

REFUGEE

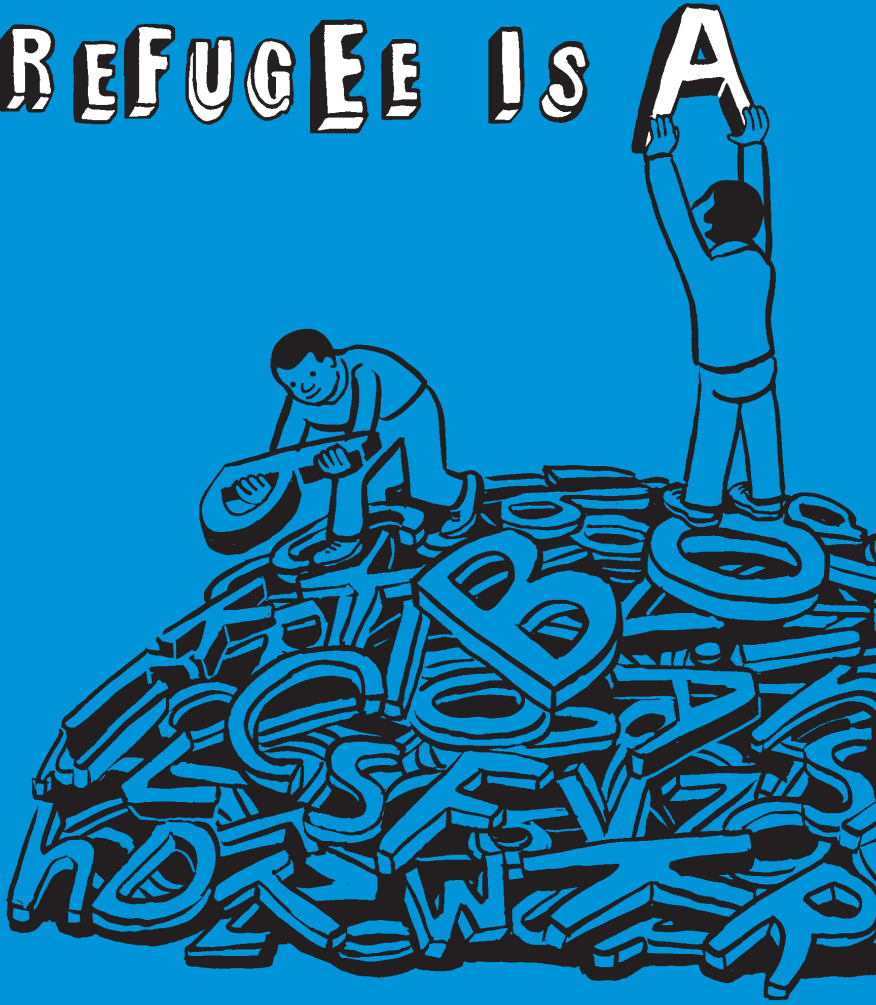


Information Guide 2009



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

Durable solutions

There are occasions when the UNHCR, sometimes with the help of other international organisations, co-ordinates and sponsors the movement of refugees from one place to another. These situations are grouped under the following categories: resettlement, internal relocation, voluntary repatriation and family reunification.

These movements are not a part of the asylum process. They happen when there is a need for protection and when the UNHCR cannot identify local solutions.

Only recognised refugees and, in exceptional cases, also asylum seekers will be considered for these relocation options with the UNHCR. A separate status determination process will be conducted by the UNHCR that may not always have the same outcome as the DHA process.

Resettlement

Resettlement is the assisted movement of a refugee, including his or her nuclear family (spouses and children) to a different country than the one that first granted refugee status. It is only available in exceptional cases for refugees who cannot find local solutions and whose protection cannot be guaranteed by the country that first granted them asylum.

General problems in South Africa, such as xenophobia and a lack of employment opportunities, do not satisfy the requirements for resettlement. The UNHCR first seeks to establish a durable environment for you and your family here in South Africa before they consider resettlement.

→ Resettlement is only possible in exceptional cases.

→ The processing of resettlement often takes more than a year.

Because of the limited number of refugees resettlement countries will accept, and the fact that the criteria set by these countries are difficult to meet, resettlement is not an option for many refugees who were granted refugee status by South Africa.



Criteria for resettlement

The UNHCR has set out the following criteria for resettlement:

Lack of legal protection: Exceptional circumstances where refugees who are of concern to the UNHCR are, for instance, refused entry to South Africa or have had their asylum application rejected.

Lack of physical protection: Circumstances where there is a direct threat to the life and/or personal safety of a refugee. The refugee may be threatened by the government of his or her country of origin or by other hostile groups in a way that renders the South African government unable to offer adequate protection.

Survivors of violence and torture may be resettled if South African medical and psychological services do not meet the requirements of the refugee.

Persons with specific medical and disability needs may be resettled if South Africa cannot provide the required medical care.

Women at risk may be resettled if their particular protection problems cannot be adequately addressed in South Africa.

Unaccompanied children may be resettled when the child is considered especially vulnerable.

Elderly refugees may be resettled if they cannot obtain adequate protection in South Africa.

Applying for resettlement

- 1 If you qualify according to any of categories listed above, you should approach a legal counsellor or other service providers to recommend possible solutions and provide assistance. If these individuals are unable to assist, you can also approach the UNHCR for further advice.
- 2 The UNHCR have consultation days on Tuesdays and Thursdays. You should approach their offices on Mondays to make an appointment.
- 3 If, during the consultation with the UNHCR, it is found that there are no prospects for solving your problem in South Africa, the UNHCR may look into prospects for resettlement.
- 4 The UNHCR Protection Unit will conduct its own investigation and make a decision based on the credibility of the information you provided.
- 5 If the decision is negative, the case will be closed and you will be informed in writing. This decision is final.
- 6 If the UNHCR Protection Unit decides that resettlement is necessary, they will ask a third country to review your application. The country will examine the case, and if this country is satisfied, your entry visa will be prepared.
- 7 You must complete a mandatory medical examination as part of your application for resettlement.
- 8 In some cases, members of the immigration department of the receiving country could interview you again.

- 9 The International Organisation of Migration is responsible for preparing the travel documents for refugees to be resettled.
- 10 The whole process can take between one and two years.

Internal relocation

Internal relocation is the official movement of a refugee/asylum seeker (including nuclear family – spouses and children) within South Africa, for protection purposes. In exceptional circumstances, persons may be relocated to gain greater access to the UNHCR. The conditions and procedures for internal relocation are very similar to those for resettlement. You are not permitted to apply for internal relocation if you have general transportation needs within South Africa.

Applying for internal relocation

- 1 If the UNHCR Protection Unit is convinced that you need to be internally relocated, they will consider safer locations within South Africa for you to reside.
- 2 If the UNHCR has implementing partners in an area they have earmarked for relocation, these partners will be contacted to organise temporary accommodation and provide other necessary services.
- 3 The UNHCR will either arrange transportation or provide the funds for transport, and you will be instructed to contact the relevant service provider on arrival.

Voluntary repatriation

Voluntary repatriation occurs when refugees freely decide to return to their countries of origin. When conditions change and the safe return of refugees to their countries is possible, it is often promoted by UNHCR as the best solution.

Applying for voluntary repatriation

- 1 You have to fill in a voluntary repatriation application form available from the unhcr or from legal institutions such as LHR, the Wits Law Clinic and the University of Cape Town Law Clinic. This form asks for information about the place you intend returning to and allows the legal counsellor to establish whether you are of concern to the UNHCR.
- 2 The legal counsellor will do an in-depth interview with you to confirm that the issues raised in the form are comprehensible, accurate and reflect what has happened.
- 3 The legal counsellor will send the application form, together with a recommendation for voluntary repatriation to the UNHCR.
- 4 The final decision rests with the UNHCR, and they will also organise the practicalities for your voluntary repatriation.

- It is important to establish whether it is safe for you to return to your country.
- You lose your refugee status the moment you leave South Africa through the process of voluntary repatriation.

Family reunification

A refugee who lost a family member during the flight or movement between countries can either request that the family member join him or her in South Africa or request to be reunited with the family member in another country.

Applications for family reunification must be made to the DHA at the refugee reception office.

Note that the DHA only considers family reunification for refugees.

Under exceptional circumstances the UNHCR can assist with transportation to and from South Africa for purposes of family reunification.

Applying for family reunification

Contact the University of Cape Town Law Clinic; the LHR office in Johannesburg, Pretoria or Durban; or the Jesuit Refugee Services offices in Johannesburg or Pretoria for assistance with filling in the application forms and processing the information. The DHA will make a decision on your application.

Tracing

The process of family reunification might sometimes require the tracing of lost family members.

The South African Red Cross Society, in collaboration with the International Committee of the Red Cross, provides a service that aims at restoring family links. This service includes the

exchange of Red Cross messages, tracing of separated families and reunification. The Red Cross works closely with the UNHCR and other agencies, particularly in dealing with child protection issues during the reunification process. The Red Cross can facilitate family reunification in cases including unaccompanied and separated children of up to 18 years of age and also in cases involving the elderly or vulnerable people.

The Red Cross message system can also be used to re-establish contact between family members who were separated or had their normal channels of communication disrupted as a result of armed conflicts or natural disasters. The Red Cross message system needs both the identity and full addresses of the sender and receiver of a message.

If you are trying to trace someone, through the Red Cross system or otherwise, make sure to provide as much information as possible about the missing family member – include as much detail as you can about the person's identity, the cause of the separation, the last date and place where you had contact with each other, whom the missing person was seen with, the last news you received about the missing person and any additional information that may facilitate the search.

If the missing person has been resettled, the person making the inquiry can consult the international communication network of the Red Cross and the Red Crescent.

Tracing normally takes time, and the chances of success depend on the accessibility of the area and the relevance and sufficiency of the information supplied.

Note that tracing activities may be suspended in areas that are inaccessible due to armed conflicts or natural disasters.