



ASILE

Global Asylum
Governance and
the European
Union's Role

Country Note SOUTH AFRICA

International protection issues and recommendations
from international and regional human rights mechanisms
and bodies

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This Country Note provides a synthetic overview of key issues and recommendations in the field of international protection put forward by international and regional human rights mechanisms and bodies. In line with the ASILE project research agenda, this Country Note pays specific attention to aspects related to 'containment' of people in need of international protection. The notion of containment is used here to refer to a broad range of policies and practices aimed at preventing access to territory, increasing expulsion and restricting mobility of asylum seekers and refugees.

The Country Note covers documents released by United Nations (UN) human rights mechanisms and bodies. These include the UN Charter-based system of human rights protection, including the Universal Period Review and the Special Procedures of the Human Rights Council, and the UN Human Rights Treaty bodies. The Note also encompasses monitoring bodies established under regional human rights systems to which the country under consideration is party.



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1. International and regional human rights obligations

South Africa is party both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).¹ In respect of the ICCPR, South Africa has also ratified the (first) Optional Protocol, recognising the competence of the Human Rights Committee to receive individual complaints concerning violation of the ICCPR, and the Second Optional Protocol abolishing the death penalty. In contrast, South Africa only acceded to the ICESCR in 2015, and has to date yet to accept the competence of the Committee on Economic, Social and Cultural Rights to receive individual complaints, as it has not ratified the Optional Protocol to the ICESCR.²

South Africa is further party to several key UN human rights instruments, including the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD).³ South Africa has accepted the competence of the committees of the CEDAW and CRPD to receive individual complaints through the ratification of the corresponding Optional Protocols. Moreover, South Africa acceded to the Optional Protocol to the CAT (OPCAT) in 2019, thereby accepting the competence of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. On the other hand, South Africa has not ratified the Optional Protocol to the CRC to recognise the competence of the Committee on the Rights of the Child.⁴

South Africa has ratified both the 1951 Refugee Convention,⁵ as well as the 1967 Protocol.⁶ On the other hand, South Africa is not party to the 1954 Convention relating to the Status of Stateless Persons⁷ or the 1961 Convention on the Reduction of Statelessness.⁸ Moreover, South Africa is not party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) or the International Convention for the Protection of all Persons from Enforced Disappearance.⁹

¹ OHCHR, Status of Ratification of International Human Rights Treaties: [South Africa](#).

² See A/HRC/36/16, para. 103; African Union, [Concluding Observations and Recommendations – South Africa, 2nd Periodic Report, 2003-2104](#), para. 29.

³ OHCHR, Status of Ratification of International Human Rights Treaties: [South Africa](#).

⁴ See African Union, [Concluding Observations and Recommendations – South Africa, 2nd Periodic Report, 2003-2104](#), para. 29.

⁵ UN Treaty Collection, Depository, Status of Treaties, [Convention relating to the Status of Refugees](#).

⁶ UN Treaty Collection, Depository, Status of Treaties, [Protocol relating to the Status of Refugees](#).

⁷ UN Treaty Collection, Depository, Status of Treaties, [Convention relating to the Status of Stateless Persons](#).

⁸ UN Treaty Collection, Depository, Status of Treaties, [Convention on the Reduction of Statelessness](#).

⁹ OHCHR, Status of Ratification of International Human Rights Treaties: [South Africa](#). See also African Union, [Concluding Observations and Recommendations – South Africa, 2nd Periodic Report, 2003-2104](#), para. 29.



Of the conventions identified by the International Labour Organization (ILO) as ‘guiding the ILO’s Labour Migration and Labour Mobility Work’ that may be of relevance to asylum seekers and refugees,¹⁰ South Africa has only ratified the Domestic Workers Convention, 2011 (no. 189).¹¹

Within the regional context, South Africa is a founding Member of the African Union (AU), and is party to the following AU treaties, among others: African Charter on Human and Peoples’ Rights (ACHPR), including the Protocol on the establishment of an African Court on Human and Peoples’ Rights (ACtHPR), and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. Notwithstanding, South Africa has not accepted the African Court’s jurisdiction for cases to be submitted to it by NGOs with observer status or individuals pursuant to Article 5(3) of the Optional Protocol.¹² Moreover, South Africa has not ratified the AU Convention for the Protection and Assistance of Internally Displaced persons in Africa (Kampala Convention).¹³

South Africa is further a member of the Southern African Development Community (SADC);¹⁴ however, the SADC does not have human rights instruments, regional instruments of relevance for the issue of refugee protection and mobility of persons in force, or a functioning tribunal to ensure adherence to SADC treaties.¹⁵

2. Scope of international protection and quality of asylum procedures

2.1. Scope of International protection

The basis for South Africa’s asylum system is the Refugees Act, 1998,¹⁶ and the Refugees Regulations.¹⁷ The Refugees Act (and its accompanying Regulations) implement South Africa’s obligations under the 1951 Refugee Convention (and 1967 Protocol) and sets out *inter alia* the procedure for the determination of refugee status and the rights and obligations of asylum seekers and refugees. Further of relevance for the South African

¹⁰ See ILO, [ILO's International Legal Framework on Labour Migration](#).

¹¹ See ILO, NORMLEX: Ratifications for [South Africa](#).

¹² African Union, [List of countries which have signed, ratified/acceded to the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights](#). See also African Union, Concluding Observations and Recommendations – South Africa, 2nd Periodic Report, 2003-2104, para. 30.

¹³ African Union, [List of countries which have signed, ratified/acceded to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa \(Kampala Convention\)](#). See also African Union, Concluding Observations and Recommendations – South Africa, 2nd Periodic Report, 2003-2104, para. 29.

¹⁴ Notable instruments of the SADC of relevance include the [Protocol on Facilitation of Movement of Persons of 2005](#) (not yet in force due to lack of ratifications) and the (since withdrawn) [Protocol on Labour and Employment of 2014](#) (see the Communique of the 40th Ordinary Summit of SADC Heads of State and Government of 17 August 2020, para. 29, <http://www.dirco.gov.za/docs/2020/sadco817.pdf>).

¹⁵ See, on the current status of the SADC Tribunal, <https://www.sadc.int/about-sadc/sadc-institutions/tribun/>.

¹⁶ Act No. 130 of 1998, Refugee Act, 1998, http://www.dha.gov.za/images/REFUGEES_ACT_130_OF_1998.pdf.

¹⁷ https://www.gov.za/sites/default/files/gcis_document/202001/42932rg11024gon1707.pdf.



asylum system is (section 23 of) the Immigration Act of 2002¹⁸ concerning the issuance of asylum transit visa for persons seeking asylum in South Africa and the Immigration Act more generally, as well as the Border Management Act.¹⁹

In its concluding observations on the 2nd periodic reporting period for South Africa, the Committee against Torture (CAT) expressed its concerns about South Africa's intention to introduce changes to its asylum legislation that would "require that asylum seekers report to a refugee reception office by no later than five days after arriving in the country, or face exclusion from refugee status".²⁰

The relevant provision of the South African Refugees Act, i.e., section 4, reads:²¹

*"(1) An asylum seeker does not qualify for refugee status for the purposes of this Act if a Refugee Status Determination Officer has reason to believe that he or she- ...
(i) has failed to report to the Refugee Reception Office within five days of entry into the Republic as contemplated in section 21, in the absence of compelling reasons, which may include hospitalisation, institutionalisation or any other compelling reason ..."*

Applications for asylum in South Africa therefore must be submitted at Refugee Reception Offices (RROs).²² According to the Department of Home Affairs, there are currently 4 RROs open to new asylum applications, namely in Pretoria, Musina, Durban and Port Elizabeth.²³ A fifth RRO in Cape Town closed to new asylum applications in July 2012, while the RRO located in Johannesburg was closed in May 2011.²⁴

UNHCR submitted that the "limited number of Refugee Reception Offices (RROs)" and the closure of RROs in Cape Town and Port Elizabeth are liable to affect asylum seekers' access to asylum, including "the right to a timely and efficient reception and processing of asylum applications and related documentation".²⁵ The Committee against Torture (CAT) and the

¹⁸ http://www.saflii.org/za/legis/consol_act/ia2002138/.

¹⁹ See F. Khan and N. Rayner (2020), "Migration Management: The Antithesis of Refugee Protection – The Case of South Africa", contribution to the ASILE Forum on *The new EU Pact on Migration and Asylum in light of the UN GCR*.

²⁰ CAT/C/ZAF/CO/2, para. 36(a).

²¹ See Refugees Amendment Act, Act No. 11 of 2017, available at https://static.pmg.org.za/Refugees_AB_2017.pdf.

²² Cf. Refugees Act, section 21(1).

²³ <http://www.dha.gov.za/index.php/contact-us/24-refugee-centres>. The RRO in Port Elizabeth was closed in 2011, but has since been reopened, see <https://www.sanews.gov.za/south-africa/pe-refugee-reception-centre-reopened>.

²⁴ See R. Ziegler (2020), "Access to Effective Refugee Protection in South Africa: Legislative Commitment, Policy Realities, Judicial Rectifications?", *Constitutional Court Review*, forthcoming (pre-publication text available on SSRN), p. 12. The Cape Town RRO was closed for new asylum applications in 2012. In 2017, the South African Supreme Court of Appeal ordered the government to reopen the Cape Town RRO by 31 March 2018. However, to date, the RRO in Cape Town has yet to be fully re-opened for new asylum applications, see <https://ewn.co.za/2020/02/03/reopening-of-ct-refugee-reception-office-delayed-again>.

²⁵ UNHCR, "Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report. Universal Periodic Review: 3rd Cycle, 27th Session. Republic of South Africa", p. 5. Cf. similarly by SCCT, A/HRC/WG.6/27/ZAF/3, para. 82.



Human Rights Committee (HRC) similarly noted the “increase in difficulties in gaining access to the refugee status determination procedure owing to the closure of a number of refugee reception offices”.²⁶

Citing the *Ruta v Minister of Home Affairs* case in South Africa, CAT noted that this amendment may jeopardise the principle of *non-refoulement*. CAT therefore recommended that South Africa ensure that prospective asylum seekers are able to apply for asylum at any time, regardless of any delays.²⁷

Freedom House noted that the amendments to South Africa’s refugee law (as well as the new Refugee Regulations²⁸) drastically restricted the rights of asylum seekers and refugees.²⁹ Thus, under the (amended) Refugees Act and new Refugees Regulations, refugees may lose their refugee status by e.g. exercising voting rights in their country of nationality or by availing themselves of consular services of their country of nationality.³⁰ According to Freedom House, these rules may result in the possibility of “an act as simple as requesting a birth certificate at a consulate [triggering] a withdrawal of refugee status and possible deportation” in contravention of the principle of *non-refoulement*.³¹

The amendment of the Refugees Act in 2017 (which was only enacted and entered into force in January 2020) also modified the definition of “dependants”, as noted by the Committee on the Rights of the Child (CRC),³² restricting the definition to minor dependent children, spouses and parents. Moreover, the amendment requires all such family members/dependants to be declared upon the first asylum application, as observed by the SCCT.³³

2.2. Quality of asylum procedures

As part of its submission to the Universal Periodic Review, 3rd cycle, for South Africa, UNHCR noted over 1.2 million asylum seekers and 121 thousand refugees were present in South Africa in 2015.³⁴ According to more recent statistics of the UNHCR, South Africa hosted around 184 thousand asylum seekers and 89 thousand refugees in 2019.³⁵ On average, asylum claims in South Africa take between 5 to 15 years to adjudicate. Moreover,

²⁶ CAT/C/ZAF/CO/2, para. 36(b); CCPR/C/ZAF/CO/1, para. 34.

²⁷ CAT/C/ZAF/CO/2, para. 37(a).

²⁸ Available at https://www.gov.za/sites/default/files/gcis_document/202001/42932rg11024gon1707.pdf.

²⁹ Freedom House (2020), “South Africa: Authorities Must Improve Treatment of Refugees and Asylum Seekers”, Press Release, 14 January 2020, <https://freedomhouse.org/article/south-africa-authorities-must-improve-treatment-refugees-and-asylum-seekers>.

³⁰ See Refugees Act (as amended), section 5(1); Refugees Regulations, section 4(1).

³¹ Freedom House (2020), op. cit.

³² CRC/C/ZAF/CO/2, para. 61(d).

³³ <https://www.scalabrini.org.za/news/teach-yourself-the-refugees-amendment-act-explained/>.

³⁴ UNHCR, “Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report. Universal Periodic Review: 3rd Cycle, 27th Session. Republic of South Africa”, p. 1, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRZAUNContributionsS27.aspx>.

³⁵ UNHCR, Refugee Data Finder (South Africa), <https://www.unhcr.org/refugee-statistics/download/?url=m7hS>.



the South African asylum system is saddled with a backlog of asylum claims estimated to require more than 60 years to clear.³⁶

The UNCHR noted that the “high number of asylum applications” affected the “fairness and efficiency” of South Africa’s asylum system.³⁷ The Scalabrini Centre of Cape Town (SCCT), as part of the 3rd Universal Period Review for South Africa, attributed South Africa’s backlogs in adjudicating asylum claims (as well as poor RSD decisions) to under-resourcing and insufficient administrative capacity.³⁸

On a similar note, the Concluding Observations to the 1st Periodic Reporting Period for South Africa under the ACHPR in 2005 recommended that South Africa take “appropriate measures to ensure the speedy consideration of the applications for asylum seekers”.³⁹ In its Concluding Observations to South Africa’s 1st Periodic Reporting under the ICESCR, the Committee on Economic, Social and Cultural Rights (CESCR) noted with concern the “reportedly large backlog of asylum applications pending in the appeal process” and urged South Africa to “[e]xpediently clear the backlog of asylum applications pending in the appeal process”.⁴⁰

Another issue raised concerning South Africa’s asylum system is the difficulty in accessing the asylum process and the corresponding risk of *refoulement*. A study in 2012 by the African Centre for Migration & Society noted that South African Refugee Status Determination Officers (RSDOs) incorrectly applied refugee law and “failed to consider the details of individual claims”, resulting in “a bureaucracy that mass produces rejection letters without any evidence of a reasoned decision-making process”.⁴¹ Amnesty International similarly observed that South Africa’s Department for Home Affairs (DHA) implementing “practices that effectively deny asylum seekers access to the asylum process”, including an “Appointment System” introduced at certain RROs characterised by appointment being granted of six months to a year in the future.⁴²

The “Appointment System” in particular results in two distinct results for asylum seekers. First, asylum seekers are required to fill in a form without assistance as part of a ‘pre-screening’ process, upon which a decision is made by RSDOs.⁴³ Second, an ‘appointment slip’ does not grant its holder any rights under the Refugee Act. This places asylum seekers

³⁶ See Khan and Rayner (2020), op. cit.

³⁷ A/HRC/WG.6/27/ZAF/2, para. 67.

³⁸ A/HRC/WG.6/27/ZAF/3, para. 82.

³⁹ African Union, [Concluding Observations and Recommendations - South Africa: First Periodic Report, 1999-2001](#), para. 30.

⁴⁰ E/C.12/ZAF/CO/1, para. 25 and 26(a).

⁴¹ R. Amit (2012), “All Roads Lead to Rejection: Persistent Bias and Incapacity in South African Refugee Status Determination”, *ACMS Research Report*, Johannesburg, African Centre for Migration & Society, June, p. 18.

⁴² See AI (2019), “[Living in Limbo: Rights of Asylum Seekers Denied](#)”, Amnesty International, October 2019, p. 11. See similarly Ziegler (2020), op. cit., p. 11.

⁴³ Ziegler (2020), op. cit., p. 11.



in a situation where they remain ‘undocumented’ and at risk of being detained and deported as ‘illegal migrants’.⁴⁴

The CAT voiced its concerns about the above-mentioned, particularly concerning the “lack of adequate safeguards against *refoulement*” leading to difficulties in gaining access to the RSD procedure, as well as the dismissal of asylum claims “without consideration of the evidence”, resulting in asylum seekers “living in constant fear of deportation”.⁴⁵

3. Admission to territory and safeguards against removal of asylum seekers and refugees

Admission of asylum seekers to the territory of South Africa in first instance is governed *inter alia* by sections 4(1)(h) Refugees Act (requiring asylum seekers to enter South Africa from designated ports of entry), 4(1)(i) Refugees Act (requiring asylum seekers to report to a Refugee Reception Office within five days of entry), section 23 Immigration Act (governing the issuance of an asylum transit visa valid for 5 days), and section 22 Refugees Act (governing the issuance of an asylum seeker visa for the duration of an asylum seeker’s claim).

Concerns have been raised in respect of admission to the territory of asylum seekers at ports of entry. Specifically, UNHCR noted that the introduction of the concept of “first country of asylum” in its immigration regulations in 2014 would have “a significant impact on access to asylum procedures and could also bar certain individuals from entering”.⁴⁶ The ‘first safe country’ principle has been observed as being used to deny asylum seekers entry into South Africa to seek asylum.⁴⁷ This has the consequence, as noted by CAT, that that (genuine) asylum seekers were being refused asylum transit visas by immigration officers, exposing them to immediate detention or deportation.⁴⁸

Similar concerns of the inability of asylum seekers to obtain transit permits have been noted by the HRC.⁴⁹ UNHCR noted that the implementation of the concept of safe third country “without proper safeguards may result in *refoulement*”.⁵⁰ UNHCR therefore recommended that South Africa remove the “first country of asylum” concept from its immigration regulations, noting that the concept was “inconsistent with international and national refugee law”.⁵¹

⁴⁴ Ibid.; AI (2019), op. cit., p. 12.

⁴⁵ CAT/C/ZAF/CO/2, para. 36(b).

⁴⁶ A/HRC/WG.6/27/ZAF/2, para. 69.

⁴⁷ See Amit (2012), op. cit., p. 69-70.

⁴⁸ CAT/C/ZAF/CO/2, para. 36(c).

⁴⁹ CCPR/C/ZAF/CO/1, para. 34.

⁵⁰ UNHCR, “Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report. Universal Periodic Review: 3rd Cycle, 27th Session. Republic of South Africa”, p. 5.

⁵¹ A/HRC/WG.6/27/ZAF/2, para. 69.



The above-mentioned is compounded by the risk of *refoulement* posed by the mandatory, accelerated border procedure introduced by the Border Management Act, undermining ‘fair and effective adjudication of international protection claims’ and granting the Border Enforcement Authority a wide margin of discretion.⁵²

Obstacles and irregularities have further been observed in respect of the continued admission of asylum seekers in South Africa. While under the Refugees Act, asylum seekers are entitled to be issued with an asylum seeker visa pending the adjudication of their asylum claim, the CAT has taken note of reports that RSD officers would threaten to cancel or refuse to prolong asylum transit visas if “not given a bribe”.⁵³ Another issue observed is the unwillingness of RROs (specifically, the RRO in Cape Town) to renew asylum seeker permits/visa that were originally issued at other RROs.⁵⁴

4. Detention and restriction to freedom of movement

4.1. Legal framework for detention and detention conditions of asylum seekers and refugees

Two major problems have been observed in respect of the detention of asylum seekers and refugees in South Africa, namely the tension between detention under the Immigration Act and the Refugees Act, and the detention of asylum seekers and undocumented migrants seeking asylum in the Lindela Repatriation Centre.

The tension between the Immigration Act and Refugees Act in respect of detention of asylum seekers concerns the following. Under the Refugees Act, an asylum seeker may only be detained subsequent to the withdrawal of his or her asylum seeker visa (section 23 Refugees Act). Moreover, any detention of asylum seekers or refugees is subject to judicial review after each expiry of a period of 30 days (section 29 Refugees Act), and no proceedings may be started against an asylum seeker in respect of his or her ‘unlawful entry or presence’ in South Africa until such time that his or her application for asylum has been adjudicated (section 21(4) Refugees Act).⁵⁵

On the other hand, under the Immigration Act, an ‘illegal foreigner’ may be detained, pending deportation, without a warrant for a period of 30 days, and such detention may subsequently be extended by warrant of a Court for a period of maximum 90 days (section 34 Immigration Act).⁵⁶ That asylum seekers (without a valid residence permit or visa issued

⁵² Khan and Rayner (2020), op. cit.

⁵³ CAT/C/ZAF/CO/2, para. 36(c); cf. R. Amir (2015), “[Paying for Protection: Corruption in South Africa’s Asylum System](#)”, *Migration Information Source*, 5 November 2015.

⁵⁴ Ziegler (2020), op. cit., p. 11-12; AI (2019), op. cit., p. 13.

⁵⁵ Cf. Ziegler (2020), op. cit., p. 15.

⁵⁶ Cf. A/HRC/17/33/Add.4, para. 55; CAT/C/ZAF/CO/2, para. 36(c).



or renewed) may fall within the scope of detention under the Immigration Act is reflected in section 23(2) Immigration Act, which states that asylum seekers whose asylum transit visa has expired ‘shall become an illegal foreigner and be dealt with in accordance with’ the Immigration Act.⁵⁷

The UN Special Rapporteur on the human rights of migrants noted the inconsistency and ambiguities surrounding the detention of asylum seekers, with “immigration officers [tending] to favour the procedures of the Immigration Act that only require a written warrant to extend detention, rather than the more protective procedure of the Refugee Act”.⁵⁸

This leads to the second issue, namely the detention pending deportation of ‘illegal migrants’ at the Lindela Repatriation Centre (LPC), the management of which has been outsourced to a private corporation.⁵⁹ Issues raised concerning the LPC include the inability of detained foreigners to access asylum procedures in the Centre,⁶⁰ as well as the conditions in which persons are detained at the Centre. The CAT, for example, expressed its concerns at the “prolonged detention, without a warrant and prior to their deportation” of rejected asylum seekers at the *Lindela Repatriation Centre* under the South African Immigration Act in “inadequate conditions that include overcrowding and a lack of hygiene and medical services”.⁶¹ Concerns about the detention of asylum seekers as “illegal foreigners” in the Lindela Repatriation Centre, in practice potentially without the possibility to seek asylum, have also been raised by the UN Special Rapporteur on the human rights of migrants in 2011,⁶² as well as the South African Human Rights Commission in 2015.⁶³

4.2. Restrictions to freedom of movement

A White Paper issued by the Department of Home Affairs of South Africa in 2017 reveals plans of South Africa to establish so-called “Asylum Seeker Processing Centres” (ASPCs) to ‘profile and accommodate asylum seekers during their status determination process’.⁶⁴ These ASPCs will be built close to the border posts at South Africa’s borders with Zimbabwe

⁵⁷ See also Ziegler (2020), op. cit., p. 15.

⁵⁸ See A/HRC/17/33/Add.4, para. 56. Cf. T. Shakespeare and J. Calder (2017), “[Alternatives to immigration detention in Africa: A summary of member findings from six countries, 2015-2016](#)”, International Detention Coalition report, March 2017, 23-24.

⁵⁹ A/HRC/17/33/Add.4, para. 58.

⁶⁰ Cf. LHR (2008), “[Monitoring Immigration Detention in South Africa](#)”, Report prepared by Lawyers for Human Rights, December 2008, p. 5-6.

⁶¹ CAT/C/ZAF/CO/2, para. 36(d).

⁶² See A/HRC/17/33/Add.4, para. 58.

⁶³ SAHRC (2015), [List of Issues Report to the Human Rights Committee on South Africa’s Implementation of the International Covenant on Civil and Political Rights](#), p. 29.

⁶⁴ DHA (2017), “[White Paper on International Migration for South Africa](#)”, South African Department of Home Affairs, July 2017, p. 61.



and Mozambique.⁶⁵ It is envisaged that the ‘basic needs’ of asylum seekers will be provided for at these ASPCs; consequently, they will “not automatically acquire the right to work, study or conduct business”, and only those asylum seekers who are considered to be of ‘low risk’ may be granted the right to leave the Processing Centres under specific conditions.⁶⁶ Asylum seekers will remain in ASPCs for the duration of the adjudication of their asylum claims.

In its concluding observations, the CAT expressed concerns about South Africa’s proposal for ASPCs, describing them as “detention facilities at the country’s borders that would house asylum seekers while their applications were processed and would limit their rights to work and movement”.⁶⁷ These Processing Centres have been described by the SCCT as a “move towards an encampment system”, fearing that such Centres would result in the detention of asylum seekers and restriction of their movement.⁶⁸ The Legal Resources Centre, in its submission to the CESCR under the First Reporting Cycle under the ICESCR for South Africa in 2018, expressed concern that ASPCs would lead to ‘gross human rights violations’.⁶⁹

The mandated presence of asylum seekers at ASPCs has further been criticised for the *indeterminate* duration thereof. While it is foreseen that asylum seekers will be required to remain at ASPCs for the duration of the adjudication of their asylum claims, Ziegler notes that the Regulations to the Refugees Act (which entered into force in 2020) does not specify a time limit on said “enforced presence”.⁷⁰ Concerns have further been expressed about the duration of asylum seekers’ mandated presence at ASPCs, given that it currently takes South Africa between 5 and 15 years to decide on asylum claims.⁷¹ Coupled with the removal of any time limits in the Regulations to the Refugees Act to adjudicate an asylum claim,⁷² this may result in the creation of refugee ‘camps’ where asylum seekers are stuck for years.⁷³

5. Other key protection issues

A brief remark can also be placed here in respect of access to health care by asylum seekers in South Africa. The CAT drew attention to “allegations that refugees, asylum seekers,

⁶⁵ AI (2019), op. cit., p. 25; J. Crush, C. Skinner and M. Stulgaitis (2017), “[Rendering South Africa Undesirable: A Critique of Refugee and Informal Sector Policy](#)”, SAMP Migration Policy Series No. 79, South African Migration Programme, 2017, pp. 6-7.

⁶⁶ Ibid.

⁶⁷ CAT/C/ZAF/CO/2, para. 36(d)

⁶⁸ <https://www.scalabrini.org.za/news/what-is-the-white-paper-on-international-migration/>.

⁶⁹ LRC (2018), “[The Reality of Forced Migrants in South Africa: the realisation of Economic, Social and Cultural Rights in South Africa](#)”, submitted to the Working Group on South Africa of the Committee on Economic, Social and Cultural Rights, 64th Session, 24 September to 12 October 2018, para. 11.

⁷⁰ Ziegler (2020), op. cit., p. 29.

⁷¹ Khan and Rayner (2020), op. cit.

⁷² Ziegler (2020), op. cit., p. 29.

⁷³ Cf. Khan and Rayner (2020), op. cit.



foreign nationals and undocumented migrants are often turned away from hospitals and clinics, thereby being denied health care”.⁷⁴ Similar concerns have been raised by the Committee on the Elimination of Racial Discrimination (CERD) in its most recent concluding observations on South Africa in 2016.⁷⁵

5.1. The right to work of asylum seekers

While recognised refugees are expressly accorded the right to seek employment under the Refugees Act (section 27), no such corresponding right is expressly granted by the Refugees Act to asylum seekers (see section 27A). Nonetheless, the South African judiciary ruled that asylum seekers could not be denied the right to seek employment as a matter of ‘human dignity’ protected by the South African constitution.⁷⁶

However, various sources have noted South Africa moving away from an (automatic) right to work for asylum seekers pending adjudication of their asylum claims.⁷⁷ This is reflected, for example, in South Africa’s 2017 White Paper on International Migration for South Africa.⁷⁸ Ziegler notes that asylum seekers would implicitly be required to provide proof that they cannot receive assistance from UNHCR or other organisations in order to receive an endorsement to be able to work pending the adjudication of their asylum claims.⁷⁹

The UNHCR noted that an amendment to South Africa’s Refugees Act imposed restrictions to asylum seekers’ access to certain rights, including the right to work for four months, pending the processing of their asylum claims.⁸⁰ The SCCT also noted that the Refugees Amendment Act of 2017 removed the automatic right to work and study for asylum seekers.⁸¹ The CESCR echoed similar concerns about the denial of the right to work of asylum seekers under the Refugees Act.⁸²

⁷⁴ CAT/C/ZAF/CO/2, para. 36(f).

⁷⁵ CERD/C/ZAF/CO/4-8, para. 26(b).

⁷⁶ See Ziegler (2020), op. cit., pp. 16-19.

⁷⁷ See LRC (2018), op. cit., para. 14, 19-25.

⁷⁸ DHA (2017), op. cit., p. 61.

⁷⁹ Ziegler (2020), op. cit., p. 31. Cf. similarly section 22(8) Refugees Act, which precludes the right to work to be granted to an asylum seeker if *inter alia* UNHCR or another ‘charitable organisation or person’ is offering shelter and basic necessities to the asylum applicant.

⁸⁰ A/HRC/WG.6/27/ZAF/2, para. 69.

⁸¹ <https://www.scalabrini.org.za/news/teach-yourself-the-refugees-amendment-act-explained/>.

⁸² E/C.12/ZAF/CO/1, para. 25.



Annex 1. Methodological Note

Human rights systems at the international and regional levels have established a range of mechanisms and bodies to monitor and promote states' compliance with their treaty obligations.

This Country Note describes key issues and recommendations in the field of asylum and international protection highlighted by international and regional human rights bodies in the context of existing monitoring and reporting procedures. In so doing, this Country Note complements research conducted under the ASILE project, in particular Country Fiches as well as the Catalogue of International and Regional Legal Standards.⁸³

The Country Note is based on desk research covering reports, documents and observations provided for by the following human rights monitoring mechanisms and bodies:

- The United Nations Charter-based system of human rights protection, including the Universal Periodic Review Process (UPR)⁸⁴ and the Special Procedures of the UN Human Rights Council;⁸⁵
- UN human rights Treaties Bodies tasked with monitoring the implementation of provisions of the core international human rights treaties;⁸⁶
- Human rights monitoring bodies established under relevant regional human rights systems to which the Country under consideration is party. These may include, depending on the country under consideration, bodies of the Council of Europe Human Rights system,⁸⁷ the Inter-American Human Rights System,⁸⁸ the African Human Rights system,⁸⁹ and the League of Arab States human rights system.⁹⁰

⁸³ See ASILE, Our research [\[online\]](#)

⁸⁴ OHCHR, Basic facts about the UPR [\[online\]](#)

⁸⁵ OHCHR, Special Procedures of the Human Rights Council [\[online\]](#)

⁸⁶ OHCHR, Monitoring the core international human rights treaties [\[online\]](#)

⁸⁷ See the website of the Council of Europe [\[online\]](#)

⁸⁸ See Inter-American Commission on Human Rights [\[online\]](#)

⁸⁹ See African Commission on Human and Peoples' Rights [\[online\]](#)

⁹⁰ See Arab Human Rights Committee [\[online\]](#)



Annex 2- South Africa: Selected documents from International and Regional Human Rights Monitoring Bodies

1. United Nations Charter-based bodies

Universal Periodic Review 3rd cycle (2017)

- National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21 – South Africa, 11 April 2017, A/HRC/WG.6/27/ZAF/1 [[online](#)]
- Compilation of UN Information, South Africa, Report of the Office of the United Nations High Commissioner for Human Rights 17 February 2017, A/HRC/WG.6/27/ZAF/2 [[online](#)]
- Summary of other stakeholders' submissions on South Africa: Report of the Office of the United Nations High Commissioner for Human Rights, 20 February 2017, A/HRC/WG.6/27/ZAF/3 [[online](#)]
- Report of the Working Group on the Universal Periodic Review – South Africa, 18 July 2017, A/HRC/39/12 [[online](#)]

UN Special Procedures

- Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante. Addendum: Mission to South Africa. 2 May 2011, A/HRC/17/33/Add.4. [[online](#)]

2. UN-Treaty Bodies

Human Rights Committee (HRC)

- Concluding observations on the initial report of South Africa. 27 April 2016, CCPR/C/ZAF/CO/1 [[online](#)]

Committee on Economic, Social and Cultural Rights (CESCR)

- Concluding observations on the initial report of South Africa, 29 November 2018, E/C.12/ZAF/CO/1 [[online](#)]

Committee against Torture (CAT)

- Concluding observations on the second periodic report of South Africa, 7 June 2019, CAT/C/ZAF/CO/2 [[online](#)]

**Committee on the Elimination of Racial Discrimination (CERD)**

- Concluding observations on the combined fourth to eighth periodic reports of South Africa, 5 October 2016, CERD/C/ZAF/CO/4-8 [[online](#)]

Committee on the Rights of the Child (CRC)

- Concluding observations on the second periodic report of South Africa, 27 October 2016, CRC/C/ZAF/CO/2 [[online](#)]

3. Other UN bodies - UNHCR

- Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review: 3rd Cycle, 27th Session, Republic of South Africa [[online](#)]

4. African Union/African Commission on Human and Peoples' Rights

- Concluding Observations and Recommendations on the First Periodic Report of the Republic of South Africa, Thirty-Eight Ordinary Session, 21 November – 5 December 2005, in Banjul, The Gambia [[online](#)]
- Concluding Observations and Recommendations on the Combined Second Periodic Report under the African Charter on Human and Peoples' Rights and the Initial Report under the Protocol to the African Charter on the Rights of Women in Africa of the Republic of South Africa, Adopted by the African Commission on Human and Peoples' Rights at its 20th Extra-Ordinary Session held from 9 to 18 June 2016, in Banjul, Islamic Republic of The Gambia [[online](#)]

5. Civil Society Organisations

- Amnesty International, "South Africa: Living in Limbo: Rights of Asylum Seekers Denied", 29 October 2019 [[online](#)]
- Freedom House, "South Africa: Authorities Must Improve Treatment of Refugees and Asylum Seekers", Press Release, 14 January 2020 [[online](#)]
- South African Human Rights Commission, "List of Issues Report to the Human Rights Committee on South Africa's Implementation of the International Covenant on Civil and Political Rights", 17 April 2015 [[online](#)]
- Legal Resources Centre, "The Reality of Forced Migrants in South Africa: the realisation of Economic, Social and Cultural Right in South Africa. Submitted to the Working Group on South Africa. Committee on Economic, Social and Cultural Rights, 64th Session, 24 September to 12 October 2018" [[online](#)]