

Your guide to understanding the

# deportation system

in South Africa



**Scalabrini**  
Centre of Cape Town

## This guide explains:

- 1 The detention and deportation process (for immigration or refugee law reasons only)
- 2 What you should do if you (or someone you know) is detained for deportation
- 3 What your rights are during the detention and deportation process.

### Download me!



This guide contains important contact details and information. Save it on your phone now and share it with someone you trust who can help if you are detained.

### Important!

If you are detained, we highly recommend getting legal help. You will find organisations that can provide more information by clicking here.

Organisations  
that can help



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We suggest reading this guide from start to finish, but you can also click on the topics to 'jump' to them in this guide.



## Your rights in detention



## The deportation process

In this guide, we will look in detail at each step of the deportation process. We have broken the process down into 4 steps, but it might differ depending on the situation you are in.



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### Step two

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## Organisations that can help



# Your rights in detention

It is important to remember that, in South Africa, everyone has rights during detention. It does not matter where you are from, or whether you have documents or no documents - you have these rights. During detention, you have the right:



To know the reason why you are being detained.



To make a phone call. If you are detained, you can ask to use the phone at the police station.



To a lawyer (or legal assistance organisation or Law Clinic, if you cannot afford a lawyer), and to an interpreter in court.



To be treated with dignity (including proper accommodation, food and medical care).



To be informed of your rights and provided information in a language you understand.



To have visits from your family / religious counsellors / doctors.



To be kept separate from criminal suspects.

**If your rights are not being respected, seek legal help.**

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**Remember, always carry  
copies of your documents  
with you**





## Did you know?

The deportation process could take up to 120 days, starting from the moment you are arrested. If you are not deported after a total of 120 days in detention, you have the right to be released.



# The deportation process

1



## Step one

Detention by an immigration or police officer



Only a police or immigration officer can ask for your documents to prove that you are living in South Africa legally. If they have 'reasonable grounds' (strong reasons) to believe you do not have legal stay in South Africa, they can detain you while they verify your status in South Africa, usually at a police station.



They can only detain you for 48 hours while they verify you, and you must be brought to court within those 48 hours or on the next working day if it falls on a weekend or public holiday.



If the investigation finds that you are an 'illegal foreigner,' an immigration officer should notify you, in writing, that you are being charged as an 'illegal foreigner'. Following this, you will be taken to court. Remember, this must happen within 48 hours.



If you are not brought to court within 48 hours, you have the right to be released immediately.

### Take action now!

It is very important to take action and get legal help once you are at this stage of the process! Find out more on the next page.

## Take action now!

At Step One of the deportation process, when you are first arrested, it is important to take action. This depends on the type of document you have. Below, find the statement that is correct for your documentation status, and follow the chart below to understand what you must do.

### I have valid documents

(Including refugee status, asylum seeker visa, any valid visa including ZEP)

#### What to do

Show the officer your certified copy or original visa, permit, e-visa PDF or emails.

#### What happens next

You must be released - but only once the officer has successfully verified your identity documents.

#### Important notes

If they do not release you, seek legal help. If your document is not with you, ask the officer if someone can bring your document to you. If they do not allow this, tell them they must verify your status or identity within 48 hours. You will be released once your document is produced and your status is verified. If they do not release you, seek legal help.

## I am a newcomer asylum-seeker, but I do not have documents

### What to do

Explain that you fled your country because it is not safe and you want to apply for asylum in South Africa.


### What happens next

At this point of the process, you should be released to apply for asylum but might be detained while Home Affairs assists you in applying for asylum at a Refugee Reception Office.

### Important notes

You should get legal help. You can contact an organisation by clicking here.

Organisations  
that can help



## I have an expired visa or permit

### What to do

Show your expired asylum seeker visa/permit, refugee status or visa to the officer and explain why it is expired.

### What happens next

At this point of the process, you might be detained. You might be fined or have to serve a prison sentence. Free legal aid is available at court to assist you if you are charged for having an expired asylum seeker visa/permit or refugee status.

## I do not have any legal documents. I am undocumented.

### What to do

Explain to the officer why you do not have documentation in South Africa.

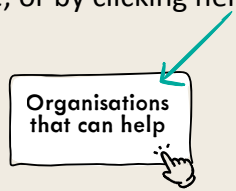
### What happens next

At this point of the process, you may be detained or released under certain conditions.

### Important notes

You should get legal help. You can contact an organisation on the last page of this guide, or by clicking here.

Organisations  
that can help



## I applied for asylum, but I have received a final rejection

### What to do

You should ask to be given enough time to get yourself ready to leave the country.

### What happens next

You should be given an 'order to depart', and a timeframe for when you need to leave South Africa by.

### Important notes

If you are not given an order to depart and you are detained, contact legal organisations immediately!

## The difference between administrative and criminal detention

At Step 1 of the detention process, if the immigration officer believes that you are "illegally" in South Africa, they should give you a form that says this. On this piece of paper, it will say which Section of the Immigration law you are being charged under. Section 34 is "administrative" detention for deportation. Section 49 is "criminal" detention and is not for deportation. The difference between these types of detention are outlined below:

### Criminal detention

Criminal detention occurs when you are charged with a crime, including the crime of entering or staying in the country illegally. (This is under Section 49 of the Immigration Act.) With any criminal matter, if you cannot afford a lawyer, you have the right to free legal aid at court.

If charged under Section 49 of the Immigration Act and found guilty, you must first serve a prison sentence (of 2 - 4 years) or pay a fine before possible deportation. Even after this, you may still be detained or re-arrested for deportation under Section 34. The 120 days of detention will start once you are arrested for deportation. Seek legal help immediately.

### Administrative detention

Administrative detention happens when you are detained for deportation after being found to be an "illegal foreigner." (This is under Section 34 of the Immigration Act.) If detained under this section, you must appear before a magistrate who will decide if you should be released or deported.

On the next page, you will see Step 2 of the detention process for those detained for administrative purposes.

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## The difference between administrative and criminal detention

At Step 1 of the detention process, if the immigration officer believes that you are "illegally" in South Africa, they should give you a piece of paper (a form?) that says this. On this piece of paper, it will say which Section of the Immigration law you are being detained (charged?) under. It is important to check this Section, because they are two different things. Section 34 is "administrative" detention. Section 49 is "criminal" detention. The difference between these types of detention are outlined below:

### Administrative detention

Administrative detention happens when you are detained for deportation after being found to be an "illegal foreigner." (This is under Section 34 of the Immigration Act.) If detained under this section, you must appear before a magistrate who will decide if you should be released or deported.

### Criminal detention

Criminal detention occurs when you are charged with a crime, including the crime of entering or staying in the country illegally. (This is under Section 49 of the Immigration Act.)

If charged under Section 49 of the Immigration Act and found guilty, you must first serve a prison sentence (of 2 - 4 years) or pay a fine before possible deportation. Even after this, you may still be detained or re-arrested for deportation under Section 34. The 120 days of detention will start once you are arrested for deportation. Seek legal help immediately. If you cannot afford a lawyer, you have the right to free legal aid at court.

**On the next page, you will see Step 2 of the detention process for those detained for administrative purposes.**

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# 2



## Step two Going to Court



The police will take you to the court holding cells before your appearance before a magistrate (judge). The magistrate will determine if you are a foreign national and, if so, whether you have a valid reason to be in the country.



In court, it is important that you have legal help. You have the right to a lawyer or to request legal assistance. In court, you must explain your documentation situation to your lawyer and the judge. Be honest, and provide as much information as possible. If the judge believes you have a valid reason to be in South Africa, then they will:

- order your release or,
- order your release and direct Home Affairs to assist you with documentation.



If your valid reasons for being in South Africa are unclear, the court may allow Home Affairs to investigate further and, if justified, order your detention until you formally apply for asylum. You may remain in detention until you are brought back to court.



If the judge believes you have no valid reason to be in South Africa, they will:

- extend your detention for deportation, agreeing with Home Affairs or
- release you for deportation processing without detention, under certain conditions.

If the judge agrees that you should be charged in terms of Section 49, this is known as criminal (not administrative) detention. If found guilty you will have to serve a prison sentence or pay a fine before either being deported, or getting documented, in South Africa. If it is not safe for you to go back to your country, you should challenge the detention. Please seek assistance from free legal aid.

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# 3



## Step three

If being deported, transportation to Lindela



If you are to be deported, you will then be held in a police station.



Generally, you will wait until you are transported to Lindela Repatriation Centre, near Johannesburg. Sometimes you are deported from a police station without going to Lindela, but this is usually only if you are being returned to a neighbouring country.



If your detention goes over 120 days, you have the right to be released.



Lindela Repatriation Centre is South Africa's deportation centre. It is near Johannesburg.

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# 4



## Step four

Deportation to country of origin



Home Affairs will arrange your return. You have the right to know what is happening; when and how you will be deported.



You may be deported by bus or plane. Remember, if your detention goes over 120 days, you have the right to be released.



After deportation, you will likely be declared 'undesirable' (banned from re-entering South Africa) for up to five years, and this could affect your future visa applications, even after your ban is lifted.



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## Arranging your own return

Sometimes, you can arrange to return to your country of origin on your own.

In some cases, you can arrange to leave South Africa on your own if you are able to:

- Show a valid travel document
- Buy a plane ticket (usually for a direct flight) to your country of origin

If approved, you will stay in detention until your flight date and be escorted to the airport by immigration. Your family or friends should make sure that your belongings are at the airport for you to take on the flight. If you are able to arrange your own journey back to your country, we strongly recommend that you do so - as long as it is safe for you to return. Arranging your return can often shorten your time in detention.

### Important!

People who are asylum seekers (whether documented or not) and refugees cannot be deported and are protected by the principle of non-refoulement. You cannot be sent back to a country where your life, freedom, or rights would be at risk.



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## Organisations that can help

If you are arrested or detained for purposes of deportation, we strongly recommend you get legal assistance. You have the right, in detention, to be visited by partners or family, and religious counsellors who might assist in finding legal assistance for you. If arrested for deportation and you cannot afford a lawyer, you should also contact a non-profit organisation or university law clinic, listed below.

### National Immigration Detention Hotline



081 716 8791



0800 079 614 (toll free)

### Lawyers for Human Rights (Durban)



031 301 0531

### Nelson Mandela University Refugee Rights Centre (Gqeberha)



041 504 1310 or 041 504 4705

### University of Cape Town Refugee Rights Clinic (Cape Town)



021 650 5581



078 594 5591

### Scalabrini Centre of Cape Town



021 465 6433



078 260 3536

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Centre of Cape Town



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