindela and be re-issued with an asylum permit. On 14 September 2010, LHR lodged an urgent application in South Gauteng High Court to halt deportation and for his release from Lindela. On 17 September 2010, the South Gauteng High Court ordered that Mr Hussein be released and that he be re-issued an asylum permit. He was released from Lindela on 17 September 2010, without a section 23 transit permit. LHR sent a letter requesting re-issuance of his permit to Crown Mines Refugee Reception Office. He was referred to Wits Law Clinic for his civil claim suit which he wishes to institute against Lindela.

67. *B B v Minister of Home Affairs and 2 Others, SGHC, 2010/36016* (September 2010) B.B. entered into South Africa in 2009 and he lodged his asylum claim at Marabastad Refugee Reception Office where he was granted an asylum permit. His permit was stolen when it was still valid and he got arrested by the police on 19 June 2010, before he could approach Home Affairs to be re-issued his permit. Following his arrest, he was detained at Gezina Police Station, before he was taken to Lindela on 23 June 2010. LHR sent a letter demanding his deportation be halted and that he be released from Lindela and be re-issued an asylum permit, on 1 September 2010. On 14 September 2010, LHR lodged an urgent application in South Gauteng High Court to halt deportation and for his release from Lindela. On 17 September 2010, the South Gauteng High Court interdicted his deportation until his status has been lawfully and finally determined and ordered that he be released from Lindela on 17 September 2010, in possession of a section 23 transit permit, in accordance with the Immigration Act, to enable him to access the Refugee Reception Office. The court further ordered that he be issued with an asylum seeker permit, pending final adjudication of his asylum claim.
68. *Z J M v Minister of Home Affairs and 2 Others, SGHC, 2010/* (August 2010) Z.J.M. entered into South Africa in July 2005. He lodged an asylum claim at Marabastad Reception Office and was granted with an asylum permit, which expired in May 2005. He was residing at the Randfontein shelter at the time, following xenophobic violence of 2008. He never left the shelter during this time, out of fear of renewed attacks, even when his permit expired. He was arrested by police in Randfontein on 13 May 2010, when he left the shelter and was detained at Randfontein Police Station, before he was taken to Lindela on 14 May 2010. LHR sent a letter demanding his deportation to be halted and that he be released from Lindela in possession of a valid asylum seeker permit and have his asylum claim properly adjudicated. On 20 August 2010, LHR lodged an urgent application in South Gauteng High Court to halt deportation and for his release from Lindela, with a valid asylum permit. The Department of Home Affairs issued a letter to LHR submitting that they did not oppose the matter and that they had instructed the Acting Director: Deportation- to release him.



Acknowledgements

This report was written by Gina Snyman, with assistance and editing from Roni Amit. Sabelo Sibanda and Thabani Matshakalle from LHR's Musina office also contributed to the content of the report.

We would like to thank Julie Ebenstein, a James E Tolan Fellow in International Human Rights, for her work on the Detention Monitoring Project from 2008-2009.

This report was made possible by funding from the Open Society Foundation. LHR's monitoring activities in the area of immigration detentions has been supported for several years by contributions from Atlantic Philanthropies. LHR extends its gratitude to both the Open Society Foundation and Atlantic Philanthropies for their generous contributions.

LHR contact details

Pretoria

Environmental Rights Project
Head office
Refugee and Migrant Rights Project
Strategic Litigation Unit
Kutlwanong Democracy Centre, 357 Visagie Street
Tel 012 320 2943 Fax 012 320 2949/012 320 7681

Durban

Refugee and Migrant Rights Project
Room S104, Diakonia Centre, 20 Diakonia Avenue
Tel 031 301 0538 Fax 031 301 1538

Johannesburg

Refugee and Migrant Rights Project
Second Floor, Braamfontein Centre, 23 Jorissen Street, Braamfontein
Tel 011 339 1960 Fax 011 339 2665

Musina

Refugee and Migrant Rights Project
42 Villa Lua, National Road
Tel 076 216 1120

Stellenbosch

Security of Farm Workers Project
Former Corobrick offices, Bridge Street
Tel 021 887 1003 Fax 021 883 3302

Upington

Security of Farm Workers Project
Office 101 & 102, River City Centre, Corner Hill and Scott streets
Tel 054 331 2200 Fax 054 331 2220

