



37 Church Street
Wynberg
Cape Town, Western Cape
South Africa

The information in this guide is taken from the PASSOP and Solidarity Peace Trust joint report “Perils and Pitfalls – Migrants and Deportation in South Africa” issued 5th of June 2012. It outlines in basic terms the rights and protections of those arrested, detained and deported. The whole “Perils and Pitfalls” report can be found at <http://www.solidaritypeacetrust.org/download/report-files/Perils%20and%20Pitfalls.pdf> For further information and advice please call PASSOP on 021 762 0322 or visit our office at the address above.

Key rules under the Immigration Act and Regulations:

- i. Only immigration officials – not police – may declare someone an illegal foreigner for the purposes of deportation
- ii. If police/immigration officers detain someone to confirm their immigration status:
 - The officers must help the detainee access their documents (if readily available), contact other people who can confirm their status, and access departmental records
 - detention for the purpose of verification must not last longer than 48 hours
- iii. If police/immigration officers detain someone for the purpose of deportation:
 - When it is decided that a person is an illegal foreigner and should be deported, that person must be informed in writing (1) that this decision has been made and (2) that he or she has the right to appeal this decision.
 - That person has the right to ask any officer at any time to confirm his or her detention for the purposes of deportation by a warrant of the court.
 - If the requested warrant is not issued within 48 hours, the person must be immediately released.
 - The person must be told about all of these rights upon his or her arrest in a language that he or she understands.
- iv. Maximum detention times:
 - A person detained for the purpose of deportation cannot be held for longer than 30 days without a further warrant of the court (specifically, one which has good and reasonable grounds)
 - Even with a further warrant, the detention may not last longer than an additional 90 days.
 - After someone is held for 120 days, they must be released immediately, regardless of official status.
- v. Prescribed forms must be used in giving effect to the above provisions.
- vi. The dignity and human rights of all detainees must be protected at all stages of arrest, detention, and deportation.

Key rules under the Constitution and Promotion of Administration of Justice

Act (PAJA):

- i. The processes of arrest, detention and deportation must respect individuals' rights and be fair, lawful, and reasonable.
- ii. Detainees have the right to:
 - Be told in writing that their rights are impaired (explain) by administrative action,
 - Be promptly informed why they are being detained and that they have a right to consult with any legal professional they choose,
 - Challenge the legality of their detention in person,
 - Have their human dignity respected at all times, including the provision of adequate accommodations, nutrition, reading material, and medical treatment,
 - Communicate with and have visits from a spouse, partner, next of kin, religious counsellor, or medical professional.

Other legal provisions:

- South African law does not require the detention of asylum seekers, refugees or illegal foreigners (Refugees Act 130 of 1998, South African Immigration Act).
- Officers are supposed to use discretion in deciding to detain people, and are mandated to do so in favour of liberty (South African Immigration Act).
- The Children's Act requires that unaccompanied minors, even if undocumented or illegally in the country, be placed in temporary places of safety – not detention centers like Lindela (Centre for Child Law and Another v Minister of Home Affairs and Other 2005 (6) SA).
- The DHA is legally required to consider asylum claims of a family as a whole to prevent families from being torn apart.