

Visit to Lindela Repatriation Centre, Krugersdorp

Justice Edwin Cameron, Constitutional Court of South Africa

Background

On Friday, 27 July 2012, Justice Cameron of the Constitutional Court (accompanied by his law clerks Nurina Ally and Michael Mbikiwa, and his former law clerk Claire Avidon) conducted an inspection of the Lindela Repatriation Centre (Lindela), situated near Krugersdorp.

The delegation was met by the Chief Director of Legal Services at Lindela, Mr D Erasmus. Other officials who assisted in facilitating the inspection included: Ms N Qaba (Director: Deportations); Mr Kekana (Acting Head of the facility); Ms A Mohube (Assistant Director: Deportations and Coordination); and Mr Myeki (Administration Coordinator).

Lindela is a facility operating in terms of the Immigration Act¹ for the temporary detention of undocumented migrants who are awaiting deportation from South Africa. We were informed that no one is detained at Lindela if determination of their legal status in South Africa is to be conducted – Lindela accepts only people whose status as “illegal foreigner nationals” is confirmed.² Individuals generally arrive at Lindela after being detained by police or immigration officials. We were told that the assertion that people are arrested at refugee reception offices³ is not correct: detainees arrive after being detained by police or immigration officials. An immigration official then has 48 hours to confirm the veracity of a person’s status before issuing a deportation warrant. Police do not issue deportation warrants as they do not have access to Home Affairs systems. Furthermore a person arrested at a Refugee Reception Centre will only be arrested for deportation after they have been rejected as an asylum seeker.⁴

The day to day management of Lindela is carried out by the Department of Home Affairs in partnership with a private contractor, Bosasa, in terms of a contract with the

¹ 13 of 2002.

² Communication from the Chief Director: Inspectorate, Mr Modiri Matthews, 18 October 2012.

³ Lawyers for Human Rights “Monitoring Immigration Detention in South Africa” (September 2010). Available at: http://www.lhr.org.za/sites/lhr.org.za/files/LHR_2010_Detention_Report.pdf.

⁴ Communication from Mr Modiri Matthews, 18 October 2012.

Department of Home Affairs. Bosasa states that it has the following responsibilities in respect of Lindela:

- Accommodation;
- Administration;
- Catering;
- Health and Safety;
- Maintenance and Technical Services;
- Office Facilities for Consulates and Human Rights Organisations;
- Recreation;
- Secure Care; and
- Training and Development.⁵

According to Bosasa, the Department of Home Affairs remains legally and administratively responsible for all matters pertaining to “the apprehension, holding, processing, repatriation and release” of detainees at Lindela.⁶

We were informed that an official judicial inspection had not hitherto been carried out at Lindela, but that Judge Brian Spilg of the South Gauteng High Court had previously visited the facility.

Limitations of visit

It deserves emphasis at the outset, as is explained more fully in the conclusion, that Lindela is a highly distinctive institutional setting.⁷ The detainee population is by definition transient.⁸ A foremost scholar in the field notes that short-term detainees

⁵ <http://www.bosasagroup.com/content/1361/1275/lindela-repatriation-centre/>.

⁶ <http://www.bosasagroup.com/content/1361/1275/lindela-repatriation-centre/>.

⁷ Mary Bosworth, “Subjectivity and identity in detention: Punishment and society in a global age”, *Theoretical Criminology* 16(2) 123–140 (2012) at 124 notes that “Because of their population and their institutional make-up, removal centres defy simple taxonomy”. Referring to the United Kingdom, she says –

“Ostensibly a destination for people en route to an airport, they increasingly house women and men for upwards of six months. Though deportation and the detention that precedes it are matters of administrative law, foreign offenders are now routinely given deportation orders by judges and magistrates as part of their criminal sentence. Detention centres likewise pose multiple methodological demands. Most fundamentally, it is extremely difficult to gain research access to such places as governments have refused to allow rigorous academic study of these institutions or those who stay or work in them. Many detainees speak only limited English. They hail from countries with an array of cultural, religious and traditional norms and practices that may be difficult for researchers to understand. Some are held overnight, others for several years; it is not always clear how to capture the range of experiences under these circumstances.”

⁸ Bosworth (note 7 above) explains –

“are in a particularly weak position, because their very identity renders them unable to make the claims they would assert.”⁹

“In an inverse of the usual justifications of penal confinement, a period of detention neither changes the detainees nor prepares them for eventual return. Rather, detention merely confirms their identity. They are always, already non-citizens, excludable and deportable.”¹⁰

Not only is the stay inside the facility necessarily short-term, but in addition detainees generally have no long-term outside family or employment links. In addition, unlike prisons, there appears to be no standing institutional mechanism to determine whether complaints of abuse and maltreatment are valid, and to follow up complaints by punishing either perpetrators or those who lay false complaints.

Detainees are however entitled to request to see Home Affairs officials or to access legal representation. Lindela has also introduced a process for regularly checking detainees and running through a series of questions with them that is designed to ensure that they are being observed and not suffering from harshness.¹¹

Our observation is that the short-term nature of detention at Lindela may have a double effect. On the one hand, it may make detainees vulnerable to abuse (since they will soon leave and will not be able to testify).¹² But, conversely, and as explained further below, it means there is no long-term institutional or social disincentive against fabricating complaints.

We found that this made it very difficult to assess reliably whether the complaints made to us had substance.¹³ The absence of functioning institutional mechanisms to

“Identified in prison as foreign nationals, such people emerge as ‘non-citizens’, subject to a new expansive form of penal power in immigration removal centres that is not bound by the familiar goals of punishment but exists purely as a means to an end: deportation.” (page 134)

⁹ Id at 126.

¹⁰ Id at 134-135.

¹¹ Communication from Mr Modiri Matthews, 18 October 2012.

¹² Mr Matthews comments, “This is not true – we have recently released detainees who wished to testify against officials in corruption cases” – communication of 18 October 2012.

¹³ Bosworth (note 7 above) states that interdisciplinary work on border control by anthropologists and geographers presents “a depressing picture of absolute state power that not only glosses over the difficulties inherent in enforcing border control under conditions of globalization, but also however unintentionally, occludes the lived experience of border control” (page 126).

determine complaints is noted with concern since it adversely affects the institution. We highlight this so that it can receive appropriate attention.¹⁴

General

Lindela has separate female and male detention sections. The overwhelming majority of those detained are male. The male section is further sub-divided into blocks A, B and C. At the time of the inspection, only blocks A and B were being used. Block C was empty. There is an on-site clinic, as well as a kitchen. There is also a dedicated control room for managing security. Accommodation, medical and catering facilities, and security operations are discussed in further detail below.

We were informed that under the contract between Bosasa and the Department of Home Affairs, Lindela maintains the following staff contingent:

- 16 security staff on shift;
- 7 managers;
- 2 doctors;
- 2 nurses;
- 4 canteen attendants;
- 30 cleaners per shift (and 2 shifts per day); and
- 45 immigration officials (Mr Modiri Matthews is the manager). There are three assistant managers and eight supervisors). At the time of the inspection, eight of the 45 posts were not filled and had been advertised for.

The average length of detention at Lindela is 30 days. A 90-day extension can be obtained only with a magistrate's warrant.¹⁵ The maximum number of days of detention is supposed to be 120 days. The facility has a capacity of 4000 detainees. At the time of the inspection, approximately 2000 detainees were being held.

Screening section

Upon arrest, detainees are brought to the screening section at the entrance to the facility. They are then processed in order to ascertain whether they are in the

¹⁴ Mr Matthews comments:

"We must be clear that the department does not wish to keep individuals in the facility for long as they are not convicts but are individuals without a lawful basis to be in South Africa. Therefore the complaints raised have to be understood as individuals seeking ways to remain in the country. However as indicated there is an opportunity to access officials. We will nevertheless consider the matter in the light of the visit to see if it needs strengthening."

¹⁵ Communication from Mr Modiri Matthews, 18 October 2012.

country illegally. Those that have legal status are released and returned to the arresting officer as they would have been declared illegal wrongly by the arresting officer.¹⁶

Those without legal documentation have their details captured in the system and processed, and their fingerprints taken. It has been pointed out to us that detainees would not have legal documents as they are illegal foreigners. Even if they have a passport the fact that it has no legal authority to remain by way of a visa or permit means that the document is not valid since it does not afford authority to be in South Africa.¹⁷

Waiting area

Once the Department of Home Affairs has screened and captured the details of the detainees, they are handed over to Bosasa in the waiting area. Bosasa is thenceforward responsible to provide medical facilities, accommodation, meals and security.

There are bathrooms in the waiting area, which the inspecting delegation found to be reasonably clean.

Induction area

In this area, the detainees are informed of appropriate behaviour when inside the facility, and are told that they may not have more than R100 on them. Money in excess of this is placed in the property store of the admissions room.

Admission room

Data capturing takes place in the admission room. Each detainee has his or her details captured and is given a unique identity number, which reflects the date on which he or she arrived, and country of origin. A record is also kept of the police officer who hands over, and the Bosasa personnel who receives.

The admission room has a property store, where belongings may be kept until release, including money in excess of R100.

¹⁶ Mr Matthews comments that “No one is allowed to be brought to Lindela unless the case has been fully investigated and the determination of illegality has been confirmed.”

¹⁷ Communication from Mr Modiri Matthews, 18 October 2012.

Search area

Before entering the accommodation in the facility, detainees are searched. There are separate areas for men and women. We were informed that the search is merely a pat down.

Clinic

Lindela has an on-site clinic. At the time of inspection, we were informed that there was a doctor always on standby and two on-duty nurses at the clinic. We spoke mainly to Nurse Margareth Gabaocoe, who heads the clinic. Nurse Linkie Moribe was also present.

The clinic was generally clean and seemed to us to be well-stocked with medication. A treatment book is maintained to record treatment detainees receive. The nurses informed the delegation that the clinic had never run out of the medication that it stocks, and that there had been no difficulties with procurement. We pressed them on this, and received assurances that medical stocks were always ample.

The nurses informed us that malaria, flu and chest infections are the main ailments treated. Most conditions can apparently be treated at the clinic with medication available on-site (including arthritis).

The nurses order medicines and the procurement takes place through Bosasa. We were informed that drugs for sexually transmitted infections, as well as antibiotics and painkillers, are generally available on-site. However, patients are sent to a nearby hospital for antiretroviral treatment and tuberculosis medication, neither of which are available at the facility.

Patient intake is approximately 200 persons per day. The nurses stated that detainees seeking treatment are accompanied by security guards to the clinic after breakfast each morning. On the day of the inspection, the clinic had seen 150 people by 13h45.

On inspection, the sick bay was generally clean and had satisfactory facilities (with neat beds, a TV and clean bathrooms).

Control Room

A control room has centralised monitoring and surveillance of the entire facility 24 hours a day.

Operators work shifts. There are three per day, of eight hours each, and two operators working per shift.

The inspecting delegation was assured that there are no cameras inside rooms or bathrooms. Monitoring therefore takes place only in the outside areas and the clinic. The film is stored for 90 days and then archived or destroyed (we did not attain clarity on this).

There have been recorded escapes from Lindela. We were informed that the most recent escape had taken place the weekend just before the inspection. Investigations are continuing, including into Bosasa officials.

Kitchen and Dining Hall

There is a fully-equipped on-site industrial kitchen. Mr David Mafikane is the kitchen manager and responsible for kitchen preparation. The kitchen area seemed hygienic and well-maintained. A sample menu (the menu changes from day-to-day) is as follows:

Breakfast

- : Mabela (80g)
- : Breakfast stew (20kg)
- : Bread (6 slices)
- : Jam (24g)
- : Tea (300ml)

Lunch

- : Wors (150g)
- : Pap (250g)
- : Mash (200g)
- : Soup (25ml)
- : Powder juice (300ml)

Supper

- : 1 egg

- : 6 slices bread
- : Jam
- : One fruit
- : Powdered juice

Food is served in the servery and taken on a tray by each detainee to the dining hall. Breakfast is served at 08h00, and lunch and supper are served together at 14h00. Men and women are served separately: the men are served the first meal before the women; the women are served the second meal before the men.

We were present for the female detainees' lunch session at the dining hall. The dining hall was clean and had sufficient seating. Supper is provided at the same time as lunch.

At the time of inspection (which was for lunch and supper), the meal we saw consisted of rice, coleslaw, chicken, egg, soup, cream soda, and a sachet of powdered juice. The first few trays had an orange but thereafter fruits weren't included. However, detainees informed us that they usually do receive apples with their meals. Some women were given a plastic fork with which to eat, though these ran out quickly, and we were told by the women that they do not ordinarily receive any cutlery. At supper time we were informed that detainees usually receive 6 slices bread, which is supposed to hold until breakfast the next morning. Those detainees who are on ARVs, and thus require high-protein meals, are served their meals at the clinic. Separate pots are used to prepare halaal meals.

Female section

Facilities

On the day of inspection, there were 27 female detainees. We inspected the storage lockers and safe facilities, which appeared well-kept with workable locks.

The sleeping quarters consist of 14 bunk-beds per room, plus a toilet, basin and shower. The sleeping quarters were clean and well-maintained.

The showers were relatively clean and well-maintained. There were, however, two broken shower heads and it appeared that only cold water was available.

In the quad, around which the rooms are situated, many women sat on blankets on the ground or floor as there were no benches. We were told that the benches were being repaired.

Complaints by female detainees

Justice Cameron addressed all the female detainees, informing them of the purpose of the inspection and inviting honest comments regarding conditions at Lindela. He made it clear that the inspection was not aimed at addressing legal issues regarding the lawfulness of their detention or to offer legal advice regarding the legal status of the detainees.

The female detainees did not approach us on an individual name-by-name basis, but rather raised general concerns in small groups. We record here the main issues repeatedly raised.

Access to telephones: There were a few complaints received about difficulties accessing telephones. We were shown telephones in the canteen, which are accessible between 8h00 and 16h00. The female detainees complained that the cost of the telephone calls was too high (R2 per minute). One of the female detainees from Thailand said that she has requested to make a telephone call but she was not allowed to because she had no money.

We visited the call room, where we were told that detainees can access the phones when required, with the assistance of immigration officials. We were informed that detainees can make overseas calls as well.

Blankets: Each detainee receives three blankets, but there were complaints that these were too small and were not cleaned.

Cold water: There were complaints that only cold water is available.

Sanitary towels: Detainees said that they received only two sanitary towels each per monthly cycle, and are required to purchase more if needed. There were also reports that sanitary towels were handed out only after the detained is “inspected” by a female security officer, who would confirm menstruation.

Difficulties accessing other toiletries: Detainees complained that they did not receive toothpaste and toothbrushes, and have difficulty accessing soap and other toiletries

generally. However, conflicting views were relayed to us on whether sufficient soap is being provided.

In a debriefing session, officials stated that the Department of Correctional Services requires only that soap and sanitary pads be provided. Mr Myeki stated that he was not aware of any “inspections” being conducted on female detainees to prove they are menstruating. As far as he was aware, the only requirement was that on receiving sanitary towels from a female security officer, the inmate would have to record receipt thereof. There was no limit on the number.

Access to lawyers: Some detainees complained that they do not get access to lawyers. They suggested that the only time that they are allowed access to lawyers or are informed of their rights as detainees is on arrival.

Difficulties seeing boyfriends or husbands: There were complaints that detainees are not allowed access to their boyfriends or husbands, and that boyfriends and husbands who are also detained in the facility are forced to pay (R5 or R10) in order to visit.

HIV-testing: Some detainees complained that the clinic did not ask them about HIV-testing and did not inform them whether HIV-testing is available.

Food: There were complaints by some detainees that serving wors was insensitive to Muslim foreign nationals who cannot eat pork.

Rudeness: There were complaints that officials at the facility treated detainees rudely, especially in the kitchen.

Male section

Facilities

Blocks: There are three blocks in the male section – A, B and C. As mentioned, at the time of inspection, only blocks A and B were occupied. Block C was empty.

Sleeping: In each room there are 24 bunk beds. It was not clear how many rooms there are in total. The floor of some of the rooms was not clean and we were informed that the lights remained on all day, which was disruptive to detainees. We were informed that detainees are responsible for the cleanliness of the rooms.

Anger of detainees

Upon first entering the male section, there was relative calm. We were able to speak in brief with some groups of detainees, and make personal inspection of a number of rooms.

However, when an announcement was made that there would be an address by Justice Cameron, the detainees started gathering quickly and in large numbers with increasing anticipation for voicing their concerns.

One detainee in particular was very agitated, possibly suffering from some mental anguish or instability. He was uncontrollable and screamed aggressively and repeatedly that he was ready to kill himself. He was tormented and threw himself against the fencing with security guards seeking to contain him.

As this developed, more detainees became increasingly agitated and enraged. The atmosphere felt to be on the brink of a riot as the detainees collected together with expressions of rage and anger, screaming out various demands and trying to communicate their feeling of discontent.

The inspection team was ushered into a secure section, with a small window facing the crowd of detainees. The anger of the crowd was exacerbated when Justice Cameron explained that the delegation was there only to take complaints of poor conditions and ill treatment, and that its purpose was not to assist with obtaining refugee status, ensuring swift relocation to country of origin, or to clarify local status. The detainees who were closest to the window thrust left-over "shells" in front of the window as evidence of use of force against them. We were later informed by officials that these were shells of sound bullets. There were repeated statements that the security guards mistreated them and that they had been suffering assaults.

In this the near-riotous atmosphere, we tried to obtain some coherent information, although it proved impossible to calm the crowd or to obtain individual complaints. From those who were able to communicate, it was said that there wasn't enough food, medicines, soap, toilet paper and hot water. Many complained of lice, caused by blankets that remain unwashed for months.

Officials told us that this was because some detainees refused to have their bedding washed, demanding instead to be returned home. One member of the delegation was also approached by two persons who said that they were sixteen and twelve years old respectively, yet were being detained amongst adults. It was not possible to

confirm their age, and not clear that they were under eighteen, although they did appear to be young.

Debriefing session

A debriefing session was held with officials from the prison, including:

- Ms Mahobe
- Mr Erasmus
- Ms Qaba
- Mr Kekana
- Mr Dlamini (immigration officer, and liaison at the High Court, who joined the debriefing shortly after the discussion had begun)

The claim that detainees were being held at the facility for more than seven months was put to the officials.

Mr Kekana and Ms Qaba stated that 120 days was standard. However, Mr Kekana suggested that some detainees deliberately delay their deportation, and frustrate officials' ability to deport them, knowing 120 days is the maximum period for which they may be held.

Prolonged detentions – we were assured, occur only where detainees are not cooperative by providing information needed, or where their stated country of origin does not accept them back. The difficulty is made worse by the fact that some detainees are untruthful about their country of origin.

Washing of blankets – It was suggested that longer-staying detainees do not cooperate in returning blankets for washing because they fear not having them returned. Cleaning the bedding was therefore a problem because those detained for a long-time (7 months) saved their blankets. This seemed difficult to understand.

Juveniles – Mr Kekana confirmed that age determination has always been a problem. The difficulty, he stated, is that some persons say to the police that they are over 18 years of age. Awaiting trial juveniles are placed in a separate juvenile detention

centre. Underage male detainees are sent to Randfontein Safe Haven for Juveniles. Young females are sent to a shelter, although they are allowed to be kept there only for a few days. There they are given only a bed and food, and they cannot be forced to stay there.

Assault – We were told that criminal cases are opened if detainees complain of being assaulted. Officials confirmed the use of teargas and sound bullets. The last use of teargas and sound bullets had been on the Monday preceding the visit, when, we were told, a group of Democratic Republic of Congo nationals had disrupted operations. Officials stated that rubber bullets were never used. In addition, the officials told us that there are no isolation cells, and no comparable internal disciplinary mechanisms.

Access to feminine hygiene products – The concern by some female detainees that they were not receiving toothbrushes and toothpaste was relayed. In response, officials stated that the Department of Home Affairs requires only that soap and sanitary pads be provided. Other toiletries can be purchased from the office. We relayed the complaints received from some female detainees that there were “inspections” conducted before receiving sanitary pads. Mr Myeki stated that he was not aware of any “inspections”. As far as he was aware, the only requirement was that on receiving sanitary towels from a female security officer, the inmate would have to show that they had received sanitary towels, although there was no limit on the number that could be received.

Hunger strikes – Mr Kekana indicated that hunger strikes did not happen often and where there was a hunger strike, this was handled by acceding to the person’s demand.¹⁸

Medication – In response to a complaint that detainees received the same medication, regardless of the ailment, Mr Myeki stated that this was not true. He suggested there may be a culture of complaint.

Complaint management – Mr Myeki stated that there was an open door policy, especially for long-term detainees.

¹⁸ Mr Matthews comments: “I am not aware of such cases” – communication of 18 October 2012.

Seeing husbands or boyfriends – Some female detainees claimed that they had to bribe officials for seeing their husbands or boyfriends. The officials said that this had never been reported to them. But they agreed to investigate this.

HIV-testing – If detainees want an HIV test then they are taken to a nearby hospital.

Condoms – No condoms are provided at Lindela. One of the officials said that “It will promote sexual behaviour”. Justice Cameron strongly asserted that the Department of Correctional Services, in accordance with WHO and UNAIDS guidelines, has a policy of discreetly providing condoms in correctional centres and that this should be undertaken. The officials assented to this.

Statistics – We received a printed up-to-date list of current inmates by country.

Contract with Bosasa – The Bosasa contract is until 2015. There is the option to extend the contract this year, else it will go out to tender (valued at R90 million per year or R7.5 million a month, inclusive of maintenance, management, etc.).

Visit by Lawyers for Human Rights (LHR) – Judge Cameron relayed to the officials many of the statements contained in LHR reports about Lindela. The officials said LHR had never inspected the facility and that they are welcome to do so. Justice Cameron confirmed with the officials that he would extend their invitation to visit to LHR, and that the officials would help facilitate the visit.¹⁹

Deputy Minister – It was reported to the delegation that the Deputy-Minister of Home Affairs had wished to be at the meeting, and sent her apologies for not being present.

Chief Director – The Chief Director: Inspectorate, Mr Modiri Matthews, also could not attend and sent apologies.

¹⁹ Mr Matthews comments (communication of 18 October 2012):

“LHR and any organisation can write to the department requesting to visit and it will be considered like all applications for visits. The South Africa Human Rights Commission does have oversight of the facility and does visit. It must be stated that we have tried to build bridges with LHR by inviting them to a meeting in August 2012 which went and we had arranged to have a follow up meeting in September 2012 to see how we can work together and build a good relationship. Subsequent to the meeting it seems that LHR did not have an interest in working with us but prefer litigating against the Department.”

Conclusion

We are regrettably not in a position to assess the integrity of allegations of assault and maltreatment at Lindela.

Here, as outlined earlier, we pause to note two features of long-term institutional incarceration. First, everyone involved – inmates, warders, parole officers, officials - has some stake in institutional stability and in the success of the system. Second, institutional mechanisms generally exist to determine whether grievances and complaints are justified, and to follow through on findings by punishing perpetrators (or rebuking fabricators of complaints).

Much of this is, however, lacking at Lindela. The conditions of detention differ from long-term facilities in both these signal respects. First, the detainee population is entirely transient. Detention at Lindela is intrinsically short-term. Indeed, its very object is to secure removal from South Africa. Hence, detainees who complain of assault or maltreatment may not be able to testify later, while, in addition, there is no long-term post-detention investment in good behaviour during detention. On top of this, secondly, we were not made aware of any functioning institutional complaint-determining mechanisms.

In long-term facilities, a functioning institutional complaint mechanism may deter fabrication of complaints in at least three ways. First, those detained know that the credibility of their complaints may previously have been tested and found without merit. Second, detainees that repeatedly lodge frivolous or fabricated complaints may fear that this will affect the plausibility of future complaints. Third, there is an incentive to make proper use of a complaint mechanism when there is effective follow up on legitimate complaints.

An inevitable consequence of these features of short-term transient detention is that detainees lack direct incentives to avoid false allegations of maltreatment. Conversely, because they are an intrinsically transient population, and because there appears to be no standing complaint-investigation and -resolution mechanism, personnel appear to operate in the absence of the usual direct personal and institutional incentives to avoid maltreatment.

In consequence, adverse incentives exist on both sides. On one hand, because detainees are kept short-term, there is little risk that complaints will be treated as

credible and effectively followed up. But, conversely, there is equally no disincentive to fabrication.

This makes complaints very difficult to evaluate.²⁰

There have, however, been persistent previous reports, emanating from human rights organisations of international stature, of poor conditions and maltreatment at Lindela.

Our visit did not enable us to confirm or refute these reports. However, we summarise some of their averments here.

- A Lawyers for Human Rights report of September 2010²¹ details problematic conditions of detention at Lindela. First, asylum seekers are often arbitrarily and unlawfully detained, without being notified of any proceedings to withdraw their asylum permits, and without any of the other procedural requirements for the lawful detention of asylum seekers being followed.²² Between February 2009 and September 2010 LHR brought more than 60 urgent High Court applications seeking the release of asylum seekers detained at Lindela. Court orders demanding the release of the detainees were issued in all but two of these.²³

Regarding conditions of detention, the same report notes the absence of access to reading or writing materials;²⁴ the extent of the interval between the last meal of one day and the first meal of the next (which exceeds the 14-hour maximum stipulated in an annexure to the Immigration Act);²⁵ and several reports from detainees about physical force and abuse, both by guards and by other detainees.²⁶ The report notes that periodic riots have broken out, motivated by detainees' frustration over the prolonged period and conditions of their detention. The lack of adequate external oversight

²⁰ Bosworth (note 7 above) says of short-term detention centres: "Detainees are, not unexpectedly, usually highly critical of them, as are human rights organizations" (page 130). She adds, "Perhaps less predictably, staff members are also sometimes troubled."

²¹ Lawyers for Human Rights "Monitoring Immigration Detention in South Africa" (September 2010). Available at: http://www.lhr.org.za/sites/lhr.org.za/files/LHR_2010_Detention_Report.pdf

²² Id at 7.

²³ Id at 9.

²⁴ Id at 21.

²⁵ Id.

²⁶ Id at 22.

mechanisms is also noted as increasing the risk of abuse of detainees by guards, and by other detainees.²⁷

With respect to the provision of health care specifically, the report notes the regular complaints made by detainees, namely: lack of access to the clinic; failure to receive adequate care; being given the same painkillers regardless of their ailment; the absence of antiretroviral and TB medication; refusal of nurses to treat detainees accused of fighting with guards; and, referring to a particular detainee as an example, the absence of any provision for the treatment of mental health problems.²⁸

- The LHR submission to the Special Rapporteur on the Human Rights of Migrants²⁹ dated February 2012 confirms that the most common complaint at Lindela is that medical care is inadequate. The submission describes the healthcare officials as adopting 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. In addition, the submission notes complaints of dirty bedding, lice, insufficient bedding, inadequate blankets, and limited access to toiletries, clean clothes and towels. Lastly, the submission notes complaints of detainees being beaten and physically injured by Lindela staff, including assaults being used in order to force detainees to sign documents consenting to their deportation.
- Third, a 2010 report by the *African Centre for Migration and Society*³⁰ found that the conditions of detention at Lindela were “generally satisfactory” subject to some exceptions, namely that the facility: failed to adhere to the legally prescribed period between meal times; violated the dignity of detainees with inadequate soap and clean clothing provision; provided insufficient bedding; and provided inadequate chronic medication. It also noted reports of violence, primarily inflicted by Lindela staff.³¹

²⁷ Id.

²⁸ Id at 21.

²⁹ Lawyers for Human Rights ‘Submission to the Special Rapporteur on the Human Rights of Migrants (February 2012). Available at: <http://www.lhr.org.za/publications/lhr-submission-special-rapporteur-human-rights-migrants>.

³⁰ Available at: http://www.migration.org.za/sites/default/files/reports/2010/Lost_in_the_Vortex-Irregularities_in_the_Detention_and_Deportation_of_Non-Nationals_in_South_Africa_0.pdf

³¹ Id at 57.

The report also found that there were irregularities in: the classification of illegal foreigners; a general failure to give effect to the procedural requirements of section 34 of the Immigration Act; prolonged and indefinite detentions; detention and possible deportation of asylum seekers, violating the prohibition against refoulement; and the improper delegation of DHA processes to Bosasa staff.

We therefore recognise and acknowledge the limitations of the inspection, and encourage Lawyers for Human Rights to make the visit the officials said they would facilitate.

Chief Director Mr Modiri Matthews comments:³²

“As indicated already³³ Lawyers for Human Rights do not seem interested in a relationship with Home Affairs. We have tried to have such a relationship to no avail. Furthermore this report fails to recognise that as a sovereign state we have a right to determine who remains in the country and we have a public duty to remove people who are here illegally.

I would challenge any NGO to benchmark with other jurisdictions to see whether the standard of Lindela and our immigration enforcement is deficient in terms of the rights of illegal foreigners and you would hear deportees in those jurisdictions making similar allegations to the points raised by deportees in Lindela.

Furthermore reports on Lindela are biased because the department is not given an opportunity to comment so one is given a view that is one sided.

Here what is pleasing is the department is being given an opportunity to respond to the findings of Justice Cameron which we greatly appreciate.

We would also like to thank Justice Cameron for taking the time out to visit the facility.”

³² Communication of 18 October 2012.

³³ See comment set out in footnote 19 above.