

REFUGEE

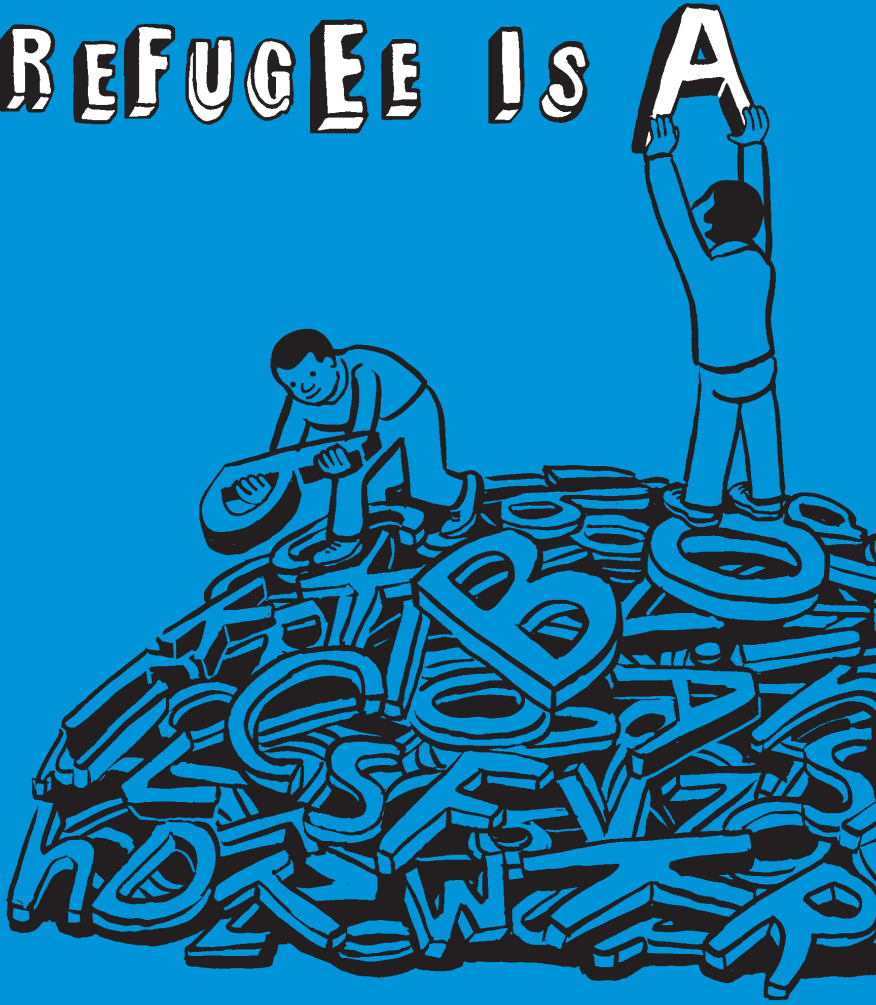


Information Guide 2009



Lawyers for Human Rights

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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

The asylum application process

As an asylum seeker:

- you have the right to have your asylum application processed and decided upon in a fair and transparent way
- you have the right not to be deported to your country of origin while your asylum application is pending
- you may not be prosecuted for unlawful entry or your presence in the country while your asylum application is pending

Who qualifies as an asylum seeker?

An asylum seeker is a person who has lodged an asylum application with the DHA and who is awaiting a decision on his or her asylum claim that will either grant or deny refugee status.

Who can apply for asylum?

According to the Refugees Act, no person may be denied the opportunity to apply for asylum. A person who has applied for asylum is allowed to stay in South Africa until there has been a final decision on the application. A final decision is one given after all possible appeals and reviews of a negative decision have been exhausted.

When should an asylum application be lodged?

You should apply for asylum as soon as possible after your entry into South Africa. It is important that you go to a refugee reception office at your first opportunity after arriving in South Africa. If you come into contact with a police or immigration officer before you have applied for asylum, you should express your intention to apply.

Remember that many people experience great difficulties accessing the refugee reception offices and sometimes have to queue for weeks before they are attended to for the first time. The DHA does not provide proof that you have been queuing outside the refugee reception office. So until you have obtained your Section 22 permit, even if you are attempting to follow the law, you could still be arrested by the police or immigration officials.

Where should I apply for asylum?

Report to the nearest refugee reception office as soon as possible. Because of the long queues at these offices, you may have to go several times before you are able to enter to apply.



There are currently seven refugee reception offices in South Africa:

- Cape Town (Nyanga)
- Durban (Moore Street)
- Johannesburg (Crown Mines)
- Musina
- Port Elizabeth
- Pretoria (Marabastad)

For SADC nationals:

A new office for Southern African Development Community (SADC) nationals opened at the Pretoria Showgrounds in April 2009. SADC nationals in Gauteng should check the latest information to determine which office to attend. SADC includes the following countries: Angola, Botswana, the Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

(See regional sections in the directory for contact details)



The asylum application process

- 1 You will fill out an eligibility form and get fingerprinted
- 2 You will receive a Section 22 (asylum seeker) permit
- 3 You will undergo a status determination interview
- 4 You will receive a decision
- 5 If your asylum claim is rejected, you can file an appeal
- 6 Your appeal will be heard by the Refugee Appeal Board, and they will make a final decision about your claim

All of these steps are free.

You should not have to pay any money

Step 1: Fill out an eligibility form and get fingerprinted

Once you access the refugee reception office, you will be asked to complete the Eligibility Determination Form, which includes a lot of questions about your background and reasons for coming to this country. A refugee reception officer (RRO) should assist you with the completion of this form.

It is important that you answer these questions honestly as your answers will be used to determine whether or not you qualify for refugee status in South Africa. The status determination officer will refer back to the eligibility form when assessing your application for asylum and might refuse your application if you have not been consistent in telling your story.

It is important that you bring any documents or evidence that verifies who you are and where you are from to the interview. It is preferable to bring the original copies. HOWEVER, remember that the DHA may only keep COPIES of your documents. You must keep your originals.

Once you complete the application form with the RRO, your fingerprints will be taken. A file will be created for you, with a case number and a file number. It is very important that you write down these numbers in case you lose your permit papers.

→ If you are applying together as husband and wife, make sure that BOTH of you are interviewed. Depending on the circumstances, it is possible that the wife of a family will have a stronger asylum claim than the husband.

→ If you have a spouse and children in another country, they must also be declared at this time or they will not be included on your file.

If you do not understand English, it's best to take an interpreter with you during your first visit to the refugee reception office. In some cases, the DHA does provide interpreters, but it is best not to rely on these professionals as they might be understaffed on the day of your interview, or the interpreter for your language of choice might not be available. Should you find yourself without an interpreter during your first visit, you need to explain your language problem to the RRO, who must provide another appointment to allow you to get an interpreter and return with him/her to the office for an interview. Be sure to agree on any fees that you might need to pay the interpreter for translation services in advance (see more under Language assistance/interpretation on p 9).

The entire asylum application process is free of charge. Never give money to a security guard, RRO or any staff member at the refugee reception office

If anyone (for example interpreters, DHA officials, "agents", "brokers" or legal counsellors) wants money from you to carry out the interview, to issue you with the relevant documents or to renew them, be aware that such person/s are acting outside of the law. You should report them to the head of the refugee reception office and/or the nearest police station (see more under Fighting corruption on p17).

Step 2: Receive a Section 22 (asylum seeker) permit

Once you have filled out the application form and had your fingerprints taken, you will be issued with a Section 22 permit, which is also known as an asylum seeker permit. You should receive this permit on the same day that you filled out your eligibility form. This permit does not recognise you as a refugee. It is only a document of acknowledgement by the government of South Africa that you have applied for asylum.

Make sure that you understand the conditions on the permit. If you do not, ask the RRO to explain them to you – this is one of the RRO's duties!

Key things about your asylum seeker permit:

- Make sure that you sign your Section 22 asylum seeker permit
- The permit allows you to work and study in South Africa
- You must, by law, keep your permit on you at all times
- Make a copy of your permit and keep it in a safe place
- You must renew your permit before its expiry date

Section 22 permits are often valid for one or three months at a time. This means that you have to regularly renew your permit until your asylum claim has been finalised. It may take several months, even years, before you receive a final decision.

Always renew your Section 22 (asylum seeker) permit BEFORE it expires. If you walk around with an expired permit, you could be arrested and detained

Step 3: Undergo a status determination interview

After you receive your Section 22 permit, you will have a status determination hearing, which is conducted by someone called a refugee status determination officer (RSDO). This interview may take place on the same day that you fill out your application form and receive your Section 22 permit.

During this interview the RSDO will assess your asylum claim, consider the eligibility form that you filled in and possibly ask you additional questions related to your application. The RSDO may ask questions to verify your identity and your country of origin. You need to answer the questions clearly and correctly. You may be asked about specific events, locations, languages, cultures, political leaders, historical events and so forth.

At this interview, you have the right to be accompanied by a legal representative and an interpreter of your choice. However, the representative is not allowed to intervene in the interview; he or she can only observe. You are also allowed to bring witnesses, affidavits from witnesses or any other evidence that might be important to your case.

The RSDO will either ask you to wait for your decision or tell you to come back the following day for your decision. If you are not sure whether to wait for your decision, ask the RSDO.

Should the status determination interview take place on a later date than when your asylum seeker permit was issued, make sure to have your permit renewed and stamped before leaving the refugee reception office.

Step 4: Receiving a decision

Once a decision has been made with regards to your refugee application, you will be told one of two things:

1 Your asylum application has been approved

You will then become recognised as a refugee and given a Section 24 permit, also known as a refugee status permit, which officially recognises you as a refugee in South Africa. This permit is valid for two years. You must renew this permit three months before it expires. To renew your permit, you must write a letter to the DHA informing them of your request to renew the permit.

Once you have been declared or recognised as a refugee, you are entitled to apply for a refugee identity document and a travel document.

Refugee identity document

Once you have applied for a refugee identity document (also known as the maroon ID or smart card), the DHA will issue you with a receipt. You will be asked to return to the refugee reception office to pick up your refugee identity document once it has been processed. Keep in mind that it may take a long time.

Travel documents

As a refugee you are entitled to a travel document. This document is officially issued by the South African government's DHA but takes the form of the United Nations Convention Travel Document. With the exception of emergency situations, you can only apply for a travel document if you have been issued with a refugee identity document. To apply for a travel document, you must undergo an interview with a representative from the UNHCR either in Pretoria or in one of the other cities when a UNHCR representative visits those cities.

If you use the travel document to travel back to your country of origin, this will be interpreted to imply that you are willing to avail yourself of the protection of your country of origin and you stand to lose your refugee status in South Africa.

If you have not yet been issued with a refugee ID and you are faced with an emergency situation that requires you to travel outside of the country, you will need to contact a legal counsellor or the UNHCR in Pretoria directly.

2 Your asylum application has been rejected

If your asylum application is rejected, it means that you do not qualify for refugee status and that the DHA does not recognise

you as a refugee. You will receive a letter stating that you must leave the country or file an appeal within 30 days. Depending on the reasons for the rejection of your application, you will need to appeal either to the Refugee Appeal Board or to the Standing Committee for Refugee Affairs.

If your decision is rejected as being manifestly unfounded, abusive or fraudulent, it will automatically be reviewed by the Standing Committee for Refugee Affairs. You will not be able to appear in person in front of this committee; however, you can provide a written statement or comments saying why you disagree with the negative decision. This needs to be submitted to the refugee reception office that issued the rejection letter or to the Standing Committee directly, within 10 days of receiving the decision. You can get a legal counsellor to help you with this step if you wish.

If your application is rejected for other reasons (unfounded), then you will have to appeal to the Refugee Appeal Board. This process is described below.

An amended version of the Refugees Act is set to take effect sometime in 2009.

Under this amended version, the Standing Committee will no longer exist and all appeals will go through the Refugee Appeals Authority.

Check the LHR website for the latest information.

Step 5: Filing an appeal with the Refugee Appeal Board

The Refugee Appeal Board is an independent tribunal that offers asylum seekers who have their applications rejected a second chance to prove their refugee claims.

If you wish to appeal your decision, submit your appeal request to the refugee reception office that issued your letter of rejection; you must do so within 30 days of receiving the decision. This request can be in the form of a letter stating that you do not agree with the decision of the RSDO and very briefly stating the reasons that you do not agree. The refugee reception office will hand over the case to the Refugee Appeal Board. If you require assistance, you should approach an NGO that can assist you in requesting an appeal.

Step 6: The appeal hearing before the Refugee Appeal Board

The Refugee Appeal Board will call you for an oral hearing where you will again be given the opportunity to present your case and reasons for applying for asylum. The refugee reception office will issue you with a hearing date, and the hearing will take place at the refugee reception office. Note that you have to receive your date in person; the date will not be issued over the phone.

It is important to seek legal assistance in preparing for your appeal. There are a number of NGOs that offer free legal assistance to asylum seekers with their appeals. See the list of service providers in the directory section of this guide.

In theory, the Refugee Appeal Board must make a decision within 90 days of the appeal hearing. Unfortunately, in practice it takes much longer to finalise appeals. In the meantime, you must continue to renew your asylum seeker permit and ensure that it remains valid.

Language assistance/interpretation

Many asylum seekers cannot understand or speak English or any of South Africa's other official languages well enough to convincingly make their case in front of officials. The DHA offers limited interpretation services in some but not all languages spoken by asylum seekers. If the DHA does not provide you with an interpreter, you are responsible for getting one yourself.

It is in your interest to get an honest and credible interpreter whom you can trust. The function of the interpreter is to provide literal translation "word for word" of what both parties are saying. If the interpreter tries to make your story sound better, makes up things or tells his or her own version of your reasons for fleeing your country, this might have a negative impact on your claim and your application might be rejected.

Remember:

- Speak slowly so that the interpreter understands exactly what you are saying. Also allow time for interpreting.
- You have the right to have your statements – whether they were interpreted or not – read back to you. If you would like to make any changes to your statement, ask the DHA official to make the changes in writing before you sign the application form.
- Avoid interpreters who demand money from you for anything other than interpretation services. Some interpreters may offer to create stories that they believe will convince the RSDOs to grant you refugee status.

There are some people who may not serve as interpreters.

The following individuals may NOT interpret for you:

- your legal representative,
- a witness to your claim testifying on your behalf, or
- a representative of the country in which you fear persecution.