

DECLARATION OF INTENTION TO APPLY FOR ASYLUM

HOW TO SHOW THAT I WANT TO APPLY FOR ASYLUM?

IMPORTANT POINTS TO NOTE FIRST

- You do not need to come to the Scalabrini Centre. Please download, print, and complete the form yourself. It is for all provinces in South Africa.
- This form is only for new asylum seekers, above the age of 18.
- A new asylum seeker is a person who is fleeing conflict, violence or persecution and should indicate an intention to apply for asylum in South Africa.
- This form is not an application for an asylum visa and it is not a permit.
- This form is not from Home Affairs but is a way to prove to authorities that you intend to apply for asylum.
- This form does not need a police stamp, but should be signed by you and by a witness. (A witness can be a friend, family member or someone else you might know who can witness you signing the declaration.)
- Once completed, keep the form and court order with you at all times.
- This form is for protective purposes only, it cannot be used to look for a job or open a bank account

If you are a new asylum seeker, but have not been able to apply for asylum yet, you can download a form to help protect yourself.

Please keep checking Scalabrini's social media for updates on asylum applications at the Refugee Reception Offices. We will update you as soon as we have more information.

SEE INFOGRAPHIC, DECLARATION FORM AND COURT ORDER ON THE NEXT PAGES





WHAT DO THE COURT AND THE LAW SAY?



The Western Cape High Court found that sections of the Refugees Act denying access to asylum for new asylum seekers who want to apply for asylum is unconstitutional. This order will go to the Constitutional Court for confirmation.

The law says: a person who is a new asylum seeker cannot be sent back to their country before they've had a chance to apply for asylum. This goes against South Africa's Constitution and the Refugees Act - no one should be sent back to a place where they might be in danger. This is called the principle of non-refoulement.

"Until an applicant's refugee status has been finally determined, the principle of non-refoulement protects the applicant from deportation." Ashebo, 2023, paragraph 29

You can prove that you want to apply for asylum by completing the "Declaration of Intention to Apply for Asylum" form, attached to this infographic.

FILL OUT THE FORM



STEP 1: PRINT THE PDF

Print the PDF attached to this infographic

This is a "Declaration of Intention to Apply for Asylum" form and the Court Order.



STEP 2: FILL IN THE FORM

Fill in the form

- Line 1: Write your name
- Line 2: Write the name of your country
- Line 3: Write your birth date
- At the bottom: In front of a witness, write your name, today's date, and sign your name. After you have done this then the witness must sign too. A witness can be anybody that you know. They need to sign the form to confirm that they saw that you signed.

THIS FORM IS
FREE OF
CHARGE.
DO NOT PAY
ANYONE FOR IT.



STEP 3: STAPLE ALL THE PAGES

Staple all the pages (Declaration of Intent to Apply for Asylum and the Court Order) together and carry them with you.

This form is your way of showing that you want to apply for asylum. The court confirms that a person who is a new asylum seeker cannot be sent back to their country before they've had a chance to apply for asylum. Do not go to the police station to stamp it. Your signature is fine and all that is needed to confirm your intention. Don't take this form to a Refugee Reception Office.

PLEASE NOTE:



This form is for new asylum seekers (newcomers) only. People who are fleeing conflict, violence or persecution are new asylum seekers and should indicate an intention to apply for asylum in South Africa. This intention form cannot and must not be used by people who have already received their asylum seeker visa or permit, or have received a final rejection decision.

Please understand that this is not a permit but is a declaration of intention and a valid copy of a court order.

EXAMPLE OF THE FORM



Declaration of Intention to Apply for Asylum

I YOUR NAME from YOUR COUNTRY born on BIRTHDATE hereby indicate and confirm my intention to apply for asylum in terms of section 21 (1)(b) of the Refugees Act 130 of 1998.

I want to apply for asylum in South Africa. I have been advised of the court order on 15 May 2025 in the case of Scalabrin Centre of Cape Town v Minister of Home Affairs and Others 8486/2024. In the case the Western Cape High Court found that sections of the Refugees Act 130 of 1998 denying access to asylum for new asylum seeker applicants are unconstitutional. A copy of the order is attached to this declaration. This order will go to the Constitutional Court for confirmation.

I understand that anyone who expresses an intention to apply for asylum cannot be deported to the country they fled from, until their asylum application has been received, considered, and processed to conclusion, including all interviews, appeals and reviews. Sending a new asylum seeker back before this is against the law, specifically the principle of non-refoulement set out in section 2 of the Refugees Act and goes against the Constitution. The Constitutional Court has confirmed that: "the right to seek asylum should be made available to every... foreigner who evinces [shows] an intention to apply for asylum, and a proper determination procedure should be embarked upon" (Abore 2021 CC para 42) The Constitutional Court also confirmed that "Until an applicant's refugee status has been finally determined, the principle of non-refoulement protects the applicant from deportation" (Asheba 2023 CC para 29). The principle of non-refoulement prevents the Department of Home Affairs from initiating deportation proceedings against new asylum seekers who have expressed an intention to apply for asylum.

Name YOUR NAME

Date TODAY'S DATE

Signature YOUR SIGNATURE

Witness Name NAME OF YOUR WITNESS

Date TODAY'S DATE

Signature WITNESS SIGNATURE

FIND THE FORM AND COURT ORDER ON THE NEXT PAGE



THIS FORM IS

**FREE OF
CHARGE.**

**DO NOT PAY
ANYONE FOR IT.**



Declaration of Intention to Apply for Asylum

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Name _____

Date _____

Signature _____

Witness Name _____

Date _____

Signature _____



IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 8684/2024

In the matter between:

SCALABRINI CENTRE OF CAPE TOWN	First Applicant
TRUSTEES OF THE SCALABRINI CENTRE OF CAPE TOWN	Second Applicant
and	
THE MINISTER OF HOME AFFAIRS	First Respondent
THE DIRECTOR-GENERAL:	
DEPARTMENT OF HOME AFFAIRS	Second Respondent
THE CHIEF DIRECTOR OF ASYLUM SEEKER MANAGEMENT:	
DEPARTMENT OF HOME AFFAIRS	Third Respondent
THE REFUGEE APPEALS AUTHORITY	Fourth Respondent
THE STANDING COMMITTEE FOR REFUGEE AFFAIRS	Fifth Respondent
and	
AMNESTY INTERNATIONAL	First Amicus
GLOBAL STRATEGIC LITIGATION COUNCIL	
FOR REFUGEE RIGHTS	Second Amicus
INTERNATIONAL DETENTION COALITION	Third Amicus
HELEN SUZMAN FOUNDATION	Fourth Amicus

Coram: Justice J Cloete, Justice L Nuku et Acting Justice S Kholong

Heard: 27 February 2025; respondents' supplementary note delivered on 7 March

2025

Delivered electronically: 15 May 2025

JUDGMENT

CLOETE J:

Introduction

[1] The applicants (collectively, "Scalabrini") have approached this court (in Part B¹ of their amended relief)² to have certain provisions of the Refugees Act (the "Refugees Act")³, and the regulations promulgated thereunder ("the regulations")⁴ declared to be unconstitutional and invalid. In the event of the court granting the relief sought, the applicants also seek an interdict against the respondents pending confirmation (or otherwise) of our order by the Constitutional Court. I will return to this aspect later.

[2] The impugned provisions are ss 4(1)(f), 4(1)(h), 4(1)(i) and 21(1B) of the Refugees Act, as well as regulations 8(1)(c)(i), 8(2), 8(3) and 8(4). The applicants assert that their effect is to disbar foreign nationals who wish to seek asylum in South Africa from doing so if they hold an adverse immigration status solely due to their non-compliance with

¹ Part A (the urgent interim relief) was heard by Manca AJ, who handed down judgment on 13 September 2024: Scalabrini Centre of Cape Town v Minister of Home Affairs and Others (8486/2024) [2024] ZAWCHC 263.

² The additional and/or alternative relief contained in prayer 3 of the amended notice of motion dated 1 November 2024, ie to review and set aside the impugned regulations, was abandoned during argument.

³ No 130 Of 1998.

⁴ In terms of s38 of the Act, published in GNR 1707, GG 42932 dated 27 December 2019.

[73] **The following order is made:**

1. It is declared that sections 4(1)(f), 4(1)(h), 4(1)(i) and 21(1B) of the Refugees Act 130 of 1998 (“the Act”) are inconsistent with the Constitution of the Republic of South Africa, 1996 (“the Constitution”) and invalid;
2. It is declared that regulations 8(1)(c)(i), 8(2), 8(3) and 8(4) of the Refugee Regulations, published in GNR 1707, Government Gazette 42932, on 27 December 2019 (“the Regulations”) are inconsistent with the Constitution and invalid;
3. In terms of section 172(2)(a) of the Constitution, paragraph 1 of this order is referred for confirmation or otherwise by the Constitutional Court;
4. The declaration in paragraph 2 of this order is suspended pending the outcome of the proceedings referred to in paragraph 3 above;
5. The interim interdict granted in Part A of this application is discharged;
6. The relief sought by the applicants in terms of section 172(2)(b) of the Constitution is refused; and

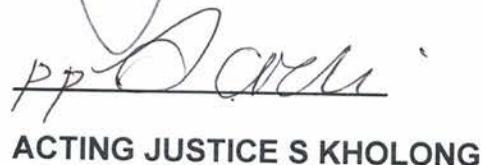
7. The respondents shall pay 80% of the applicants' costs (including those incurred in respect of Part A) on Scale C (party and party), jointly and severally, the one paying, the others to be absolved, and including the costs of 3 (three) counsel where so employed.



JUSTICE J CLOETE

I agree.

JUSTICE L NUKU


PP

ACTING JUSTICE S KHOLONG

For the applicants: Adv A Katz SC with Adv D Simonsz and Adv G Slingers

Instructed by: Lawyers for Human Rights (Ms N Mia)

For the respondents: Adv N Arendse SC with Adv D Borgstrom and Adv A Nacerodien

Instructed by: Denga Inc. (Mr A Denga)

For the first to third amici: Adv M Bishop with Adv M Mokhoaetsi

Instructed by: Cliffe Dekker Hofmeyr Inc. (Mr G Xaba)

For the fourth amicus curiae: Adv I De Vos

Instructed by: Norton Rose Fulbright South Africa Inc. (Mr J Whyte)