

# Practical Guide for Defending the Rights of Refugee Children and Refugee Unaccompanied Minors in South Africa



POLICY REVIEW, PROCESSES, PROCEDURES & PRACTICAL EXPERIENCE

By

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## Acknowledgement

This handbook aims to improve knowledge of international and domestic legal framework regarding the treatment of refugee children and unaccompanied minor refugee children. It is the first of many handbooks that the Refugee Children Project will compile to update users of changes and/or amendments of policies affecting all kinds of refugee children. RCP remains grateful to all those who assisted and participated in making this a reality. A special thank goes to Atlantic Philanthropies who generously funded the handbook. In preparing it the authors relied on comments from various individuals and officials who participated in the review workshop. Participants provided valuable insight into policies while others provided actual policies which otherwise would not have been accessible to the drafters. Most of the comments and documents were integrated into the handbook. RCP appreciates the final comments received from Abeda Bhamjee and the editing work done by Tamlyn Manson.

## FOREWORD

Children are the most vulnerable members of society. Their wellbeing and the protection of their rights is a measure of society's level of safety as well as success. Children's rights have to be protected at all costs. Hence the South African government has, among other things, ratified the United Nations (UN) Convention on the Rights of the Child in order to engender a culture of child protection. This ratification presents a significant milestone because it places children's issues on government's agenda.

South Africa's commitment to protecting children's rights is enshrined in Chapter Two ("Bill of Rights") of the 1996 Constitution of the Republic of South Africa. Section 28 of the Bill of Rights outlines children's rights and states that: *"Every child has the right... to basic nutrition, shelter, basic health care services and social services"*. In addition, the constitution recognises refugee children and the fact that they are a special group and require special treatment because of trauma resulting from exposure to armed conflict and political instability.

Armed conflict and political instability in many parts of the world, including Africa, has forced many people – especially women and children – to flee their countries of birth. Those forced to flee tend to seek asylum in countries characterised by political stability, adherence to good governance practices and respect for human rights. It is therefore important for all people and organisations dealing with refugees and refugee children to know the complex legal requirements for resettling peacefully in another country.

Stories of refugee's lives and experiences have been told all over the world for centuries. The modern international system for protecting refugees can be traced back to 20<sup>th</sup> August 1922 when the League of Nations, forerunner of the United Nations, appointed Dr. Fridjof Nansen as the first High Commissioner for Refugees. On the 10<sup>th</sup> December 1948, the United Nations proclaimed the Universal Declaration of Human Rights. Article 14 of the Declaration stipulates that: *"Everyone has the right to seek and enjoy in other countries asylum from persecution."*

Many people have requested and enjoyed asylum and protection from neighbouring and distant countries – including prominent South African politicians and business people. The former United States (US) Secretary of State, Madeleine Albright (née Korbel), recalled in an interview with *Refugees Magazine*, that:

*“While I was a little girl, my family was driven twice from its home, first by Hitler and then by Stalin. This experience may have given me a deeper sense of the value of freedom, and the knowledge never to take its blessing for granted. It has also led me, in my current position, to visit refugee centres when possible. For I know, whenever I look into the eyes of a refugee child, I will see something of myself.”*

Madeleine Albright, a Czechoslovakian refugee girl, was able to fulfil her human and intellectual potential because she resettled in an environment which respected and promoted human rights such as freedom of speech, security, and access to education and health.

Worldwide, many refugee children have built successful lives after integrating into host societies at a young age. A refugee from Lithuania, Valdas Adamkus, returned home and was elected the country’s president in 1992 after many years of asylum in the US. Roxana Maracineanu, a young Romanian exile, brought joy and prestige to her adopted country France by winning a world swimming championship in Australia in 1998.

The above success stories can be attributed to the fact that such refugee children enjoyed human rights enabling them to access various essential services such as health, social security, education and socio-economic integration in their host countries. Access to these services is a fundamental building block in the process of restoring the losses suffered by refugees – particularly children – and ensuring their survival.

This Practical Guide developed by the Refugee Children’s Project (RCP) is based on the organisation’s experience in dealing with refugee children and refugee unaccompanied minors. It is for the use of child rights activists, educators and other service providers, as well as refugees, parents and concerned children. The Practical Guide provides a summary of the most essential national and international legal instruments on the rights of refugee children and refugee unaccompanied minors. It also provides processes and procedures to follow when claiming and enforcing the rights and privileges of refugee children and refugee unaccompanied minors.

Important contacts are provided to facilitate networking amongst structures dealing with refugees in general and refugee children and refugee unaccompanied minors in particular. This publication is part of RCP’s effort to enable refugee children and refugee unaccompanied minors to resettle and resume their lives more easily and more quickly in South Africa. This Practical Guide also serves to create awareness among refugee children and refugee unaccompanied minors, parents, educators, human

rights activists, NGO workers, government policy makers and other interested parties of the rights of refugee children and refugee unaccompanied minors in particular.

Abale Ebalo Justin

RCP Director

Johannesburg, 20 June 2008

## ABOUT THE REFUGEE CHILDREN'S PROJECT

The Refugee Children's Project (RCP) is a relief organisation that was founded in 2002. The organisation was originally formed to facilitate the integration of refugee children and refugee unaccompanied minors into South African society, the initial area of intervention being the Johannesburg Metropolitan Municipality. Since 2006, the scope of RCP intervention has been expanding from an exclusive focus on refugee children and refugee unaccompanied minors to include programmes that target women and children<sup>1</sup> – whether recognised refugees, asylum seekers, undocumented migrants, internally displaced person (IDPs) or returnees.

In addition to this change in RCP's scope of work, its areas of intervention expanded to include projects in three additional provinces (Limpopo, KwaZulu-Natal and Western Cape). RCP is an active member of different networks and forums on refugees and migrants' issues, and collaborates with international relief and refugee institutions such as the United Nations High Commissioner for Refugees (UNHCR), the International Organisation for Migration (IOM), UNICEF and the International organisations.

RCP implements strategic projects to innovatively address gaps created during the process of integrating refugee women and children into local societies. Based on the principle of a human rights culture, RCP projects place specific emphasis on access to basic resources and services, employing an integrated service-delivery approach to alleviate the multiple problems faced by refugee women and children.

In addition, RCP endeavours to ensure that the rights of refugee women and children of every category are realised in accordance with the relevant domestic, regional and international standards.

### **RCP's Vision**

Guided by domestic legislation and international protocols, and based on human rights principles and an integrated service-delivery approach, RCP endeavours:

- to be a world pioneer in service, education and advocacy interventions that care for refugee women and children and enhance their integration;
- to nurture and promote Africa-based research, dialogue and networking in the field of refugee and migrant children; and
- to give an audible voice to refugee and migrant children and youth.

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<sup>1</sup> Refugee women and children include those who are refugees, asylum seekers, internally displaced persons (IDPs), undocumented women and children, and returnee women and children.



### **RCP's Mission Statement**

- to develop and implement innovative, cost-effective and integrated intervention programmes that meet the needs of refugee women and children and facilitate their easy integration into local societies;
- to achieve sustainable impacts on the lives of refugee and migrant children through dialogue, advocacy and training targeting their structural conditions, social position and access to children's rights; and
- to develop avenues through which refugee children and youth may speak to one another, their communities, and those in power.

### **RCP's Objectives**

To achieve the above vision and mission, RCP aims to fulfil the following strategic objectives:

- To provide essential services critical to the successful integration of refugee women and children into local societies.
- To advocate for friendly domestic and international policies and legislation to meet the ever-changing needs of refugee women and children.
- To create awareness on a range of issues that directly or indirectly affect refugees in general and refugee women and children in particular.
- To promote the optimum care and development of children and women who find themselves in circumstances that place their physical, social, emotional, intellectual and spiritual development at risk.

## CHAPTER 1: BACKGROUND

### Introduction

This Practical Guide constitutes a study of legal frameworks and policy provisions. It outlines processes and procedures for accessing services to meet the basic needs of refugee children and refugee unaccompanied minors residing in South Africa. Meeting the basic needs of refugee children and refugee unaccompanied minors (RC&RUM) is a precondition for their proper development into resilient adults contributing to the wellbeing of society. The Refugee Children's Project (RCP) plans to make available this Practical Guide for use by individuals and organisations that work with refugee children.

According to the UNHCR, children younger than 18 represent 44% of the total number of refugees globally. At the end of 2005, 88% of these children were older than five years of age, and 12 percent under. The UNHCR report at the end of 2005 stated that the proportion of children to the entire refugee population was highest in Central and South West Asia, North Africa and the Middle East. South Africa is, however, unique in that it has a relatively low percentage of refugee children and refugee unaccompanied minors. Reliable empirical statistics on the actual numbers of RC&RUM are not readily available. Nevertheless, there are RC&RUM whose needs must be met and this Practical Guideline is compiled with them in mind.

### Why the Practical Guide?

RCP initiated the process to compile this practical guide in order to contribute to efforts aimed at enabling RC&RUM to settle properly in South Africa. Organisations and individuals working with refugee children find it very difficult to assist children in accessing essential services to meet their needs.

Many organisations are unfamiliar with the needs of RC&RUM, a situation worsened by a lack of clarity about procedures in many policies on child access to services.

This Practical Guide aims to make the work of organisations and individuals working with RC&RUM easier by:

- Providing a concise analytical summary of existing international and national legal frameworks and policy provisions;

- Outlining processes and procedures to follow in accessing existing services to meet the needs of refugee children and refugee unaccompanied minors;
- Providing tools that can be used to meet the needs of RC&RUM.

This Practical Guide is a resource that organisations will continuously update when policies and legislations are amended, changed or repealed. It represents a first offering with the aim of ensuring that the needs of RC&RUM are publicised and addressed in South Africa.

#### **What is Covered in the Practical Guide?**

This Practical Guide is based on international and national legal frameworks and policies on refugees, with specific consideration of issues related to the rights of RC&RUM. The core of the Practical Guide comprises guidance on claiming the rights of RC&RUM, focusing on six different themes that impact on the lives of refugee children and refugee unaccompanied minors. The themes are: the asylum and refugee process in South Africa, protection of refugee children against maltreatment, access to social services, access to health, access to education and access to other durable solutions.

#### **For whom is the Practical Guide Intended?**

The Practical Guide is primarily for use by those who are concerned with the protection and resettlement of this marginalised and vulnerable group of children, including foster parents, guardians, and activists working with and for refugee children and refugee unaccompanied minors. The secondary users of this Practical Guide are educators, and policy makers, as well as refugee children and refugee unaccompanied minors themselves. The Practical Guide facilitates an understanding of the legal framework and policy provisions that bear upon claims for the rights of refugee children and refugee unaccompanied minors in South Africa.

#### **How to Use the Practical Guide**

This Practical Guide contains process maps and diagrams that provide a pictorial view of the steps to follow in order to fulfil a specific need, such as applying for asylum. The maps and diagrams were drawn up after a review of applicable legislation and/or policy procedures. The process maps and diagrams do not replace legislation and applicable policy guidelines, but simplify them. The user should review the maps to understand the steps required to fulfil a specific need, the policy requirements that apply, and also possible decisions or outcomes of various actions. Where possible and applicable, appeal processes

are included. The different sections of the handbook contain essential basic information as well as helpful tips.

### Definition of the Key Concept “Refugee”

Both the 1951 UN Convention Relating to the Status of Refugees and the 1967 UN Protocol Relating to the Status of Refugees define the concept of a “refugee” as a person who, *“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his origin or nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country or, not having a nationality and being outside that country of his origin or her former habitual residence is unable or, owing to such fear, unwilling to return to it”*.

The 1951 Convention and the 1967 Protocol consider a person to be a refugee if that person satisfies the following four conditions:

- S/he must be outside his/her country of origin or nationality;
- S/he must have a well-founded fear of persecution;
- His/her fear must be based on one of the five reasons: race, religion, nationality, social group, or political opinion; and
- S/he must be unable or unwilling to avail to the protection of that country or return there.

In addition to the above, the 1969 African Union Convention Governing the Specific Aspects of Refugee Problems in Africa acknowledged special particularities in defining the concept “refugee”. In this Convention, a refugee was considered to be a person who, due to *“external aggression, occupation, foreign domination or events seriously disrupting 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 country of origin or nationality.”*

South Africa’s Refugees Act, 1998, cites both the UN and the OAU definitions in defining who will qualify for refugee status in the country.

## **CHAPTER 2: OVERVIEW OF THE INTERNATIONAL LEGAL INSTRUMENTS ON RC&RUM IN RSA**

### **Introduction**

This chapter provides a synopsis of international legal instruments and the ways in which public officials have translated them into implementable programmes in South Africa. The summary is intended as background information for use by those advocating for various matters pertaining to RC&RUM.

### **The 1951 UN Convention Relating to the Status of Refugees**

This Convention has its roots in the early days of the International Refugee Organisation and United Nations High Commission for Refugees (UNHCR). It was developed between 1947 and 1950 to provide legal status to persons who do not enjoy the protection of any government. The Convention gives a general definition of the term “refugee”, as described in the previous chapter. Article 33 also provides the principle of “non-refoulement”: this means that no person may be returned to a territory where he/she may be exposed to persecution.

### **The 1967 Protocol Relating to the Status of Refugees**

The 1967 Protocol addresses the limitations of the 1951 Convention regarding dateline and geographical reach in order to include new groups of refugees from around the globe (Africa, for example). The protocol establishes the “universal character of the term refugee”.

### **The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa**

The 1969 OAU Convention expanded the definition of a refugee by including important provisions relating to asylum, voluntary repatriation and prohibition of subversive activities by refugees. It is the regional complement in Africa to the 1951 UN Convention Relating to the Status of Refugees.

### **The United Nations High Commission for Refugees (UNHCR) Executive Committee**

The UNHCR is entrusted with the unique responsibility of promoting and providing international protection of refugees.

The UNHCR Executive Committee (Excom) is the main policy-making body of the UNHCR. The Excom is made up of representatives from all States Parties and meets every year in Geneva. Decisions taken during Excom meetings are not binding, but as far as children are concerned the following are important:

- **Conclusion 47** (Excom meeting 1987) highlights the particular vulnerability of unaccompanied and disabled refugee children and recommends regular assessment of the needs of refugee children.
- **Conclusion 59** (Excom meeting 1992) reaffirms and expands upon the need for particular attention to be given to refugee children, drawing special attention to the right of refugee children to education, and to protection from military recruitment and irregular adoption.
- **Conclusion 84** (Excom meeting 1992) calls upon states to “ensure the best interest of the child and the role of the family as the fundamental group of society concerned with the protection and well-being of children and adolescents”.

#### **UNHCR Guidelines on Protection and Care of Refugee Children**

The UNHCR formulated its first *Guidelines on Refugee Children* in 1988, with the objective of improving and enhancing the protection and care of refugee children. This was endorsed by the UNHCR Excom in 1993. It was revised in 1994 to include the Convention on the Rights of the Child as a point of reference for UNHCR’s actions. The guidelines emphasise the best-interest rule and further address issues such as refugee unaccompanied minors, physical security, psycho-social problems associated with trauma, education guidelines, community assistance and the protection of culture.

#### **National Legal Instruments, Frameworks and Policies**

Since 1994, the South African Government has made great advances in developing a legal framework favourable to the respect of human rights, equality and governance. Beside the 1996 Constitution, specific legislation and policies on refugees have been developed and implemented. This is in addition to ratification of various international Conventions and Protocols.

With regard to the rights of refugees, South Africa has acceded to the 1951 Convention Relating to Status of Refugees, the 1967 Protocol Relating to the Status of Refugees and the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, as well as other human rights instruments.

The rights of refugee children in South Africa are enshrined in the Constitution, the Refugees Act, and several other pieces of legislation passed by the Parliament. These are briefly summarised below.

#### **The South African Constitution (Act 108, 1996)**

Section 28 (1) of the Constitution guarantees the following rights to every child, including refugee children and refugee unaccompanied minors:

- Right to a name and nationality;
- Right to a family or parental care, or to appropriate alternative care;
- Right to basic nutrition, shelter, basic health care and social services;
- Right to protection from maltreatment, abuse, neglect or degradation and exploitative labour;
- Right not to be required or permitted to perform work that is inappropriate for a child or places the child's wellbeing at risk;
- Right not to be detained except as a measure of last resort, and in such cases to be kept separately from adults and only for the shortest appropriate time;
- Right to have a legal counsellor assigned by the State; and
- Right not to be used directly in armed conflict and to be protected in times of armed conflict.

Section 28 (2) states the broad principle that *"a child's best interests are of paramount importance in every matter concerning the child."*

#### **Refugees Act, (Act 130, 1998)**

Through the Refugees Act, the Republic of South Africa assumes certain obligations to receive and treat refugees in its territory in accordance with the standards and principles outlined in international laws. These include obligations to:

- Give effect to relevant international legal instruments regarding refugees;
- Provide for the reception of asylum seekers in South Africa;
- Regularise applications for asylum; and

- Meet the human rights and related needs of refugees.

In terms of protection and rights, refugees:

- Are entitled to a formal written recognition of refugee status in the prescribed form;
- Enjoy full legal protection, which includes the rights set out in the Bill of Rights in Chapter 2 of the Constitution, and the right to remain in the Republic in accordance with the provision of this Act;
- Are entitled to apply for an immigration permit in terms of the Refugees Act after five years' continuous residence in the Republic from the date on which they were granted asylum, if the Standing Committee certifies that they will remain refugees indefinitely;
- Are entitled to an identity document referred to in section 30;
- Are entitled to a South African travel document as contemplated in section 31;
- Are entitled to seek employment; and
- Are entitled to the same basic health services and basic primary education that other inhabitants of the Republic receive from time to time.

### **The Children's Act**

The Children's Act, (act 38, 2005), is the primary piece of national legislation that provides provisions on the protection and wellbeing of children in the Republic of South Africa.

The act defines a child as any person under the age of 18, irrespective of nationality. Thus, any person who is younger than 18 years old and in the Republic of South Africa – irrespective of their country of origin – will be regarded as a child. This definition applies to RC&RUM as long as they are under 18.

The Act stipulates that the "*child's best interest*" is the overriding principle governing all matters and decisions that are taken relating to the protection and wellbeing of children. Thus, in reviewing asylum applications, particularly those of unaccompanied children, Refugee Offices are bound by the above principle. The Act also requires that all proceedings, actions or decisions in a matter concerning a child must:



- respect, protect, promote and fulfil the child’s rights as set out in the Bill of Rights and Chapter 3 of the Children’s Act, subject to any lawful limitations;
- respect the child’s inherent dignity;
- treat the child fairly and equitably; and
- Protect the child from unfair discrimination on any ground, including on the grounds of the health or HIV/AIDS-status of the child or a family member of the child.

The Children’s Act therefore requires all South African government departments and/or agencies to take the above principles into account when considering matters affecting children.

The Act also creates supplementary rights for children. These rights do not replace but add to those rights contained in the Constitution of the Republic of South Africa. They are for enjoyment of all children, including refugee children and refugee unaccompanied minors. They have the right:

- Not to be unfairly discriminated against, either directly or indirectly;
- To a name, nationality and identity;
- To a family and to have a relationship with their own family;
- To own property and to benefit from the proper administration of property;
- To protection from maltreatment, abuse, neglect, degradation, exploitation and other harmful practices;
- To protection from harmful social and cultural practices;
- To be protected from economic exploitation through administrative, social, educational, punitive and other suitable measures and procedures;
- To education, leisure, recreation, and access to court;
- To have confidential access to health-related information on sexuality, reproduction and sexually transmitted diseases, including HIV/AIDS; and
- To social security, including access to social assistance if the parent or care giver cannot or does not provide for the basic needs of the child.

In relation to RC&RUM, the Children’s Act provides that every child who is a refugee or who is seeking refugee status in accordance with international or domestic law, and every undocumented migrant child, whether unaccompanied or accompanied by a parent or other adult person, has:

- The rights set out in the act, as may be appropriate in the circumstances;

- The right to be re-united with his or her parents or family if separated from his or her parents or family; and
- The right to receive humanitarian protection and assistance.

The act provides two additional rights for children with physical, intellectual or psychiatric disabilities, namely:

- The right to enjoy life in conditions which ensure dignity, promote self-reliance and facilitate active participation in the community; and
- To receive special care; and to receive fair financial assistance from the state.

## CHAPTER 3: ASYLUM-SEEKING APPLICATION PROCESS AND PROCEDURES

### Introduction

RC&RUM are disadvantaged in comparison to most children. They are likely to have had traumatic experiences that affect their physical, cognitive, emotional and social development. Refugee children and refugee unaccompanied minors, particularly from warring countries, may have experienced violence and witnessed relatives, friends or acquaintances being sexually abused, killed or maimed. They may have been dislocated or forcibly removed from their homes. Family life and schooling have usually been disrupted. Girl refugees are at a greater risk of having been sexually abused, while young boys may have been compelled to become child soldiers and even to kill.

A country receiving RC&RUM is under a legal as well as a moral obligation to provide an environment enabling these children to recover from the vulnerability their experiences have engendered. In addition, the receiving country must also provide an environment in which RC&RUM will be able to live a normal life and enjoy being children. If RC&RUM are to enjoy their rights as children in the Republic of South Africa, it is imperative that they must first be legalised. Legal status is acquired by applying for asylum and following the procedures outlined in the Refugees Act and related policies. If the South African government grants asylum status, RC&RUM will be able to access social grants as well as health and learning facilities in South Africa.

As in most countries, the asylum application process in South Africa is difficult, complex, painfully slow, and susceptible to abuse. The media often publish stories of inhumane treatment of refugees and acts of corruption perpetrated by officials employed in the Refugee Reception Offices (RRO). Clearly, the application process for RC&RUM is unlikely to be a simple process. It is hoped, however, that knowledge of the high-level process outlined in this chapter will enable asylum seekers and those assisting them to understand the various steps of the application process, as well as how to access other services for RC&RUM.

This chapter has been compiled to build an understanding, aided by visual representation, of:

- The processes that RC&RUM must follow when seeking asylum status in South Africa. The process differs for refugee children and refugee unaccompanied minors. Refugee children who are with their parents will be included in their parents' application process. The South African Children's

Courts, regarded as the supreme guardian of all children in South Africa, will be responsible for assisting refugee unaccompanied minors.

- The processes that should be followed to access social grants; health, learning, and other essential services; and assistance with regards to social integration (employment, housing etc).
- The processes that should be followed when seeking legal protection from crime or maltreatment.

### Asylum and Refugee Process and Procedures

There has not yet been thorough research into the ways in which individuals seeking asylum or refugee status gain access to South Africa. Anecdotal evidence indicates that the majority walk up until they reach refugee offices at points of entry; others are illegally trafficked into South Africa. Available evidence from most countries, including those that are part of the European Union, shows an increase in the use of human traffickers to gain entry into foreign territories. South Africa is not immune to this phenomenon.

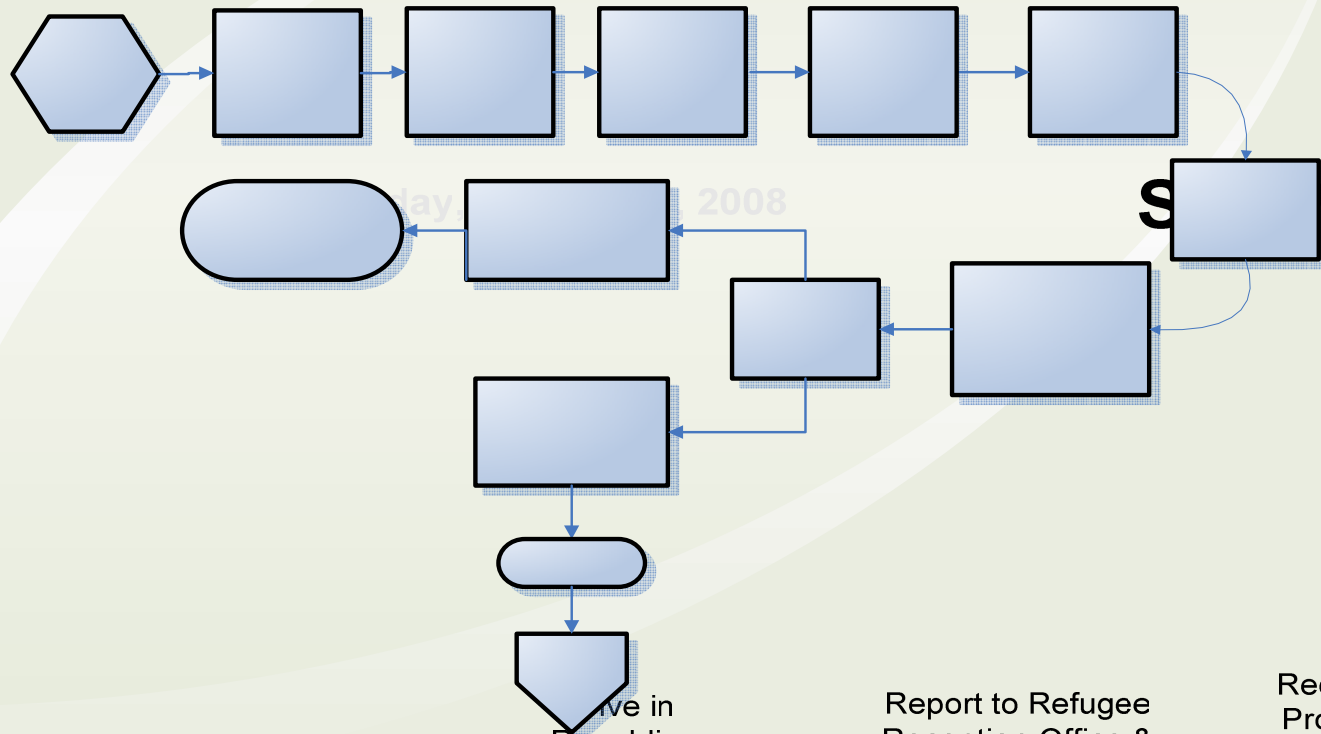
Families and individuals seeking asylum and refugee status take great risks to enter countries of refuge – deaths, as well as rape and robbery of adults and children en route, continue to be reported. The increase in the use of illegal measures to gain entry is attributed to tight legislation that makes it difficult for asylum seekers and individuals seeking refugee status to access the countries that can offer higher levels of safety. Besides dealing with trauma in their countries of origin, many would-be refugees and asylum seekers are exposed to high levels of corruption while en route to South Africa. Thus, by the time they reach a Refugee Reception Office, people seeking asylum or refugee status have usually been exposed to high levels of trauma and insecurity. And here too they are often exposed to maladministration, xenophobia and corruption at the hands of officials working at Refugee Reception Offices (RRO). If the above process is difficult for an adult, it is far more harrowing for children – particularly refugee unaccompanied minors, who are alone and without the guidance and protection of adults.

Irrespective of the mode of entry into the Republic of South Africa, it is important that all asylum seekers lodge an application at a Refugee Reception Office, either at the port of entry or 'in-country' after arrival. The Department of Home Affairs (DHA), which is responsible for receiving and processing all asylum application lodged in South Africa, has established Refugee Reception Offices (RRO) at ports of entry and in various urban towns. These Offices are responsible for receiving and processing asylum applications.

The Maps below provides an outline of the asylum seeking process set out in the Refugees Act.



Refugee Children's Project



# S 1: APPLY

ive in  
Republic  
of South  
Africa

Report to Refugee  
Reception Office &  
declare intention to  
seek asylum

Refugee  
Reception Officer  
Provides Asylum  
seeker with  
Eligibility  
Determination  
Forms

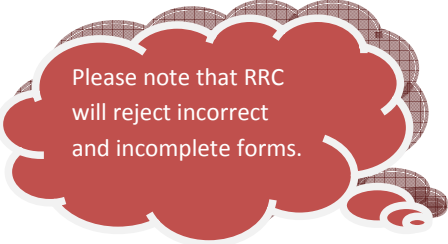
Refugee Officer iss

On arrival in the Republic of South Africa, an asylum-seeking person must

- Present him/herself as soon as possible to the Refugee Reception Offices (RRO) established by the DHA and **declare the intention to seek asylum**.
- A Refugee Reception Officer will provide the asylum-seeking person with an **Eligibility Determination Form**. The asylum seeker is required to complete the form and submit it together with a recent photo to the Refugee Reception Office. A photo must be supplied by all applicants, or individuals whose names appear on the application form, who are above the age of 16. Children younger than 16 who are in company of their parents or guardians are not required to submit photos.


Unaccompanied children are assisted by the South African Children's Courts, which are legally regarded as the supreme guardians of children. The court will, based on evidence before it, rule whether the child should be granted asylum or not. Its decision, unless it is appealed by the Department of Home Affairs, is binding to all other state departments.

- The DHA's Refugee Reception Officers are required to verify that submitted forms are properly completed. If forms are not completed correctly, they are required to assist asylum seekers to correctly and fully complete the eligibility Determination forms.



Please note that RRC will reject incorrect and incomplete forms.

- To ensure that accurate and correct information appears on the forms, the Refugee Reception Officer may interview an applicant on receiving the form. The Officer will also take fingerprints of the applicant. If it is a family that is applying, fingerprints of the applicant and all dependents above the age of 16 will be taken and all must be present when the forms are submitted.



Children are allowed to attend school while parent's status is being determined.

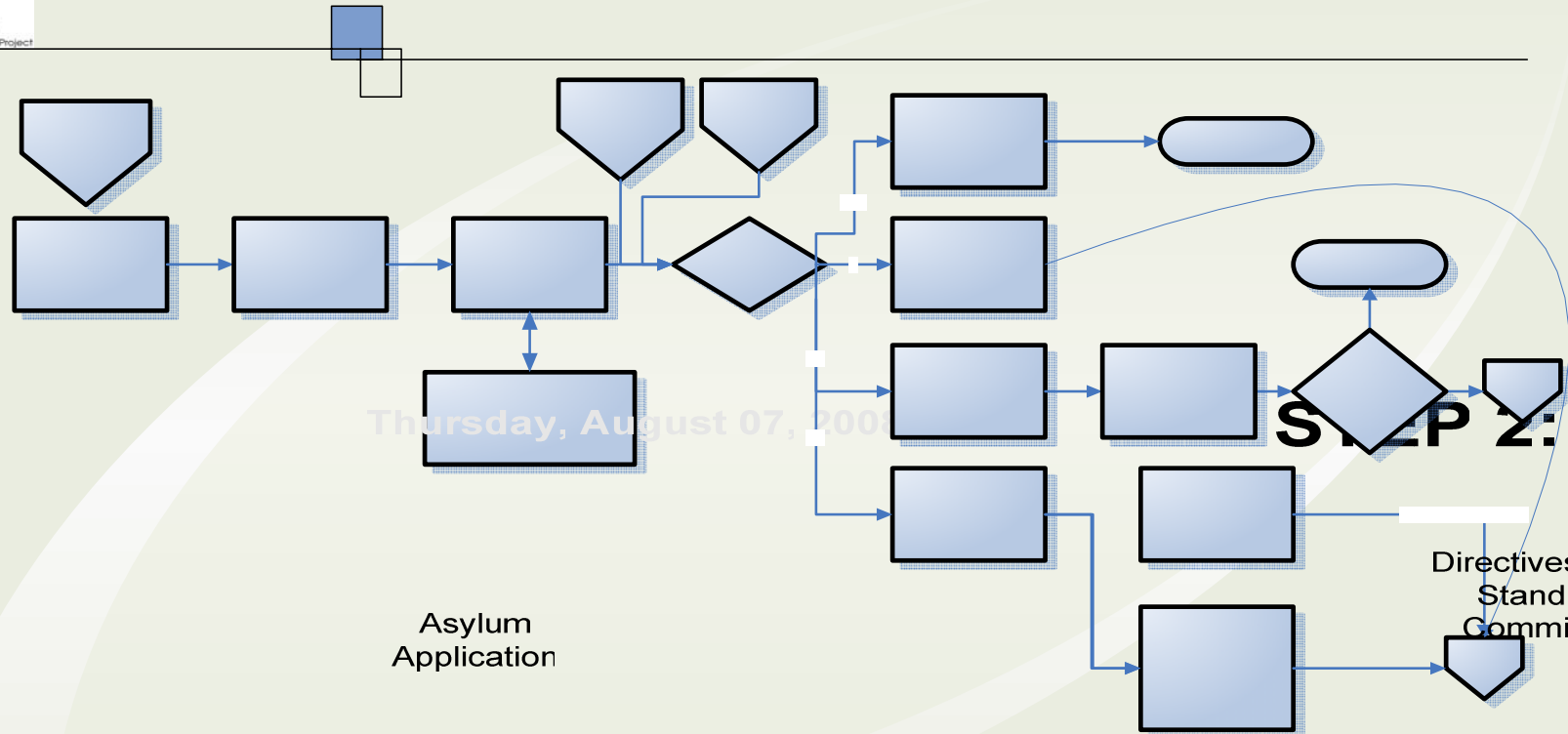
- An asylum-seeking permit will be issued to all applicants in terms of section 22(1) of the Refugees Act. This permit must be renewed on stipulated dates up until a decision is made on the matter. Non-renewal or non-compliance with the stipulated conditions may result in an application being rejected, after which arrest and deportation may follow.

DHA is required to provide translation services at the RRO but this is not always the case. Some applicants may require a translator and it might be useful if an asylum seeker is accompanied by a trusted translator to assist in completing forms or completing an interview.

It is therefore important that asylum seekers comply with all the conditions stated in the asylum-seeking permit. The Refugee Reception Officer and/or organisations specialising in refugee matters will provide the necessary advice should an asylum seeker need to vary the conditions on the permit.

The application form is then forwarded to a Status Determination Officer – one of three structures that make decisions on asylum status. All applications received are first considered by the Status Determination Officer. In reaching a decision, the Officer follows the processes diagrammatically illustrated in the following process map:





Thursday, August 07, 2008

## STEP 2: STATUS

Asylum Application

Refugee Determination Officer receives Eligibility Application

Status determination hearing / interview is scheduled


Status determination hearing / interview

Directives from Standing Committee

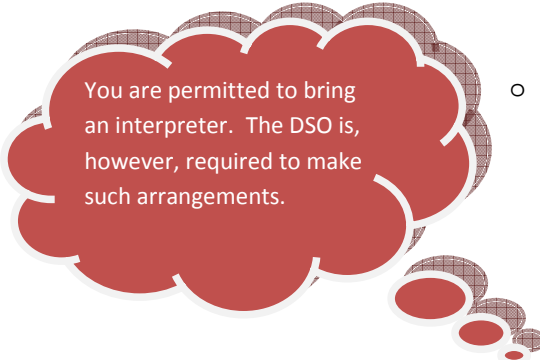
May review or require additional information from Applicant, RRO and

On receiving the application form, the Status Determination Officer (SDO) will schedule a date for an interview / hearing. **It might take up to a year to secure a date for an interview or hearing.** The applicant is required to attend the interview or hearing, during which the SDO may require additional information, or specialist information from other experts or the UNHCR. The SDO will review information before him/her and make one of four decisions:

- **Decision 1** – The SDO grants or approves the asylum application and issues a section 24 (3) (a) permit. The permit entitles the applicant to enjoy all rights and privileges accorded to Refugees in RSA. The permit protects a person from being returned to his or her country of origin and confers other rights, such as accessing most of the benefits accorded to children by various policies.
- **Decision 2** – If, following a review of the facts before him/her, the SDO believes that the application raises questions of law, the matter will be referred to the Standing Committee to provide directives. The SDO will use directives from the Standing Committee to make a ruling.
- **Decision 3** – The SDO rejects the application as unfounded. The applicant can either appeal to the RAB within 30 days or leave the country.
- **Decision 4** – The SDO rejects the application as manifestly unfounded, abusive or fraudulent. This decision is subject to an automatic review by the Standing Committee. The applicant will be provided with reasons for the decision within five days of the SDO's decision. In this instance, the applicant can either wait for a decision by the Standing Committee, seek advice from organisations working with refugees, or leave the country.

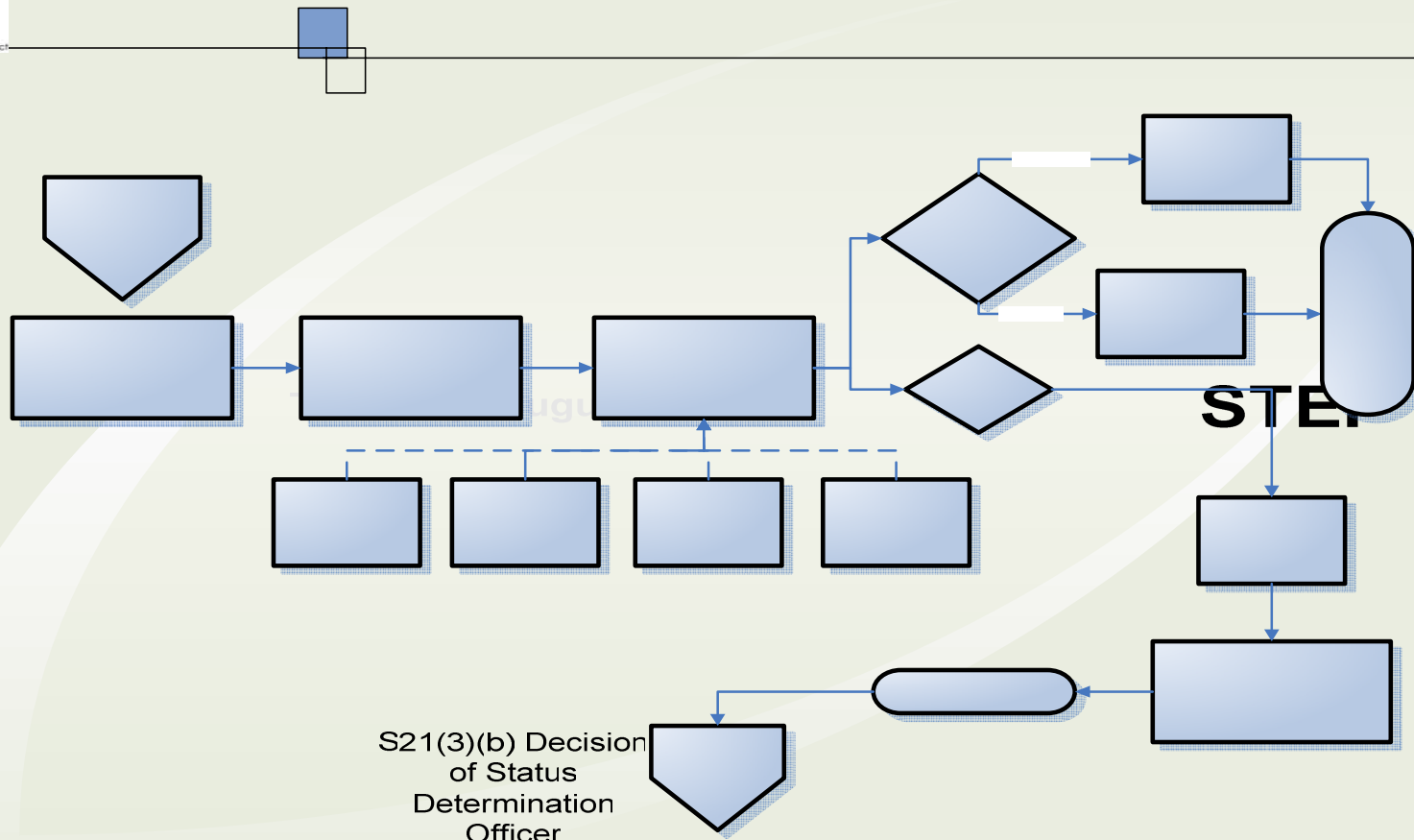


The application will be rejected if you don't attend the interview.



You are permitted to bring an interpreter. The DSO is, however, required to make such arrangements.

If matter is forwarded to the Standing Committee for review, the steps presented in the process map below will be followed. The Standing Committee will review various information sources. This includes hearing oral or reviewing written evidence from the UNHCR, or from a knowledgeable person. The committee independently investigate and may also request applicants to provide any other necessary information.



## STEP 3: STANDING

Standing Committee receives copies of transcripts from Status Determination Officer

Matter is scheduled for Review by Standing Committee

Standing Committee Status Determination decisions taken in t s24 (3) (b) of Refu

Based on its finding the Standing Committee may make the following decisions:

- If a matter concerns a question of law, it will prepare the necessary directives on the question of law before it and forward them to the SDO for processing. The directives will guide the SDO with regards to the question of law. The SDO will use guidance provided by the directives to determine status of the application.
- If a matter concerns an application rejected as manifestly unfounded, abusive or fraudulent by the SDO, the Standing Committee can **confirm or set aside** the decision of the SDO. The SDO is bound by the decision of the Standing Committee.

If the applicant decides to appeal a decision of the SDO, the following high-level process will be followed.

- The rejected **applicant can lodge an appeal within 30 days** with the board and complete the necessary forms.
- The **appeal board will schedule the matter for a hearing**. On the day of the hearing the board will review various information sources. This includes hearing oral or reviewing written evidence from UNHCR or from a knowledgeable person. The committee can on its own make enquiries and may also request the applicant to provide other necessary information. The board may also refer the matter to the Standing Committee for inquiry or investigation.
- Following the review, the board can **confirm or substitute or set aside** the decision of the SDO. If a rejection decision is confirmed, the applicant will be required to leave South Africa. If the decision is set aside or substituted, the board will communicate its decision to the SDO and direct him/her to comply with its decision.

A process map illustrating the steps in this procedure appears on the following page.



## Conclusion

The Refugees Act is the overarching policy framework for matters relating to refugees and asylum seekers in RSA. Children, particularly those with guardians, are not required to fill in a status determination form. The parent or guardian must include the children in his/her application. The South African Courts together with the Department of Social Development will oversee the process to determine the status of unaccompanied children.

## CHAPTER 4: INSTITUTIONS THAT OFFER PROTECTION FROM MALTREATMENT

### Introduction

South Africa has many structures and policies aimed at improving the level of protection of its inhabitants against maltreatment and abuse of power. Structures that can be accessed to enhance such protection include:

- **Chapter 9 institutions:** Several institutions were established by Chapter 9 of the South African Constitution to support constitutional democracy in South Africa. Though wholly funded by the government, they exercise a measure of independence. These institutions include the Human Rights Commission (HRC), the Commission for Gender Equality (CGE), the Public Protector, and the Commission for the Promotion and the Protection of the Rights of Cultural, Religious and Linguistic Communities.
- **Independent Complaints Directorate and Secretariat for Safety and Security:** These two constitutional structures exist to monitor the performance of the South African Police Service (SAPS) and to investigate complaints relating to abuses of power by the police.

### The Human Rights Commission (HRC)

The **Human Rights Commission** exists to promote respect for human rights and a culture of human rights; to promote the protection, development and attainment of human rights; and to monitor and assess the observance of human rights in South Africa. The Constitution empowers the HRC to investigate and report on the observance of human rights, to take steps to secure appropriate redress where human rights have been violated, to carry research and to educate the population on human rights issues.

The HRC is a strategic agency that can enhance the protection of RC&RUM from abuse and maltreatment. In the past, the HRC influenced policy changes by the DHA and Department of Social Development which enabled the children of asylum seekers to attend school while their applications were still being considered, and refugee children to access social grants. The HRC has also championed initiatives aimed at addressing xenophobia through the “Roll Back Xenophobia” Campaign. Thus, the HRC has and continues to assist refugee communities, families and children on two fronts. On the one hand, it assists in shaping up government policy so that it is refugee-friendly. On the other, its “Roll

Back Xenophobia Campaign” and related projects facilitate the safe integration of refugees, children and refugee unaccompanied minors into South African communities.

#### Contact Numbers for the HRC

Tel: (011) 484 8300

Fax: (011 ) 484 7149

Email:

#### The Commission on Gender Equality (CGE)

The **Commission for Gender Equality** exists to promote respect for gender equality and the protection, development and attainment of gender equality. The commission is empowered to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality (section 187 (1-2) of the Constitution of the Republic of South Africa, Act 108 of 1996). The CGE can shape gender aspects of government department policies and legislation to address any discriminatory aspect of it. The work of the CGE includes issues impacting on both females and males.

#### Contact Numbers for the CGE

Tel: 011 403 7182

Fax: 011 403 7188

Email: [cgeinfo@cge.org.za](mailto:cgeinfo@cge.org.za)

#### The Public Protector

**The Public Protector** (PP) is empowered to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice, to report on that conduct and to take appropriate remedial action (section 182 (1) of the Constitution of the Republic of South Africa, 1996). The PP can investigate any government department’s action or decision that is perceived to be improper or prejudicial and ensure that appropriate action is taken.

#### Contact Numbers for the Public Protector

Tel: (012) 366 7000 Toll  
Free 0800 11 2040

FAX: (012) 366 7047



## The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CPPRCRLC)

**The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities** exists to fulfil three constitutional objectives (section 185 (1-3) of the Constitution of the Republic of South Africa, 1996). They are to:

- Promote the respect for rights of cultural, religious and linguistic communities;
- Promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; and
- Recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa.

This commission exists to protect mutual respect and develop peace and friendship amongst different cultural, religious and language groups. In other countries, cultures and religions often clash and cause conflicts. In South Africa the constitution requires that these different cultures, religions and languages be respected. Violation of religious and cultural rights can be investigated by this Commission alone or jointly with the HRC.

### Contact Numbers for the CPPRCRLC

Tel: (011) 339 1775


Fax: (011) 339 2234

Email:

[chairperson@crlcommission.org.za](mailto:chairperson@crlcommission.org.za)

## The Bill of Rights

The primary policy used by all the above structures in protecting the rights of South African inhabitants is the Constitution, and particularly the Bill of Rights. These Commissions and other human rights organisations cannot exist without the Bill of Rights, which is paramount to the enjoyment and protection of the rights articulated in the Constitution. The Bill of Rights forms the Chapter 2 of the Constitution of the Republic of South



All Human Rights in RSA can be limited with laws of general application.

Africa, and provides 28 different rights to be enjoyed by everyone living in the country, as described in the table below.

If there is a dispute or lack of consensus, the Constitutional Court is the only Court that may interpret the provisions of the Bill of Rights. This Court is independent of the executive and legislative arms of government.

**Table 1: Bill of Rights**

<b>Right</b>	<b>Brief explanation</b>
<b>Equality</b>	Acknowledges that everyone is equal and entitled to equal protection and benefit of the law. The right makes it illegal to practice unfair discrimination against anyone on any grounds – including race, gender, religion, language, birth, etc.
<b>Human Dignity</b>	This right relates to the inherent dignity of human beings. It acknowledges dignity and requires that it be protected and respected.
<b>Life</b>	This right acknowledge that everyone has a right to life. The state and any of its organs are prohibited from taking a life.
<b>Freedom and Security of Person</b>	<p>This right outlaws the deprivation of freedom on arbitrary grounds or without just cause. Forms of arbitrary deprivation of freedom include detention without trial, public or private violence, torture, or punishments that are cruel or degrading. The Constitutional Court has interpreted this right to prohibit the death penalty and corporal punishment at schools and correctional facilities in South Africa.</p> <p>In addition to the above, this right empowers ordinary inhabitants of South Africa to make their own decisions regarding reproduction, security and control over their bodies, and not to be subjected to medical and scientific experiments without their consent. These are rights to bodily and psychological integrity.</p>
<b>Protection from Slavery, Servitude and Forced Labour</b>	This right prohibits all forms of slavery, servitude and forced labour.
<b>Privacy</b>	This right protects against unlawful searches of persons and their homes, prevents unlawful seizure of possessions and protects the privacy of communications.
<b>Freedom of Religion, Belief and Opinion</b>	This right enables individuals to freely observe and practice their religion and beliefs. Also individuals have rights to an opinion.
<b>Freedom of Expression</b>	This right guarantees freedom of expression of the press and other media, artistic creativity, academic freedom and scientific research. Prohibited forms of expression include propaganda for war, incitement of violence, advocacy of hatred based on race or ethnicity, etc.

<b>Assembly, Demonstration, Picket and Petition</b>	This right allows peaceful and unarmed demonstrations, assemblies, picketing, etc. Thus, any individual or group of individuals may demonstrate, march and present petitions to various organisations.
<b>Freedom of Association</b>	This right empowers a person or organisation to freely associate with other individuals or organisations.
<b>Political Rights</b>	Political rights enable a person to make their own political choices (including the formation of a political party), participate in the activities of a political party, vote in elections, stand for public office, and enjoy fair and regular elections for any legislative body.
<b>Citizenship</b>	This right prohibits the deprivation of citizenship to any citizen.
<b>Freedom of Movement and Residence</b>	This right allows individuals to move freely within and to leave South Africa. This includes the right to be provided with a passport enabling a person to freely leave and re-enter the country. The right also permits a person to reside anywhere in South Africa rather than being restricted to areas that were historically reserved for specific racial groups.
<b>Freedom of Trade, Occupation and Profession</b>	This freedom enables individuals to freely choose their trade, occupation and profession.
<b>Labour Relations</b>	This right requires employee organisations to engage in fair labour practices. Employees and employers are permitted to form and join organisations of their choice, and to engage in collective bargaining.
<b>Environment</b>	This right protects the environment and preserves it for future generations.
<b>Property</b>	This is the longest section of the Bill of Rights. It protects property ownership and prohibits arbitrary deprivation of property. This act also entitles communities deprived of property after 1913 because of apartheid to a right to restitution.
<b>Housing</b>	This right entitles an individual to a house and protection from eviction and/or demolition of a house. The state is required to pass legislation to enable progressive realisation of this right.
<b>Healthcare, Food, Water and Social Security</b>	This right provides for health care services, sufficient food and water, and social security. The state is required to pass legislation to enable progressive realisation of this right.
<b>Children's Rights</b>	Children's rights apply to people under the age of 18, and include the right to a name, nationality, family care, basic nutrition, and protection from maltreatment and exploitative labour practice. Children are not to be detained unless it is a last resort. In civil proceedings affecting children, they have a right to a state-paid legal practitioner.
<b>Education</b>	These are rights to education for children and adults, and the right, at a public educational institution, to receive education in an official language or, where practical, in a language of choice.

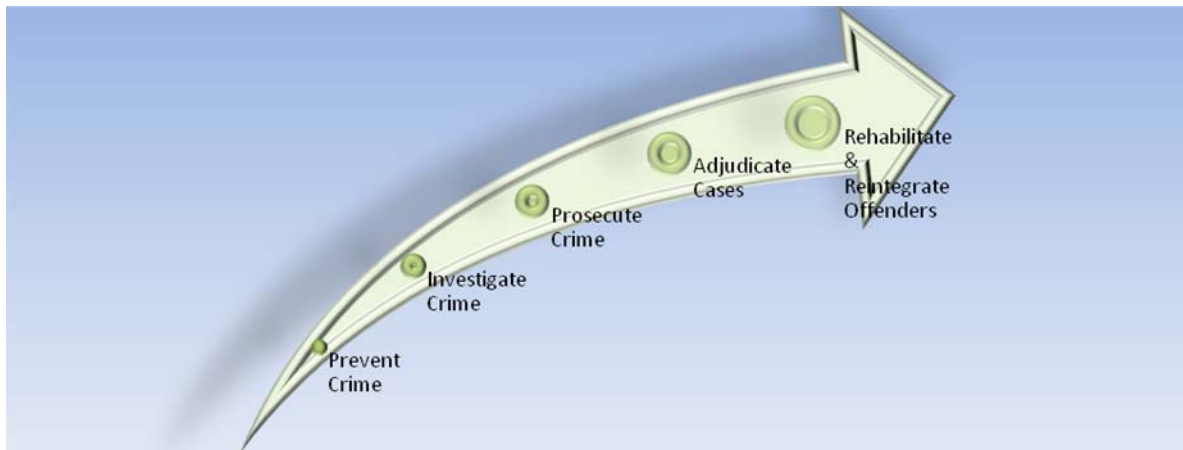
<b>Language and Culture</b>	This right provides for the use of one's language and participation in the cultural life of one's choice.
<b>Cultural, Religious and Linguistic Communities</b>	This right enables groups to form, observe, participate and belong in a cultural, religious and linguistic community.
<b>Access to Information</b>	This is a right to access information, held either by the state or other persons, that is essential for the protection and enjoyment of the rights outlined in the Bill of Rights.
<b>Just Administrative Action</b>	This right relates to administrative action that is lawful, reasonable and procedurally fair. The right entitles individuals affected by an administrative action to written reasons for that action.
<b>Access to Courts</b>	This right provides for a right to access a court or appropriate independent tribunal or forum to resolve a dispute by applying law.
<b>Arrested, Detained and Accused Persons</b>	These rights are those that are applicable to arrested, detained and accused persons. Rights include the right to remain silent, to be informed of the reasons for detention, to have a legal practitioner assigned if detained, and to a fair trial.

It should be remembered at all times that these rights are not without limits. They can be deprived through a law of general application that is reasonable and justifiable. The above rights can be enjoyed and enforced only if individuals know of their existence and how they apply to them. For RC&RUM, these rights are of paramount importance. They can be utilised to compel state organs to enhance the protection of RC&RUM. Unlike adults, children are granted a right to a state-funded legal practitioner in any civil matter affecting them. Thus, children who are asylum seekers can claim legal representation, at the expense of the South African government, when applying for refugee status.

## CHAPTER 5: PROTECTION FROM CRIME

### Introduction

The Justice, Crime Prevention and Security (JCPS) Cluster is composed of agencies that are essential for the protection of RSA residents from crime. The agencies are the South African Police Service (SAPS), the National Prosecuting Authority (NPA), the Judiciary, the Department of Social Development (DSD), and the Department of Correctional Services (DCS). Together, these institutions are responsible for the activities represented in the graphic below.



SAPS is the only agency with the constitutional responsibility to prevent and investigate crime. For complex, organised crimes, SAPS relies on specialised agencies of the NPA, such as the Directorate of Special Operations (better known as the Scorpions) and the Special Investigative Directorate. In preventing crime, SAPS utilises a partnership approach involving the community, other government agencies and all spheres of government.

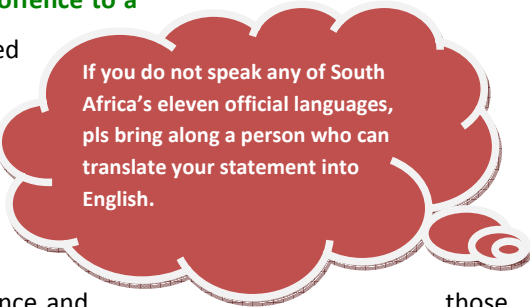
A victim of crime has the right to be treated with fairness, respect for their dignity and privacy, to receive information, protection, assistance, compensation & restitution.

### Reporting of Crime

**Once a crime is committed, the victim must report the offence to a police station, or alternatively dial 10111.** Uniformed

police officers will take the first statement from the victim. The victim will be interviewed in detail. The interview is essential to enable SAPS to understand the type of offence committed and its nature.

Understanding the nature and circumstances of the offence and those involved, including their description, is essential for proper investigation of the offence.



If you do not speak any of South Africa's eleven official languages, pls bring along a person who can translate your statement into English.

### Victim Empowerment

Often SAPS will, either prior to or after the interview, **refer the victim to counselling services.** These are services provided by trained practitioners employed by or funded by the DSD. The counselling service aims to empower the victim by addressing the psychological harm caused by the crime. On arranging for counselling services, check beforehand that they are offered free of charge, which is usually the case

### Investigation of Crime

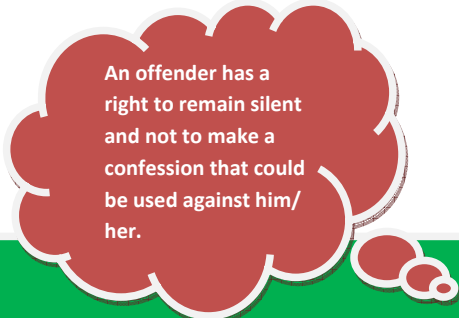
**SAPS will investigate the crime.** Plain-clothes police officers are responsible for investigating reported crimes. Their role is to collect sufficient evidence to link the offender to the crime scene as well as to obtain the essential evidence indicating that the accused person is, in fact, guilty. During the investigation, the investigating officer may interview the victim again. The interview aims to fill gaps in the statement made to uniformed officers, as well as to obtain additional information from the victim.

**The investigating officer is required to periodically brief the victim of progress made in the investigation.** If the crime is proven, and the offender is found, it is likely that SAPS will detain the offender and bring them before a court of law.

### Rights of the Offender

The **offender is entitled to receive bail and to enjoy the rights** accorded to arrested, accused and detained persons in the Bill of Rights. These include the rights:

- To remain silent;



An offender has a right to remain silent and not to make a confession that could be used against him/her.

- To be informed of the right to remain silent and the consequences of not remaining silent;
- Not to be compelled to make any confession or admission that could be used in evidence against the person;
- To be brought before a court of law as reasonably as possible to be charged, informed of reasons for continuous detention or released on bail or permanently; and
- To be presumed innocent until found guilty in a court of law.

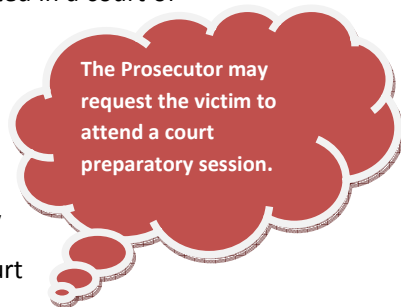
### Redress for Violation of Rights by the South African Police Service (SAPS)

If the above rights are not respected, the offender can complain to the Independent Complaints Directorate, the Secretariat for Safety and Security or the Chapter 9 institutions listed in the previous chapter. These entities are responsible for both investigating police abuses of power and monitoring police conduct. The offender should also bring any violation to the attention of his/her defence lawyer, the prosecutor, and the court. All these structures will take the appropriate action.

### Prosecution

On completing its investigation, SAPS hands over the docket and evidence collected to the NPA, the functions and powers of which are regulated by the National Prosecuting Authority (NPA) Act of 1996. The NPA is an independent authority which, following a review of evidence contained in a SAPS docket, decides whether to prosecute the offending party or not. If it decides to prosecute, this agency is required to prove beyond reasonable doubt that the offence was committed and that it was committed by the accused person/s. The proof or evidence is presented in a court of law.

The prosecutor may want to interview the victim or witness prior to the court date. In addition, the prosecutor may require that the victim attends a court preparatory session. The court preparatory session aims to prepare the victim and witnesses for the court environment and tell them what to expect.



### Court of Law

At the court of law, the proceedings are chaired by a judicial officer (known as either a magistrate or judge), who is also independent of SAPS and the NPA. The judicial officer will inform the person suspected of committing an offence



of their rights, including the right to legal representation provided freely by the state.

The suspect is free, if he/she can afford it, to pay privately for legal

**Normally the legal practitioner provided by the state will be an employee of the Legal Aid Board. The Legal Aid Board employs legal practitioners who have recently graduated from law school. They may not have the necessary technical expertise, but they do understand the law. These practitioners are only employed by the state for 12 months or less.**

representation and to conduct his/her own defence. In light of the fact that the NPA official is likely to be experienced in criminal matters, we highly recommend that the services of trained legal representatives be obtained for all criminal matters.

At first appearance, it is likely that the case may be postponed to enable the offender to acquire the services of legal representatives. However, once the services have been obtained, the case will continue. The legal representative is likely to interview the offender prior to court appearance to familiarise himself with the matter.

At court, the prosecutor (NPA) will present the case and call all its witnesses, including the victim, to prove the case. The defence lawyer of the offender will, if necessary, question the state witnesses. Thereafter the NPA will be asked to redirect the witnesses. Once the state has completed its case, the lawyer of the accused person will also call its witnesses, in most instances including the offender. The Prosecuting Authority will also interview all the defence witness.

**It should be noted that South African courts have different expectations from the Prosecuting Authority and the legal representatives of the accused. The Prosecuting Authority is required to prove beyond reasonable doubt that the accused person has committed the crime. The legal representative of the accused is required to provide evidence that will make the court doubt the evidence of the state. Thus, an accused person is not required to prove his or her innocence beyond reasonable doubt.**

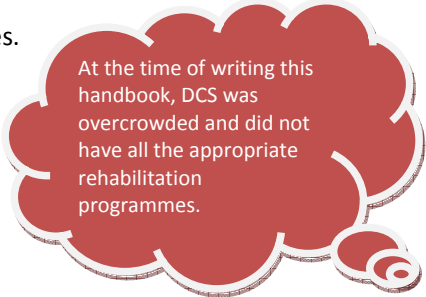
If doubts remain in the judicial officer's mind, the offender is likely to be released. However, if the judicial officer is certain of the offender's guilt, there are three possible sanctions, or punishments,



that can result. A fine can be imposed; the offender can be sentenced but released on warning by the court to serve time in the community; or the offender can be sentenced to spend time in prison.

### Correction and Rehabilitation

The Department of Correctional Service (DCS) has the responsibility to safely house all offenders who are sentenced to serve time at their facilities. Children are safely detained away from adult offenders and most of the facilities that keep child offenders are managed by the Department of Social Development. This department is government by the Correction Service Act, 1998, and the White Paper on Correctional Services developed after 1996.



At the time of writing this handbook, DCS was overcrowded and did not have all the appropriate rehabilitation programmes.

DCS offers rehabilitation services aimed at addressing the factors that caused a person to offend. Once the appropriate time has been served, the rehabilitated person is released and reintegrated back into the community or country of origin.

### Conclusion

The Constitution of the Republic of South Africa provides for the formation of the above agencies. However, their actions are predominantly regulated by the Criminal Procedure Act, 1977, amended in 2003. This is a unifying act regulating the investigative methods of SAPS, charging and prosecuting, judicial decisions and the correctional service functions of DCS. There are specific regulations governing the manner that child offenders and victims managed are managed by the police, prosecutors, social development and correctional services.

## CHAPTER 7: ACCESS TO EDUCATION

### Introduction

Refugee children and refugee unaccompanied minors who were forced to flee their countries of origin are currently in the process of rebuilding their lives in a new environment. Education is a powerful tool in the adaptation and social integration of refugee children and refugee unaccompanied minors in South African society. Education forms the basis for the personal and intellectual development of children and prepares them to contribute to society through their participation in the labour market.

An initial need assessment conducted by the RCP in 2002 identified access to education as a major concern for refugee children and refugee unaccompanied minors in South Africa. They face major challenges in accessing basic services including access to education.

International and national legal frameworks promote children's access to basic services. Refugee children are considered to be vulnerable in their countries of asylum; thus a provision in the Convention on the Rights of the Child stipulates that: *"States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention"*. The Convention further declares that: *"States Parties recognise the right of the child to education... with a view to achieving this right progressively and on the basis of equal opportunity"*. The Convention promotes compulsory, free primary education, and accessible higher education as well as vocational information and guidance .

International conventions emphasise children's right to education regardless of the status of their parents. The Constitution of South Africa has reaffirmed international conventions by providing for protection and promotion of the fundamental rights of both citizens and non-citizens. Access to some free public schools and compulsory education is applicable to both citizens and non-citizens. National and provincial legislation does provide for the right of non-South Africans to access education regardless of their parents' status.

## International Policy Frameworks

There are many international laws and policies regulating access to education by refugee children and refugee unaccompanied minors. Amongst them are:

### **a) United Nations Convention on the Rights of the Child, Article 28**

States Parties recognize the right of the child to education and, with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- Make primary education compulsory and available free to all; and
- Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in case of need.

### **b) Convention relating to the Status of Refugees, Article 22: Public Education**

The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

### **c) Universal Declaration of Human Rights, Article 26**

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

## Relevant National and Provincial Legislation

There are also several national laws and policies relating to the right to education for refugee children and refugee unaccompanied minors. These are outlined below.

### **Bill of Rights in the Constitution**

The Bill of Rights provides for protection and promotion of the fundamental rights of both citizens and non-citizens. Section 29 on Education states that: *“Everyone has the right to a basic education, including adult basic education; and to further education, which the state, through reasonable measures, must make progressively available and accessible.”*

Basic education is defined in the South African Schools Act, 1996, to mean that all children between the ages of 7 and 15 or in grade 1 to 9 must receive compulsory education.

### **Refugees Act, 1998**

According to Section 27 (g) of the Refugees Act, a refugee is entitled to the same basic health services and basic primary education that the inhabitants of the Republic receive.

### **Admission Policy for Ordinary Public Schools, Notice 2432 of 1998**

Both the South African Schools Act, 1996, and the **admission policy apply equally to learners** who are not citizens of the Republic of South Africa and whose parents are in possession of or awaiting a permit for temporary or permanent residence issued by the Department of Home Affairs. However, persons classified as “illegal aliens” must, when they apply for admission for their children or for themselves to public schools, show evidence that they have applied to the Department of Home Affairs to legalise their stay in the country in terms of the Aliens Control Act, 1991. If unable to produce the above evidence, the School Principal is required to **conditionally admit the child to school** but also provide advice of where the parents can obtain the necessary documentation.

In the Gauteng Province the admission policy is provided for in the General Notice 4138 of 2001. It contains the same provisions as above.

Admission to public schools is not based on whether the parents/guardians can afford to pay school fees or whether the learner is familiar with the school's language of learning and teaching. A learner is admitted first depending on the availability of space and then parents are made aware of their responsibilities relating to the payment of school fees. Although public schools are allowed to charge registration fees, these fees are not compulsory and are refundable.

The principal cannot declare a school full. Only the District Director has authority to do that.

When a learner has been refused admission to a school, the parents/guardians have a right to appeal to the MEC. The principal is expected to provide parents the necessary application forms and contact details of the MEC.

#### **Exemption of parents from the payment of school fees regulations, Notice 1293 of 1998**

This regulation provides for conditions within which parents will be exempt for paying school fees. The regulation specifies that if schools determine their annual school fees in terms of section 39 of the Act, the following categories will apply to exemption from payment:

- If the combined annual gross income of the parents is less than ten times the annual school fees per learner, the parent qualifies for full exemption;
- If the combined annual gross income of the parents is less than thirty times but more than ten times the annual school fees per learner, the parent qualifies for partial exemption;
- If the combined annual gross income of the parents is more than thirty times the annual school fees per learner, the parent does not qualify for exemption; and
- A person exercising parental responsibility of a learner residing in a foster home or foster care are exempted from paying school fees.

The regulations create opportunities for both citizens and non-citizens to apply for exemption from the payment of school fees in public schools, though not in independent schools. This provides opportunities for access to education by learners who cannot afford school fees.

It must be noted that parents whose applications for exemption are turned down have a right to appeal to the MEC. The principal is expected to provide the affected parents with the necessary appeal form and contact details of the MEC.

The above clauses discourage public schools from setting very high school fees, because the higher the school fees, the higher the chances of exemption for parents earning lower salaries.

### Conclusion

Considering that legislation adequately covers the right of refugees and undocumented children to access education, what remains is effective implementation of these rights. There is a need for an advocacy campaign to inform schools as well as refugee, asylum-seeker or other immigrant parents of the right of every child in the country to access education.

## CHAPTER 8: ACCESS TO SOCIAL SERVICES AND LOCAL INTEGRATION


### Introduction

This section of the report summarises legislation related to social security and practices relating to community integration in South Africa. A simplified process that an individual can follow to access social security is also provided. The chapter has been written from the point of view of the child refugee or unaccompanied minor refugee. It therefore excludes social service grants for the aged.

Social security and assistance is a universal, inalienable human right, as established by article 22 of the Universal Declaration of Human Rights, which states that:

*“everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international cooperation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity...”*

The Universal Declaration of Human Rights does not restrict this right to citizens of a state but applies it to all members of society. It therefore opens the door for non-citizens, including refugee children and refugee unaccompanied minors, to request that the state fulfil this obligation. In addition, the Universal Declaration of Human Rights further states that the right to social security and assistance can be fulfilled both through efforts of a nation-state and through international cooperation. Therefore, though the nation-state is primarily responsible for fulfilling the right to social security and assistance, other international actors are permitted and can be requested to assist.



Party States are not obliged to fulfil the rights of the Universal Declaration of Human Rights. States are only required to meet obligations outlined in conventions and/or protocols that they have ratified or acceded to.

### International Policy Frameworks

#### International Covenant on Economic, Social and Cultural Rights

Obligations relating to social security are outlined in the International Convention on Economic, Social and Cultural Rights. Article 9 establishes the right to social security for all. It specifically indicates that:

*The State Parties to the present Covenant recognises the right to social security, including social insurance.*

With regards to children, article 10 (3) of the Covenant requires of party states to adopt “*Special measures of protection and assistance... on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.*”

The above article demands that party states refrain from discriminating against children either by reason of parentage or other conditions. Thus, refugee children and refugee unaccompanied minors should be entitled to the same social assistance and protection as ordinary children born of South African citizens.

South Africa ratified this convention and is therefore required to fulfil its contents.

### **United Nations Convention on the Rights of the Child**

The UN Convention on the Rights of the Child stipulates that:

- Article 26 (1): States Parties shall recognise for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realisation of this in accordance with their national law.
- Article 26 (2): The benefits should, where appropriate, be granted taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefit made by or on behalf of the child.

The convention confirms the need to provide social assistance to children. It also creates an obligation, when granting social assistance, to take into account the resources and circumstances of the person responsible for the child’s maintenance.

### **Relevant National Legislation**

#### **Constitution of the Republic of South Africa**


Section 27 (1) (c) of the Constitution stipulates that everyone has the right to access social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. Section 27 (2) clarifies that this responsibility is that of the state and requires the relevant department to develop appropriate legislation to enable the above.



For children in general (including refugee children and refugee unaccompanied minors), section 28 (1) (a) and (b) of the Constitution acknowledges that every child has the right to family care or to appropriate alternative care when removed from the family environment. Every child has the right to basic nutrition, shelter, healthcare services and social services. To ensure implementation of the above, the DSD has developed much legislation to fulfil these needs. This legislation is briefly summarised below.

#### **South African Social Security Act, 2004**

The South African government passed the Social Security Act in 2004. The Act created an institution known as the South African Social Security Agency (SASSA), which is responsible for social security. The agency, according to section 3 of the Act, was created to ensure the efficient and effective management, administration and payment of social assistance; administration and payment of social security; and rendering of related services. In its operation, SASSA is guided by other social security legislation, some of which is outlined below.



SASSA is responsible for processing and making all social security payments, including child support grants.

#### **Regulations in terms of the Social Assistance Act, 2004**

On 22 February 2005 the DSD published regulations to aid the process of implementing the Social Assistance Act. The regulations provide two kinds of social assistance relevant for this handbook, namely the Child Support Grant and the Foster Child Grant.

Paragraph 4 (2) provides seven requirements for the child support grant, one of which is a requirement that the recipients must either be citizens or permanent residents of South Africa. The regulation excludes, or rather discriminates against, refugee children and refugee unaccompanied minors, preventing them from benefiting from a child support grant.

**To apply for a Child Support Grant, a South African identify document and the birth certificate of the child are required. These are issued by the Department of Home Affairs to citizens and permanent residents.**

Paragraph 6 provides regulations for the Foster Child Grant. The regulations simply indicate that a parent, primary caregiver, or foster parents can qualify for the Foster Child Grant. Provisions

regarding the Foster Child Grant do not discriminate against parents, foster parents or primary caregivers who are not citizens or permanent residents of the Republic of South Africa. Thus, non-citizens or non-permanent residents qualify for the Foster Child Grant.

**For applications for a Foster Child Grant, SSASA may, in terms of paragraph 10 (1) (c), accept identity documents issued by the country of origin or Department of Home Affairs.**

The following is a process to follow to apply for both the Child Support and Foster Child Grants.

<b>Child Support Grant</b>	<b>Foster Child Grant</b>
<p>1. Collect all documents listed below.</p> <ul style="list-style-type: none"> <li>• Identity document or birth certificate of the child.</li> <li>• Marriage Certificates.</li> <li>• Proof of personal income of the applicant, or a sworn statement.</li> <li>• Proof that the applicant is the primary caregiver of the child.</li> </ul>	<p>1. Collect all documents listed below.</p> <ul style="list-style-type: none"> <li>• Identify document issued by country of origin or South Africa’s Department of Home Affairs.</li> <li>• Proof of income of the child, proof that the child attends school or is on a waiting list.</li> <li>• An order of the court. A social worker can assist a foster parent to obtain a court order.</li> </ul>
<p>2. Complete the prescribed forms at the SASSA. Officials at the SASSA are required to assist applicants if they are unable to complete the forms. Applicants are also permitted to bring a person who may assist.</p>	
<p>3. Have the application form certified by an attesting officer.</p>	
<p>4. The primary caregiver must sign the form in the presence of the attesting officer.</p>	<p>4. The foster parent must sign the application form in the presence of the attesting officer.</p>
<p>5. All documents listed in 1) will be verified by a second attesting officer. This officer will certify that all requirements have been complied with. If not, the applicant will be required to collect additional documents or submit a sworn affidavit.</p>	
<p>6. The applicant will be given a photocopy of the application, and a letter acknowledging receipt of the application. The letter must contain the names of the applicants and the date of submitting the application, and must be stamped.</p>	
<p>7. Outcome of the application will be relayed in writing to the applicant.</p>	
<p>8. If unhappy with the outcome, the applicant can appeal. SASSA is required to provide a reason for each decision and an appeal procedure.</p>	

## CHAPTER 9: ACCESS TO HOUSING AND SHELTER

### Introduction

Housing and shelter are essential basic needs. Many refugee children live in extremely poor housing because their parents have no means to afford decent accommodation. The South African government does not provide free accommodation to refugees and there are no refugee camps. For refugee unaccompanied minors this situation is especially dire, particularly for those who live on their own and must stay in shelters or find themselves on the street. International treaties and national legislation guarantee access to proper housing and shelter. The following international treaties and programmes and national legislation applies to all – including refugee children and refugee unaccompanied minors.

### International Policy Frameworks

Many international treaties and programmes focus on the right of all to proper housing. The Convention on the Rights of the Child emphasises the need of children to be raised in proper living conditions to optimise their physical and mental development. The following treaties are essential in claiming the rights of refugee children and refugee unaccompanied minors to proper housing and shelter.

### The Universal Declaration of Human Rights

The Universal Declaration of Human Rights stipulates that:

- Section 17 (1): Everyone has the right to own a property alone as well as in association with others.
- Section 17 (2): No one shall be arbitrarily deprived of property.

To emphasise access to proper housing and shelter, the declaration states that:

- Section 25 (1): Everyone has the right to a standard of living adequate to the health and well being of him/herself and his/her family, including food, clothing, housing, and so on.
- Section 28 (d): This section is specific about the right of children to shelter. It recognises that every child has the right to a shelter.

## **United Nations Convention on the Rights of the Child (CRC)**

The Convention on the Rights of the Child states that:

- Section 27 (1): States Parties recognise the right of the child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
- The implementation of this right is explained Section 27 (3). It states that *"States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."*

## **The International Covenant on Economic, Social and Cultural Rights**

This Covenant emphasises the importance of good living conditions. It stipulates the following:

- Section 11 (1): The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right.

## **The United Nations Centre for Human Settlement (UNCHS) Global Urban and Observatory Programme and Habitat Agenda**

The objectives, principles and recommendations of this programme include:

- Adequate shelter for all;
- Sustainable human settlement; and
- Financing of shelter and human settlement.

## **Relevant National Legislation**

The following pieces of national legislation and policies on housing and shelter apply to all, including refugee children and refugee unaccompanied minors living in South Africa.

## **The Constitution of the Republic of South Africa**

Section 26 of the Constitution stipulates that: *"Everyone has the right to have access to adequate housing"*. This provision of the Constitution is further detailed in the Housing Act of 1997 as explained below.

### **The Housing Act, 1997**

The Housing Act came into effect on 1<sup>st</sup> April 1998, and focuses on the imperative to provide access to adequate housing for everyone, with priority for the poor. The Act provides norms and standards as regulated by the National Housing Code published in May 1999.

The Act defines the roles and responsibilities of the different spheres of government as follows:

- National government must establish and facilitate a sustainable national housing development process;
- Provincial governments must do everything in their power to promote and facilitate the provision of adequate housing in their province within the framework of national policy; and
- Municipalities must take all reasonable and necessary steps within the framework of national and provincial legislation and policy to ensure that inhabitants of their areas of jurisdiction have access to adequate housing on a progressive basis.

### **Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998**

This Act prohibits unlawful evictions and repeals the highly contentious prevention of illegal squatting. It provides for relevant factors to be taken into consideration in an eviction procedure.

### **Rental Housing Act, 1999**

The preamble of this Act acknowledges that rental housing is a key component of the housing sector and concedes that there is a need to promote the provision of rental housing, a need to balance the rights of tenants and landlords, and a need to create mechanisms to protect both tenants and landlords against unfair practices and exploitation. The Act responds to the need to introduce mechanisms through which conflicts between tenants and landlords can be resolved speedily at minimum cost to the parties.

The government responsibilities most applicable to refugee children and refugee unaccompanied minors as regards the promotion of rental housing include:

- Promotion of a stable and growing market that progressively meets the latent demand for affordable rental housing among poor people and those historically disadvantaged by unfair discrimination, by the introduction of incentives, mechanisms and other measures that:
  - improve conditions in the rental housing market;
  - encourage investment in urban and rural areas that are in need of revitalisation and resuscitation; and
  - correct distorted patterns of residential settlement by initiating, promoting and facilitating.
- To facilitate the provision of rental housing in partnership with the private sector.

### **National Housing Subsidy Scheme**

From time to time, the government introduces and implements individual ownership or institutional subsidies to households. At one stage the subsidy amounted to R 15 000 for all households earning less than R 3 500 per month.

### **The Housing Accord**

Through this Accord, the Department of Housing develops and implements plans to provide houses to poor households. For example, between March 1994 and November 1996, the Department of Housing facilitated the building of 123 139 houses.

### **Conclusion**

Housing and shelter are among the most important basic need of people legally residing in South Africa. Access to housing and shelter is intended for everyone, thus it is critical to advocate for access by refugee children and refugee unaccompanied minors.

Understanding the national legislation and programmes around housing and shelter facilitates actions that promote the access of refugee children and refugee unaccompanied minors.

## CHAPTER 10: XENOPHOBIA

### Introduction

South Africa has made remarkable progress towards establishing a free and democratic society based on respect for human rights and the rule of law. But despite progressive legal frameworks, some of which are summarised in this handbook, some South Africans in both the public and private arenas do not welcome foreigners – particularly black, African foreigners. These individuals do not differentiate between refugees, asylum seekers and other immigrants. As a result, black or African foreigners are subjected to various kinds of violence, abuse and crime. Prior to 2008, these incidents, though relatively common, were isolated occurrences. However, in April and May 2008, they became more intense and widespread, particularly in informal settlements located in Gauteng province. Black African foreigners' houses were burnt down, many individuals were assaulted and a large number were murdered. More than 60 people were reportedly killed in the attacks, with roads barricaded and police battling with the protesters.

Many theories were advanced to explain the cause of the April and May 2008 violence and crime. These range from perceptions held by some poor, black local residents that black foreigners from African countries compete with them for employment and living space. In addition, black foreigners from African countries are often blamed for the high rate of crime in South Africa.

### About Xenophobia

Xenophobia is an unreasonable fear, distrust, or hatred of strangers, foreigners, or anything perceived as foreign (unknown) or different by a certain population group. The term xenophobia comes from the Greek words *xenos*, meaning "foreigner" or "stranger," and *phobos* meaning "fear." The term is typically used to describe a fear or dislike of foreigners or of people significantly different from one-self.

Generally, two main elements play critical roles in the incidence of xenophobia. The first is a population group present within a society that is not considered part of that society. Often this group consists of recent immigrants (including refugees and asylum seekers), but xenophobia may also be directed against a group that has been present for centuries. Secondly, proximity to and direct social interaction with non-citizens will impact citizens' attitudes (negative or positive). A survey by the Southern African Migration Project (SAMP) in 1998 found that many South Africans have no direct

interaction and experience of foreigners, even from neighbouring countries. Those who have no contact with foreigners are most likely to have negative opinion of them.

Xenophobia can elicit or facilitate hostile and violent reactions, such as the mass expulsion of immigrants, killings, looting and other inhuman treatments experienced recently in South Africa.

### **International Policy Framework**

The international legal system acknowledges the basic human rights of all inhabitants of the world, regardless of whether they live in their countries of origin or in any other country in the world. The Universal Declaration of Human Rights envisions the realisation of basic human rights in any country in the world.

### **Universal Declaration of Human Rights**

On December 10, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights and called upon signatory countries to publicise the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

The preamble of the Declaration emphasises the recognition of the inherent dignity and equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world.

The Declaration recognises that disregard and contempt for human rights has resulted in barbarous acts which have outraged the conscience of humankind. The advent of a world in which human beings shall enjoy freedom of speech and belief, and freedom from fear and want, has been proclaimed as the highest aspiration of the common people.

The following principles and provisions of the Declaration are essential in dealing with the consequences of xenophobia.

- *Article 1:* All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
- *Article 5:* No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.



- *Article 13:* (1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country.
- *Article 14:* (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- *Article 17:* (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.

### Relevant National Policies

The Constitution of the Republic of South Africa guarantees the basic human rights of those who live in the country. Xenophobia is a gross human rights abuse that is intolerable. In May 2001, President Thabo Mbeki observed that all South Africans must be vigilant against *“any evidence of xenophobia”* against African immigrants. He noted that it is *“fundamentally wrong and unacceptable”* that South Africans should treat people who come to South Africa as friends as though they are enemies.

### The South African Constitution: Bill of Rights

The South African Constitution guarantees basic rights and freedoms to everyone living within the boundaries of the nation-state. Basic rights include freedom of speech, freedom of movement, legal protection, police protection and access to services (the Bill of Rights, Chapter 2 of the Constitution).

### The Roll Back Xenophobia (RBX) Campaign

In 1997, the South African Human Rights Commission (SAHRC) identified xenophobia as a major source of concern to human rights and democracy in the country. Then, in October 1998, the SAHRC (in partnership with other agencies) launched a public and media education programme known as the Roll Back Xenophobia (RBX) campaign. The campaign was designed to send a message, in the words of its founding document, that *“that an irrational prejudice and hostility towards non-nationals is not acceptable under any circumstances”*.

### Conclusion

The Republic of South Africa has progressive legislation on numerous issues. However, there is no legislation or policy framework on xenophobia. Though there have been numerous conferences and summits that have sought to develop frameworks to address xenophobia, these have not been elevated to policy level. Legislation and policies alone are not sufficient guarantees that xenophobia will not occur. Acceptance at individual and societal level of inalienable human rights as outlined in the Universal Declaration of Human Rights and the Constitution of the Republic of South Africa are essential to the prevention and reduction of xenophobia.

## APPENDIX 1: GLOSSARY OF KEY CONCEPTS

**Asylum-seeker** – Someone who has crossed an international border in search of safety, and refugee status, in another country. The Refugees Act, 1998, defines an asylum seeker as a “person who is seeking recognition as a refugee in the Republic.”

**Crime** – Any act that is prohibited by domestic and international law. This includes acts such as theft, remaining in a country without a permit, human trafficking, etc.

**Immigrant** – A citizen of one country who has taken a decision to become a resident of another country. Immigrants enter a country either legally, through formal programmes adopted by countries, or illegally, by crossing borders without a proper visa.

**Refugee Child** – The Refugees Act, 1998, defines a refugee as any person who has been granted asylum status. A child is defined in the Children’s Act, 2005, as any person under the age of 18, regardless of nationality. For the purpose of this Practical Handbook, a refugee child refers to any person under the age of 18, irrespective of nationality, who has been granted asylum.

**Refugee Status** – To be recognised as having refugee status, a person must have left his or her own country or be unable to return to it “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” (UN Convention Relating to the Status of Refugees). However, one does not practically have refugee status until the Department of Home Affairs processes and grants one’s application for asylum.

**Refugee Unaccompanied Minor** – A refugee under the age of 18 who is not accompanied by a parent or a legal guardian who is seeking or has been granted asylum.

**Offender** – A person who has been found guilty of committing a crime by a court of law.

**APPENDIX 2: IMPORTANT RESOURCES FOR REPORTING AND NETWORKING ON REFUGEE CHILDREN'S AND REFUGEE UNACCOMPANIED MINORS' RIGHTS**

If you feel that your rights or the rights of your child/client have been violated, or if you need additional information on the rights of these children, please contact the following agencies for advice or assistance:

**GAUTENG**

<p><b>Refugee Children's Project (RCP)</b></p> <p>Tel: 011 333 9266 Fax: 011 333 8757</p> <p>Email: <a href="mailto:rcpsa@rcpafrica.org.za">rcpsa@rcpafrica.org.za</a></p> <p><b>Web:</b> <a href="http://www.rcpafrica.org.za">www.rcpafrica.org.za</a></p>	<p><b>Black Shash</b></p> <p>Street Address: Khotso House, 1st Floor, 25 Anderson Street, Gauteng 2001</p> <p>Postal Address: P. O. Box 2827 Gauteng, 2000</p> <p>Tel: +27 11 8348361/5 Fax: +27 11 4921177</p>
<p><b>United Nations High Commissioner for Refugees UNHCR</b></p> <p>Tel: 012 354 8000 <a href="http://www.unhcr.org">www.unhcr.org</a></p>	<p><b>United Nations Children's Fund – UNICEF</b></p> <p>Tel: 012 354 8201 <a href="http://www.unicef.org">www.unicef.org</a></p>
<p><b>Committee of Refugees and Migrants in South Africa (CoRMSA), formerly known as NCRA</b></p> <p>Office 5B, South West Engineering Building, University of the Witwatersrand, Braamfontein, Johannesburg South Africa</p> <p>Tel: 011 717 4047 Fax: 011 717 4040</p>	<p><b>Lawyers for Human Rights (Johannesburg)</b></p> <p>2nd Floor Braamfontein Centre 23 Jorissen Street (corner of Jorissen and Jan Smuts) Braamfontein 2001</p> <p>Tel: 011 339 1960 Fax: 011 339 2665</p>
<p><b>Lawyers for Human Rights (Pretoria)</b></p> <p>Kutlwanong Democracy Centre 357 Visagie Street, Pretoria</p> <p>Tel: 012 320 2943 Fax: 012 320 2949</p>	<p><b>National Children's Rights Committee</b></p> <p>Tel: 011 339 1919</p>
<p><b>Childline: Child Abuse Reporting / Telephone Counselling</b></p> <p>Tel: 011 484 1070 Toll Free: 0800 055 555</p>	<p><b>Child Welfare South Africa</b></p> <p>P O Box 8539 Johannesburg 2000 South Africa Tel: 011 492 2888</p>

	<a href="http://www.childwelfareza.org.za">www.childwelfareza.org.za</a>
<b>Joburg Migrant Help Desk</b> CJ Cronje Building, 80 Loveday St. (Cnr Loveday and Plein St.) Ground Floor Tel: 011 376 8689 or 011 407 7028	<b>Department of Health</b> Tel: 012 312 0121 <a href="http://www.doh.gov.za">www.doh.gov.za</a>
<b>Forced Migration Studies Programme (University)</b> Tel: 011 717 4084	<b>FAMSA</b> Tel: 011 975 7106 <a href="http://www.famsa.org.za">www.famsa.org.za</a>
<b>Jesuit Refugee Service: For various services</b> Tel: 012 341 8096 Pretoria Tel: 011 331 0037 Johannesburg	<b>Office on the Rights of the Child in the President ORC</b> Tel: 012 300 5504
<b>Planned Parenthood Association of South Africa (PPASA)</b> Tel: 011 880 1182 <a href="http://www.ppasa.org.za">www.ppasa.org.za</a>	<b>South African Human Rights Commission</b> Entrance 1, Wilds View, Isle of Houghton Boundary Road, Parktown Tel: 011 484 8300 Fax: 011 642 8494
<b>Soul City</b> Tel: 011 643 5852 <a href="http://www.soulcity.org.za">www.soulcity.org.za</a>	Volunteer Child Network (CSIR): For volunteering and networking Tel: 012 841 2231 <a href="http://www.volunteerchildnetwork.org.za">www.volunteerchildnetwork.org.za</a>
Wits University Law Clinic University of the Witwatersrand Empire Road, Braamfontein Tel: 011 717 8552	

## KWAZULU NATAL

<b>Children's Budget Project, IDASA</b> Tel: 031 467 5600 <a href="http://www.idasa.org">www.idasa.org</a>	<b>Durban Refugee Network</b> Chester House, Durban Commerce 388 West Street, Durban <b>Tel: 031 306 0181</b>
<b>Lawyers for Human Rights</b> Room 31, Diakonia Centre 20 St. Andrews Street, Durban, 4001 Tel: 031 301 0531	<b>Refugee Pastoral Care Durban</b> Tel: 031 307 1074

## WESTERN CAPE

<b>Child Protection Unit (SAPS)</b> Tel: 021 393 2363 <a href="http://www.saps.gov.za">www.saps.gov.za</a>	<b>Children's Rights Project</b> Community Law Centre, UCT Tel: 021 959 2950 <a href="http://www.communitylawcentre.org.za">www.communitylawcentre.org.za</a>
<b>Molo Songololo</b> Tel: 021 726 5420 <a href="http://www.molo.com">www.molo.com</a>	<b>NICRO: For children in trouble with the law</b> Tel: 021 461 7253
<b>Refugee Rights Project of the University of Cape Town</b> Tel: 021 650 2678	<b>Scalabrini Centre of Cape Town</b> Tel: 021 465 6433
<b>University of Cape Town</b> Legal Aid Clinic, Room 439 Wilfrey and Jules Kramer, Law School Building Stanley F Middle Campus, Rondebosch Tel: 021 650 3551	

## LIMPOPO

<b>Refugee Children's Project (RCP)</b> Tel: 015 295 8184	<b>Musina Legal Advice Centre (Musina and Beitbridge)</b> Tel: 015 533 1002
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## APPENDIX 3: METHODOLOGY

### Introduction

The methodology, research process and techniques employed to prepare this Practical Guide are explained in this section of the report. In light of the fact that the Practical Guide is not meant to be an academic document, the methodology explanation is high-level and not detailed. The explanation provided aims to present to the reader a picture of the research methods, techniques and process followed in the development phases of this Practical Guide.

### Research Methodology

The drafters of this Practical Guide employed qualitative methodologies to gather empirical evidence that informed this Practical Guide. The evidence was gathered utilising an iterative framework that identified and confirmed themes constituting the next chapters of this Practical Guide. Figure one below illustrates the iterative processes followed to prepare this Practical Guide.



Figure 1: Research Process

The iterative research approach enabled the authors to identify and develop different themes relevant to this Practical Guide. Firstly, relevant international and national legal frameworks in the form of conventions, protocols, treaties and legislation addressing specific themes were analysed. The analysis enabled the authors to map high-level processes for accessing specific services relevant to RC&RUM.

The maps and information contained in the Practical Guide were confirmed through individual interviews with key specialists in the field of child rights and a focus group discussion with relevant service providers (mostly NGOs active in child rights advocacy).

The qualitative methods are included the following techniques:

- Literature Study – Literature published in peer-reviewed journals were collected and studied. The study identified the RC&RUM themes that were relevant to this Practical Guide. The researchers were analytical and used their knowledge and expertise to ensure that analysis was appropriate and of highest scientific standard.
- Policy Analysis – Policy relevant to particular themes was collated and analysed. The analysis aimed to understand policy interventions and to design generic process maps indicating the path that RC&RUM can follow to access services. The analysis was done within the scientific confines and ethical requirements of policy analysis and business process design.
- Focus Group Discussion – Focus group discussions were held with officials implementing services relevant to RC&RUM. The discussions confirmed generic process maps designed following the policy analysis.

### Process of Drafting the Practical Guide

A draft framework was compiled. The framework was presented in a workshop attended by key experts and child rights practitioners identified by RCP. The purpose of the workshop was to review the draft Practical Guide and identify gaps and areas for further research. Additional research was then conducted to deal with identified gaps and additional research. The improved version of the Practical Guide was then sent to different role players for piloting. The piloting was aimed at testing the practical implementation of the document. The users were also requested to collect practical experiences and cases studies that will assist those faced with similar cases. On reception of the inputs from the different users, the final Practical Guide was developed and submitted to RCP for final approval and editing.



## **APPENDIX 4: LIST OF REFERENCES**

### **International Policy Frameworks**

Universal Declaration of Human Rights (1948)

United Nations Convention Relating to the Status of Refugees (1951)

United Nations Protocol on the Convention on Refugees (1967)

African Union Convention on Refugees (1969)

The UN Convention on the Rights of the Child (1989)

International Covenant on Economic, Social and Cultural Rights

### **South African Legislation**

The Constitution of the Republic of South Africa Act 108 of 1996

The Rental Housing Act Number 50 of 1999

Prevention of Illegal Eviction Act Number 19 of 1998

The Housing Act Number 107 of 1997

Regulation in terms of the Social Assistance Act Number 3 of 2004

The South African Social Security Act Number 3 of 2004

Exemption of Parents from Payment of School Fees Regulation Notice Number 1293 of 1998.

South African School Act Number 84 of 1996

Gauteng School Admission Policy for Ordinary Public Schools, General Notice 4138 of 2001

Aliens Control Act Number 96 of 1991

Refugees Act Number 130 of 1998

### **Relevant Documents**

Child and Youth Care (A Journal for those who Work with Children and Youth at Risk and their Families), Volume 23 No 6 to 11 June to November 2005)

Children First (A Journal on Issues Affecting Children and Their Care), March/April 2004, Vol. 8, No. 54

Children and Their Rights, Child Rights Project, Lawyers for Human Rights, 2002

Legal and Policy Frameworks to Protect the Rights of Vulnerable Children in Southern Africa, Save the Children UK, 2006

Working with Foreign Children: A Guide for SANDF, Lawyers for Human Rights and Save the Children, 2004

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Towards a Means to Live: Targeting Poverty Alleviation to Realise Children's Rights, Children's Institute, University of Cape Town, December 2005

The State of the World's Children 2005, 2006, 2007 and 2008, UNICEF

A World Fit for Children 2003 (UNICEF)

The South African Children's Charter (National Children's Rights Committee)

Social and Economic Rights, Human Rights Committee (HRC) Quarter Review (October 1999)

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Social and Economic Rights in the Western Cape and a Report Back on the Eastern Cape Report of October 1999, Human Rights Committee (HRC) Quarter Review (November 2000)

South African Child Gauge 2005, Children's Institute, University of Cape Town (2005)

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Besides his involvement with RCP, Paulin volunteers for the Global Initiative for Peace & African Development (GIPAD) as executive president; Young Entrepreneurs for NEPAD (YENEPAD) as director of human development; and the Group of Refugees Without Voice (GRWV) as chairman of the board. Internationally, Paulin is a member of CARE International and the American Refugee Committee (ARC). He can be contacted at [paulin@maniema.org](mailto:paulin@maniema.org) or [paulin@africamail.com](mailto:paulin@africamail.com), mobile phone +27 82 780 0504.



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