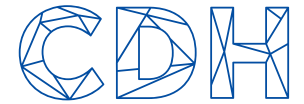


Immigration Law

ALERT | 29 September 2025



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Update on the Immigration Amendment Bill, 2024

In late March 2024, the Immigration Amendment Bill, 2024 (Bill) was published to amend section 34 of the Immigration Act 13 of 2002 (Immigration Act). This is the provision which deals with the arrest and detention of illegal foreigners for purposes of deportation. These amendments are the result of two Constitutional Court judgments, namely *Lawyers for Human Rights v Minister of Home Affairs and Others* [2017] (10) BCLR 1242 (CC) (First Constitutional Court judgment) and *Ex parte Minister of Home Affairs and Another v Lawyers for Human Rights; In Re: Lawyers for Human Rights v Minister of Home Affairs and Others* (38/16) [2023] ZACC 34 (30 October 2023) (Second Constitutional Court judgment).

First Constitutional Court judgment

In June 2017, the Court held that sections 34(1)(b) and (d) of the Immigration Act were unconstitutional in that these provisions:

- do not require the detainee to be informed of the right to legal representation;
- do not require the automatic judicial review of a detention before the expiry of 30 calendar days;

- do not allow the detainee to make oral or written representations to the court, or appear in court in person;
- do not permit the detainee to make representations to the court on whether the grounds advanced by an immigration officer meet the standard of good and reasonable grounds; and
- deny the detainee the right to challenge the lawfulness of their detention by appearing in court.

The declaration of invalidity was suspended for a period of 24 months and the Court ordered that pending the correction of the defect within 24 months (by 28 June 2019), any illegal foreigner detained in terms of section 34 of the Immigration Act must be brought before a court in person before the expiry of 48 hours from the time. Since then, this has been the position with foreigners being brought before court.

Second Constitutional Court judgment

In October 2023, the Court supplemented and clarified the order in the First Constitutional Court judgment by allowing a detainee to appear before a court in person when a court is considering whether to extend a detention period beyond 30 days, and by introducing the "*interests of justice*" criterion as a guideline for immigration officers and courts in the exercising of their discretion under the Immigration Act.



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The Court ordered that, pending the enactment of remedial legislation within a period of 12 months, and if remedial legislation is not enacted, the following provisions will apply:

- an immigration officer must apply the interests of justice criterion when considering the arrest and detention of an illegal foreigner in terms of section 38(1) of the Immigration Act;
- a detained person shall be brought before court within 48 hours from the time of arrest;
- the court must apply the interests of justice criterion when the arrested person is brought before it;
- the court may authorise the further detention of the person if it concludes that the interests of justice do not permit the person's release;
- if the further detention of the person is ordered, they must again be brought before court prior to the expiry of the authorised detention period, and the court must again apply the interests of justice criterion at that stage;


- the court may then again authorise the further detention of the person, but by no more than 90 calendar days, if it concludes that the interests of justice do not permit the person's release; and
- whenever the person concerned is brought before court, they must be given an opportunity to make representations to the court.

Status and next steps?

The Bill is now at the public participation stage, and the public have now been invited to comment on the Bill. For purposes of such participation, any written comments on the Bill must be submitted to ABill8B-2024@parliament.gov.za by no later than 17h00 on 13 October 2025.

We continue to monitor developments on the progress of the Bill.

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and Mapaseka Nketu**



Application for Work

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Address*

Phone*

Email Address*

State*

ZIP/PL

Date of Birth

Yes

No

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

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