



GUIDE 3

RIGHTS AND DUTIES OF ASYLUM SEEKERS AND REFUGEES IN SOUTH AFRICA

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1.1 Do asylum seekers and refugees have the right to move freely around South Africa?

As opposed to many other countries, South Africa has **no refugee camps**, nor does the State provide any particular form of social or financial assistance to asylum seekers or refugees. Asylum seekers and refugees have the right to remain lawfully and move freely throughout the country as long as they have valid documentation to legalise their presence in South Africa. This means that they are allowed to reside where they wish, to engage in economic activity and to integrate socially and culturally within local communities. Asylum seekers and refugees within South Africa enjoy the same human rights under the Constitution as South African citizens, except for the right to vote and the right to form a political party.

1.2 Do asylum seekers and refugees have the right to work in SA?

Both asylum seekers and refugees have the **right to seek employment** in South Africa. Many employers are reluctant to employ asylum seekers or refugees because of the expiration date indicated on the permit. For asylum seekers, the expiry date is an indication of when the person should next present themselves at the Refugee Reception Office so as to continue with the status determination process. For refugees, the permit is usually renewed on the expiration date for a period of 4 years.

The employment of asylum seekers and refugees is governed by the labour laws of South Africa. Employees are therefore able to access the services of the Commission for Conciliation, Mediation and Arbitration (CCMA) and the Labour Court. As employees, asylum seekers and refugees are liable to pay taxes in the same manner as South Africans.

All persons, irrespective of whether their stay in South Africa is legal or allows them to work, are considered an 'employee' in terms of the Labour Relations Act. If the person had rendered services, they are entitled to receive the remuneration as agreed upon and it should not be retained based on the person's immigration status.

1.3 Can asylum seekers and refugees claim UIF benefits?

All contributors to the Unemployment Insurance Fund (UIF) may claim benefits. In practice, a claimant must have an ID to be registered as a beneficiary. Asylum seekers and temporary residents do not have access to a thirteen-digit identification number and therefore, should not contribute to UIF nor claim benefits. Employers should therefore not deduct UIF contributions from the salary of an asylum seeker or temporary resident. Recognized refugees

are able to obtain an identity document and should contribute to UIF and be able to claim benefits.

1.4 Can children of asylum seekers and refugees go to school in South Africa?

Access to education is a basic human right available to all children in South Africa, irrespective of their nationality and documentation status.

Children who are documented as asylum seekers or refugees are entitled to access the same **basic primary education** as South African children. Primary education means grade 1 to 9 and must be made available to all children between the ages 7–15.

The admission of undocumented children to public schools must be allowed on the condition that the parent(s) or caregiver is in the process of arranging the relevant documentation to regularize their stay in South Africa. If after three months, no documentation has been obtained, the School Governing Body, in consultation with the District Officials, must liaise with the relevant authorities and parents to ensure that the child obtains documentation to remain legally in South Africa. The documentation options for children vary depending on their circumstances and are linked to the documentation status of their parent(s) or caregiver.

Parents, who cannot afford school fees, may request to be exempted from payment. Exemption requests may be made to any public school, by submitting proof of monthly income and expenses, which would determine whether they qualify for exemption under a financial means test. Applications for exemption from school fees must be made directly to the school by the parent or caregiver. Asylum seekers and refugees may apply to be exempted from the payment of school fees in the same manner as citizens.

1.5 Are asylum seekers and refugees eligible to benefit from social grants?

Only recognized refugees are eligible to access social grants through the South African Social Security Agency (SASSA). Refugees qualify for all social grants, except for the war veteran grant. This includes the child support grant, care dependency grant, the foster child grant, the disability grant and the old age grant. The applicant must submit a copy of their refugee identity document (or a receipt as proof of application for identity document made). The availability of the grant is linked to the validity of the refugee status document and therefore, a copy of the renewed document must be submitted to SASSA in case of expiration.

1.6 Do asylum seekers and refugees have the right to access medical care in South Africa?

The South African Constitution entitles everyone to access health care services and specifically states that no one may be denied emergency medical treatment. Asylum seekers and refugees are entitled to the same basic health services as South African citizens. Basic healthcare usually includes primary health care services (services provided at clinics or

facilities where first consultations are made), maternal and child health care and HIV/AIDS treatment. Public health care facilities in South Africa function according to a means-based payment system and certain categories of persons are liable to pay maximum fees. Asylum seekers and refugees are subjected to a financial means test in the same manner as South Africans and must pay medical costs according to their financial abilities. If a person earns below a certain amount per annum, medical services are free.



© Danie Nel | Dreamstime.com - Children awaiting treatment for tuberculosis at a clinic in Gugulethu, South Africa

Undocumented foreigners may not be refused emergency medical treatment on the basis of their documentation status. However, they may be held liable to pay maximum fees for any health services. Children below the age of six and pregnant or lactating women should be allowed to access free health care services, irrespective of their documentation status or nationality.

The right to health care can be limited, both for citizens and foreigners, depending on the availability of resources. Some forms of specialized health care favour citizens over foreigners. For example, dialysis treatment is accessible to all persons, but due to a lack of resources, South African citizens are treated as a priority. Furthermore, the National Health Act states that a person who is not a citizen or permanent resident must obtain written authorization from the Minister of Health in order to receive an organ transplant.

1.7 May foreigners receive anti-retroviral treatment in South Africa?

According to national health policy, anti-retroviral treatment is freely available to everyone in South Africa, irrespective of documentation status or nationality.

1.8 Do foreign nationals have the right to register the birth of babies born in South Africa?



© Feije | Dreamstime.com - African baby is vaccinated against measles and polio

All babies born in South Africa must be registered, whether they are born to citizens or foreigners. Registration of birth is very important for purposes of documenting the child's age and nationality. Children born in South Africa to foreign parents retain the nationality of the parent(s). Asylum seekers and refugees may register the birth of their baby by producing their documents issued in terms of the Refugees Act, as identification.

In the past, a distinction was made between 'abridged birth certificates' and 'unabridged birth certificates'. An abridged birth certificate contains only the details of the individual's birth such as the parents' names, identity numbers and nationality. Unabridged birth certificates contain more detailed particulars of the parents, such as the places of birth of the parents. Prior to 2013, unabridged birth certificates were only issued, upon request, to South African citizens and children of South African citizens who were born abroad. From 2013, unabridged birth certificates are issued to everyone, especially since it is required for certain purposes such as travelling with children. Births must be registered within 30 days. Late birth registration is possible, but requirements are more stringent.

1.9 Can foreign nationals get married in South Africa?

Foreign nationals may be married in South Africa and their marriages are registered at the Department of Home Affairs. In practice, undocumented persons may be married in terms of a religious or traditional ceremony, but will experience difficulty to register the marriage. Valid identification documentation which legalises the foreigners' stay in South Africa is needed in order to register a marriage.

1.10 Do asylum seekers and refugees have the right to own property in South Africa?

Asylum seekers and refugees are free to acquire property in South Africa or enter into lease agreements.

Refugees do not have rights in terms of land claims or housing provided by the State. Migrants are excluded from government housing subsidies.

1.11 May asylum seekers and refugees open bank accounts in South Africa?

Asylum seekers and refugees may open bank accounts, but there is no duty on banks to assist foreign nationals to open an account. The asylum seeker temporary permit or refugee status is used for identification purposes and the prospective account holder should also submit proof of residential address. The Department of Home Affairs must verify the authenticity of the document before an account can be opened. Verification should take a few days, but in reality this is often delayed.

1.12 What are the duties of asylum seekers and refugees in South Africa?

First and foremost, asylum seekers and refugees are expected to abide by the laws of South Africa. Secondly, foreign nationals, irrespective of their documentation status, have the duty to keep their documentation updated and to ensure that their stay in South Africa remains legal. For asylum seekers and refugees, this means presenting themselves at a Refugee Reception Office on the date on which the permit expires.

1.13 What happens when a foreigner commits a crime in South Africa?

Any person who commits a crime, irrespective of their nationality or documentation status, will be prosecuted under the Criminal Procedure Act. Once the convicted foreigner has served the sentence, he or she is transferred to the custody of the Department of Home Affairs, where their immigration status will be reviewed.

If the offender is a temporary resident, the visa will be withdrawn and the person is required to leave South Africa.

If the offender is an asylum seeker or refugee, DHA may decide to withdraw the asylum seeker or refugee's permit. This will depend on the nature of the crime and with consideration to the principle of *non-refoulement* (the prohibition from returning a refugee or asylum seeker to a country if there is a chance they will face persecution or harm there).

A person's whose documentation is withdrawn following the conviction of a crime will be declared an 'undesirable person' which has the effect of prohibiting the person of returning to South Africa for a certain period of time. Obviously though, the offender may contest his deportation in court.

1.14 What is the relation between asylum and extradition?

Extradition is when the foreigner's country of origin formally requests that the person be rendered to its jurisdiction, so as to be prosecuted for a crime committed in that jurisdiction. South Africa is party to a number of bilateral and multilateral agreements to govern extradition to those countries. Crimes committed, for which a person may be excluded from refugee status, will most probably constitute extraditable offences. If South Africa receives an extradition request in respect of an asylum seeker, the asylum application should be finalized and extradition should be refused if grounds exist for believing that the person may be prosecuted on account of his race, religion, nationality or political opinion. South Africa may not extradite a person if he or she may receive the death penalty, or face torture or inhumane or degrading treatment or punishment upon their return to the requesting country. However, if the receiving states give the assurance that there is no risk of executing the death penalty, the person may be extradited.

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