

YOUR GUIDE TO  
**REFUGEE LAW**  
IN SOUTH AFRICA

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# INTRODUCTION

On 1 January 2020, South Africa's refugee laws were changed drastically by the coming into effect of the Refugees Amendment Act. This came two decades after the implementation of South Africa's very progressive refugee laws, and almost three decades into South Africa's democratic dispensation. Even at the best of times, legislation and laws are often difficult to access for individuals who may not speak English as a first language. This is perhaps even more true for those needing to access the refugee system in South Africa.

This guide seeks to shed light and make South Africa's new laws more accessible and easy to understand. Make no mistake, while there are significant concerns with the new refugee laws, it is still necessary to ensure accessibility for those most impacted by the changes.

The Scalabrini Centre of Cape Town is inspired by the teachings of John Baptist Scalabrini, and embraces cultural diversity. Central to this is the recognition of the dignity of all persons. One way that we can amplify the dignity of others is to provide tools so that individuals can go into the world with greater agency. This is part of an integral human development approach to others – an approach that holds that authentic development is development that makes every person 'more human' and in so doing assists with the promotion of the good of the whole person and of every person. Our work is guided by the effort to "integrate all within a communion that is not based on ethnic, cultural or social membership, but on the common justice" (St. John Paul II).

It is also an approach that acknowledges that every person has a contribution to make to the whole of society, no one is excluded from contributing something for the good of all – this is both a right and a duty. In South Africa, and many other African countries, integral human development links to the concept of ubuntu – I am because we are, or, my humanity is intricately woven into the recognition of the humanity in others. As Pope Francis says, "We are a single human family that is journeying on towards unity, making the most of solidarity and dialogue among peoples in the multiplicity of differences".

John Baptist Scalabrini lived this mission, recognising the humanity in others and particularly highlighting the need to do so in respect of migrants, refugees and people on the move. More than one hundred and thirty years after that initial intuition, the network of Scalabrinian organizations in more than thirty countries around the world continues to implement this mission and vision of solidarity and justice. Since we started our journey in South Africa in 1994, we are committed to giving every migrant the opportunity to be welcomed, protected, promoted and integrated in this wonderful and hospitable country, despite its fragility and contradictions.

This guide is about the Refugees Amendment Act of 2017 which was implemented from 1 January 2020.

Always according to its laws and more specifically in a manner that respects international human rights law, mindful of the words of Scalabrini:

"Migration is undoubtedly a good thing for both those who leave and those who remain, a true social safety valve, opening new avenues for commerce and industry, blending and perfecting the concept of motherland beyond geographical boundaries, making the whole world humanity's motherland. But it is always a very grievous travesty for individuals and nations, when it is allowed to take place without law, with no restraints or guidance, or effective protection" (John Baptist Scalabrini, 1891)

It is hoped that this booklet will help demystify the laws, and in so doing, assist individuals in accessing their rights, which is central to being able to live a more human, and more humane, life.

Fr Filippo Ferraro  
SCCT Board of Trustees Chairperson

These changes mark the first substantial change to refugee law in South Africa since the Refugees Act was signed in 1998. As an organisation, we have serious concerns about these changes. Read our submissions at: [scalabrini.org.za/category/submissions](https://scalabrini.org.za/category/submissions).

When the Refugees Amendment Act of 2017 came into force on 1 January 2020, The Scalabrini Centre of Cape Town published a press statement outlining our concerns. You can read it here: [shorturl.at/ipslJ](https://shorturl.at/ipslJ).

## DISCLAIMER

This is a guide only, and it not to be used as a legal document in any way whatsoever. It should not be used to substitute legal advice. Should you need to refer to the original laws and regulations, we recommend that you refer to the [Refugees Amendment Act 2017](#), read with the [Refugees Act 1998](#). This should be read with the [Refugees Regulations, 2018](#). This guide does not look at how these laws are implemented. This guide does not reflect Scalabrini's opinion on these laws. This information is subject to change.

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## MINI-GLOSSARY

**ASYLUM SEEKER**

A person whose request for refugee protection has yet to be finally determined. Whilst awaiting final determination they are provided with an asylum seeker document.

**NON-REFOULEMENT**

Under international human rights law, the principle of non-refoulement guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm, such as a war-like situation.

**REFUGEE**

The [1951 UN Convention](#) defines a refugee as a person who is 'unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.' [The OAU Convention](#) expands this to include someone who flees war or public disorder, and includes members of their family. This is domesticated in South African refugee law. See Question 12 of this booklet for the full definition.

**REFUGEE APPEALS AUTHORITY**

The RAA (formerly known as the Refugee Appeal Board) is established in terms of Refugees Amendment Act. Its duties, among others, are to consider appeals lodged by asylum applicants where their application is considered to be 'unfounded' by a Refugee Status Determination Officer.

**REFUGEE RECEPTION OFFICE**

A RRO is a governmental office, established by the Director-General of Home Affairs, where asylum applications are lodged and adjudicated. It is 'run' by the Department of Home Affairs. Refugee Reception Offices have been referred to, in other laws, as 'Reception Centres', too.

**REFUGEE STATUS DETERMINATION OFFICER**

A RSDO is an official of the Department of Home Affairs who, among other duties, interviews asylum seekers and takes the first decision on whether to grant refugee documentation or reject the asylum application.

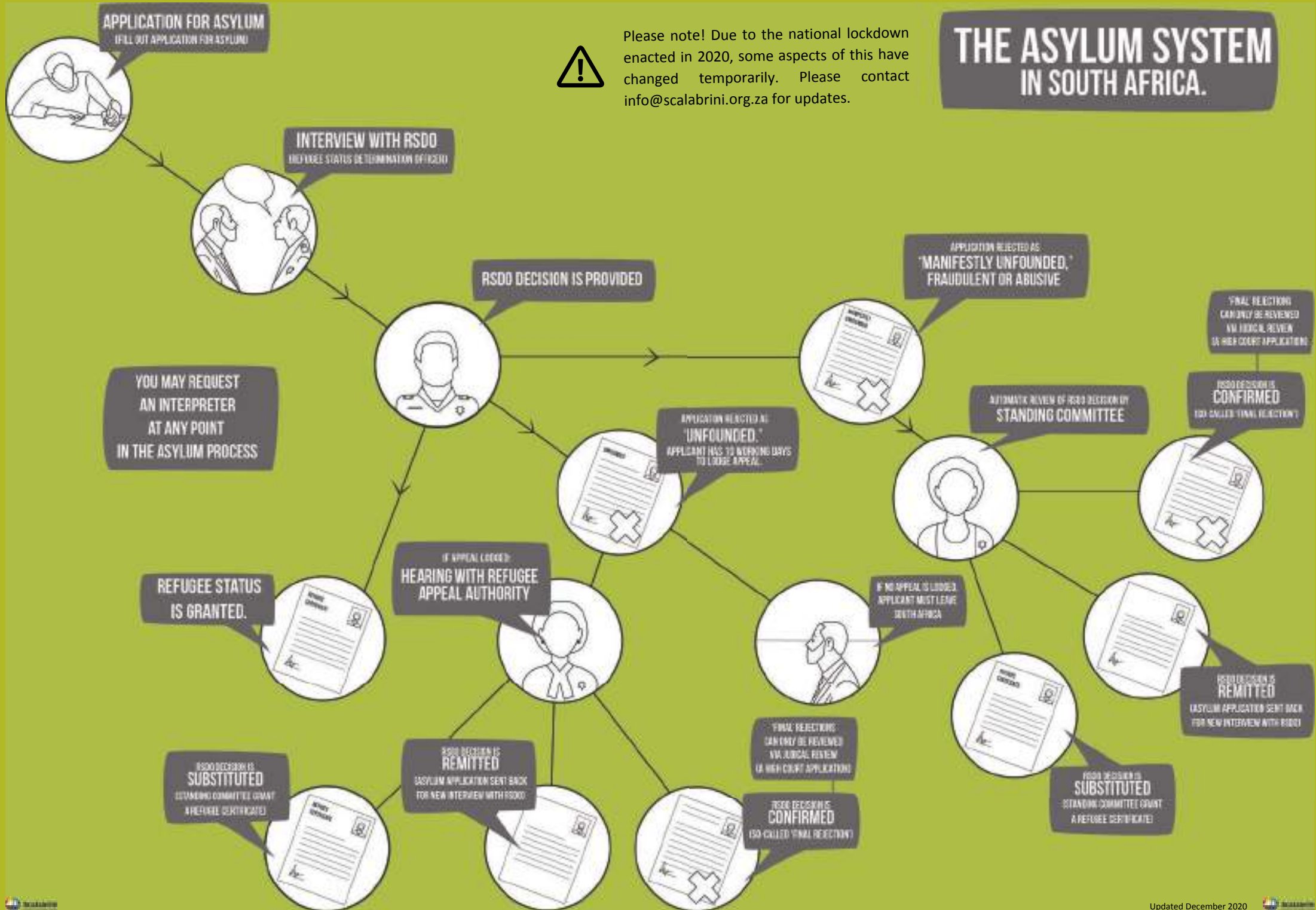
**STANDING COMMITTEE**

The Standing Committee, which used to be known as the Standing Committee for Refugee Affairs (SCRA), is a committee established in terms of the Refugees Amendment Act. It has various duties and functions such as considering certain rejected asylum applications, withdrawing refugee documentation, and other administrative functions.



# THE ASYLUM SYSTEM IN SOUTH AFRICA.

Please note! Due to the national lockdown enacted in 2020, some aspects of this have changed temporarily. Please contact [info@scalabrini.org.za](mailto:info@scalabrini.org.za) for updates.



This guide is about the Refugees Amendment Act of 2017 which was implemented from 1 January 2020.

## HOW DO I APPLY FOR ASYLUM IN SOUTH AFRICA?



Please note! Due to national lockdown enacted in 2020, new asylum applications are not currently being received in South Africa. We are awaiting updates in this regard. Please contact [info@scalabrini.org.za](mailto:info@scalabrini.org.za) for more information.



### WHERE CAN I FIND THIS IN THE LAW?

The laws on applying for asylum in South Africa can be found at Sections 21, 22 and 24 of the [Refugees Act](#), and should be read together with Regulations 2, 7, 8 and 14 of the [Refugees Regulations](#) and Section 23 of the [Immigration Act](#).

### 1.

According to the Refugees Amendment Act, if you enter South Africa with the intention to apply for asylum, you must declare this at the port of entry when you enter South Africa. When you do this, your biometrics will be taken for you to be granted an 'asylum transit visa'.

### 2.

According to the Refugees Amendment Act, you must apply for asylum within five days of entering South Africa. You must apply in person at a Refugee Reception Office (or another place if specifically designated by the Director-General of Home Affairs). Here, your biometrics and other data will be taken as you apply for asylum.

### 3.

If you did not enter through a port of entry – or if you did, but you were not issued with an 'asylum transit visa' – you will be interviewed by an immigration officer to see why you do not have this visa.

### 4.

If you apply for asylum more than five days after entering South Africa, and have reasons for this delay, you must explain this clearly to an official of the Department of Home Affairs who works at the Refugee Reception Office.

### 5.

When you apply for asylum, you must make this application on a specific form provided to you at the Refugee Reception Office. This form is called the Application for Asylum and is referred to as the 'DHA-1590'. It can be found in the Refugee Regulations. The Refugees Amendment Act states that an asylum seeker must be assisted by an officer designated to receive asylum seekers. If you need help, ask for assistance.

### 6.

When you fill out your application for asylum form (the DHA-1590 form), be careful. Everything you write on this form must be true and correct. The law says that you cannot change this information later on. Make sure that you write the full and correct details of all your children, and all spouses or permanent partners whether they are in South Africa or not - or even if you do not know their whereabouts.

[CONTINUE ON NEXT PAGE >](#)

Remember, if you need an interpreter, you must request one.

### GOT MORE QUESTIONS?

If you have more questions, please do not hesitate to seek legal advice right away. Turn to Question 16 for a list of organisations you can contact.

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## 7.

When you fill out your application for asylum form (the DHA-1590 form), indicate on the form what language you want to use. Choose carefully, as the Department of Home Affairs will assume that you will be fluent in whichever language you choose to apply in.

## 8.

The application for asylum form (DHA-1590 form) must be submitted with the 'asylum transit visa' or another type of visa, any identification cards, and your biometrics. Children, spouses or other dependents who accompany you will also have their biometrics taken.

## 9.

After you submit your application for asylum form, you will be scheduled for an interview with a Refugee Status Determination Officer. This could be right away. Before the interview the RSDO must explain the procedure to you. During the interview, the RSDO should ask you the reasons why you fled your country and why it may be unsafe to return. They may request evidence or clarification of what you tell them. Spouses will be interviewed separately. This interview must be recorded. If it is discovered that you provided false, dishonest or misleading information, your asylum application will be rejected.

## 10.

If you are married outside of South Africa, you will need to provide your original marriage certificate and you and your partner will have to provide an affidavit. You will also have to be interviewed separately on the same day by the RSDO who will have to make a determination on the validity of your marriage.

## 11.

After you apply for asylum, you and your dependents must be issued with an asylum seeker document (known as an asylum seeker visa). One document must be issued to each person in your family unit. Make copies of these documents and always keep them very safe.

## 12.

The Refugee Status Determination Officer must provide you with a decision. This could be to grant you refugee documentation, or to reject your asylum application. This is known as an RSDO decision. Make sure to make copies of the decision and keep it very safe. You must report to the Refugee Reception Office where you applied for asylum to receive, in writing, the outcome.

### WHAT'S NEXT?

- If you are granted refugee status, refer to Question 12 in this booklet.
- If your asylum application is rejected as unfounded, refer to Question 9 in this booklet.
- If your application is rejected as manifestly unfounded, abusive, or fraudulent, refer to Question 10 in this booklet.

*Make copies of all documents as you receive them. Keep them safe.*



## WHERE CAN I APPLY FOR ASYLUM IN SOUTH AFRICA?

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### REFUGEE RECEPTION OFFICES

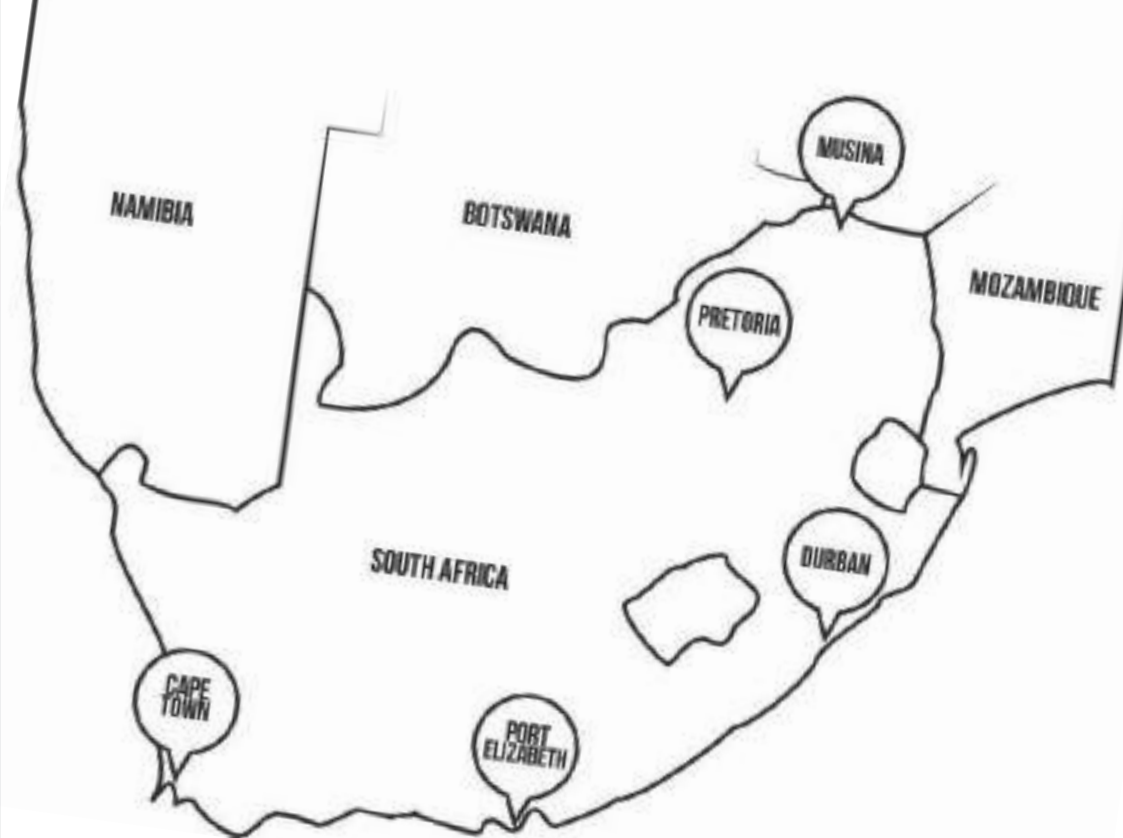
You can only apply for asylum at a Refugee Reception Office in South Africa.

As of August 2020, there are five Refugee Reception Offices across South Africa that will accept a new asylum application: Musina, Pretoria, Durban and Port Elizabeth. There is a Refugee Reception Office in Cape Town but they do not accept new asylum applications at the moment (despite the courts ordering that there must be a fully functional Refugee Reception Office in Cape Town).

The Refugee Reception Offices have a system of 'nationality days,' in which people can apply for asylum on certain days depending on the country that they come from. This is supposed to help with long queues and helps with the availability of interpreters. To check which 'day' is your nationality's day at the Refugee Reception Office, contact an organisation (such as one of the organisations listed at Question 16 of this booklet) for updated information, or the Department of Home Affairs website.

### GOT MORE QUESTIONS?

If you have more questions, please do not hesitate to seek legal advice right away. Turn to Question 16 for a list of organisations you can contact.



Under the Refugees Amendment Act, the Director-General of Home Affairs can establish or disestablish as many Refugee Reception Offices as he or she deems necessary for the proper administration of the Refugees Amendment Act. He or she can also direct categories of asylum seekers to apply for asylum at certain places or certain Refugee Reception Offices. This must be done by formal notice in the Government Gazette. At the time of writing, the Director-General has not exercised this power.

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## WHERE CAN I FIND THIS IN THE LAW?

The laws on establishment of Refugee Reception Offices can be found at Section 8 of the [Refugees Amendment Act](#).

## WHEN COULD I BE 'EXCLUDED' FROM APPLYING FOR ASYLUM?



Please note! Due to national lockdown enacted in 2020, new asylum applications are not currently being received in South Africa. We are awaiting updates in this regard. Please contact [info@scalabrini.org.za](mailto:info@scalabrini.org.za) for more information.



## WHERE CAN I FIND THIS IN THE LAW?

The laws on exclusion be found at Section 4 of the [Refugees Amendment Act](#). See the next page for where you can find this in international refugee law.

The Refugees Amendment Act sets out who can be recognised as a refugee - but it also sets out grounds upon which someone could be 'excluded' from applying for asylum, or being recognised as a refugee. This is known as 'exclusion.'

When a person applies for asylum there are certain grounds that could mean they are not allowed to apply - this is known as 'exclusion'. If the Refugee Status Determination Officer has 'reason to believe' that an asylum seeker falls into one of the nine exclusion categories below, then they can be excluded from applying for asylum.

- A person has committed a crime against peace, a crime involving torture, a war crime or a crime against humanity.
- A person has committed a crime outside South Africa which is not of a political nature and which, if it had been committed in South Africa, would be punished with a prison sentence without the option of a fine.
- A person who has been found guilty of acts contrary to the objects and principles of the United Nations or the African Union.
- A person enjoys the protection of any other country, in which he or she holds refugee status, residence or citizenship.
- A person who has committed a crime in South Africa that is a 'Schedule 2' crimes (see Schedule 2 of the [Criminal Law Amendment Act No 105 of 1997](#)) or has committed a crime that is punishable by imprisonment without the option of a fine.

### GOT MORE QUESTIONS?

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- A person has committed an offence in relation to having fraudulent or fake South African documentation (such as an ID card, passport, travel document, temporary residence visa or permanent residence permit).
- A person who is fleeing the justice system in another country, provided that that country has rule of law which is upheld by a recognised judiciary.
- A person who did not enter South Africa through an official border post and who cannot show 'compelling reasons' why they did not use an official border post. People who enter South Africa 'illegally' (not through an official border post) will have to explain to the Refugee Status Determination Officer why. If they have 'compelling reasons' as to why they entered illegally, the Refugee Status Determination Officer might allow them to apply for asylum. The law does not explain what 'compelling reasons' are - but does give the examples of hospitalisation and institutionalisation.
- A person did not apply for asylum at a Refugee Reception Office within five days of entering South Africa (unless there are 'compelling reasons'). This does not apply to people who already had an immigration visa in their passport and – perhaps because the situation suddenly changed in their home country – they had to apply for asylum within South Africa. This is known as a 'refugee sur place'.

### WARNING!

Even if you hold an asylum seeker document, you can have it withdrawn (taken away) from you if you are found to fall into the exclusion list, above. This is set out at Section 22(5) of the Refugees Amendment Act. In this case, you must be notified in writing of the intention to withdraw, including the reasons for the intended withdrawal, and be notified of the right to make written representations within seven days of receiving the notification. Please seek legal advice: see Question 16.

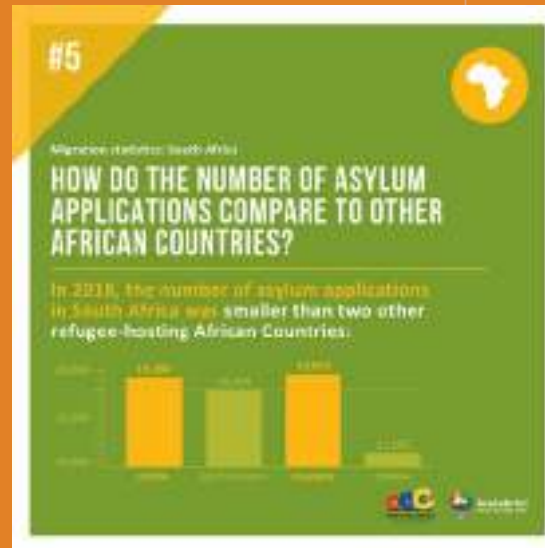
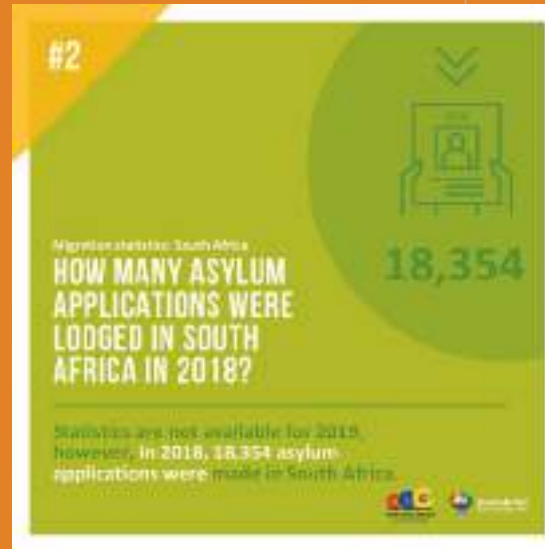
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# DID YOU KNOW?

Throughout this Guide, we will share with you some interesting statistics on the asylum system in South Africa. All of these statistics can be found at [scalabrini.org.za/resources/migration-statistics](http://scalabrini.org.za/resources/migration-statistics)



## WHAT ARE THE CONDITIONS ON AN ASYLUM SEEKER DOCUMENT?



### WHERE CAN I FIND THIS IN THE LAW?

The laws on conditions of asylum seeker documents can be found at Sections 22, 27(a) and 37(b) of the [Refugees Amendment Act](#), and should be read together with Regulation 12 of the [Refugees Regulations](#).

### OTHER SOUTH AFRICAN ENTRY VISAS CANCELLED



If you hold any other South African immigration visa or permit in your passport, this will become null and void when you are issued an asylum seeker document. The visa in your passport must be returned to the Department of Home Affairs for cancellation. This means you need to take the visa with you to the Refugee Reception Office when you apply for asylum.

### SOME OF YOUR RIGHTS & RESPONSIBILITIES

As an asylum seeker in South Africa, you have the following rights:

- You are entitled to an asylum seeker document.
- You are entitled to have the asylum seeker document renewed for the duration of the processing of your asylum claim by the Department of Home Affairs, including appeals and reviews.
- You have all the rights outlined in South Africa's constitution, such as those in the Bill of Rights (except ones that are explicitly for South African citizens only, such as the right to vote or form a political party).
- You have the right not to be unlawfully arrested, detained or deported.

As an asylum seeker in South Africa, you have the following responsibilities:

- You have a responsibility to abide by South Africa's laws.
- You have a responsibility to renew your asylum seeker document by the renewal date, at the Refugee Reception Office where you first applied.
- You have a responsibility to inform the Refugee Reception Office of your residential address. If your address changes, you must inform the Refugee Reception Office within 30 days.
- You have a responsibility to carry your original asylum seeker document with you at all times.

### BEWARE!



#### Abandonment of asylum claim

If your asylum seeker document expires and you do not renew it within a month of its expiry date, the Department of Home Affairs might consider that you have 'abandoned' your asylum application - unless you are able to show compelling reasons why you could not extend your asylum seeker document (such as proof of being hospitalised for the whole period). See question 6 for more information on abandonment.

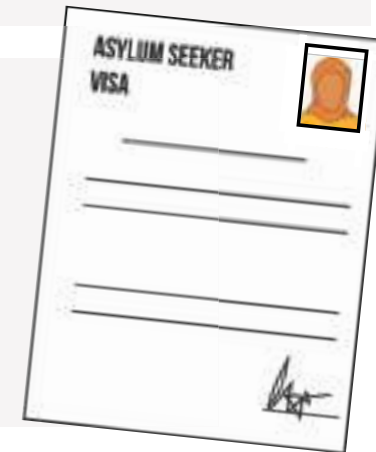
#### Cancellation or withdrawal of asylum seeker document

Failure to uphold your responsibilities (as listed in the box on the left) can result in the Department of Home Affairs withdrawing or cancelling your asylum seeker document. There is a specific process for this - you must be notified in writing of the intention to withdraw your asylum seeker document, and given reasons. You can challenge this through written representations but you only have seven working days to do this. A final written decision must be given to you. In certain circumstances, you can be detained during this process. Seek legal advice urgently if you are in this situation - see Question 16 for more information.

### LEAVING SOUTH AFRICA

As an asylum seeker, you cannot leave South Africa while your application is in process - as your asylum seeker document will be cancelled.

The refugees regulations state that, if you leave South Africa without prior authorisation of the Director-General of Home Affairs, your asylum claim will 'cease'. Any authorisation to leave South Africa must be in writing.



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### GOT MORE QUESTIONS?

If you have more questions, please do not hesitate to seek legal advice right away. Turn to Question 16 for a list of organisations you can contact.

## MAY I WORK OR STUDY ON AN ASYLUM SEEKER DOCUMENT?



### WHERE CAN I FIND THIS IN THE LAW?

The laws on these conditions of asylum seeker documents can be found at Sections 9(c) and 22 of the [Refugees Amendment Act](#), and should be read together with Regulation 5 of the [Refugees Regulations](#).

This guide is about the Refugees Amendment Act of 2017 which was implemented from 1 January 2020.



### STUDY

#### A RIGHT TO BASIC EDUCATION ONLY

All persons in South Africa have the right to basic education - regardless of their documentation status. This right is in South Africa's Bill of Rights and has been affirmed by the South African courts. Children must be admitted to schools - regardless of documentation type. 'Basic education' includes Grade 1 to Grade 9.

On your asylum seeker document, condition B.10 provides the entitlement to 'seek and receive' basic education or adult basic education. (Please note that this condition is on the new asylum seeker document format. Prior to 1 January 2020, this appeared at B.3 on the asylum document.)

#### ENDORSEMENT TO FOR FURTHER STUDIES

If you want to study beyond basic education (Grade 10 onwards), you must fill out Form 7 in the Annexure of the Refugees Regulations. You can get this form at the Refugee Reception Office. This form must be signed by the appropriate person at the educational institution you wish to study at. You must then submit this form to the Refugee Reception Office.

After submitting Form 7 to the Refugee Reception Office, the Standing Committee will determine the period and conditions under which you may study while awaiting the outcome of your application for asylum.

### WORK

#### PERMISSION TO WORK NOT AUTOMATIC

Under the Refugees Amendment Act, you do not automatically have permission to work in South Africa while you are waiting for the outcome of your asylum application. You will have to apply to have your asylum seeker document 'endorsed' with permission to work in South Africa. Once you submit this application, the Standing Committee will assess whether to grant you permission to work while your asylum claim is being adjudicated. Part of this assessment is whether you have other means of support (such as friends and family or charitable organisations). If you are given permission to work, this must be 'endorsed' on your asylum seeker document. You will have to show that you are employed within six months of the date of the endorsement. If you cannot show that you are employed within six months, this condition may be removed from your asylum seeker document.

#### IF PERMISSION TO WORK IS ENDORSED ON YOUR ASYLUM SEEKER DOCUMENT ...



After receiving an endorsement to work, a person with an asylum seeker document must produce a letter to prove that they are employed. This must happen within 14 days of gaining employment.



This letter must be signed by your employer – and it should be written on Form 6 of the Annexure to the Refugees Regulations.



Permission to work is endorsed on an asylum seeker document, the Standing Committee will determine any conditions or time periods.



Conditions that the Standing Committee can determine includes in which sectors an asylum seeker may or may not be employed or study.

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#### GOT MORE QUESTIONS?

If you have more questions, please do not hesitate to seek legal advice right away. Turn to Question 16 for a list of organisations you can contact.



## WHAT HAPPENS IF MY ASYLUM SEEKER DOCUMENT EXPIRES?



### WHERE CAN I FIND THIS IN THE LAW?

The laws on these conditions of asylum seeker documents can be found at Sections 9(c) and 22 of the [Refugees Amendment Act](#), and should be read together with Regulation 5 + 9 of the [Refugees Regulations](#).

You must renew your asylum document on, or before, its expiry date. If you do not, and your asylum document expires, seek legal advice straight away. Please see Question 16 for a list of organisations where you can find advice.

#### IF YOUR ASYLUM SEEKER DOCUMENT EXPIRES FOR MORE THAN A MONTH, IT WILL BE CONSIDERED 'ABANDONED'

If your asylum seeker document has expired for over a month, your asylum claim will be considered abandoned. It is very important that you understand what happens next, and what to do if you have a strong reason why you could not go and renew the asylum document in time ('compelling reasons').



#### YOUR CASE WILL BE REFERRED TO THE STANDING COMMITTEE

In this situation, the Refugee Status Determination Officer will inform the Standing Committee that your asylum claim is abandoned using a specific form (Form 3 in the Annexure to the Refugee Regulations).



#### IF YOU COULD NOT EXTEND YOUR ASYLUM DOCUMENT DUE TO 'COMPELLING REASONS,' YOU MUST SHOW THIS

If you have strong or 'compelling' reasons why you could not renew your asylum document in time, you need to explain this to the Standing Committee. You will need proof of your 'compelling reasons'. These reasons conclude: hospitalisation, quarantine, arrest without bail, involvement in a witness protection programme, institutionalisation, or other 'compelling reasons'.



#### FAILURE TO SHOW COMPELLING REASONS WILL RESULT IN THE STANDING COMMITTEE CONFIRMING THAT YOUR ASYLUM CLAIM IS ABANDONED

If the Standing Committee endorses (confirms) that your application for asylum has been abandoned, you will be referred to immigration officials. Once your asylum claim has been deemed 'abandoned', you may not reapply for asylum. Without documentation in South Africa, you are at risk of arrest and deportation. Please check our infographic on deportation to make sure you understand the deportation process and your rights ([shorturl.at/lmRX0](http://shorturl.at/lmRX0)) and seek legal advice immediately.

#### GOT MORE QUESTIONS?

If you have more questions, please do not hesitate to seek legal advice right away. Turn to Question 16 for a list of organisations you can contact.

### THIS PART OF THE LAW IS SUBJECT TO A LEGAL CHALLENGE

The clauses relating to abandonment of asylum claims in the Refugees Amendment Act are being challenged in the South African courts. Following a [court ruling](#) in December 2020, Home Affairs is not allowed to implement this aspect of the law, pending the finalisation of the case. Please contact [info@scalabrini.org.za](mailto:info@scalabrini.org.za) for more information.

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## HOW DO I JOIN FAMILY MEMBERS INTO MY ASYLUM OR REFUGEE FILE?



### WHERE CAN I FIND THIS IN THE LAW?

The laws on family dependents can be found at Section 21(b) of the [Refugees Amendment Act](#), and should be read together with Regulations 2, 3, 8 and 11 of the [Refugees Regulations](#).

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**Please note!** Due to national lockdown enacted in 2020, the family joining process has been temporarily stopped. Please email [info@scalabrini.org.za](mailto:info@scalabrini.org.za) for the latest update.

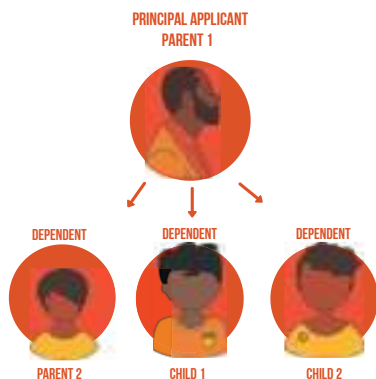
### WHAT IS 'FAMILY JOINING'?

In South Africa, family unification – known informally as 'family joining' – means granting asylum or refugee documentation to dependent family members of a recognised refugee or asylum seeker in South Africa. The family unit is documented under one file. This affirms the principle of documenting a family together.

### WHO IS A 'DEPENDENT'?

Dependents include spouses, unmarried children, a dependent child, (whether they are born before or after the application for asylum) and destitute, aged or infirm parents who are dependent on the main file holder. Dependents must have been included in your application for asylum, unless it is a child born to you after your application for asylum.

A '[child](#)' means any person under the age of 18 years. A '[spouse](#)' means any person who is party to a marriage or same sex union which is solemnised and registered as either a civil, religious or customary union. This also includes a marriage that took place in your home country. It also includes persons in a permanent heterosexual or homosexual relationship.



### THE PROCESS OF 'FAMILY JOINING'

Anyone who applies for asylum in South Africa after 1 January 2020 can only join dependents in their asylum file if they declared that dependent in their original application for asylum (this is the DHA-1590 form which can be found at Form 2 in the Annexure of the Refugees Regulations). If you have a child after you have applied for asylum, must register their birth at Home Affairs and join them to your file. See the next page for more information on this.



It is very important that you include all dependents on your application for asylum, and that you write all their names and dates of birth correctly and in full. If you do not record them correctly, it might cause problems later on.

### JOINING YOUR SPOUSE OR PARTNER IN YOUR ASYLUM APPLICATION

- > When you include your spouse in the application for asylum, an official from the Department of Home Affairs must 'authenticate' your marriage certificate, and interview each of you separately to prove a real marriage exists. The outcome of this interview is just as important as the certificate itself.
- > If you do not have a marriage certificate, you must complete an affidavit that includes details about your relationship, such as the date and place of the marriage and other details about the ceremony and vows. This must be written on Form 1(a) which you will find in the Annexure of the Refugees Regulations.
- > If you are in a permanent homosexual or heterosexual relationship and you are not married, you must provide evidence of your relationship to the Department of Home Affairs. This should include a notarial agreement (this has to be notarised by a South African Notary Public - an attorney who is also a notary) and each of you will be interviewed separately to 'prove' the existence of your relationship.

### JOINING YOUR CHILDREN IN YOUR ASYLUM APPLICATION

- > In your application for asylum, you must write the full names and birth dates of all your children. Include all your children, even those that are not with you (for example, if any of your children remain in your country of origin). This is important if these children join you at a later date. If a Refugee Status Determination Officer reasonably suspects that a child accompanying you may have been smuggled or trafficked, they can demand a DNA test.

## ADDING DEPENDENTS AT A LATER DATE

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Dependents that you had before applying for asylum must be included, or declared, in your asylum application. Failure to do so will mean that they cannot be joined to your asylum file. If you have a child that is born after you apply for asylum, you can join them to your asylum file at the Department of Home Affairs. If you get married or enter a permanent relationship after you apply for asylum, you can join your spouse, or partner, as a dependent in your asylum or refugee file. You will need to show specific proof of this, as explained below.

## IF YOU GET MARRIED, OR ENTER A PERMANENT RELATIONSHIP AFTER YOU HAVE APPLIED FOR ASYLUM

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- > If you get married or enter a permanent relationship after you apply for asylum in South Africa, you would not have been able to include their details in your original asylum application. As such, you can choose to join your partner/spouse to your asylum or refugee file after getting married or entering a permanent relationship. You will have to apply to have them included in your asylum file by bringing a marriage certificate or notarial agreement to the Refugee Reception Office.

## IF YOU HAVE A CHILD AFTER YOU HAVE APPLIED FOR ASYLUM

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- > If you have a child after you have been in South Africa for a while, and after you have applied for asylum, you will not have included them in your original asylum application. As such, you must apply to include this child in your asylum file. You will need to bring your child, their South African birth certificate and a certified copy of this birth certificate, to the Refugee Reception Office along with your own documentation.

## I DID NOT DECLARE ALL MY CHILDREN IN MY ASYLUM APPLICATION. WHAT DO I DO?

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- > If you failed to include all your children in your asylum application, you should still try to join these children in your asylum file, at the Refugee Reception Office. This process is described in Regulation 8(9) of the Refugee Regulations and requires that you bring a DNA test to the Refugee Reception Office proving the child to be yours. If this child is not your biological child, the Department of Home Affairs will refer the child to the Department of Social Development as an accompanied minor so that they can be documented on their own (see Question 15).

## I AM A DEPENDENT OF MY WIFE. MUST I GO WITH HER TO EXTEND MY ASYLUM/REFUGEE DOCUMENT?

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Every dependent in a refugee or asylum file must renew their documents, together with the principal applicant. This means spouses in the same file must renew their documents together. You must submit an affidavit to confirm that you are still married. An example of this affidavit can be found at Form 1 in the Annexure of the Refugees Regulations.

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## GOT MORE QUESTIONS?

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If you have more questions, please do not hesitate to seek legal advice right away. Turn to Question 16 for a list of organisations you can contact.



## WHAT HAPPENS IF I AM NO LONGER A 'DEPENDENT'?

### WHAT IS A 'DEPENDENT'?

Dependents include spouses, unmarried children, a dependent child, (whether they are born before or after the application for asylum) and destitute, aged or infirm parents who are dependent on the main file holder. Dependents must have been included in your application for asylum, unless it is a child born to you after your application for asylum. A 'child' means any person under the age of 18 years. A 'spouse' means any person who is party to a marriage or same sex union which is solemnised and registered as either a civil, religious or customary union. This also includes a marriage that took place in your home country. It also includes persons in a permanent heterosexual or homosexual relationship.

### WHEN DOES SOMEONE 'STOP' BEING A DEPENDENT?

You stop being a 'dependent' when you stop relying on the principal applicant for your basic needs. For children, this is assumed to be when they reach 18 years old. For spouses, this would happen upon divorce. The Department of Home Affairs does not allow you to continue in the principal applicant's file in these circumstances. that dependent can apply to remain in South Africa in certain circumstances permitted by the Refugees Amendment Act.

### IF YOU ARE NO LONGER THE DEPENDENT OF AN ASYLUM SEEKER...



If a dependent (child or spouse) of someone with asylum seeker documentation is no longer a dependent, they can apply for asylum on their own. That person will be subject to the same process as any other asylum seeker.

This means they will be interviewed about the reasons why they left their country of origin, and why they cannot return there. Regulation 11(1) in the Refugees Regulations states that they must apply for asylum at the same Refugee Reception Office where their previous asylum seeker document (as a dependent) was issued. This must be done within six months of no longer being a dependent.

### IF YOU ARE NO LONGER THE DEPENDENT OF A REFUGEE ...

If a dependent (child or spouse) of someone with a refugee recognition document is no longer a dependent, they can apply for asylum on their own. That person will be subject to the same process as any other asylum seeker.

If you were a dependent spouse, and the dependency has stopped (either because of divorce or death of your partner) you must notify the Department of Home Affairs and apply to continue to use your current refugee document, for as long as it is valid. (After this document expires, you would have to apply for asylum on your own.)

In cases of divorce, the Department of Home Affairs will also want to see proof that your marriage was genuine before allowing you to continue using your existing refugee document. You will need to provide certain documents to the Department of Home Affairs. For example, in the case of a divorce, a divorce certificate is needed. In the case of a death, the death certificate is needed.

### I AM A DEPENDENT, BUT I AM TURNING 18. WHAT SHOULD I DO?

- > Recognised refugees: if you were documented as a dependent child (with one of your parents as principal applicant), and you have reached the age of 18, you must go to the Refugee Reception Office where your refugee document was originally issued and apply to continue using it for its remaining period of validity. After that, you must make an application for asylum on Form 4 of the Refugees Regulations.
- > Asylum-seeker: if you were documented as a dependent child (with one of your parents as principal applicant), and you have reached the age of 18, you must go to the Refugee Reception Office where your asylum document was originally issued and you must make an application for asylum on Form 4 of the Refugees Regulations.



CONTINUE ON NEXT PAGE>

This guide is about the Refugees Amendment Act of 2017 which was implemented from 1 January 2020.

### WHERE CAN I FIND THIS IN THE LAW?

The laws on this aspect of family dependents can be found at Section 21(b) of the [Refugees Amendment Act](#), and should be read together with Regulations 2, 3, 8 and 11 of the [Refugees Regulations](#).



## **WHAT IS FORM 4?**

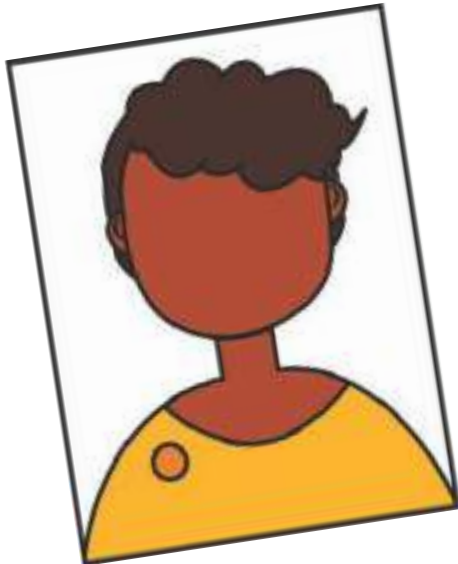
This form is an ‘application for asylum [for a] previously dependent person’ and includes a section where you must explain why you need continued protection in South Africa. The form also requires other information such as criminal record history, language abilities, employment and study history, etc.

## **GOT MORE QUESTIONS?**

If you have more questions, please do not hesitate to seek legal advice right away. Turn to Question 16 for a list of organisations you can contact.

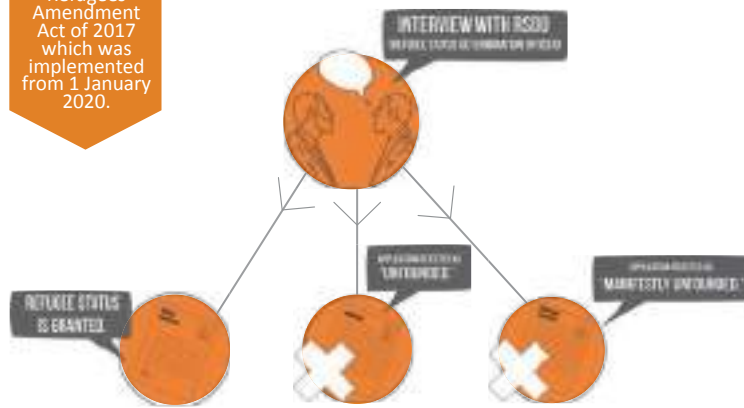
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This guide is about the Refugees Amendment Act of 2017 which was implemented from 1 January 2020.

## WHAT HAPPENS IF MY ASYLUM CLAIM IS REJECTED AS 'UNFOUNDED'?



After you have been interviewed by a Refugee Status Determination Officer (RSDO), they may make one of three decisions on your application. This decision is provided to you as a written document, and is usually between 3-5 pages long. It should have your picture and other personal details on the first page and the words 'RSDO Decision' written on it. When you receive this document, you should be required to sign it - to confirm that you have received it. The RSDO decision should also have been explained to you.

If you have been granted refugee documentation, look at Question 12 of this booklet. If your application has been rejected as 'manifestly unfounded', 'abusive' or 'fraudulent', there is a different process - please look at Question 10.

### WHAT HAPPENS NEXT?

If the RSDO decision on your asylum application is a rejection as 'unfounded', you have the right to appeal this decision. You should be informed of this right when you receive the written RSDO decision. The appeal must be lodged with the Refugee Appeals Authority within ten working days of the date that you received the RSDO decision rejecting your asylum application. For more on this process, see the opposite page >>

If you do not hand in your appeal application within ten working days, the decision by the RSDO to reject your application will be considered final. This means your asylum application has failed, and you are not permitted to remain in South Africa. In very limited circumstances, if you fail to submit your appeal application within the ten working days, you might be able to hand it in 'late', if you can prove, with evidence, that you have 'compelling reasons' why you were late.

### WHAT IS THE APPEAL PROCESS?

If you disagree with the decision to reject your asylum application, you can appeal that decision by requesting a hearing with the Refugee Appeals Authority. There are set reasons why you can appeal a rejection of your asylum application - so we advise you to seek legal advice on this application immediately. See Question 16 of this booklet for a list of organisations you can contact.

An appeal application should be made in a specific format known as a 'Notice of Appeal' (which is found at Form 9 of the Refugees Regulations). You must submit this application at the Refugee Reception Office that has been handling your asylum application. Officials at the Refugee Reception Office must send your appeal application to the Refugee Appeals Authority. You are entitled to continue renewing your asylum document after you have handed in your appeal application, while waiting for a hearing date at the Refugee Appeals Authority.

The Refugee Appeals Authority must schedule a hearing date for your appeal. You must be notified of the date and time of the hearing. You have a right to legal representation (a lawyer) at the appeal hearing: see Question 16. You may also request an interpreter.

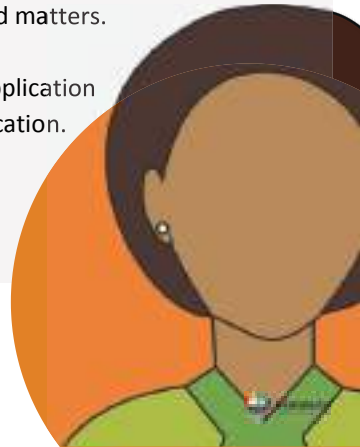
You must attend the appeal hearing, where members of the Refugee Appeals Authority will ask you questions regarding your asylum claim and related matters.

The Refugee Appeals Authority will reconsider your asylum application and will, in due course, provide a fresh decision on your application. This decision must be in writing. If you do not attend your appeal hearing, the Refugee Appeals Authority can make a decision without you being there.



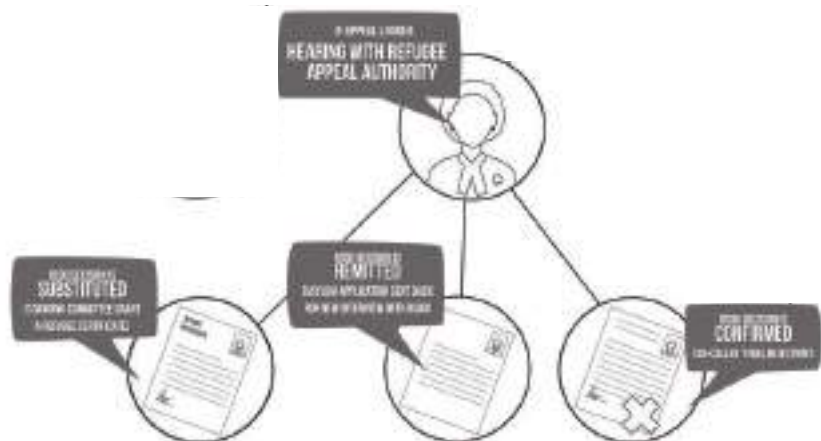
### WHERE CAN I FIND THIS IN THE LAW?

The laws on unfounded asylum applications can be found at Section 24 of the [Refugees Amendment Act](#), and should be read together with Regulation 16 of the [Refugees Regulations](#).



## NOTE THE BACKLOG!

There is a backlog at the Refugee Appeals Authority. This means that there is a long waiting time for people being scheduled an appeal with the Refugee Appeals Authority. This means that it can take years before you receive your appeal hearing date. Remember that you are entitled to continue renewing your asylum document whilst waiting for this appeal hearing date.



The Refugee Appeals Authority must make a decision on your appeal. This can be one of three things:

- A 'final' rejection: this means that your asylum claim has again been rejected and you can no longer legally remain in South Africa. You will be notified of how many days you have in South Africa before you must leave the country. The only way to challenge this decision is by a 'judicial review'. You will need a lawyer for this; see Question 16.
- You are granted refugee documentation: this means the Refugee Appeal Authority has confirmed that you are recognised as a refugee. You must be provided with a refugee recognition document - see Question 12 in this booklet for more information.
- The decision is 'remitted' (sent back) to the Refugee Status Determination Officer- the Refugee Appeals Authority decides to send your asylum application back to a Refugee Status Determination Officer again, who will re-interview you and make a new decision on your asylum application.

## A NOTE ON JUDICIAL REVIEW

If the decision by the Refugee Appeals Authority is a 'final rejection,' and you wish to challenge this, you must urgently seek legal advice. You can only challenge a 'final rejection' by way of a judicial review which can only be at a High Court. You need a lawyer for this. You can seek advice from a private or a pro-bono lawyer (see Question 16). When using the services of a private lawyer, you can verify that their credentials by looking them up on the Legal Practise Council website ([lpc.org.za/practitioners](http://lpc.org.za/practitioners)) - every lawyer who has the right to practise in South Africa is listed on that website.

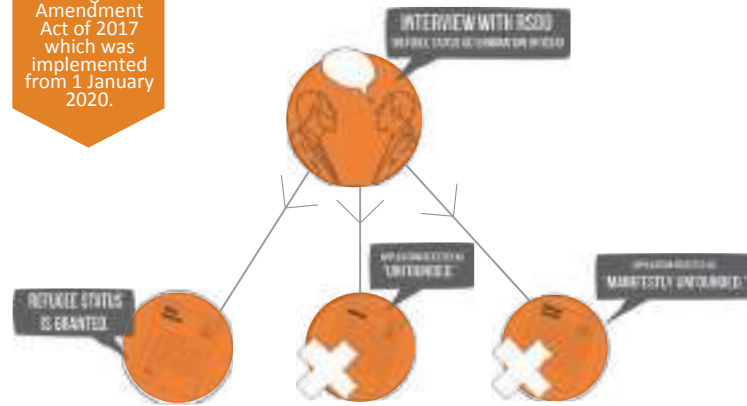
## GOT MORE QUESTIONS?

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After you have been interviewed by a Refugee Status Determination Officer (RSDO), they may make one of three decisions on your asylum application. This decision is provided to you as a written document, and is usually between 3-5 pages long. It should have your picture and other personal details on the first page and the words 'RSDO Decision' written on it. When you receive this document, you should be required to sign it - to confirm that you have received it. The RSDO decision should also have been explained to you. If you have been granted refugee documentation, look at Question 12 of this booklet. If your application has been rejected as 'unfounded', please see Question 9.

### WHAT HAPPENS NEXT?

If the RSDO decision on your asylum application is a rejection as 'manifestly unfounded', 'abusive', or 'fraudulent', this will be automatically sent for 'review' by the Standing Committee. You should be informed of this when you receive the RSDO decision. You are entitled to continue renewing your asylum document while you are waiting for a decision from the Standing Committee.

### CAN I CHALLENGE A 'MANIFESTLY UNFOUNDED' / 'ABUSIVE' / 'FRAUDULENT' DECISION?

If your asylum application is rejected as 'manifestly unfounded', 'abusive', or 'fraudulent', under the previous Refugees Act, you could submit 'written representations' to the Standing Committee. The Refugees Amendment Act does not clearly indicate whether you can still make written representations or not.

Currently, the Standing Committee has yet to establish its Rules. Information about how to provide written representations should be conveyed when the Refugee Status Determination Officer's decision is issued to you.

These written representations should set out your asylum claim and evidence why you believe the RSDO decision was incorrect. We strongly advise you to get legal advice before providing written submissions. Seek legal advice as soon as possible - you will find a contact list at Question 16 of this booklet.

### WHAT WILL THE STANDING COMMITTEE DO NEXT?

When the Standing Committee receives a RSDO decision rejecting an asylum claim as 'manifestly unfounded', 'abusive' or 'fraudulent', they will review that decision. The Standing Committee must make one of three decisions:

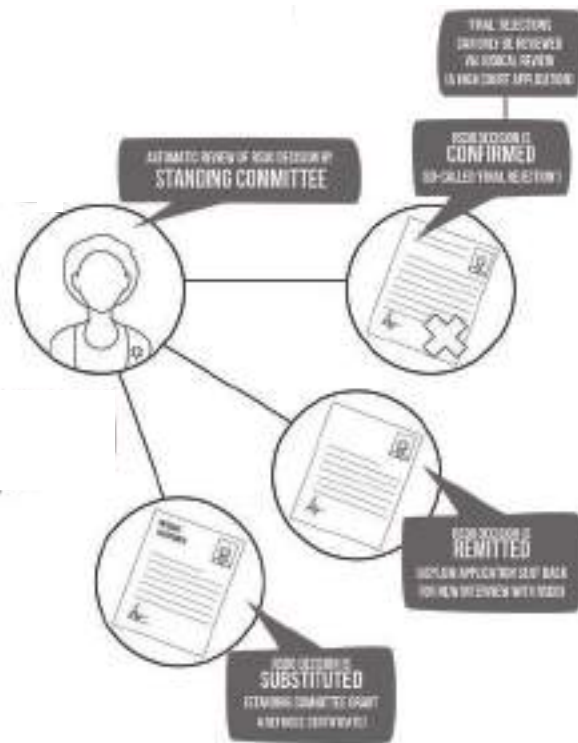
- A 'final' rejection: this means that your asylum claim has again been rejected and you can no longer legally remain in South Africa. You will be notified of how many days you have in South Africa before you must leave the country. The only way to challenge this decision is by a 'judicial review'. You will need a lawyer for this; see Question 16.
- You are granted refugee documentation: this means the Standing Committee has confirmed that you are recognised as a refugee. You must be provided with a refugee recognition document (see question 12 of this booklet).
- The decision is 'remitted' (sent back) to the Refugee Status Determination Officer- the Standing Committee decides to send your asylum application back to a Refugee Status Determination Officer again, who will re-interview you and make a new decision on your asylum application.

## WHAT HAPPENS IF MY ASYLUM CLAIM IS REJECTED AS 'MANIFESTLY UNFOUNDED', 'ABUSIVE' OR 'FRAUDULENT'?



### WHERE CAN I FIND THIS IN THE LAW?

The laws on manifestly unfounded asylum applications can be found at Section 24 of the [Refugees Amendment Act](#), and should be read together with Regulation 15 of the [Refugees Regulations](#).



## THE STANDING COMMITTEE HAS CONFIRMED THE REJECTION OF MY ASYLUM APPLICATION. WHAT HAPPENS NEXT?

If the Standing Committee confirms the decision of the RSDO, this is known as a 'final rejection' - which means you will no longer be permitted to be in South Africa legally. You should receive this decision in writing. The only way to challenge this decision is through judicial review (see box on opposite page). If you are in this situation, and you cannot return home because you fear persecution or risk of harm in your home country, seek legal advice urgently - see Question 16 for a list of organisations that you can ask for advice.

## A NOTE ON JUDICIAL REVIEW

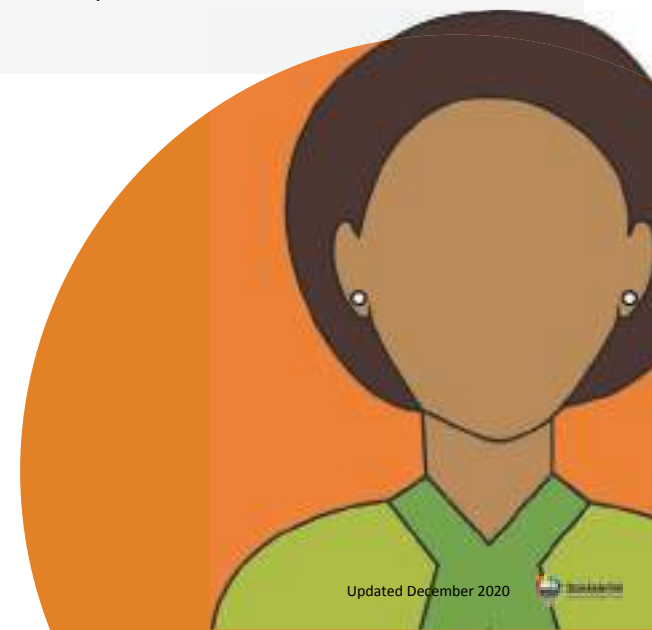
If the decision by the Standing Committee is a 'final rejection,' and you wish to challenge this, you must urgently seek legal advice. You can only challenge a 'final rejection' by way of a judicial review which can only be at a High Court. You need a lawyer for this. You can seek advice from a private or a pro-bono lawyer (see Question 16). When using the services of a private lawyer, you can verify that their credentials by looking them up on the Legal Practise Council website ([lpc.org.za/practitioners](http://lpc.org.za/practitioners)) - every lawyer who has the right to practise in South Africa is listed on that website.

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## WHEN CAN REFUGEE DOCUMENTATION CEASE OR BE WITHDRAWN?



### WHERE CAN I FIND THIS IN THE LAW?

The laws on cessation can be found at Sections 5 and 36 of the [Refugees Amendment Act](#), and should be read together with Regulations 4 and 23 of the [Refugees Regulations](#).

In some circumstances, the status of being a refugee can be cancelled by the South African government. This is known as 'cessation'. Cessation primarily affects recognised refugees, however an asylum seeker document can be withdrawn if one of the cessation grounds applies to them.

When cessation applies, the Minister of Home Affairs would issue an order to cease the recognition of refugee status, of an individual or group of refugees. In terms of the Refugees Amendment Act, cessation can happen if one or more of the list below occurs:

- A refugee re-avails themselves of the protection of their country of origin. Re-availing means engaging with one's country of origin in anyway and includes seeking consular or diplomatic services, those who travel abroad without refugee passport and accessing benefits afforded to citizens of their country of origin. For a full list, see Regulation 4 of the Refugees Regulations.
- A refugee, who has lost their nationality, gets it back through a voluntary and formal act.
- A refugee becomes a permanent resident or citizen of South Africa, or acquires the nationality of another country (and is protected by that country).
- A refugee voluntarily 're-establishes' themselves in the country that they fled (left) or the first country that they stayed in after fleeing. This may include visiting these countries.
- If the reason a refugee left their country of origin and grounds on which they were recognised as a refugee no longer exist. This could be, for example, that the war or conflict have ceased, or reasons for persecution are no longer present.

- A refugee provided false information when applying for asylum, or they were granted refugee documentation due to an error on the part of the Department of Home Affairs (you can see the full list of reasons at Section 36 of the Refugees Act).
- A person who has committed a crime in South Africa that is a 'Schedule 2' crimes (see Schedule 2 of the [Criminal Law Amendment Act No 105 of 1997](#)) or has committed a crime that is punishable by imprisonment without the option of a fine.
- A person has committed an offence in relation to having fraudulent or fake South African documentation (such as an ID card, passport, travel document, temporary residence visa or permanent residence permit).

### NOTE!

The Refugees Amendment Act includes the fact that the Minister of Home Affairs can cease the refugee status of 'any individual' refugee, or a group of refugees. There is no certainty regarding the exact circumstances when this would take place, presumably it would relate to the grounds listed in Section 5 of the Refugees Amendment Act.

Regulation 4 of the Refugees Regulations prohibits refugees and asylum seekers from participating in any political activity in South Africa. It is not clear if this means that this could be a ground for the cessation of refugee status, or withdrawal of asylum seeker documentation. Concerns have been raised regarding the legality and application of these provisions.

## WHAT IS THE ACTUAL PROCESS OF CESSATION?

### INDIVIDUAL

The Standing Committee must inform the person, in writing, of the intention to withdraw refugee documentation. The person with refugee documentation will have the opportunity to challenge this through written submissions. This must be done within a limited time period, which is set out in the letter advising the refugee of the intention to withdraw refugee documentation. Should the Standing Committee finally withdraw refugee documentation, they must inform the refugee, in writing.

Remember that you have the right to challenge any decision - including a cessation decision - through a high court review. If you are in this situation, and you cannot return to your country of origin, or you wish to challenge the lawfulness of a cessation decision, it is vital that you get legal advice as soon as possible. You can seek advice from one of the organisations listed at Question 16.

If someone has their refugee documentation ceased following one of the above processes, they will then have to hand over all documents given to them by the Department of Home Affairs. This would include your refugee recognition document, your refugee ID and your refugee travel documents, if applicable. You will then be processed in terms of the Immigration Act. Beware: you will be at risk of detention and deportation (see Question 12, and seek legal advice as soon as possible if you are in this situation).

### GROUP

If a group or category of refugees are having their refugee documentation withdrawn, the Standing Committee does not have to write to individuals. It must publish an announcement about the 'group cessation' in the Government Gazette. (Would refugees have right to appeal this? How can one find the Government Gazette?)

## ARE THERE SPECIFIC SITUATIONS IN WHICH CESSATION CANNOT OCCUR?

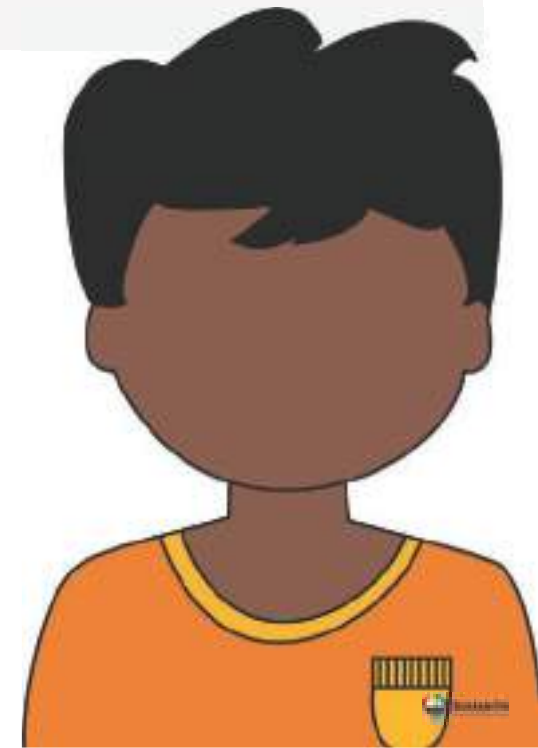
Yes. There are some situations in which the Standing Committee can decide not to withdraw refugee documentation. Regulation 23 of the Refugees Regulations lists these reasons. These include; humanitarian grounds, a child with no family in their country of origin, someone on life-saving medical treatment (that cannot be found in their country of origin), and other similar grounds.

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## I HOLD REFUGEE DOCUMENTATION. WHAT ARE THE CONDITIONS?



### WHERE CAN I FIND THIS IN THE LAW?

The laws on this aspect of refugee documentation can be found at Section 27 of the [Refugees Amendment Act](#), and should be read together with Regulation 17 of the [Refugees Regulations](#).

### THE DEFINITION OF A REFUGEE

The definition of a refugee, in terms of South African refugee law, is set out at Section 3 of the Refugees Amendment Act. In the Act, a refugee is defined as a person who:

- A** owing to a well-founded fear of being persecuted by reason of his or her race, gender, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or
- B** owing to external aggression, occupation, foreign domination or other events seriously disturbing public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin or nationality; or
- C** is a spouse or dependant of a person contemplated in paragraph (a) or (b).

The definition of a refugee, above, has its roots in international refugee law - namely the [UN Refugee Convention](#) and the [OAU Refugee Convention](#).

#### GOT MORE QUESTIONS?

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If the Department of Home Affairs decides that the reasons you left your country fit with the definition of a refugee (see the box to the left), you will be granted a refugee document (unless you are excluded for any reason). This means that the South African government has offered protection to the individual who is now a refugee. This protection is an international law responsibility of the SA government. Having refugee status in South Africa carries with it certain rights and responsibilities – both for the individual and the state. A refugee status document that is issued should:

- Be valid for four years (unless it is withdrawn or ceases before that),
- Be granted to the main file holder as well as all dependents included in that file holder's refugee file (these are the dependents listed at initial application, or one's who have been successfully added in your file)
- Must be reapplied for at least 90 days prior to the expiry of the refugee documentation.

A person who has been issued a refugee recognition document must:

- Apply for an identity card immediately (this 'refugee ID' is valid for the same time period as the refugee recognition document).
- Submit, in writing, an intention to extend refugee documentation, 90 days before it expires at the designated Refugee Reception Office,
- Cannot leave South Africa without a travel document, and may apply for a refugee travel document, if travel is going to be undertaken, and subject to further application requirements.
- Must notify the officials at the Refugee Reception Office of any change in address.

The refugee document also states that it can be withdrawn 'if the holder has been convicted and sentenced for a criminal offence'. In addition to these conditions, you must abide by the laws of South Africa.

### I HOLD REFUGEE DOCUMENTATION. CAN I APPLY FOR PERMANENT RESIDENCY?

Section 27 of the Refugees Amendment Act states that a recognised refugee can begin the process of applying for permanent resident status only after they have held refugee recognition for ten years or more. The first step is to apply for certification (in terms of section 27(c)) to be recognised as a refugee indefinitely. This application has to go to the Standing Committee, and must be a written application. It can take some time for this first step to be completed. Note: There is some risk to applying for certification and it is a complex process. It is advised that you seek legal advice or assistance if you want to make a section 27(c) application. See Question 16 for a list of organisations to contact.





## I HOLD REFUGEE DOCUMENTATION: CAN I GET AN IDENTITY CARD OR A TRAVEL DOCUMENT?



### WHERE CAN I FIND THIS IN THE LAW?

The laws on refugee IDs and travel documents can be found at Sections 27 and 30 of the [Refugees Amendment Act](#), and should be read together with Regulations 18 and 19 of the [Refugees Regulations](#).

As a recognised refugee in South Africa you must apply for and be issued with an identity card. This is called a Refugee Identity Document, or Refugee ID. It is a small, red book and it will have the same expiry date as your refugee document. The Refugee ID will have your file number on it which is the same as the one on your refugee document. It will also have a photo of you in it, and a 13-digit ID number. This number starts with your birth date. This Refugee ID is important because it is needed when interacting with government departments, schools or universities, private businesses, banks and social grant applications. You will also need the Refugee ID to apply to a refugee travel document.

### WHAT DO I NEED TO APPLY FOR A REFUGEE IDENTITY DOCUMENT?

To apply for a refugee ID, you will need:

- > A copy of your refugee document,
- > to be over 16 years of age,
- > to make the application on Form 11 (found at the Refugee Reception Office, or in the Refugee Regulations), and
- > to submit biometrics (for example, your photo and fingerprint).

Applications for the Refugee ID must be made at the Refugee Reception Office where your original application was lodged.

### AS A REFUGEE, CAN I TRAVEL USING OTHER DOCUMENTATION?

No! As a refugee, you cannot use any passport or travel documentation issued by your country of origin. If you do, you risk having your refugee status document revoked (cancelled). If you hold refugee documentation, you can only travel abroad only with a refugee travel document issued by the South African Department of Home Affairs, at the Refugee Reception Office.

### GOT MORE QUESTIONS?

If you have more questions, please do not hesitate to seek legal advice right away. Turn to Question 16 for a list of organisations you can contact.

### WHAT DO I NEED TO APPLY FOR A REFUGEE TRAVEL DOCUMENT?

You are advised to apply for your refugee travel document at least two months before your date of travel. To apply for refugee travel document, you will need:

- > a copy of your refugee document (it must have a remaining period of validity of at least 180 days),
- > a copy of your valid Refugee ID,
- > to submit biometrics (such as a photo and fingerprints)
- > to pay a fee (which is set each year), and which is paid in cash at the Refugee Reception Office. When paying cash, always ensure you get a receipt noting details (for example, the amount you paid, your name, and the name of the official that you gave the money to).

Applications are made at the Refugee Reception Office where your original application was lodged. For those refugee document holders who are under the age of 16 and cannot have a Refugee ID, a parent or guardian must assist them to obtain the refugee travel document and include their own details, as above.

### AS A REFUGEE, WHERE CAN I TRAVEL?

The refugee travel document allows you to travel abroad - but your entry to other countries is dependent on that country's visa requirements. You are responsible for arranging your visa to enter any other country. You must research and arrange your visa before travelling. Note that there is a high risk of having your status as a recognised refugee in South Africa being withdrawn if you travel to your country of origin.

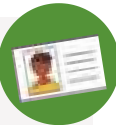
### WHERE CAN I FIND OUT MORE INFORMATION ABOUT THIS?

The Refugees Regulations contain more details about applying for a refugee travel document. We suggest you take a look as soon as you consider travelling. For example, Form 12 advises that this application should be lodged at least two months before travelling. It also indicates that the period of validity of a refugee travel document is capped at one year (or, until the expiry date of your refugee document - whichever is sooner). NOTE: Always keep details of your travel, and keep copies of old refugee and travel documents. You may need this for future documentation.

### DISCLAIMER

This is a guide: not a legal document. It explains what is stated in the Refugees Act, as amended, and the Refugees Regulations. It should not be used to substitute legal advice. This guide does not reflect our opinion on these laws. This information is subject to change.

This guide is about the Refugees Amendment Act of 2017 which was implemented from 1 January 2020.



## WHAT DOES THE REFUGEE LAW SAY ABOUT DEPORTATION?



### WHERE CAN I FIND THIS IN THE LAW?

The laws on deportation matters can be found at Section 28 of the [Refugees Amendment Act](#), and should be read together with Regulation 21 of the [Refugees Regulations](#).

In South Africa, deportation is the procedure performed by the Department of Home Affairs causing an 'illegal foreigner' to leave the Republic (involuntarily, or under detention) in terms of the Immigration Act. Typically, this person is returned to their country of origin. If a foreign national does not have legal stay in South Africa, they must leave the country. Otherwise, they can be arrested, detained and deported, as set out by sections 32 and 34 of the Immigration Act.

#### IMMIGRATION ACT

The Immigration Act regulates how non-South Africans enter into, depart from, and live in South Africa - and it provides legalisation options for those coming to South Africa for non-refugee reasons – for example, to work, to study, to start a business and so on.

#### REFUGEES ACT

The Refugees Amendment Act provides for those who are seeking asylum in South Africa. However, in certain circumstances, those who have been through the asylum system and are legally deportable will fall under the the Immigration Act.

### IT IS VERY IMPORTANT TO UNDERSTAND MATTERS OF DETENTION AND DEPORTATION.

We strongly recommend you read our Detention and Deportation Infographic and article, which answers many questions on this issue. This can be found at [www.scalabrini.org.za/news/detentiondeportation](http://www.scalabrini.org.za/news/detentiondeportation). You should contact a legal representative as soon as you receive any form of notification from Home Affairs that you will be deported or that you have to report to the Refugee Reception Office for purposes of deportation.

These provisions have caused concern; please read about this on the next page.

This guide is about the Refugees Amendment Act of 2017 which was implemented from 1 January 2020.

### THE PRINCIPLE OF NON-REFOULEMENT

The principle of non-refoulement over-rides deportation procedures. In short, it means that a government may not deport someone if there exists a 'reasonable risk of harm' should that person be returned to their country of origin.

### CAN SOMEONE ON A REFUGEE DOCUMENTATION BE REMOVED FROM SOUTH AFRICA?

As mentioned, it is very important to keep in mind the principle of non-refoulement when dealing with the issue of deportation. If you are someone who is facing deportation and you are not safe in being returned to your country of origin, you must seek legal advice urgently. See Question 16.

The Refugees Amendment Act states that asylum seekers or refugees may be removed on grounds of national security, national interest or public order. The Refugees Amendment Act does not describe what 'grounds of national security, national interest or public order' means. In these cases, such people can only be removed by order of the Minister of Home Affairs. If this happens,

- The Minister of Home Affairs will issue an order to remove an asylum seeker or refugee.
- The UNHCR will then be notified, and they can remove or resettle that person (within 2 weeks).
- That person has their asylum or refugee document withdrawn, and they can be detained before being removed. In this case, the Director-General of Home Affairs can arrange that 'any state officer or any other person' transport that person to 'any destination' in South Africa and remove them – including the use of private security forces.
- If that person wants to challenge their removal, they must approach the High Court within 48 hours. If that order is approved by the High Court, it must be 'confirmed' by the Constitutional Court within two weeks. If not, the High Court order preventing deportation will lapse and the person can be removed.

## **WARNING!**

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The deportation provisions seem to be in contravention of national and international laws that protect refugees and asylum seekers. They also seem to contradict the judicial processes set out in South Africa. Please seek updates from a legal advisor on developments of this provision of the law, in case it changes in the future.

## **DOES THE REFUGEES ACT MENTION ANYTHING ELSE ABOUT DETENTION?**

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Yes. Section 29 of the Refugees Amendment Act sets out no one can be detained under the Refugees Amendment Act for a longer period that is reasonable and justified.

If you are detained in terms of the Refugees Amendment Act you cannot be held for a period of more than 30 days - after which, a court must review your detention. The detention of a child must only happen as a measure of last resort – and family unity and the best interests of the child must be taken into consideration.

## **GOT MORE QUESTIONS?**

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If you have more questions, please do not hesitate to seek legal advice right away. Turn to Question 16 for a list of organisations you can contact.

## **DISCLAIMER**

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## HOW DO UNACCOMPANIED CHILDREN APPLY FOR ASYLUM?



### WHERE CAN I FIND THIS IN THE LAW?

The laws on unaccompanied children applying for asylum can be found at Section 12(a) of the [Refugees Amendment Act](#), and should be read together with Regulation 10 of the [Refugees Regulations](#).

### THE DEFINITION OF AN UNACCOMPANIED CHILD

According to the UNHCR, 'Unaccompanied children' are children under 18 years of age who have been separated from both parents and are not being cared for by an adult who, by law or custom, is responsible to do so.

In this case, we are focusing on those unaccompanied children who have an asylum claim.

A child who applies for asylum in South Africa on their own, who approaches the Refugee Reception Office, should be dealt with in a very specific way.

- 1 The child should then be brought to the Children's Court to be dealt with under The Children's Act.
- 2 If a child is an asylum seeker, and is in need of care and protection, they must be issued with an asylum seeker document. All unaccompanied children are automatically considered in need of care and protection as they have no legal caregiver.
- 3 A certain process is followed for unaccompanied children who need to apply for asylum. Officials at the Refugee Reception Office must refer the child to the Department of Social Development.
- 4 A social worker will investigate the circumstances of the child.
- 5 Once at the children's court, the court may appoint a person to assist the child to apply for asylum. This person would act on behalf of the child in applying for asylum.

- 6 Unaccompanied asylum seeking children shall be given an asylum seeker document. This asylum seeker document should be kept safe by a representative of the Department of Social Development, as they are caring for the child.
- 7 The Director-General of the Department of Home Affairs must keep a register of unaccompanied asylum seeking children.

### GOT MORE QUESTIONS?

If you have more questions, please do not hesitate to seek legal advice right away. Go to Question 16 for a list of organisations you can contact.

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## WHO CAN I CONTACT FOR MORE INFORMATION?

NAME	LOCATION	CONTACTS	SERVICES
<a href="#">The Scalabrini Centre of Cape Town</a>	Cape Town	<a href="http://www.scalabrini.org.za">www.scalabrini.org.za</a> 021 465 6433 @ScalabriniCT (Facebook) info@scalabrini.org.za	 Advocacy programme: walk in free advice Tuesday-Friday 9am-12pm. Assistance with documentation, accessing services. Social worker. For other services see <a href="http://scalabrini.org.za/service">scalabrini.org.za/service</a> .
<a href="#">The Refugee Rights Unit</a> (at the University of Cape Town)	Cape Town	021 650 5581 refugeelawclinic@uct.ac.za	Free legal services to refugees and asylum seekers in Cape Town.
<a href="#">Lawyers for Human Rights</a>	Nationwide	<a href="http://www.lhr.org.za">www.lhr.org.za</a> Pretoria - 012 320 2943 Johannesburg - 011 339 1960 Cape Town - 021 424 8561 Musina - 015 534 2203 Durban - 031 301 0531	Free legal services to refugees, migrants and asylum seekers.
<a href="#">UNHCR</a>	Nationwide	0800 1000 30 (Mon-Thur 9-4, Fri 9-1)	Information and guidance on UNHCR services.
<a href="#">Nelson Mandela University Refugee Rights Centre</a>	Port Elizabeth	041 504 1310 Linton.harmse@mandela.ac.za	Free legal services to refugees and asylum seekers throughout the Eastern Cape Province.



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