



**THE RIGHT OF ASYLUM SEEKERS AND REFUGEES TO
WORK IN SOUTH AFRICA**

Many people around the world are forced to flee their homes and seek protection in other countries. This happens during times of war and conflict and it happened to many South Africans under apartheid who received refugee status in other countries until they were able to return home after independence in 1994.

Now South Africa is host to people who need our protection and support.

In line with our Constitution and international agreements, South Africa, through the Refugees Act, 1998, gives protection to genuine asylum seekers who cannot return home.

THIS PAMPHLET EXPLAINS AND CONFIRMS THE RIGHT OF ALL ASYLUM SEEKERS AND REFUGEES WITH VALID DOCUMENTATION TO WORK AND STUDY IN SOUTH AFRICA.

1. WHO IS A REFUGEE?

In terms of the Refugees Act, 1998, a refugee is someone who is forced to flee her/his country of origin because

- (a) s/he **has a “well-founded fear of persecution”** from the government in their home country as a result of eg their political opinion, their beliefs or practices eg belonging to a religious group, or being a member of a victimised race, tribe, gender or because of sexual orientation; or
- (b) there is a **state of disorder in the country** eg civil war or war from an external aggressor.
- (c) s/he is a dependent of a refugee ie a spouse or child.

2. WHAT IS THE DIFFERENCE BETWEEN AN ASYLUM SEEKER AND A REFUGEE?

A recognized refugee - is someone who has applied for and been accepted as a refugee and has then been granted a **section 24 Refugee Permit**. The permit is usually valid for four years and is renewable.

An asylum seeker - is someone who has applied or wishes to apply for refugee status but who is waiting for a final decision regarding their application. From the time that an asylum seeker applies for asylum at a **Refugee Reception Office** in South Africa, s/he is entitled to receive a **section 22 Temporary Asylum Seeker Permit**. This permit is usually valid for 6 months and must be regularly renewed until a final decision is made. This includes a decision made by one of the two appeal /oversight bodies, the Refugee Appeal Board (“RAB”) or the Standing Committee for Refugee Affairs (“SCRA”).

We have many asylum seekers in South Africa who have been waiting for many years for a final decision and have had their asylum seeker permits renewed many times, sometimes even for more than 10 years.

3. FROM WHICH COUNTRIES DO ASYLUM SEEKERS IN SOUTH AFRICA FLEE?

Refugees flee to South Africa mainly from the war-torn Great Lakes region in Africa including the **Democratic Republic of the Congo** (“DRC”) and **Burundi**, as well from areas in North Africa which are war-torn and/or have very poor human rights records such as **Somalia, Ethiopia** and **Eritrea**. To a lesser extent South Africa receives refugees from other countries as well.

The conflicts in the Great Lakes region have resulted in more deaths than all people killed during the Second World War, and is the most under-reported conflict in the world with millions of people displaced and at risk of persecution or death should they be forced to return to their home countries.

As a signatory to the United Nations Convention on Refugees, South Africa has an obligation to provide protection to those who flee to South Africa from their home countries as refugees. In terms of the South African Refugees Act, it is unlawful to “refoul” or forcibly return a refugee at risk.

As a society which has suffered from oppression and degradation, we have emerged with a Constitution which ensures the **Right to Dignity and protects the human rights of everyone in South Africa equally** - no matter who you are or where you come from.

4. THE AUTOMATIC RIGHT OF ASYLUM SEEKERS & REFUGEES TO WORK AND STUDY

The asylum seeker and refugee community contribute to our multi-cultural society on every level, both socially and economically. In law everyone living in South Africa is entitled to receive the same protections from the state as South African nationals.

Most importantly both asylum seeker and refugee permits expressly recognize the RIGHT TO WORK AND STUDY in South Africa:

The extract below is of an asylum seeker permit. See the highlighted section which expressly grants the permit holder the Right to Work and Study:

REPUBLIC OF SOUTH AFRICA
DEPARTMENT: HOME AFFAIRS
Section 22 of the Refugees Act No. 130 of 1998

ASYLUM SEEKER TEMPORARY PERMIT
REFERENCE NO: [REDACTED]
Permission is hereby granted to the following person as holder of this permit to remain in the RSA of part thereof as determined in part B hereof.

A. PERSONAL PARTICULARS OF HOLDER
SURNAME: [REDACTED] FIRST NAME(s): [REDACTED]
RESIDENTIAL ADDRESS: [REDACTED]
DATE OF BIRTH: [REDACTED] GENDER: [REDACTED]
NATIONALITY: [REDACTED] COUNTRY OF ORIGIN: [REDACTED]
FILE NUMBER: [REDACTED] PLACE OF ISSUE: [REDACTED] EXPIRY DATE: [REDACTED]
ALTERNATIVE FILE NUMBER: [REDACTED]

B. CONDITIONS
1. The holder of the permit may reside temporarily in the Republic of South Africa for the purpose of applying for asylum in terms of the Refugees Act No. 130 of 1998.
2. The permit holder shall, without expenses to the state, leave the Republic on before 2018/07/24 or [REDACTED] if his/her application for asylum has been rejected.
3. The permit entitles the holder to: **WORK AND STUDY IN RSA**
4. Failure to comply with the conditions of this permit will be dealt with in terms of Section 37 (b) and Section 22 (6)

such later date as duly authorised by a Refugee Status Determination Officer if his/her ap
3. The permit entitles the holder to: **WORK AND STUDY IN RSA**
4. Failure to comply with the conditions of this permit will be dealt with in terms of Section 27

This means that an employer can accept an asylum or refugee permit as the document which lawfully grants a job applicant the Right to Work in South Africa. Similarly, schools and other educational institutions can accept these permits as proof of the Right to attend school and/or study in South Africa.

No additional document or permit is required.

5. LABOUR LAW AND OTHER PROTECTIONS APPLY TO ALL WORKERS

All laws in South Africa which govern the employment relationship, apply equally to all workers, whether the person is a citizen, a refugee, asylum seeker or even if the employee is undocumented. This means that employees should

- have contracts of employment
- be paid the required minimum wages and meet minimum standards
- be registered with the Department of Labour
- have UIF deducted and paid over to the Department of Labour*
- be subject to the same disciplinary procedures as all other workers and cannot be dismissed without fair procedures being followed.

Some employers have expressed concerns about employing asylum seekers and refugees because they do not have the right to remain in South Africa permanently and could be deported back to their countries. In this regard it should be noted that

- the chronic backlog at the Refugee Reception Offices and at the Appeals/oversight bodies, means that there are **many people who have been waiting for years for decisions**. It could take many more years for a final ruling – until then asylum seekers are entitled to have their permits renewed;
- **it is unlawful** in terms of the Refugees Act and international law to “refoul” people back to their countries where they could face persecution or death;
- the South African government and its people have a duty to support genuine asylum seekers and help ensure that their stay in South Africa is one where their dignity is upheld. The Right to Work is a core component in promoting this right:

“Without work, refugees and asylum seekers are caught in a cycle of structural poverty and .. dependency on the State purse and on..other members of society”.

- Many studies have shown that asylum seekers contribute greatly to the economies they join, as workers and entrepreneurs. As an employer you can contribute to South Africa’s international commitments by employing asylum seekers and refugees as part of your business.

**We are still working on challenges faced by asylum seekers and refugees who battle to obtain UIF due to not having a 13 digit ID document.*

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