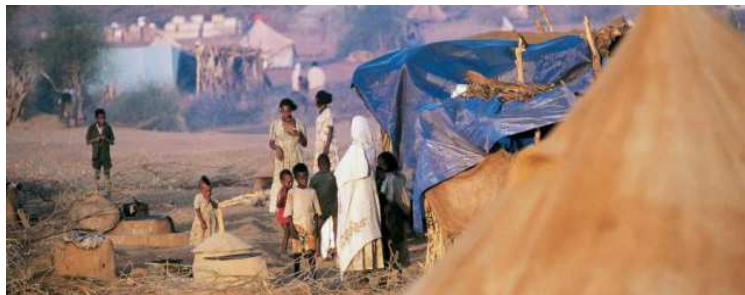


WHO IS A REFUGEE IN SOUTH AFRICAN LAW



In 1996, SA committed itself to the protection of refugees by ratifying the 1951 United Nations Refugee Convention as well as the 1969 Organization of African Unity Refugee Convention. South Africa's Refugees Act 130 of 1998 entered into force in 2000.

WHO IS A REFUGEE ?

THE REFUGEE ACT RECOGNISES TWO DEFINITIONS OF REFUGEES

1. People with a well-founded fear of persecution

The first definition is taken from the 1951 UN Refugee Convention. It provides protection to persons fleeing their country of origin because of a well-founded fear of persecution by their government or by other non-state actors that the government is unable to stop.

The term "well-founded fear of persecution" refers to your particular experiences and circumstances instead of the general situation in your country of origin. A person's very personal response to the prospect of return to your country of origin will be assessed together with available information on the conditions in your country of origin to determine whether you will be subject to danger if you are forced to return.

2. People who fled their country of origin due to threats to the public order:

The second definition is adopted from the Organisation of African Unity Refugee Convention and provides protection to persons who were forced to flee because of violence, war and civil disturbances in their country of origin.

The spouse or dependant of a recognised refugee is also entitled to refugee status, even if the individual claim was rejected.

WHO IS NOT A REFUGEE ?

The definition of a refugee denotes a specific category of person and therefore excludes all other people who do not fit into any of the categories set out above. For example, an individual who leaves their country due to purely economic hardship is not a refugee. Rather, such an individual is an economic migrant and such an individual, once identified, will not be able to claim refugee protection. In these cases, he or she should apply for either a work permit or a study or visitor's visa.



WHO MAY BE EXCLUDED FROM RECOGNITION AS A REFUGEE?

A Person may be excluded from receiving refugee status if the individual has:

- have committed a crime against humanity, a war crime or a crime against peace;
- have committed a serious non-political crime outside of SA, which if committed in SA would be punishable by imprisonment
- He or she has already received protection (refugee status) in another country.

WHO COULD LOSE REFUGEE STATUS?

A person could lose his or her refugee status if he or she:-

- voluntarily obtain the protection or nationality of your country of origin,
- obtain the nationality of a new country or voluntarily return to the country left in fear and take up residence there with the intention of settling permanently.

A person could lose his or her refugee status because of events in his/her country of origin, such as:

- when there is no longer a threat to you in your country of origin
- if he or she take on the protection of his or her country of origin because the circumstances in that country have changed



REFUGEE RIGHTS

South Africa possesses one of the strongest regimes of legal rights in the world. Beginning with the Bill of Rights in the Constitution of 1996, the supreme law of the country, South African law and policy strives to protect the rights of all people within its borders. Asylum seekers, refugees, and even illegal immigrants enjoy many of the protections of the Bill of Rights. However, some rights are available only to citizens and do not apply to all groups. Rights specific to asylum seekers and refugees may also be found in the Refugees Act of 1998

WHAT IS A RIGHT?

- A right can give a person the ability to demand something from someone else.
 - ◆ The right to healthcare gives an asylum seeker or refugee the right to receive medical treatment at the same rates as SA in similar circumstances
- A right can also prevent other people from doing things to a person. (A negative right)
 - ◆ The police may not kill or injure a person.
- If a person has a right, he/she may also have an obligation or a duty.
 - ◆ John has a right not to be harmed by Pete, and, similarly, John has a duty not to harm Pete.
- Rights can be limited.
 - ◆ The freedom of speech does not allow a person to use inflammatory speech to incite violence.

Other important Rights found in the Constitution

- Human dignity (Section 10)
- To Life (Section 11) - e.g. A person may not be killed for coming to SA without a permit.



- Freedom and security (Section 12)
- A fair trial upon arrest (Section 35)
- Freedom from torture or violence (Section 12)
- Privacy (Section 14)
- Religion (Section 15)
- Freedom of expression (Section 16)
- Assembly (E.g. Protests). (Section 17)

- Association (E.g. Clubs). (Section 18)
- Access to courts (Section 34)
- Freedom of Movement, including right to leave SA. (Section 21)
- Children's' rights, including access to education (Sections 28 & 29)

REFUGEE RIGHTS

Every person in SA is protected by the Bill of Rights, found in Chapter 2 of Constitution
Equality rights require equal protection and no discrimination

Limitations on Rights:

The Bill of Rights does not always include refugees

- In the Bill of Rights, when the text reads 'Everyone', then it applies to refugees as well **unless** another law limits that right under **section 36(1)**.
- If the right applies to 'Citizens', then it applies to SA nationals unless another law grants that right to refugees

The Constitution also provides for Socioeconomic Rights:-

Which are not guaranteed to all persons, but the government must strive to promote within its means:

- Right to a clean and healthy Environment
- The right to acquire Property
- Healthcare
- the right to seek housing (Sections 26 & 27)

Other important Rights

- The right to a formal recognition of refugee status in the prescribed form (Form BI-1693 i.e. Section 24 Permit).
- The right to seek employment.
- The right to have access to primary and emergency health care and referrals for further medical treatment.



- The right to a refugee identity document, as referred to in **section 30 of the Refugees Act**.
- The right to a travel document, as referred to in **section 31 of the Refugees Act**.
- The right to apply for permanent residence, after five years of continuous residence in SA from the date on which he or she was granted asylum, if the Standing Committee certifies that he or she will remain a refugee indefinitely.
- Refugees have the right to basic health care and emergency health care.
- Refugees have the right to primary education. Asylum seeker children may study at SA public schools and asylum seekers may qualify for school fees exemptions for their children
- Refugees have the right to study
- In return, refugees must respect the rights of others and follow the laws and regulations of SA.

ASYLUM SEEKER RIGHTS IN SOUTH AFRICA



- Like refugees, Asylum Seekers in SA are protected by the Bill of Rights of the South African Constitution.
- Asylum Seekers have the right to remain in SA, subject to the provisions of the Refugees Act. This means that they have the right not to be deported from SA before their asylum application is finalized.
- Asylum seekers may study and seek employment while awaiting the determination of their claim.
- Asylum Seekers are entitled to a fair process in the adjudication of their asylum application.
- Asylum Seekers have the right to basic health care and emergency health care.
- Asylum Seekers have the right to primary education. Asylum seeker children may study at SA public schools and asylum seekers may qualify for school fees exemptions for their children.
- Asylum Seekers have the right to access secondary and tertiary education.
- Asylum Seekers may not apply for refugee identity books or travel documents.
- In return, asylum seekers must respect the rights of others and follow the laws and regulations of SA.

DIAGRAM - Refugee Status Determination Process in South Africa

