

REFUGEE

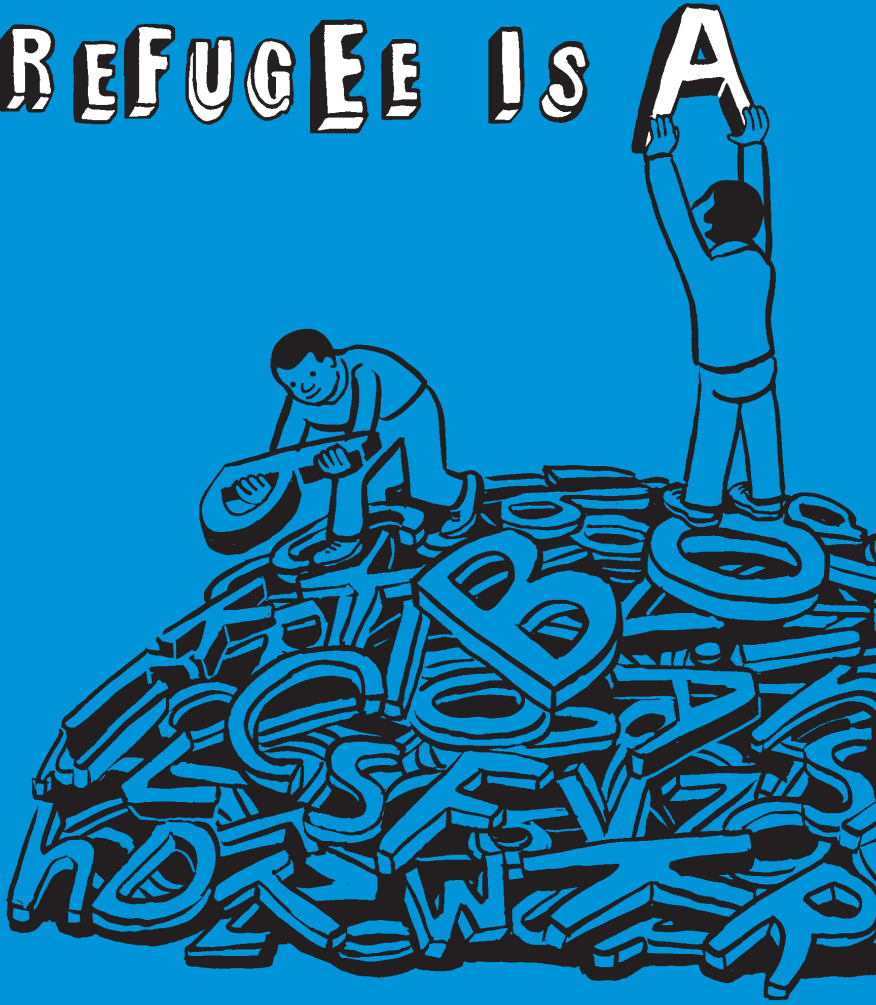


Information Guide 2009



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

Arrest and detention



If you are a refugee or asylum seeker with a valid permit, you are protected against arrest and detention. A police officer or immigration official may only arrest you in exceptional circumstances or for a criminal offence.

As a foreign national you may be arrested and detained by the police or an immigration officer if you are suspected, on reasonable grounds, to be an undocumented migrant or illegal foreigner. The burden is on you to prove that you are entitled to be in the country. Remember that the Refugees Act requires you to have a valid permit and to carry it with you at all times. Having your permit on you is also the easiest way to prove that you have the right to stay in South Africa.

Individuals who are in possession of a permit are sometimes arrested on the suspicion of carrying false documents. In addition, individuals may be arrested before they have had the opportunity to apply for asylum or as a result of having been unable to access refugee reception offices to renew their permits before they expire. For this reason, it is important to renew your permit before it expires.

What to do if you are arrested

It is a criminal offence to bribe any police or immigration officer in order to avoid being arrested or to be released from detention

In most cases of arrest, it is a police officer who is likely to stop and arrest you. A police officer will probably take you to a nearby police station and keep you there for some time. He or she must get in contact with the DHA's immigration inspectorate in order to verify your identity.

Often there is a legal way out of your arrest, but it might take some time and effort from your side. The actions you must take to secure your release, and your chances of being released from detention, depend on the reasons why you were detained in the first place.

If you are in possession of a valid Section 22 or Section 24 permit: If you are arrested despite having a valid permit, contact your friends or your family so that they can provide the DHA with copies of your valid documents. Sometimes you might need to get confirmation of your permit from the refugee reception office in order to be released.

If your Section 22 or Section 24 permit has expired: The Refugees Act clearly states that you must renew your Section 22 permit before it expires and your Section 24 permit three months before it expires. This information is also printed on your permit. Without renewing your permit, arresting police officers have no information to back up your claim that you are legally in the country. The DHA may detain you while your asylum claim is being decided. However, the DHA cannot send you back to your country of origin before a decision has been made with regards to your asylum application and you have had the opportunity to appeal.

If you have not yet applied for asylum: The success of your release from detention if you have been arrested before you have had the opportunity to apply for asylum depends on how long you have been in South Africa. The Refugees Act states that you must apply for asylum as soon as possible after you have entered the country (usually within 14 days of coming into the country). It is important that you clearly express to the arresting officer that you wish to apply for asylum in South Africa. You should also try to explain why you have not been able to apply for asylum until now. The DHA can NOT send you back to your country of origin before your asylum application has been finally decided upon, but they may detain you pending the finalisation of your claim.

If you have committed a crime: If you are arrested under suspicion of having committed a crime in South Africa, you will be treated according to the Criminal Procedures Act just like any South African. You might risk having your asylum application turned down because of the crime that you have committed, and you may be sent back to your country of origin either before or after you have served your sentence.

If you are unable to secure your release from detention in any of these situations, contact your closest legal advice office for free legal assistance.

If you are brought before a magistrates' court, you have the right to request "legal aid". The court will then give you an opportunity to speak to a lawyer free of charge in private.

Conditions of arrest and detention

If you are suspected of being in the country illegally and are arrested and subsequently detained, there are specific requirements that the arresting officer must abide by:

- The officer must verify that you are in the country illegally within 48 hours of your arrest. If you are not declared to be an illegal foreigner within 48 hours, you must be released. Although the burden of proof is on you, the officer must assist in providing you with information. **You have the right to make at least one free phone call to locate copies of your permit.** The officer must also attempt to confirm your status with the DHA.
- You have the right to make written representations against the decision to detain and deport you to the minister of home affairs.
- You may not be detained for more than 30 days unless a magistrates' court reviews your detention. You have the right to make a written statement to the magistrate (judge). You must also receive a written decision from the court.
- **If you are taken to Lindela (the deportation centre), you may contact a lawyer (including LHR) who visits the centre every week and seek legal advice.**

If you fail to prove that you have a right to be in the country you will be declared an "illegal foreigner", detained and eventually deported to your country of origin.