

REFUGEE

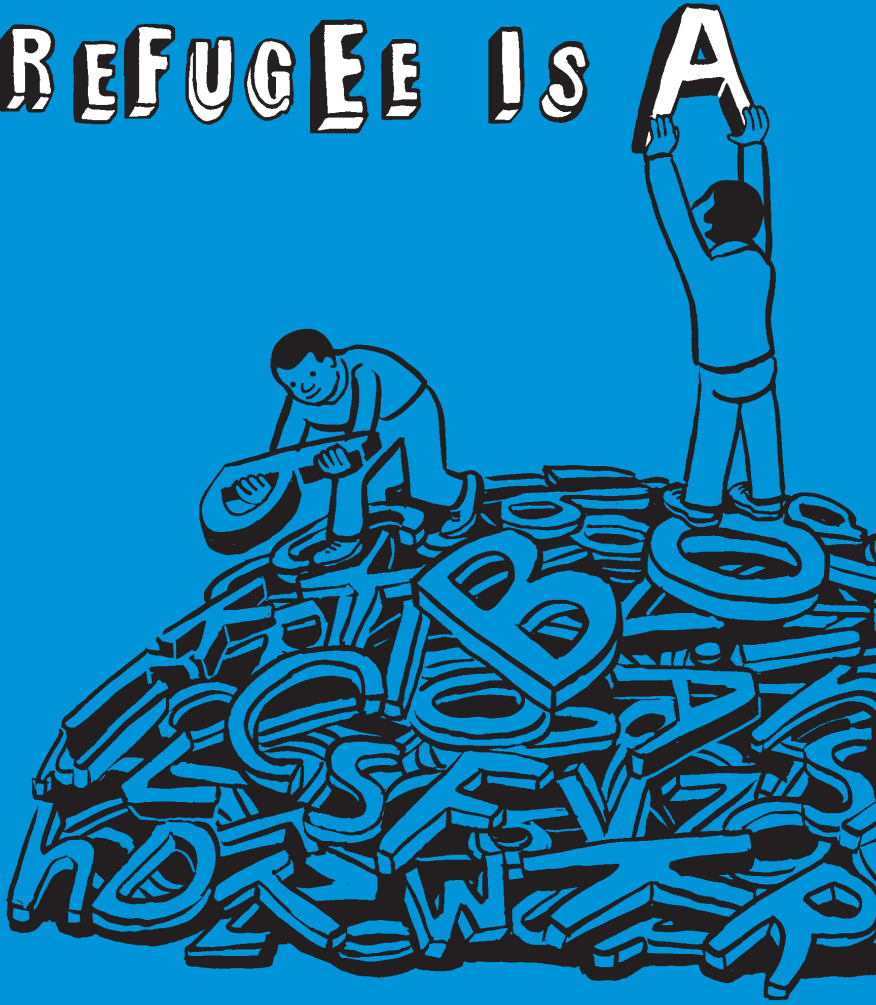


Information Guide 2009



Lawyers for Human Rights

A REFUGEE IS A



How to use this guide

The Guide is divided into two parts:

The first part provides important information on how to apply for asylum and seek legal assistance, where to find material assistance, how to access social assistance such as health, education, employment, trauma- and psychological support both from government and non-governmental sources. It also provides general information about South Africa.

The second part consists of a detailed directory of the relevant government departments, international organisations, non-governmental organisations (NGOs), and community-based and religious organisations offering assistance to the refugee community in South Africa.

Please note that the South African government's policies and practices may change. Please check the Lawyers for Human Rights (LHR) website, www.lhr.org.za, for the most up-to-date information.

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Acronyms and definitions

Acronyms

- DHA → Department of Home Affairs
ICRC → International Committee for the Red Cross
RRO → Refugee reception officer

Definitions

- **Asylum seeker:** A person who has lodged an asylum application with the Department of Home Affairs and who is waiting for a decision on refugee status
- **Department of Home Affairs (DHA):** The South African government department responsible for the administration of asylum applications and refugee matters
- **Durable solution:** Long-term solutions to problems experienced by refugees, generally involving movement back to home country or third country of asylum or integration locally
- **Eligibility determination form (form BI-1590):** The form you have to fill out the first time you report to any of the seven refugee reception offices in the country
- **Family reunification:** The bringing together of members of the same nuclear family with the help of the UNHCR and/or the ICRC after approval by the DHA
- **Family tracing:** The attempt to locate and link up members of the same nuclear family (father, mother, brother and sister) with or without the help of the UNHCR and/or the ICRC
- **Immigration Act:** The new law that has replaced the Aliens Control Act. This law regulates who may enter South Africa and how and also covers deportations
- **Non-refoulement:** The fundamental principle that prohibits states from returning asylum seekers or refugees to countries where their lives and freedoms may be threatened
- **Permanent resident:** A person who has been given permission to live in South Africa on a permanent basis
- **Persecution:** Severe violation of human rights for reasons of race, religion, nationality, political opinion or membership of a social group
- **Prohibited person:** A person without any legal documents allowing him or her to stay in South Africa lawfully. It can also cover people who are not allowed in SA such as deportees or people with infectious diseases.
- **Recognised refugee:** A person who has been granted refugee status in terms of section 24 of the Refugees Act
- **Refugees Act No.130 of 1998:** Law passed by the parliament of South Africa that governs the treatment of refugees in the country
- **Refugee:** A person who is forced to flee his/her country due to a well-founded fear of persecution or disasters of human origin such as armed conflicts, civil upheavals and generalised violence
- **Relocation:** An internal transfer of a refugee or asylum seeker from one part of South Africa to another, with the help of the UNHCR
- **Resettlement:** The relocation of a refugee from South Africa to a second country of asylum with the approval of the UNHCR and the country of resettlement
- **Section 22 permit:** Temporary, renewable permit, described in Section 22 of the Refugees Act, which is issued to asylum seekers while they await a decision on their asylum application and allows the bearer to reside in South Africa and to work and study
- **Section 24 permit:** Renewable permit, issued in terms of Section 24 of the Refugees Act, which grants refugee status to the bearer and allows him/her to reside in South Africa for a period of two years
- **Temporary resident:** Person with a legal permit that allows him or her to stay in the country for a limited period of time. Tourists, foreign students and business people would typically apply for temporary resident permits
- **The Standing Committee for Refugee Affairs:** Committee that reviews any refugee applications that have been rejected on the basis of being manifestly unfounded and that provides certification that a refugee will remain a refugee indefinitely for the purposes of applying for permanent residence
- **Unaccompanied minor:** A child under the age of 18 who is in South Africa without the company of his/her parents or guardians
- **Undocumented migrant:** A person who is not in possession of the requisite visa or residence permit that is required to be in the country legally
- **UNHCR:** The United Nations High Commissioner for Refugees is an international organisation mandated to provide international protection to refugees and to promote long-term durable solutions to their problems
- **Voluntary repatriation:** Voluntary return of refugee from country of asylum to country of origin

Who is a refugee?

A refugee is someone:



- *who has a well-founded fear of being persecuted on account of his or her race, religion, nationality, political opinion, gender or membership of a particular social group*
- *whose life, physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or other events seriously disturbing or disrupting public order in either part or the whole of his or her country of origin*
- *who is a dependant of anyone who falls into the above categories*

Definitions of refugees

The Refugees Act recognises two definitions of refugees:

→ **People with a well-founded fear of persecution:** The first definition is taken from the 1951 UN Refugee Convention. It provides protection to persons fleeing their country of origin because of a well-founded fear of persecution by their government or by other non-state actors that the government is unable to stop.

The term “well-founded fear of persecution” refers to your particular experiences and circumstances instead of the general situation in your country of origin. Your very personal response to the prospect of return to your country of origin will be assessed together with available information on the conditions in your country of origin to determine whether you will be subject to danger if you are forced to return.

→ **People who fled their country of origin due to threats to the public order:** The second definition is adopted from the Organisation of African Unity Refugee Convention and provides protection to persons who were forced to flee because of violence, war and civil disturbances in their country of origin.

The spouse of a recognised refugee is also entitled to refugee status, even if his or her individual claim was rejected.

Who is *not* a refugee?

You cannot apply for refugee status if you are just looking for a job, trying to further your education, visiting friends or family, or seeking to run a business in South Africa. In these cases, you should apply for either a work permit or a study or visitor’s visa.

Who could be disqualified from becoming a refugee?

You are excluded from refugee status if you:

- have committed a crime against humanity, a war crime or a crime against peace;
- have committed a serious non-political crime outside of South Africa; or
- are currently enjoying the protection of another country (eg if you have refugee status in another country).

Who could lose refugee status?

You could lose your refugee status if you:

- voluntarily obtain the protection or nationality of your country of origin,
- obtain the nationality of a new country or
- voluntarily return to the country you left in fear and take up residence there with the intention of settling permanently.

You could also lose your refugee status because of events in your country of origin, such as:

- when there is no longer a threat to you in your country of origin or
- if you take on the protection of your country of origin because the circumstances in that country have changed.

Circumstances in your country of origin must have changed to such an extent that the causes of persecution and thus the risk of persecution no longer exist. The changes must be of a fundamental nature and solutions must be effective and durable.