

# PRO BONO

NOTICE CONFIRMS  
RIGHTS OF ILLEGAL  
ASYLUM SEEKERS

## NOTICE CONFIRMS RIGHTS OF ILLEGAL ASYLUM SEEKERS

**The Director-General of Home Affairs recently issued a formal notice announcing Lindela Holding Facility (Lindela) as a place for the detention of illegal foreigners pending deportation. While Lindela has been used for this purpose since 1996, the notice — made in terms of s34 (1) of the Immigration Act, No 13 of 2002 (the Act) — officially aligns the facility with the legislative provisions in the Act and accompanying regulations.**

While this means that a deportation officer may still arrest an illegal foreigner without a warrant, certain other formalities will have to be observed:

- written notification of the decision to deport must be given to the illegal foreigner with information relating to their right to appeal;
- such illegal foreigner may at any time request that their detention for the purpose of deportation be confirmed by a warrant of court (which would result in immediate release if not issued within 48 hours);
- they shall be informed upon arrest or immediately thereafter of their aforementioned rights in a language which they understand when possible, practicable and available;
- no one may be held in detention for longer than 30 calendar days without a court warrant which may only extend, on reasonable grounds, the period to a maximum of 90 days; and
- minimum standards must be maintained to promote human rights with an emphasis on dignity.

The standards referred to are captured in Annexure B of the 2014 Immigration Regulations and relate to accommodation, nutrition and hygiene.

The accommodation regulations call for separation of genders, people with illnesses who can affect the health of others and minors from majors. The exceptions of spouses and parents of children, who are allowed to be detained together, are to be noted. The regulations further indicate that unaccompanied minors may not be detained at all. Each detainee is entitled to a bed, mattress and at least one blanket. They are also entitled to adequate space, lighting, ventilation, sanitary installations and general health conditions with access to basic health facilities.

In terms of nutrition, a balanced diet plan is required which takes into consideration physical conditions requiring special diets. The medical officer may vary a diet plan for a particular detainee if such variation is required for medical reasons. Meals shall be served no less than four and a half hours apart, and no more than 14 hours between the evening meal and breakfast during a 24 hour period. Clean drinking water must also be available at all times.

It is the responsibility of each detainee to maintain the cleanliness of their person, clothing, bedding and room. It is merely the responsibility of the Department of Home Affairs to provide the means for detainees to maintain their hygiene.

Clients are advised to take note of the effect of this notice which means Lindela is officially bound by the regulations. Clients thus have additional legal recourse against the Department of Home Affairs should they be aware of any violations of the aforementioned rights in Lindela.

*Tricia Erasmus and Richard Chemaly*

## CONTACT US

For more information about our Pro Bono and Human Rights Legal practice and services, please contact:



**Jacquie Cassette**  
National Practice Head  
Director  
Pro Bono and Human Rights  
T +27 (0)11 562 1036  
E [jacquie.cassette@dlacdh.com](mailto:jacquie.cassette@dlacdh.com)



**Tricia Erasmus**  
Senior Associate  
Pro Bono and Human Rights  
T +27 (0)11 562 1358  
E [tricia.erasmus@dlacdh.com](mailto:tricia.erasmus@dlacdh.com)

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### BBBEE STATUS: LEVEL TWO CONTRIBUTOR

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#### JOHANNESBURG

1 Protea Place Sandton Johannesburg 2196, Private Bag X40 Benmore 2010 South Africa  
Dx 154 Randburg and Dx 42 Johannesburg  
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E [jhb@dlacdh.com](mailto:jhb@dlacdh.com)

#### CAPE TOWN

11 Buitengracht Street Cape Town 8001, PO Box 695 Cape Town 8000 South Africa  
Dx 5 Cape Town  
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E [ctn@dlacdh.com](mailto:ctn@dlacdh.com)

[cliffedekkerhofmeyr.com](http://cliffedekkerhofmeyr.com)

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