

# GLOBAL **NEXTGEN** INDEX

Protecting the liberty of our next generation, today.

End Child Detention Scorecard

## **SOUTH AFRICA**

Published August 2018 using information compiled between November 2017 – January 2018, based on the most up-to-date reports and analysis available.



## FINAL SCORE

# 39

Children are detained for periods of up to one month in poor living conditions, and with unrelated adults in South Africa. There are many practices in that provide support for migrant children living in the community. However, the Government's White Paper on International Migration threatens progressive policies, including the removal of the right to work and use of further detention in border "processing centres."

	South Africa	Possible
Treaties	16	20
National laws	0	10
Processing	10	26
Placement	4	12
Rights	9	20
Oversight	3	12
<b>Sub Total</b>	<b>42</b>	<b>100</b>
Points off	-6	-15
Bonus points	+3	+15

### Treaties 16/20

South Africa has ratified four of the six Conventions and Protocols that assist in the protection of children in the context of migration.

**Recommendation:** The Government of South Africa is commended on this achievement. Further, the government is encouraged to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

### National laws 0/10

Section 32 of South Africa's Refugees Act allows all unaccompanied children to apply for asylum and therefore protects both unaccompanied children and asylum-seeking children. However, the Refugees Act does not explicitly prohibit child detention with section 29(2) stating "the detention of a child must be used only as a measure of last resort and for the shortest appropriate period of time."

**Recommendation:** The Government of South Africa is encouraged to implement a law in alignment with international standards, that prohibits the detention of all children up to the age of 18, and their families.

### Processing 10/26

South Africa has few policies or practices in place which are sensitive to the needs of migrant children. Some positive provisions do exist in law, such as the possibility of foster care, involvement of social workers when engaging with unaccompanied minors and documentation being granted to suspected victims of trafficking to avoid being detained. However, vital processes such as BID, BIA, screening, referrals, and case management are

implemented in an ad hoc manner, mostly by NGOs. In general, services are under resourced, legal aid is only available in criminal cases, not administrative cases, and reports suggest that xenophobia is rife among some social workers.

**Recommendation:** The Government of South Africa is strongly encouraged to immediately develop child-centred policies and practices that are implemented systematically, particularly for unaccompanied children.

## Placement 4/12

There are some placement options with conditions for unaccompanied children such as the nation-wide, government-run Child and Youth Care Centres (CYCC) and foster-care schemes. South Africa currently allows unconditional placement options for asylum-seeking or refugee children and families, although this autonomy is threatened by the proposed “processing centres” in the White Paper that will withdraw freedom of movement.

**Recommendation:** The Government of South Africa is strongly encouraged to reconsider the White Paper’s removal of liberty from refugee and asylum-seeking children and their families. The government is encouraged to utilise existing practices of alternatives to detention and implement placement options in a robust and systematic fashion, including the promotion of foster care for unaccompanied minors.

## Rights 9/20

Very little social assistance and housing is provided for migrant children and their families. Whilst the Children’s Act entails provisions for housing, limited resources means these provisions are seldom enjoyed. Education is extended to non-national children as outlined in the Constitution. However administrative barriers due to lack of migration status may result in discrimination. Financial assistance and grants favour refugees, but not asylum-seekers or children in their care. Non-nationals have access to vaccinations, hospitals, and adequate health care in emergency situations. The right to work for asylum seekers is in the process of being removed by the White Paper.

**Recommendation:** The Government of South Africa is strongly encouraged to urgently uphold the rights of migrant children to indiscriminate access to education, housing, social assistance and health care. Additionally, the government is encouraged to introduce firewall legislation to ensure social welfare services are not impeded by migration control activities. Further, the government is strongly encouraged to reconsider removing the right to work for asylum seekers through the White Paper.

## Oversight 3/12

The Judiciary does not interpret the laws correctly. South Africa does not have any formal monitoring or reporting of immigration detention by independent bodies aside from infrequent monitoring by UNHCR and ICRC, nor are immigration detention statistics published.

**Recommendation:** The Government of South Africa is strongly encouraged to improve its statistics by including disaggregated data about immigration detention, coupled with developing the National Preventive Mechanisms for Detention Monitoring after ratifying the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

## Points off -6/-15

It is noted that detention of children has decreased in South Africa, however statistics are not readily available. Children in detention can be detained in poor living conditions and with unrelated adults.

**Recommendation:** The Government of South Africa is strongly encouraged to abolish the detention of all children, in law and in practice. Notwithstanding this recommendation, the government needs to take significant and immediate action to reduce numbers of children detained for extended periods of time, and drastically improve the detention conditions.

### Bonus points +3/+15

The CRC is in national domestic law, but application according to immigration detention of children is not being applied or routinely reported on. Additionally, little political will for change exists to protect the rights of migrant children.

**Recommendation:** The Government of South Africa needs to urgently uphold the rights of children in order to comply with international law obligations and standards. Further, the government is strongly encouraged to reconsider the erosion of current protection of children by the forthcoming White Paper.



This scorecard has been assessed by the South Africa NextGen Index Committee:

- Lawyers for Human Rights
- Scalabrini Centre of Cape Town

For further information regarding how this score was measured visit <http://next-gen-index.org/>

If you have any questions, please contact the Global Campaign:  
[media@endchilddetention.org](mailto:media@endchilddetention.org)

# Additional Resources & Information

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## Treaties & National Laws

- [Constitution of the Republic of South Africa, 1996](#)
  - Child Detention: Section 28
  - Emergency Health Care: Section 27
- [South Africa Child Justice Act, 2008](#)
  - Child Assessment: Section 34
- [South Africa Refugees Act, 1998](#)
  - Unaccompanied Minors: Section 32
  - Child Detention: Section 29(2)
  - Child Social Worker Support: Section 32
- [South Africa Children's Act, 2005](#)
  - Age Determination: Section 48(2)
  - Best Interests of a Child: Chapter 7
  - Children's Court Orders: Section 46
  - Foster Care: Chapter 12
  - Guardianship: Section 24-25
  - Definition of Child in Need of Care and Protection: Section 150
  - Unaccompanied and Separated Children: Chapter 9
- [South Africa Prevention and Combating of Trafficking in Persons Act, 2013](#)
  - Child Processing: Sections 15, 17

## Directives & Services

- Form 7: [Medical Report and Age Assessment of Child](#)
- Probono South Africa: [Unaccompanied and Separated Foreign Children - Guide 4](#)

## Community Integration & Support

- Scalabrini Centre of Cape Town: [Foreign Children in Care in the Western Cape Province](#)
- [South Africa Social Assistance Act, 2004](#)
- [South Africa National Health Act, 2004](#)
  - Child Health Care: Section 4(3)(a)

## Infrastructure & Oversight

- Scalabrini Centre of Cape Town: [Unaccompanied and Separated Foreign Children in the Western Cape, South Africa - Exploring \(the lack of\) Durable Solutions for Children in Informal Relations of Care](#)
- South Africa Human Rights Commission: [Lindela at the Crossroads of Detention and Repatriation](#)
- Africa Check: [FACTSHEET - Detention and Deportation of Undocumented Migrants in South Africa at the Lindela Repatriation Centre](#)
- Lawyers for Human Rights
  - [Violence and Violations at the Lindela Repatriation Centre](#)
  - [LHR Submission to the Special Rapporteur on the Human Rights of Migrants](#)
  - [Publications](#)