



UCT Refugee Rights Clinic

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Children's Rights Manual





There can be no keener revelation
of a society's soul than the way
in which it treats its children.

Nelson Mandela





A GUIDE TO SAFEGUARDING
REFUGEE AND MIGRANT
CHILDREN IN SOUTH AFRICA

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INTRODUCTION

The Refugee Rights Unit (RRU) at the University of Cape Town (UCT) has developed this manual to assist and guide parents, caregivers, social workers, and government officials in safeguarding refugee and migrant children who are in need of care and protection in South Africa. This manual also directs individuals to services which are available in Cape Town, which assist in matters involving children.

Who is a refugee child or migrant child?

The Children's Act 38 of 2005 defines a child as a person who is below the age of 18 years old.

Migrant and refugee children are **foreign** children, **even if** they are born in South Africa. A foreign child is defined as a child born to parents who are not South African citizens. Sometimes if a child has been abandoned in South Africa it is hard to determine the nationality of the child.

A **refugee** child can be defined in two ways:

1. The child, either accompanied or unaccompanied, has fled from persecution or war in their country of origin as defined in terms of Section 3(a) and (b) of the Refugees Act 130 of 1998; or
2. The child is dependent on a refugee caregiver or parent as defined in terms of section 3(c) of the Act.

A **migrant** child can be defined in two ways:

1. The child was born outside of South Africa and travelled to South Africa from another country or region, accompanied or unaccompanied by a parent or caregiver.

2. The child was born in South Africa to parents who travelled to South Africa from another country or region.

Rights of refugee and migrant children living within South Africa

All children in South Africa, regardless of their nationality or immigration status, are protected by and entitled to the rights afforded to children in the Bill of Rights in the Constitution. Section 28 of the Bill of Rights states that every child has the right to a name and a nationality from birth; to care and protection; basic nutrition; shelter; health care and social services; to be protected from maltreatment, neglect and abuse; not to be detained except as a last resort; and to be protected in times of armed conflict. Importantly, the best interests of the child are paramount in every matter concerning a child. Section 29(1) makes provision for the right to basic education for every child. Furthermore, everyone, which includes children, is afforded the rights to dignity, equality, and not to be discriminated against.

The rights mentioned above are given effect to by the Children's Act 38 of 2005, which applies to all children within South Africa. In South Africa, the mere fact that you are a child, under the age of 18, entitles to extra legal protection.

The information in this manual is derived from the experience of the Refugee Rights Unit in providing legal assistance to refugee and migrant children in South Africa. The practical guides listed below are common matters the clinic assists with.

PRACTICAL GUIDES

The UCT Refugee Rights Unit has, through its practical experience, identified the most common issues faced by refugee and migrant children. The common issues refugee and migrant children face relate to birth registration, obtaining documentation, accessing education, and/or abandonment. This booklet attempts to explain and provide advice relating to these.

1. BIRTH REGISTRATION

A fundamental right of children in South Africa is to have their birth registered irrespective of their nationality or the immigration status of their parents.

All children born in South Africa must have their birth registered with the Department of Home Affairs (DHA). Once a birth has been registered with the DHA a child will be given an unabridged birth certificate which has the information of the parents and their nationality on it. A birth certificate in South Africa is not the equivalent to citizenship and after the child's birth has been registered the child must be correctly documented.

The UCT Refugee Rights Unit is experienced in assisting with the registration of the child's birth. It is recommended that if a parent, carer, or social worker faces any issues in this process they should contact the Unit for assistance.

Registration process – how it works and important information

a. Giving birth - what to know

- Pregnant mothers can approach any government hospital for health care, even if they are undocumented. Any mother, documented or undocumented, is entitled to healthcare from a government hospital as it is classified as emergency health care.
- After giving birth, the mother will receive: 1) a DHA 24/PB form (proof of birth, signed by the doctor); 2) a maternity or hospital certificate; and 3) a clinic card from the hospital. It is important to keep these documents safe and to provide the correct details which are captured on the hospital forms. Be sure to spell all names correctly.

b. When and where to register the birth

- All children born in South Africa must be registered within 30 days of birth to acquire a birth certificate. This must be done at the DHA civic offices.
- If they are unable to register the birth within 30 days, they can make an application for a late registration of birth. See the requirements in point (d) on page 9.

c. Who can register the birth of a child?

- The birth can be registered by a parent, guardian, or any other person who is legally responsible for the child.

- Sometimes a lack of documentation of the parents can prevent a parent or caregiver from registering the birth of the child within the 30 days.

Examples:

If the **mother and the father are undocumented**, they will not be able to register the birth of the child until they are documented. They will need to complete a **late registration of birth** once a parent becomes documented. It is important to keep safe all documents received proving the child's birth pending the registration.

If the **mother is undocumented and the father is documented**, the DHA may require **DNA testing** of the father and child through a government facility in order to register the birth. Where DNA testing is required, the Children's Court will need to intervene to have DNA testing done, and to order the DHA to register the birth of the child.

UCT Refugee Rights Unit assists with the Children's Court issues and should be approached for assistance.



d. Documents needed for the registration application:

0 to 30 days

- DHA 24 (notice of birth form) - completed at the DHA offices on application
- For children born at home: DHA 24PBA (Proof of Birth Affidavit)
- For children born at a health facility: DHA24/PB (proof of birth) - provided at the health facility and signed by the doctor.
- Maternity certificate - provided at the hospital
- Clinic card - provided at the hospital
- Where necessary a marriage certificate
- Biometrics (palm, foot or fingerprint) of the child to be registered
- Fingerprints of parent/s
- Identification documents of the parent/s

31 days to 1 year

- DHA 24/LRB (notice of birth) - completed at the DHA offices on application
- For children born at a health facility: DHA 24/PB (Proof of birth).
For children born at home: DHA 24PBA (Proof of Birth Affidavit).
- DHA 288/A - Affidavit giving reasons for Late Registration of Birth (LRB)
- Maternity certificate - provided at the hospital
- Clinic card - provided at the hospital
- Where necessary a marriage certificate
- Biometrics (palm, foot or fingerprint) of the child to be registered
- Fingerprints of parent/s
- Identification documents of the parent/s

1 to 7 years

- DHA 24/LRB (notice of birth) - completed at DHA offices on application
- For children born at a health facility: DHA 24/PB (Proof of birth).
For children born at home: DHA 24PBA (Proof of Birth Affidavit).
- DHA 288/A - Affidavit giving reasons for Late Registration of Birth (LRB)
- Maternity certificate - provided at the hospital
- Clinic card - provided at the hospital
- Where necessary a marriage certificate
- Biometrics (palm, foot or fingerprint) of the child to be registered
- Fingerprints of parent/s
- Identification documents of the parent/s

7 years and above

- DHA 24/LRB (notice of birth)
- For children born at health facilities: DHA 24/PB (Proof of birth).
For children born at home: DHA 24PBA (Proof of Birth Affidavit).
- DHA 288/A (Affidavit giving reasons for LRB)
- Maternity certificate - provided at the hospital
- Clinic card - provided at the hospital
- Where necessary a marriage certificate
- Biometrics (ID-size photo and fingerprint) of the person to be registered
- Fingerprints of parent/s
- Identification documents of the parent/s

2. DOCUMENTATION FOR REFUGEE CHILDREN

The Refugees Act 130 of 1998 allows for dependents of asylum seekers and refugees to qualify for the status of the file holder. A child could take on the status of their parent, through an application for **family joining**. The child would then be put under the parent's file and documented.

Application process

The UCT Refugee Rights Unit assist refugees and asylum seekers in making applications for family joining.

1. Who can be joined?

- The Refugees Act states that a dependent can be joined to the file holder's application. A dependent can be a husband or wife, a child, or other dependents such as an elderly parent.
- Where a child is not your direct descendant, the child will first need to be placed in your legal care through the Children's Court before being joined to the main member's file.

2. When and where to go?

- Children are usually only joined to their parents file once they are 3 years old. It is thus important to first register the child's birth if they are born in South Africa.
- The application can be done at a Refugee Reception Office (RRO).
- If the file holder has refugee status, the application must be done at the Refugee Reception Office where the file holder renews their refugee

document. Alternatively, the file must be transferred to another Refugee Reception Office for good reason.

- If the file holder is an asylum seeker, they may apply at their nearest Refugee Reception Office.

3. Types of family joining applications and documents needed

- The person applying should have copies of their asylum documents, and depending on who is being joined, a copy of a marriage certificate, copies of birth certificates and any other documentation that proves the identity and relation of the person being joined. An affidavit can be used to explain the dependency or family relationship if any of these documents are missing.
- There are different requirements for different scenarios:

Examples:

Child is born outside of South Africa

- If a child is born outside of South Africa with a birth certificate that states the parent's name, this is proof of the child's identity and the child's relation to the parent. If the birth certificate is not in English, it will need to be translated for the application. Please see the end of this manual for a list of places that do translations.
- If the child has no birth certificate, then some kind of proof of that child's identity and relation to parent or care giver is necessary. In this case an affidavit attesting to the child's identity and relation is useful. There may be affidavits from different people who can attest to the relation between the child and care giver. If the Department of Home Affairs is not satisfied with this, they may request that a DNA test is done to satisfy the relationship.

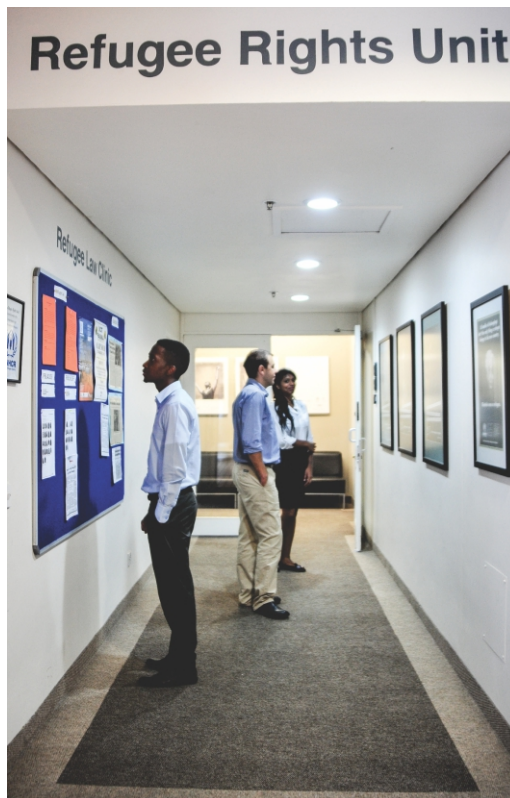
Child is born in South Africa

- If a child born in South Africa has a birth certificate that states the parent's name, this is proof of the child's identity and the child's relation to the parent.
- If a child is born in South Africa and does not have a birth certificate OR the birth certificate does not contain the name of the parent seeking to join the child, as above, there should be an affidavit attesting to the child's identity and their relation to the person onto whose file they are being joined. There are other documents that may help in showing the relation between the child and the file holder, as well as the identity of the child. Examples of these are the child's clinic booklet, the notice of birth or proof of birth (especially if it has the file holder's name on) and the maternity certificate. If the Department of Home Affairs is not satisfied with this, they may request that a DNA test is done to prove the relationship. In cases where the parent cannot afford to do this the UNHCR may be able to pay.
- It is advised that a parent first tries to register the birth of the child in order to obtain a birth certificate before making a family joining application.

Children that are not directly or biologically related to the file holder

- If you are a refugee or asylum seeker and you are caring for a child that is not directly or biologically related to you, the child can be joined to your file by obtaining an order of care from the Children's Court before joining the child.
- In the Children's Court inquiry (see below), a social worker is assigned to the case. The social worker will investigate whether the carer is a suitable person to look after the child. If they find that they are, the

social will recommend to the Children's Court that the child be placed legally in the care of the caretaker. The Magistrate will then decide whether to make an order to place the child into the care of the caretaker. Once an order is given, the carer can take this order to the Department of Home Affairs to initiate the family joining process.





3. ACCESS TO BASIC EDUCATION FOR REFUGEE AND MIGRANT CHILDREN

In South Africa **all** children of a certain age have the right to education and the right not to be discriminated against. Section 29 of the South African Constitution states that **everyone** has the right to basic education. The right to education in terms of the Constitution has been interpreted to apply to all children living in South Africa.

By law, in accordance with the South African Schools Act No 84 of 1996, every child from the age of **seven** until the age of **fifteen** or the end of grade nine, whichever occurs first, **must** attend school. Children have access to public schools even if they are undocumented and cannot be denied admission merely based on their immigration status.

On the 10th of February 2020, Department of Basic Education **Circular No. 1 of 2020** was signed by the Minister and shared with all South African schools. The circular refers to the admission of undocumented learners and states that children should not be refused acceptance at a school because of lack of documentation. Where the child lacks official documents, schools should instead require parents, caregivers or guardians to offer alternative proof of identity, for example a sworn affidavit/statement as to the child's identity.

Often schools or the education department in the area are not aware of the rights of undocumented children and may insist on documentation or a birth certificate. The UCT Refugee Rights Unit has a lot of experience with talking to schools about these matters. If there are issues, contact the UCT Refugee Rights Unit for any further advice or assistance.

Important tips when applying for schools

1. It is important to apply to schools early. The admissions generally open in February the year before the student is intending to start.
2. When applying to schools, applications should be made to several schools in your area as the school of your choice may be full.
3. When applying, important documentation would be the child's birth certificate and documentation such as asylum, refugee status or other immigration documents such as a study visa. If the child does not have a birth certificate or other documentation, the parent, carer or a lawyer may provide an affidavit or sworn statement that fully identifies the child, this must include the child's full name, date of birth.
4. Documentation of a child is very important and can be very helpful in their access to education. A child should be joined to a parent or care-givers file if possible.





4. ACCESS TO HEALTH CARE

Every person in South Africa has the right to medical treatment and no one can be refused emergency medical treatment. This is laid out in section 27 of the South African Constitution. Everyone in South Africa has access to basic primary health care.

Pregnant mothers can approach any government hospital for health care, even if they are undocumented. Any mother, documented or undocumented, is entitled to health care from a government hospital as it is classified as emergency health care.

Refugee and asylum seekers, with or without a permit, who approach a public health care institution must be assessed according to the MEANS test. This has been prescribed in a directive that was issued to all public health care institutions by the National Department of Health on the 19th of September, 2007.

The UCT Refugee Rights Clinic has a lot of experience with talking to hospitals and clinics about these matters. If there are issues, contact the UCT Refugee Rights Unit for any further advice or assistance.

5. SEPARATED AND UNACCOMPANIED CHILDREN



All foreign unaccompanied or separated children in South Africa should be presumed to be in need of care and protection. Most foreign unaccompanied or separated children lack identification documents.

An unaccompanied foreign child is a child, who is not a South African national, who has been separated from both parents and other relatives and who is not being cared for by an adult, who, by law or custom, is responsible for doing so. For example, a child who entered the country on his own and has no parents or any family members in the country.

A separated foreign child is a child who is not a South African national and who is separated from both parents or from the previous legal/customary guardian, but not necessarily from other relatives. For example, a child being cared for by an aunt or uncle, sibling or distant relative.



If you know of an unaccompanied or separated child, the first thing to do is to approach the nearest office of the Department of Social Development (DSD). The DSD will assist with opening a Children's Court inquiry and, if the child is unaccompanied, find a place of temporary care for the child.

Where the child is unaccompanied, it is after hours, or you are unsure where the nearest DSD offices are, the child can be taken to a police station. A police officer will contact the DSD. The DSD must help every child even if the child is undocumented.

The UCT Refugee Rights Unit is trained to assist in matters involving separated and unaccompanied minors. Our attorneys will represent the children and act in their best interest.

The Children's Court inquiry: with separated or unaccompanied minors

A Children's Court inquiry must be conducted when dealing with separated or unaccompanied minors as they are in need of care and protection.

The Children's Court inquiry - which is explained in detail below - will have different functions depending on whether the child is unaccompanied or separated.

1. Unaccompanied children

Where a child is **unaccompanied** the Court will need to investigate and determine whether it is better to reunite the child with their family in their country of origin or look towards a long-term solution of placement in

South Africa. While the court is determining what is in the best interest of the child, it will make a temporary order to place the child in a care facility.

a. Reunification

- The court may order for the child to be reunited with their family in their country of origin, but only after adequate investigation and a finding that it is safe for the child to return home. Where tracing is successful an assessment should verify that family reunification is in the best interests of the child. If there are serious concerns, it may be necessary to involve the appropriate local authorities, existing welfare systems, other agencies and local communities for any further action or if support is required.
- Return of an unaccompanied foreign child, who is not a refugee, to his or her country of origin can only occur after a Children's Court inquiry, in which the child was represented, which confirms that a government organ or non governmental organisation in the country of origin is willing to receive the child and provide him or her with the necessary support once there.
- A refugee child cannot be returned to their country of origin as it will place the child at risk! The child will have to be placed in a care facility.

b. Placement in a care facility

- If reunification within a reasonable time is not possible, long-term solutions need to be found for the child in South Africa. The Court may make an order placing the child in a care facility, along with an order in terms of Section 46(h) instructing the Department of Home Affairs to document the child. The child may be fostered or adopted.

2. Separated children

If the child is **separated**, the Children's Court may, after proper investigation, grant an order of care placing the child in the care of a caregiver. After this the child will be joined to the care giver's file. The court may make an order instructing the DHA to document the child.

The investigation by the Children's Court with unaccompanied minors

Although an investigation and report by the social worker is given to the court in every matter, when dealing with unaccompanied minors, specific investigations must be completed.

Prior to finalising a Children's Court inquiry, investigations may include the following:

- An age assessment by the District Surgeon
- A determination of whether the child appears to have a refugee claim
- Referral to UCT Refugee Rights Clinic for expert assistance
- Legal representation - the child requires legal representation to protect his or her best interests, irrespective of whether the child has an asylum claim. Referral may be to UCT Refugee Rights Clinic or Legal Aid South Africa.
- Family tracing, which should begin as soon as possible. This is done with the assistance of the Red Cross, International Organisation for Migration (IOM), or International Social Services (ISS) South Africa.
- A determination as to whether there is a suitable foster parent in the Refugee community

6. CHILDREN'S COURT INQUIRY

The Children's Court has a wide jurisdiction in matters involving children, including matters involving foreign children (both documented and undocumented). The Children's Court can hear and make orders concerning all children within South Africa; for the protection and well-being of a child, the care of a child, the paternity of the child, the provision of governmental services for children, and the placement of a child into care facility.

When to approach the Children's Court

The child is under the age of 18 years and is in need of care and protection. Documentation of the child is not relevant to who can be assisted.

The UCT Refugee Rights Clinic assists parents, social workers, the courts, and children themselves with Children's Court matters. Although the Children's Court can hear any matter concerning a child, from our experience the matters involving foreign children are usually the following:

- a. A child is unaccompanied, abandoned or separated from their parents
- b. Family reunification in the child's country of origin
- c. A child is without documentation and is unable to become documented through the care giver or parent
- d. The parents are unable to obtain a South African birth certificate for the child
- e. Paternity and maternity testing when the parents are unable to give consent
- f. The child is in need of care and protection
- g. The child has been unable to access a public service from an organ of state to which the child is entitled

How to open an inquiry

A person assisting a child, or the child him or herself, can either approach the closest office of the Department of Social Development or the closest Magistrates Court in order for an inquiry to be opened.

A social worker will then open a Children's Court inquiry through the Children's Court. If the Children's Court was approached first, a social worker will be assigned to the case.

If the child is in immediate danger (e.g. they are being abused or are abandoned) the child can be taken to the closest police station for assistance. The police will contact the Department of Social Development, and a social worker will be assigned.

The process at the Children's Court

The processes of the Children's Court will differ depending on the matter. Generally however the Children's Court follows the process below:

1. A social worker is assigned by the court or brings the case before the Children's Court.
2. Where a child was placed in a temporary care facility by the social worker pending the matter being heard, the court will confirm the temporary placement of the child.
3. The court will postpone the matter for further investigation - investigation will differ depending on the matter.
4. Investigations will be done and a report will be compiled by the social worker who will make recommendations as to what should happen.
5. Once the investigation and report are given to the magistrate, the court will make the appropriate order of court.

7. MINISTERIAL EXEMPTION: EXCEPTIONAL CIRCUMSTANCES

The Minister of Home Affairs may grant foreign nationals a ministerial exemption, which would allow the foreign national permanent residence in South Africa for a specified or unspecified amount of time. The exemption may be granted only under special circumstances. Some instances may be if a foreign national was either too young when they arrived in South Africa or was born in South Africa to foreign national parents and thus do not have an asylum claim themselves. Another example may be if the child is no longer in contact with their parents or risks being stateless. It is necessary to apply for a ministerial exemption.

This measure is only used in exceptional circumstances.

The application:

1. Affidavit:

- a. The affidavit should be the story of the individual applying written out and it should emphasise what could be called 'special circumstances'. This should include how the person came to South Africa (or if he/she was born in South Africa), who they came with; and their life in South Africa, such as schooling, their care givers, foster care or children homes, work and general life experiences. The UCT Refugee Rights Unit can assist clients with the writing of an affidavit.
- b. The affidavit can then be taken to a police station to be commissioned (stamped and signed by a commissioner of oaths).

2. Form 47:

- a. Form 47 in the Immigration Act Regulations needs to be filled in by the applicant.
- b. The form requires the personal details of the applicant and an explanation of why the applicant should get the exemption.
- c. The form also states that the applicant needs to attach:
 - The applicant's passport / asylum permit / refugee status / visa to stay in South Africa. If they do not have any documentation, anything that can help identify the individual, for instance clinic cards or expired passports.
 - The applicant may also attach any other documentation to support their applicant (this may include school reports, tertiary education certificate/s, the affidavit, etc.).

3. Department of Home Affairs:

- a. Once the applicant has completed the Form 47 and their affidavit, they should take those, as well as the copies of all documents mentioned above to the Department of Home Affairs.
- b. A Home Affairs official should accept the documents and sign the form.

The UCT Refugee Rights Unit assists with these applications. A consultation can be booked with UCT to assist with the completion of the documentation. The client should provide all evidence of their stay in South Africa that would support their story as well as any asylum documentation, visa or passport.

CONCLUSION

The aim of this manual is to advise children and their caretakers of their rights in South Africa and how these function in practice. The Unit is experienced in these matters and should always be contacted for advice and assistance when dealing with refugee and migrant children.



CONTACTS

DEPARTMENT OF HOME AFFAIRS, REFUGEE RECEPTION OFFICES

PORT ELIZABETH REFUGEE RECEPTION CENTRE

Centre Manager: Mr Sabelo Ngxitho
Email: sabelo.ngxitho@dha.gov.za
Telephone: 041 404 8304/ 05/ 11
Address: 2 Neil Boss Road, Korsten, Port Elizabeth

PRETORIA: DESMOND TUTU REFUGEE RECEPTION CENTRE

Centre Manager: Ms Bangwalang Chiloane
Email: bangwalang.chiloane@dha.gov.za
Telephone: 012 395 4174/ 4000
Mobile: 066 473 0631
Address: 352 Es'kia Mphahlele Drive, Asiatic Bazaar, Pretoria, 0001

MUSINA REFUGEE RECEPTION CENTRE

Centre Manager: Mr Jimmy Malemela
Email: jimmy.malemela@dha.gov.za
Telephone: 015 534 5300
Mobile: 083 852 0104
Address: 8 Harold Grenfell Street, Musina, Limpopo

DURBAN REFUGEE CENTRE

Centre Manager: Ms Naleen Balgobind
Email: naleen.balgobind@dha.gov.za
Telephone: 031 362 1201
Fax: 031 362 1220
Address: 137 Che Guevara Road, Glenwood, Durban, Kwazulu-Natal

CAPE TOWN REFUGEE RECEPTION OFFICE

Centre Manager: Ms Akos Essel
Email: akos.essel@dha.gov.za
Telephone: 021 421 9173/ 9200
Mobile: 066 300 7281
Address: Nelson Mandela Blvd, Cape Town City Centre, Cape Town

DEPARTMENT OF HOME AFFAIRS, CIVIC OFFICES

HOME AFFAIRS CAPE TOWN

Telephone: 021 468 4500
Address: 56 Barack Street, Cape Town

HOME AFFAIRS WYNBERG

Telephone: 021 763 6400
Address: 1 Maynard Mall, 70 Main Road, Wynberg

HOME AFFAIRS BELLVILLE

Telephone: 021 944 6200
Address: 177, 181 Voortrekker Road, Bellville

DEPARTMENT OF SOCIAL DEVELOPMENT, WESTERN CAPE

General enquiries: 021 483 5045
Address: Union House, 14 Queen Victoria Street, Cape Town
There are metro offices across Cape Town. By calling the general enquiries they will be able to refer you to the closest office.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Toll-free hotline: 0800 100 030

TRANSLATION SERVICES

ALLIANCE FRANÇAISE DU CAP

Telephone: 021 423 5699
Address: 155 Loop Street, Cape Town City Centre, Cape Town

NGO'S ASSISTING REFUGEES

SCALABRINI

Telephone: 021 465 6433
Address: 47 Commercial Street, Cape Town City Centre, Cape Town
Website: www.scalabrini.org.za

LEGAL RESOURCES CENTRE

Telephone: 021 879 2398
Address: Greenmarket Place, 54 Shortmarket Street, Cape Town

ADONIS MUSATI PROJECT

Telephone: 021 762 4886
Address: 21 Church Street, Wynberg, Cape Town

CHILDREN'S COURTS / MAGISTRATES COURT

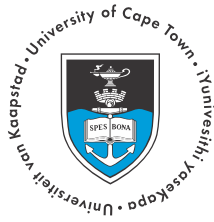
Wynberg 021 799 1928
Cape Town (CBC) 021 461 2225
Bellville 021 950 7715
Goodwood 021 591 3171/3172
Kuilsriver 021 903 1161
Blue Downs 021 909 9000
Khayelitsha 021 360 1400
Mitchells plain 021 370 4221

INTERNATIONAL SOCIAL SERVICES AGENCY

Telephone: 012 312 7790/ 012 312 7591

INTERNATIONAL ORGANISATION FOR MIGRATION

Telephone: 012 342 2789



UCT Refugee Rights Clinic

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With Contribution from



The Government of the United States