

Advocate Mabedle Lawrence Mushwana
Chairperson, South African Human Rights Commission
Per email: mmoletsane@sahrc.org.za, lmushwana@sahrc.org.za

and

Dr Pregaluxmi Govender
Deputy Chairperson, South African Human Rights Commission
Per email: pgovender@sahrc.org.za

Cc:

Dr Aaron Motsoaledi
Minister of Health, Department of Health, Republic of South Africa
Per email: minister@health.gov.za

May 28, 2012

Dear Advocate Mushwana and Dr Govender,

Request to the South African Human Rights Commission to investigate the state of health and the provision of health care services at Lindela Repatriation Centre

Introduction

1. Médecins Sans Frontières (MSF), SECTION27, Lawyers for Human Rights (LHR), and People against Suffering, Oppression and Poverty (PASSOP) write to request that the South African Human Rights Commission (SAHRC) urgently investigate the state of health and health care service provision at Lindela Repatriation Centre (Lindela) in terms of section 9 of the Human Rights Commission Act 54 of 1994.
2. SECTION27 is a public interest law centre that seeks to influence, develop and use the law to protect, promote and advance human rights. One of SECTION27's priority areas is the right to access to health care services as guaranteed by section 27 of the Constitution of the Republic of South Africa, 1996 (the Constitution).
3. MSF is an independent medical humanitarian organization working in more than 60 countries across the world. MSF has worked in South Africa since 2000, and has pioneered comprehensive HIV treatment and decentralized care for drug resistant tuberculosis. MSF's experience and expertise in treating and caring for people with HIV and TB is well established.

4. LHR is an independent human rights organisation with a thirty-year track record of human rights activism and public interest litigation in South Africa. LHR has been involved in the monitoring and provision of legal assistance to detainees at Lindela since 2000.
5. PASSOP is a community-based, non-profit organisation and grassroots movement, largely made up of volunteers from the refugee community, working to protect and promote the rights of all refugees, asylum seekers and immigrants in South Africa.

Grounds for concern necessitating an urgent investigation of the state of health and health care service provision at Lindela.

6. The following are grounds for concern that we believe necessitate an urgent investigation of the state of health and the provision of health care services at Lindela.

The Department of Home Affairs has denied MSF access to Lindela

7. On 30 November 2011, MSF requested access to Lindela in order to conduct an independent medical assessment of the state of health care provision at Lindela. The Chief Director of the Immigration Directorate for the Department of Home Affairs, Mr Modiri Mathews, denied the request on 21 December 2011. In his denial Mr Mathews asserted that:

“The Department of Health and Chapter 9 institutions such South African Human Rights Commission have oversight responsibilities of the Lindela facility relating to its compliance with adequate medical standards and human rights respectively [sic]”.

8. Mr Mathews concluded that “permission cannot be granted as the Department is satisfied with the arrangements it has in place in this regard”.
9. While we do not doubt Mr Mathews’ sincerity, we note with concern that Lindela has been the site of grave human rights abuses throughout its existence, especially in regard to the right to health. These abuses have been consistently documented in several reports on Lindela, including in reports by the SAHRC in 1999 and 2000. The SAHRC has not published a report on Lindela recently.¹ Other organisations, however, have published reports. These reports similarly and consistently report conditions that indicate the necessity for urgent intervention at Lindela.
10. Moreover, it has come to our attention that Bosasa, the company responsible for security and operations at Lindela, has communicated to LHR that it is no longer responsible for providing health care services at Lindela.

¹ On 24 May 2012 the Legal Resources Centre organised a panel discussion related to migration. SAHRC Commissioner Dr Gladstone Sandi Baai was the chair of this discussion. He reported that the SAHRC had conducted a preliminary investigation of Lindela in early 2012. He also indicated that a report had been written but not made publicly available. We kindly request that, in addition to the investigation herein requested, the report from the previous investigation be provided to us.

The recorded history of human rights abuses and the denial of the right to health at Lindela

11. Below we draw your attention to a selection of troubling findings related to the history of human rights abuses and the denial of the right to health at Lindela.

11.1. In 1999 the SAHRC reported that:

“Common complaints about the conditions at Lindela included lack of adequate nutrition, inadequate medical care, and interrupted sleep, as well as being subjected to degrading treatment or intimidation”.²

11.2. The SAHRC also reported that “The three most common complaints were: lack of adequate nutrition, irregular or inadequate medical care and systematic, forced interruption of sleep.”³

11.3. In 2000, the SAHRC reported, “Many detainees have complained about limited access to medical care at Lindela.”⁴ The SAHRC also found that non-compliance with menu recommendations was common and long periods of time passed between when detainees were provided food. In this regard, we note that the denial of adequate nutrition increases the likelihood of poor health outcomes for all people, and especially individuals with chronic diseases such as TB and HIV.⁵

11.4. A 2010 report by the Forced Migrations Studies Programme found that:

11.4.1. “Among respondents who are on chronic medication, including ARVs, 62% reported that they did not have access to these medications at Lindela.”⁶

11.4.2. “54% of detainees at Lindela who sought medical care did not feel that their condition had been treated adequately.”⁷

11.4.3. Violence is not uncommon within Lindela, and 80% of reported cases involved Bosasa and/or Department of Home Affairs staff. In this regard, we note that the victims

² The South African Human Rights Commission Report into the Arrest and Detention of Suspected Undocumented Migrants (19 March 1999) available at <http://www.sahrc.org.za/home/21/files/Reports/Report%20into%20the%20Arrest%20and%20Detention%20of%20suspected%20migrants19.pdf>

³ Ibid

⁴ “Lindela At the Crossroads for Detention and Repatriation: an assessment of the conditions of detention by the South African Human Rights Commission” (December 2000) available at <http://www.queensu.ca/samp/migrationresources/xenophobia/reports/sahrc1.pdf>

⁵ Ibid

⁶ Amit, R. “Lost in the Vortex: Irregularities in the Detention and Deportation of Non-Nationals in South Africa” (June 2010) available at http://www.cormsa.org.za/wp-content/uploads/2009/05/lost_in_the_vortex_irregularities_in_the_detention_and_deportation_of_non-nationals_in_south_africa.pdf

⁷ Ibid

of violence are likely to need both physical and mental medical treatment.⁸

11.5. A 2012 Submission to the Special Rapporteur on the Human Rights of Migrants, submitted by LHR, reported that:

“Most detainees that LHR consults with at South Africa’s designated detention and deportation centre, Lindela Repatriation Centre (Lindela) complain about the conditions in detention. The most common complaint is that the medical care is inadequate. The medical care provided at Lindela appears to be a ‘band aid’ approach where detainees are given medication but nothing is done to address the overall conditions of detention that lead to illness spreading from one detainee to the next ... According to detainees, their psychological well-being is neglected in detention. There are no counsellors, psychologists or psychiatrists available for detainees on site.”⁹

11.6. Solidarity Peace Trust and PASSOP recently conducted a survey of people that have been detained or deported for immigration reasons. The focus of this research was the process of detention and deportation as a whole, but the findings regarding Lindela were particularly disturbing. 90% of respondents that had been detained in Lindela reported not having had access to medication or ARV's.¹⁰ This statistic reflects a gradual decrease in the amount of medical care available inside Lindela over the past few years. The length of detention is also of serious concern. During the survey, several detainees, immigration lawyers and relatives affirmed that detention beyond the 120 days is very common.¹¹ Twice in the last six months, the Department of Home Affairs and Bosasa have defended public accusations of mistreatment by saying that the claimants are "liars"¹² or that the allegations are not "provable"¹³.

The lack of oversight at Lindela

12. One would hope and expect that this long and shameful history would have led to increased monitoring of Lindela by independent medical, legal and human rights organisations. Sadly, this has not been the case. As MSF’s recent experience indicates, access to Lindela is severely restricted. A recent report from the Integrated Regional Information Network IRIN, a news service provided by the UN Office for the Coordination of Humanitarian Affairs, quoting Kaajal

⁸ Ibid

⁹ “LHR Submission to the Special Rapporteur on the Human Rights of Migrants” LHR (2012) available at <http://www.lhr.org.za/publications/lhr-submission-special-rapporteur-human-rights-migrants>

¹⁰ PASSOP, Solidarity Peace Trust "Report by Solidarity Peace Trust and PASSOP on the process of deportation in SA" Forthcoming on 5 June 2012. Available from the authors by request.

¹¹ Ibid

¹² “Home Affairs DG ‘Prejudiced’” Legal Resources Centre (4 April 2012) available at: <http://www.lrc.org.za/lrc-in-the-news/1883-2012-04-04-home-affairs-dg-prejudiced>

¹³ “SA to Deport 18,000 illegal foreigners” SABC (23 December 2011) available at www.sabc.co.za/news/a/4dd9bb80498758d683c5bbf9983387d0/SA-to-deport-1-800-illegal-foreigners-20111223+death+of+congolese+at+lindela&cd=3&hl=en&ct=clnk&client=safari

Ramjathan-Keogh, an attorney with LHR, explained that:

“While the practice of arresting undocumented migrants first and asking questions later appears common in Musina, several organisations, including LHR, IOM and the UN Refugee Agency (UNHCR) have regular access to detainees at the police station and often help secure the release of those with pending asylum applications or lost permits. Access to detainees at Lindela is much more limited. The South African Human Rights Commission is the only organisation with an official mandate to monitor immigration detention facilities, but according to LHR, such monitoring has been ‘haphazard and infrequent’. ‘We rely on clients to tell us who is there and what is going on. It’s extremely laborious and frustrating,’ said Ramjathan-Keogh, adding that the organisation was being forced to scale back its assistance to detainees at Lindela due to resource constraints.”¹⁴

13. On 10 May 2012, relatives of a man detained at Lindela reported that the Department of Home Affairs had mishandled the man’s meningitis infection. The man was admitted to Leratong Hospital on 25 November 2011, but the family reports that it was not informed of the man’s condition until 2 February 2012. The family has been unable to access information as to the cause of illness. The man’s brother said “Right now we cannot establish anything since he is very sick and Lindela officials are not saying anything meaningful.” This case highlights the need for increased oversight and monitoring of Lindela.¹⁵

The effect of detention on health

14. It has also been proven that detention, generally speaking, is associated with poor health outcomes and thus increases the need for medical attention. The International Detention Coalition recently reported that:

“Detention has been shown to harm health and wellbeing ... Research has demonstrated that being in detention is associated with poor mental health including high levels of depression, anxiety and post-traumatic stress disorder (PTSD) and that mental health deteriorates the longer someone is detained. One study found clinically significant symptoms of depression were present in 86% of detainees, anxiety in 77%, and PTSD in 50%, with approximately one quarter reporting suicidal thoughts.”¹⁶

¹⁴ “SOUTH AFRICA: Migrants face unlawful arrests and hasty deportations”, *IRIN* (14 February 2012) available at <http://www.irinnews.org/Report/94865/SOUTH-AFRICA-Migrants-face-unlawful-arrests-and-hasty-deportations>

¹⁵ Tariro Washinyira “Lindela accused of poor monitoring of meningitis case”, *GroundUp* (10 May 2012) available at <http://groundup.org.za/content/lindela-accused-poor-handling-meningitis-case>. The Department of Home Affairs has since responded to the accusations lodged by the family. Independent of whether the response is or is not satisfactory, this case highlights the consequences of the lack of oversight and monitoring of Lindela.

¹⁶ International Detention Coalition (IDC) “Immigration Detention Submission to the Special Rapporteur on the Human Rights of Migrants” (February 3, 2012) available at <http://www.scribd.com/doc/80883801/IDC-submission-to-the-Special-Rapporteur-concerning-his-report-on-the-issue-of-immigration-detention>

Continuing reports of violence at Lindela

15. Furthermore, it appears that incidents of violence continue to occur at Lindela. Recently, for example, the Sowetan reported that 10 people sustained injuries during a riot at the Lindela on 27 March 2012.¹⁷ We note again that these individuals may require physical and mental medical attention.

The emphasis on migrant populations and the role of the SAHCR in The National Strategic Plan for HIV, STIs and TB, 2012-2016 (NSP)

16. Finally, we draw attention to the emphasis that the NSP places on migrant populations and the role of the SAHCR in the response to HIV and TB. The NSP identifies migrants as a key population that should be targeted for specific prevention, care, treatment and support interventions in the response to HIV and TB. The term 'key populations' refers to those most likely to be exposed to, or to transmit, HIV and/or TB. As a result, their engagement is critical to a successful HIV and TB response. Key populations include those who lack access to services, and for whom the risk of HIV infection and TB infection is also driven by inadequate protection of human rights, and by prejudice.
17. Furthermore, the NSP identifies "using existing bodies to monitor human rights abuses and increase access to justice" as an important intervention. It specifically mentions SAHRC's role in this regard:

" ... SAHRC and other relevant institutions established in terms of the Constitution responsible for protecting and upholding the rights of individuals must monitor human rights abuses involving those living with HIV and TB or who are at the greatest risk of infection ... "
18. Given these provisions of the NSP, we argue that Lindela must be prioritised in the response to HIV and TB, and that the SAHCR must take the lead in this regard.

Conclusion

19. Considering all of the above, we believe that it is urgently necessary that the SAHCR conduct an independent medical assessment of the state of health and the provision of health care services at Lindela. We therefore call on the SAHRC to conduct the assessment and report on its findings. This assessment must include the entire Lindela facility. The SAHRC must also interview detainees. We recommend that an independent task team be appointed for this purpose.
20. The report should measure Lindela's performance with reference to:

¹⁷ Katlego Moeng, "Inmates riot at Lindela Repatriation" *The Sowetan Live* (27 March 2012) available at <http://www.sowetanlive.co.za/news/2012/03/27/inmates-riot-at-lindela-repatriation>

- 20.1. Relevant recommendations made in previous SAHRC reports;
- 20.2. Relevant recommendations made in other independent reports on Lindela and best practices for detention generally;
- 20.3. The NSP's objectives and interventions;
- 20.4. Regulations made in terms of section 34(1)(e) of the Immigration Act 13 of 2002¹⁸; and
- 20.5. Relevant constitutional rights, including:
 - 20.5.1. The right to health as entrenched in section 27;
 - 20.5.2. The right to human dignity as entrenched in section 10;
 - 20.5.3. The right to conditions of detention that are consistent with human dignity as entrenched in section 35;
 - 20.5.4. The right to the provision, at state expense, of adequate nutrition and medical treatment as entrenched in section 35;
 - 20.5.5. The right of everyone who is detained to communicate with and be visited by that persons chosen medical practitioner as entrenched in section 35; and
 - 20.5.6. Every child's right to basic nutrition and health care services as entrenched in section 28.

21. We also call on the SAHRC to make a report on this assessment publicly available and take all steps within its authority to remedy any human rights concerns that the assessment may give rise to and to formulate contingencies for remedying any violations of the above in the future.

22. We thank the SAHRC for its prompt attention to this matter. As shown above, this is an urgent matter regarding potentially serious human rights abuses. We therefore request that the SAHRC acknowledge receipt of this request and respond with an indication of the SAHRC's plan in this regard by 11 June 2012.

23. Please contact Mark Heywood (by email at Heywood@section27.org.za or by phone at 011 356 4100) and Jens Pederson (by email at msfocb-johannesburg-coord@brussels.msf.org or by

¹⁸ Section 34(1)(e) provides that "illegal foreigners" must "be held in detention in compliance with minimum prescribed standards protecting his or her dignity and relevant human rights." Regulations made in terms of this section prescribe those standards.

phone at 011 403 4440) with inquiries.

Sincerely,

A handwritten signature in black ink, appearing to be 'Jens Pedersen', written in a cursive style.

Jens Pedersen on behalf of MSF

Mark Heywood on behalf of SECTION27

A handwritten signature in black ink, appearing to be 'Braam Hanekom', written in a cursive style.

Braam Hanekom on behalf of PASSOP

A handwritten signature in black ink, appearing to be 'Kaajal Ramjathan-Keogh', written in a cursive style.

Kaajal Ramjathan-Keogh on behalf of LAWYERS FOR HUMAN RIGHTS

[ENDS]