

DETENTION AND DEPORTATION OF MIGRANTS AND REFUGEES IN SOUTH AFRICA

Visit our page to find out more about this topic:
www.genderjustice.org.za/explainers

WHAT IS THE DEPORTATION PROCESS IN SOUTH AFRICA?

For more information, see our FAQs overleaf.

We **STRONGLY** recommend that, if you are detained, you get legal assistance. This is especially important when you are brought before in court within 48 hours of arrest. See Question 8, overleaf.

If you have an asylum claim (there is a risk of persecution or harm if returned to your country), you cannot be deported. Get legal assistance urgently.



STEP ONE

Only a police officer or immigration officer can ask you to identify yourself. If they have 'reasonable grounds' to believe you do not have legal stay in South Africa, they can interview and detain you for up to **48 hours** while they verify your identity or status in South Africa. Get legal help!



STEP TWO

Only an immigration officer can declare you to be an 'illegal foreigner'. The deportation process will begin. You must be informed of this, in writing, in a language that you understand. You should also be informed of your right to **appeal** this decision. The immigration officer can arrest you for the purposes of deportation - it is up to their discretion.



STEP THREE

You must be brought, in person, before a court. This must occur within **48 hours** of being arrested or taken into custody. The court will decide whether to confirm your detention or not. Their decision must be given to you in writing. They can extend your detention up to **30 days**.



STEP FOUR

After the first 30 days, the immigration officer can ask the court to extend your detention period 30 days at a time. You must **appear** in court, and can make written representations. The detention can only be extended if there are good reasons to do so. You can only be detained for **120 days** in total.



STEP FIVE

If your deportation is now going ahead, you may be transferred to **Lindela Repatriation Centre** in Gauteng. In reality, this takes time and you may be held in a police station or prison while awaiting transfer or direct deportation. Although you have several rights in detention (see overleaf), the conditions of Lindela and other detention spaces are not good.



STEP SIX

During this process, the Department of Home Affairs interacts with your consulate, embassy, or immigration officials in your country to arrange your return. They should ensure that you will be received upon return.



STEP SEVEN

Just before being deported, you must be informed of the upcoming deportation. You may be deported using bus, train or plane. Once you are deported, it is highly likely that you will be banned from returning to South Africa for up to five years. Even after this time period, the ban may negatively affect your chance of being granted visas in South Africa.

At any point in the deportation process, you can arrange to leave South Africa yourself, if you can prove that you are financially able to and have travel documents. If successful, you'll be given a form requiring you to report to Home Affairs regularly. If you are able to arrange your own exit from South Africa, we strongly recommend that you do so - as long as doing so does not put you at risk.



Remember, if you are not deported after a total of 120 days in detention, you have the right to be released. See overleaf for organisations to contact.

1. WHEN CAN SOMEONE BE DETAINED FOR DOCUMENTATION PURPOSES?



In South Africa, **ONLY** police officers and immigration officers are permitted to ask you to show identity documentation. This must be a proof of identity which includes your **name** and **photograph**. You can only be detained if a police officer or immigration officer believes on 'reasonable grounds' that you do not have legal stay in South Africa.

2. AS A NON-SOUTH AFRICAN, WHICH DOCUMENTS SHOULD I CARRY WITH ME?



If you have a **visa** in your passport, you must carry **at least** a certified copy of the passport and visa at all times. If you hold **refugee status**, you should also carry a certified copy of your refugee status at all times. If you have an **Asylum Seeker Temporary Permit**, you should carry the original document with you at all times.

3. WHERE CAN I BE DETAINED FOR PURPOSES OF DEPORTATION?



You can only be detained at a place determined by the Director-General of Home Affairs (this is published in the Government Gazette). This includes some **police stations**, **detention facilities** and **offices** under the management or managed on behalf of Home Affairs. Those awaiting deportation will usually be transferred to the **Lindela Repatriation Centre** in the Gauteng Province, South Africa's only immigration detention centre.

4. WHAT ARE MY RIGHTS IN DETENTION?



Your rights in detention include the right: (1) To be informed of the reasons for your detention and your rights in detention; (2) To be detained in conditions that are within minimum standards of dignity and human rights, which includes adequate accommodation, food, reading material and medical treatment; (3) To be able to choose and consult with legal practitioners of your choice, or to be assigned one at State expense; (4) To be visited by your spouse or partner, next of kin, and chosen religious counsellors or medical practitioners; and (5) To be held separately from criminal suspects.

5. HOW CAN I ACCESS LEGAL HELP IN DETENTION?



If you are arrested or taken into custody for purposes of detention, we strongly recommend you get legal assistance. You have the right, in detention, to be visited by spouses or partners, next of kin, and chosen religious counsellors who might assist in finding legal assistance for you. If you cannot afford a lawyer, you should also contact a non-profit organisation, listed below. (Note, if you are arrested for a criminal matter, you may be able to request Legal Aid.)

6. WHO CANNOT BE DEPORTED?



Asylum seekers and refugees may not be detained for the purposes of deportation under the Immigration Act, as this could amount to non-refoulement (which is the principle that States cannot return people to countries where there is a reasonable risk of harm or death). This includes people that have an intention to apply for asylum. However, asylum seekers who have been finally rejected and who have not challenged the final rejection **are** at risk of detention and deportation. The detention of **children** is not allowed - only if it is a 'measure of last resort'. This is subject to certain safeguards.

7. WHAT IS THE DEPORTATION SYSTEM LIKE IN REALITY?



Home Affairs deports **thousands** of people each year. Despite the legal safeguards, many detainees at Lindela face very difficult circumstances. It has been found that detainees are kept for more than 120 days, and that detention conditions are poor, including limited access to healthcare, legal advice and unlawful detention of asylum seekers and children.

8. I NEED HELP. WHO CAN I CONTACT?



WWW.SCALABRINI.ORG.ZA



WWW.GENDERJUSTICE.ORG.ZA

Lawyers for Human Rights | Musina: 015 534 2203
Durban: 031 301 0531 | Pretoria: 012 320 2943
Johannesburg: 011 3391960
Refugee Rights UCT | 021 650 5581
The Scalabrini Centre of Cape Town | 021 465 6433