

REFUGEE

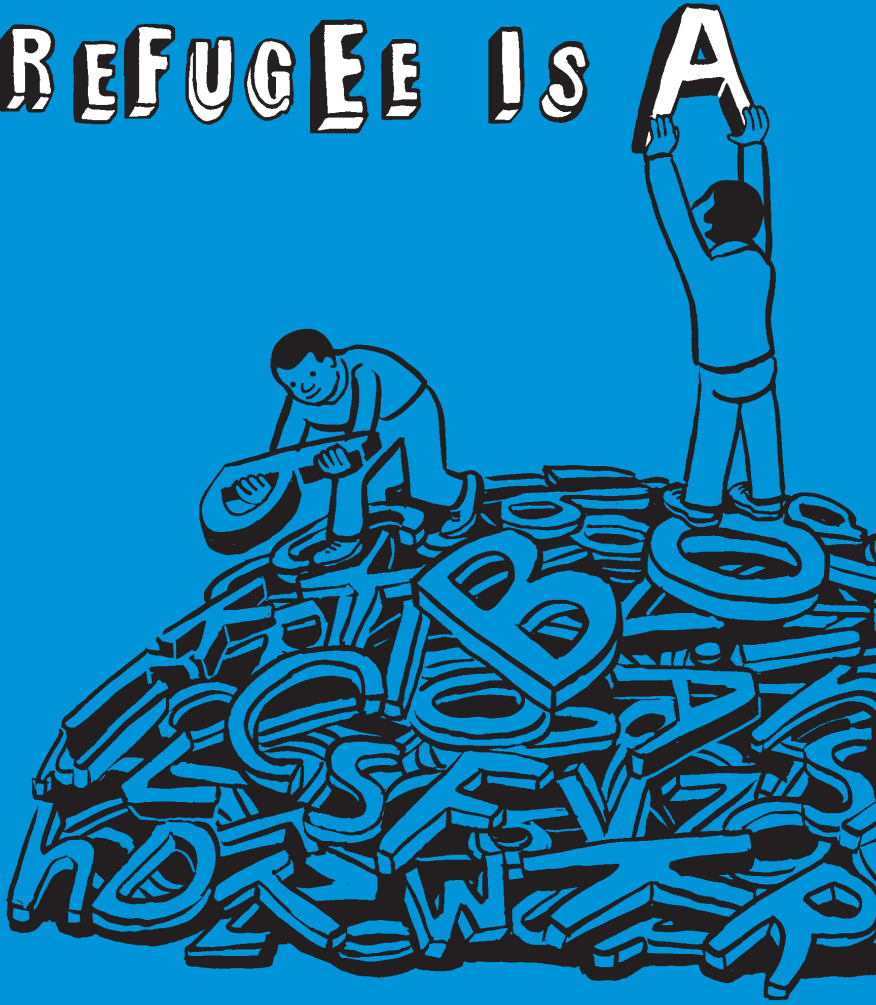


Information Guide 2009



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

Asylum applications from children



International and South African law recognises that child refugees have different requirements from adult refugees. Refugee children are vulnerable both as children and as refugees. They obtain legal protection as children generally and as refugees specifically.

If a child enters the country in the care of a relative other than a parent or a biological grandparent, that caregiver should apply to the Children's Court to be appointed as the child's legal guardian. This will entitle the caregiver to apply for a foster-care grant, which is a monthly payment from the Department of Social Development to assist foster parents in caring for foster children. See p21 for details.

Accompanied children

The asylum application of a child who is accompanied by his or her parents or guardians is normally included in the application of the parent, biological grandparent or legal guardian.

Refugee status is granted to children and other dependants when the principal applicant's (head of the family/household) application is approved.

In some cases it is advisable for a child to submit an independent asylum application, especially if the case for asylum for the child is stronger than his or her parents' claims. In many cases children are persecuted because they are children, especially in countries where child soldiers and female circumcision are common. A legal representative or a parent/legal guardian must always accompany a child asylum seeker to his or her interviews.

Unaccompanied/separated children

- All unaccompanied children must identify themselves as being on their own to the DHA, who will make special arrangements for their applications.
- NO unaccompanied child should include his or her asylum application with that of an unknown person as this might jeopardise the asylum application and the chances of family reunification.
- The Refugees Act defines a child as a person under the age of 18.

A child asylum seeker is unaccompanied if no person can be found who takes primary responsibility for the care of that child, either by law or custom. This includes a child who is separated from his or her parents either before or during flight from the country of origin.

Unaccompanied asylum seeker and refugee children possess all the rights of other asylum seeker and refugee children. However, because they are not in the care of parents or guardians, they require special protection.

The legal responsibility for unaccompanied or separated asylum seeker and refugee children lies with the South African government. It is the duty of the Department of Social Development to ensure that unaccompanied or separated asylum seeker and refugee children receive the protection, shelter, basic nutrition and social services that they require.

Unaccompanied or separated children must submit an independent asylum application. An unaccompanied or separated child should approach a DHA representative at any of the refugee reception offices, state that he or she is an unaccompanied or separated child and request assistance with the application process. The DHA representative has a duty to contact a social worker from the Department of Social Development to further assist the child. However, if any problems are experienced, an unaccompanied or separated child can also approach the offices of any of the NGO legal counsellors listed in this guide for assistance.

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

The amended version places a positive duty on the Department of Home Affairs and the Department of Social Development to assist unaccompanied minors. Check the provisions of the law for more information.

Check the LHR website for the latest information regarding the amended Act.