

# KNOW YOUR RIGHTS!

Answers to Frequently Asked Questions, and important information about being **arrested or detained** on the basis of your **documentation status**.





## If you are being detained for your documentation to be verified, and you know your documents are in order:

- If you do not have your identification documentation or permit with you, tell the immigration officer and/or police officer that **they must, by law, take the following steps to verify your identity or status:**
  - Access relevant documents that may be readily available;
  - Contact relatives or other persons who can prove your identity and status;
  - Access the Department of Home Affairs records; or
  - Provide the means for you to obtain the documents that may confirm your identity and status.
- Inform the immigration officer and/or police officer that the Department of Home Affairs operates a 24-hour hotline for the verification of identity and status.
- If you are arrested and your documents have been submitted to the Department of Home Affairs for verification, but **you have not received a response within 48 hours, you have the right to be released.**

# Here are some answers to Frequently Asked Questions

## 1 Can I be stopped and asked for my identity documents by a law enforcement officer?

Yes. In terms of the Immigration Act 13 of 2002, police officers and immigration officers are allowed to stop and ask you to show them your identity documentation. This must be 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 are not entitled to be in South Africa.

**Always carry your permit, visa, identity documents and/or passports with you!**

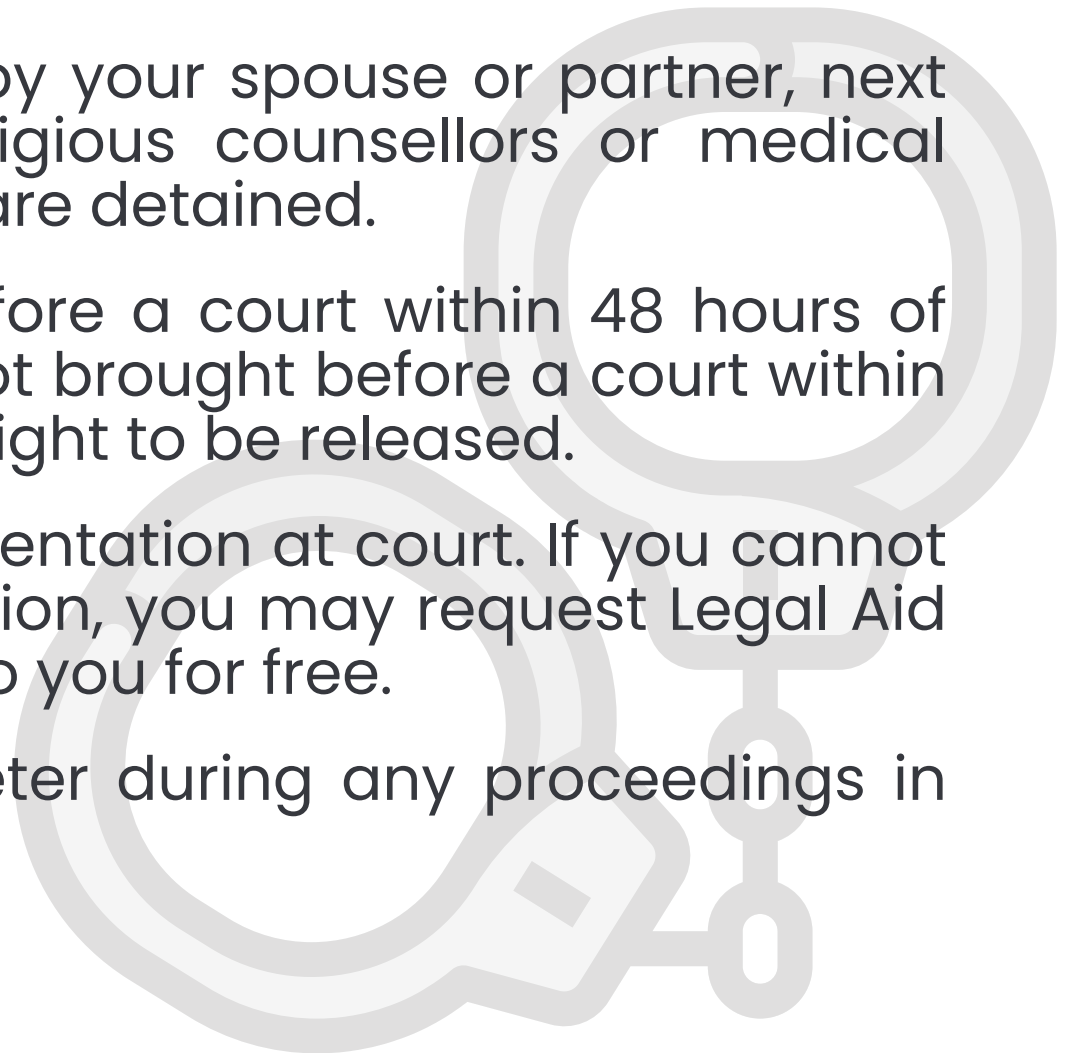




## What rights do I have if I am arrested, or detained?

### Every person who is arrested or detained in South Africa has these rights:

- The right to know for what you are being arrested and detained, and what your rights are.
- The right to have this information given to you in a language you understand.
- The right to be visited by your spouse or partner, next of kin, and chosen religious counsellors or medical practitioners while you are detained.
- The right to appear before a court within 48 hours of your arrest. If you are not brought before a court within this time, you have the right to be released.
- The right to legal representation at court. If you cannot afford legal representation, you may request Legal Aid which will be provided to you for free.
- The right to an interpreter during any proceedings in court.





## What if I am a **refugee**, and I am being detained for my documentation to be verified?

- **Show your refugee permit** to the immigration officer and/or police officer.
- If you do not have your refugee permit with you, ask the immigration officer and/or police officer if you can have someone bring it for you, so that you can show your permit to them. If the immigration officer and/or police officer does not allow this, **tell them all the steps they must take by law to verify your identity or status.**
- If you are brought before a magistrate:
  - Tell the magistrate everything that happened with the immigration officer and/or police officer.
  - Tell the magistrate that the immigration officer and/or police officer did not allow someone to bring your permit, and that they did not follow all the steps that they must take by law to verify your identity or status.
- Tell the magistrate that you want be released, and that your further detention is unlawful.

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## What if I am a **new-comer asylum seeker**, and I have no **asylum-seeker permit**?

- Tell the immigration officer and/or police officer that you are a newcomer asylum seeker, you have declared your intention to apply for asylum and by law, you cannot be deported until you have been given an opportunity to apply at the Department of Home Affairs.
- Explain to them that the Western Cape **High Court made an order 13 September 2024**, in the case of *Scalabrini Centre of Cape Town v Minister of Home Affairs 8486/2024* which prevents the Department of Home Affairs from starting any process to deport any foreign national in South Africa who has indicated an intention to make an application for asylum.
- Explain all the steps you have taken to apply for asylum while you have been in South Africa, including photos of yourself at the Refugee Reception Office, documents from the Department of Home Affairs and any communication that shows you have tried to apply for an asylum seeker permit.

- An example of what you can show the immigration officer, or the police officer, is an affidavit from a police station, affirming that you were at the Department of Home Affairs to apply for asylum, and the date on which you went there. This will help explain why you do not have an asylum seeker permit.
- If you have not taken any steps to apply for asylum while you have been in South Africa, explain that you have fled your country of origin and want to apply for asylum in South Africa.
- If you are taken before a magistrate, explain to the magistrate everything that you have explained to the immigration officer and/or police officer and declare your intention to apply for asylum before the court again.
- If you are arrested in terms of section 49 of the Immigration Act for not having documentation, ask the magistrate that you be released on bail and allowed to apply for asylum.
- If you are detained under section 34 of the Immigration Act, ask the magistrate to either release you so that you can apply for asylum, or order the immigration officer to take you to apply for asylum.

## 5 What if I am an asylum seeker, with a valid asylum seeker permit?

- Show your asylum seeker permit to the immigration officer and/or police officer. Make sure that you have a copy of your permit that you can give the immigration officer and/or the police office to verify.
- If you do not have your asylum seeker permit with you, ask the immigration officer and/or police officer if you can have someone bring it for you so that you can show it to them. If the immigration officer and/or police officer does not allow this, tell them all the steps they must take by law to verify your identity or status.
- Your status must be verified within 48 hours, before you are taken to a Magistrates Court:
  - Tell the magistrate everything that happened with the immigration officer and/or police officer.
  - Tell the magistrate that the immigration officer and/or police officer did not allow someone to bring your permit and that they did not follow all the steps that they must take by law to verify your identity or status.
  - Tell the magistrate that you must be released, and your further detention is unlawful.





## What if I am an asylum seeker, with an expired asylum seeker permit?

- Even if your asylum seeker permit is expired, show it to the immigration officer and/or police officer. Do not hide it on your person, and do not be afraid to explain valid reasons why your permit is not renewed.
- If you do not show the immigration officer and/or police officer your expired permit, or explain why you have not renewed it, you will face the risk of being arrested and detained without getting assistance with renewing your permit.
- Explain why you could not, or did not, renew your asylum seeker permit. If you are detained after explaining this, you must exercise your rights under arrest and detention as explained above.
- Explain that your asylum application has not yet been decided and that you cannot be deported until the Department of Home Affairs has made a decision on your application.
- If you are brought before a magistrate, explain to the magistrate why you could not or did not renew your asylum seeker permit. Explain that your asylum application has not yet been decided and that you cannot be deported.

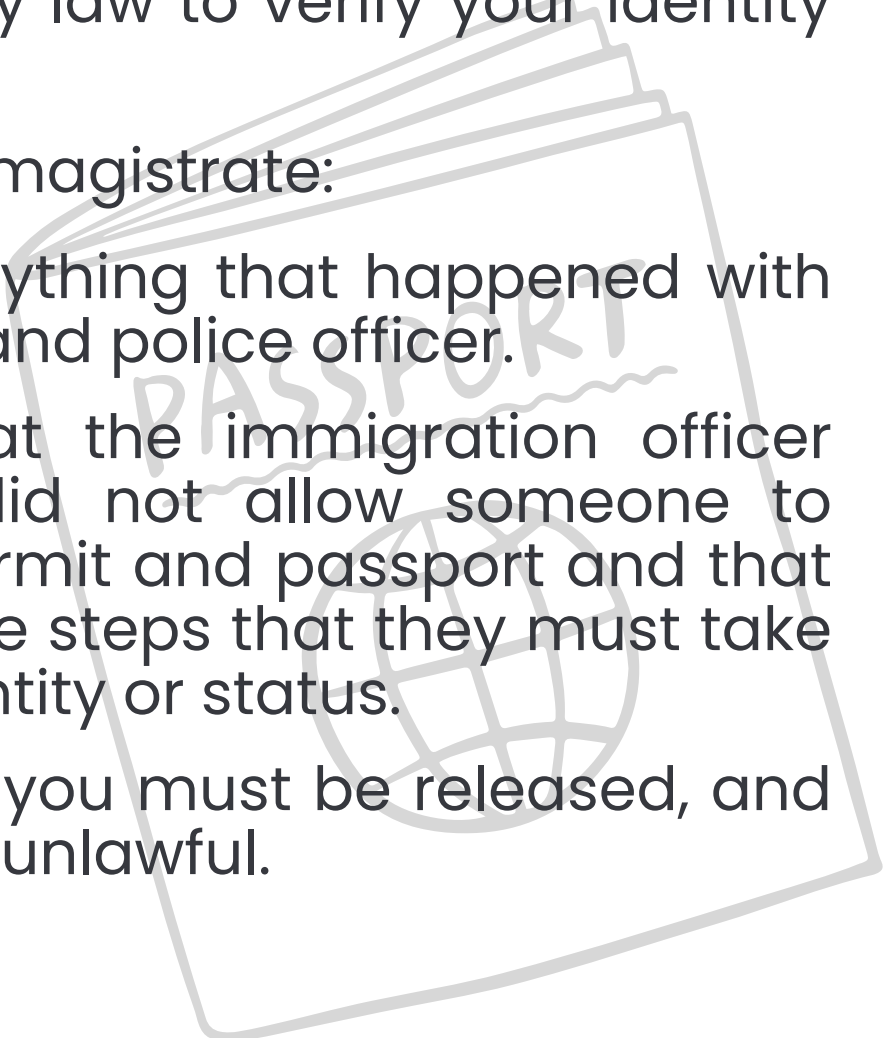
## 7 What if I have a Zimbabwean Exemption Permit?

- Explain that even though your permit has expired, on 29 November 2024, the Minister of Home Affairs extended the validity of the ZEP until 28 November 2025.
- Show your passport and ZEP to the police officer and/or immigration officer. If you do not have your passport and ZEP with you, ask the immigration officer and/or police officer if you can have someone bring it for you so that you may show it to them. If the immigration officer and/or police officer does not allow this, tell them all the steps they must take by law to verify your identity or status.
- If you are brought before a magistrate:
  - Tell the magistrate everything that happened with the immigration officer and/or police officer.
  - Tell the magistrate that the immigration officer or police officer did not allow someone to bring your ZEP and that they did not follow all the steps that they must take by law to verify your identity or status.
  - Tell the magistrate that you must be released, and your further detention is unlawful.



## **What if I am a migrant with another kind of valid visa, or a passport?**

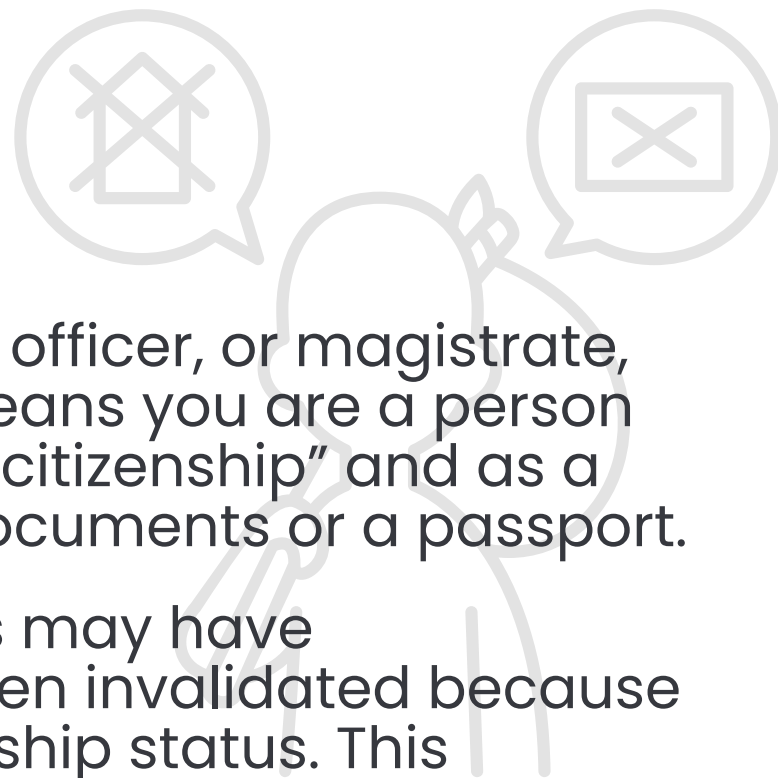
- Show your valid visa/permit or passport to the immigration officer and/or police officer.
- If you do not have your valid visa/permit or passport with you, ask the immigration officer and/or police officer if you can have someone bring it for you so that you may show it to them. If the immigration officer and/or police officer does not allow this, tell them all the steps they must take by law to verify your identity or status.
- If you are brought before a magistrate:
  - Tell the magistrate everything that happened with the immigration officer and police officer.
  - Tell the magistrate that the immigration officer and/or police officer did not allow someone to bring your valid visa/permit and passport and that they did not follow all the steps that they must take by law to verify your identity or status.
  - Tell the magistrate that you must be released, and your further detention is unlawful.



## 9 What if I am a migrant with no valid visa, or any other authorisation to be in SA?

- Explain to the immigration officer and/or police officer why you do not have documentation to be in South Africa.
- If you are arrested and detained, remember that you still have rights and protections under the law including the right to be brought before the court with 48 hours, the right to legal representation, the right to be afforded an interpreter, the right not to be harmed, tortured and held indefinitely in detention.
- If you can transport yourself back to your country of origin, ask the immigration officer and/or magistrate to be released and be given 14 days to leave the country voluntarily instead of being detained pending deportation.
- ***ALWAYS REMEMBER YOU HAVE THE RIGHT TO LEGAL REPRESENTATION. IF BROUGHT BEFORE A COURT, REQUEST THE ASSISTANCE OF LEGAL AID.***

## 10 What if I am stateless?



- Explain to the police or immigration officer, or magistrate, that you may be “stateless”. This means you are a person with no recognised “nationality” or “citizenship” and as a result, you cannot obtain identity documents or a passport.
- Remember, some stateless persons may have documentation, but it may have been invalidated because of investigations concerning citizenship status. This includes, for example, blocked IDs.
- Explain that deportation is not possible because you have no country of citizenship, and will likely be turned away or deported from another country.
- Explain that even though you are stateless, you still have a right to be protected from indefinite detention.
- Request that the Department of Home Affairs conduct a “Statelessness Determination Procedure” through the office of the Director of Citizenship and UNHCR. If it is suspected that you hold citizenship in another country, request that the Department of Home Affairs verifies this through the respective embassy or consulate. **Do not contact the embassy or consulate if you are a refugee or asylum-seeker** as this may imply a re-availment of protection from the country you have fled and may affect your asylum claim.