

ACCESSING EDUCATION: NON-SOUTH AFRICAN CHILDREN

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The right to **basic education** is a **fundamental human right**. This right applies also to refugees, asylum seekers, and undocumented or stateless individuals. In practice, such individuals may **face barriers to access their education**.

WHAT DOES THE LAW SAY?



UNIVERSAL DECLARATION OF HUMAN RIGHTS

"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages...[and] compulsory." (Article 26)



INT'L COVENANT ON ECONOMIC, SOCIAL & CULTURAL RIGHTS

"Primary education shall be compulsory and available free to all." (Article 13)



THE CONSTITUTION OF SOUTH AFRICA

"Everyone has the right ... to a basic education, including adult basic education." (Section 29)

REFUGEES ACT OF SOUTH AFRICA

"A refugee ... is entitled to the same basic health services and basic primary education which the inhabitants of the Republic receive from time to time." (Section 27)

ADMISSIONS POLICY FOR ORDINARY PUBLIC SCHOOLS

"A public school must admit learners and serve their educational requirements without unfairly discriminating in any way." (Section 5)
The Admissions Policy confirms that undocumented children can be enrolled in school, but the parents must actively arrange documentation for the children. The time period provided is 3 months.

DO NON-SOUTH AFRICAN CHILDREN HAVE A RIGHT TO EDUCATION?



YES

Any child in South Africa - including **undocumented**, **asylum seeker**, and **refugee children** - can **not** legally be denied access to a basic education. This is confirmed in the laws above. The Admissions Policy "should apply equally to learners who are not citizens of the Republic of South Africa and whose parents are in possession of a **permit** for temporary permanent residence issued by the Department of Home Affairs. This would include asylum seeker and refugee children."

MUST NON-SOUTH AFRICAN CHILDREN PAY SCHOOL FEES TOO?

Non-South African children are subject to the **same** school fees as South African children. Parents / caregivers with refugee or asylum seeker status who cannot afford school fees can **apply** for a **fee exemption**, which is applied to at the school. There have been cases of asylum seeker parents struggling to be granted exemptions. Undocumented parents cannot apply for a fee exemption. The process is the same as for South Africans: applicants must submit **proof** of **monthly salary and expenses**. In reality, it can be **difficult** for an applicant with refugee/asylum status to receive an exemption. However, a learner **cannot** be excluded from school due to **non-payment** of fees. A school may also not retain a learner's report because the parent cannot pay fees.



YES

DO CHILDREN NEED AN IDENTITY DOCUMENT TO ENROLL IN SCHOOL?

YES - AND NO.

Parents and caregivers of learners must provide any identifying documents currently held (birth certificates, immunisation cards, etc.). However, if a child does not have these documents, they cannot be excluded from basic education.

ADMISSIONS POLICY FOR ORDINARY PUBLIC SCHOOLS

This Policy states that: 'the child must be admitted to the school conditionally while the parent obtains the needed documentation.' Caregivers will have **three months** from their child's conditional admittance to gather the appropriate **documents**. Caregivers must also provide **evidence** that they have applied for documentation in South Africa, by showing that they have applied to the Department of Home Affairs to legalise the child's stay in the country in terms of the relevant law (Immigration Act / Refugees Act).

WHAT KIND OF PROBLEMS EXIST AROUND NON-SOUTH AFRICAN CHILDREN AND EDUCATION?

There are several challenges that exist around undocumented children accessing education. There are challenges facing children and their families - and schools themselves, too.

CHALLENGES FACING CHILDREN



In reality, some non-South African children face difficulties in accessing education. Usually this is due to a lack of documentation. In cases such as this, parents and caregivers should enroll their children and obtain the documents within the three month grace period. However, in reality, it is very difficult to access documentation for some children in South Africa.



CHALLENGES FACING SCHOOLS

Schools can face severe government fines if they are found enrolling students who lack proper documentation, so many principals can be wary of admitting non-South African students. There have also been cases of principals facing legal action for enrolling undocumented students. Nevertheless, schools may not discriminate based on documentation status in an applicant's admission.

WHAT IS BEING DONE ABOUT IT?

The matter of undocumented, refugee and asylum children accessing education in South Africa has gained a lot of media attention (google it!). Several organisations have taken this matter to court. One major case is:

Minister of Home Affairs v Watchenuka

Confirmed the right of undocumented dependants of asylum seekers and refugees to be enrolled in public schools.

I'VE GOT MORE QUESTIONS. WHO CAN I ASK?

There are several organisations working on this issue. Here are the contact details of five organisations:

The Scalabrini Centre of Cape Town | info@scalabrini.org.za | Cape Town: 021 465 6433
Lawyers for Human Rights | Durban: 031 301 0531, Pretoria: 012 320 2943, Johannesburg: 011 339 1960
Legal Resources Centre | info@lrc.org.za | Johannesburg: 011 836 9831, Cape Town: 021 481 3000
Centre for Child Law | centreforchildlaw@up.ac.za | Pretoria: 012 420 4502
Equal Education | Cape Town: 021 361 0127 / 021 461 6582, Johannesburg: 081 510 2384, King William's Town: 043 642 1616



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