



**Joint Submission to the Portfolio Committee on Basic Education**

**Submission on the difficulties faced by refugees,  
asylum seekers and other foreign migrant children  
in accessing education**

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**Submitted by Lawyers for Human Rights and the Consortium for  
Refugees and Migrants in South Africa**

[www.lhr.org.za](http://www.lhr.org.za)

[www.cormsa.org.za](http://www.cormsa.org.za)

## **Submission to the Portfolio Committee on Basic Education**

This is a joint submission from Lawyers for Human Rights and the Consortium for Refugees and Migrants in South Africa (Cormsa) on the difficulties faced by foreign children in accessing education.

Lawyers for Human Rights is an independent human rights organisation with a thirty-year track record of human rights activism and public interest litigation in South Africa. LHR uses the law as a positive instrument for change and to deepen the democratisation of the South African society. To this end, it provides free legal services to vulnerable, marginalised and indigent individuals and communities, both non-national and South African, who are victims of unlawful infringements of their Constitutional rights.

The Consortium for Refugees and Migrants in South Africa (CoRMSA), is a registered Non Profit Organisation tasked with promoting and protecting refugee and migrant rights. CoRMSA is comprised of a number of member organisations<sup>i</sup> including legal practitioners, research units, and refugee and migrant communities.

Both Lawyers for Human Rights and CoRMSA have an interest in ensuring that all children have access to basic education in South Africa. This joint submission deals with the difficulties that foreign children in South Africa are encountering in accessing education.

### ***i. Legal and Policy Framework with regard to access and admissions***

In South Africa, access to education is guaranteed by the Constitution's Bill of Rights (Chapter 2, Section 29) which states: "(1) Everyone has the right to a basic education, including adult basic education". Everyone has been explicitly interpreted to include non-citizens. Furthermore the education system is regulated by the South African Schools Act No 84 of 1996 and related regulations. As noted above, these Acts make access to schooling a basic right and prohibit any kind of discrimination or exclusion, whether on the basis of nationality, documentation status or ability to pay.

This means that the South African government is obliged to provide adequate primary schooling for all children. All asylum seeker and refugee children have a right to primary education and are entitled to the same access to schooling as any South African child. Furthermore, primary schooling is compulsory in South Africa.

The Department of Education policy "A Public School Policy Guide" states that "every child has the right to be admitted to school and to participate in all school activities. This policy stipulates that a governing body of a public school may determine an admission policy for the school. However, the school's admission policy must be based on the guidelines determined by the Head of the Provincial

Education Department (HOD). If the applicant is refused admission the HOD must, through the principal of the school, inform the parent of the refusal and the reasons thereof.

It is very clear in the policy that if a child has been refused admission to a public school, the school principal must give a written explanation of why the learner was not admitted. We are finding that in dealing with cases of foreign children, especially refugee and asylum seeker children, schools have not been willing to engage with parents/care givers. We have also seen that certain school principals have been resistant to receiving learners/care givers, and are further refusing to advise them or refer to the Department of Education at the District level. There have been instances where LHR has intervened in communicating with schools principals to find that they will refuse to answer correspondence or take telephone calls. This has made it difficult and in some cases impossible to enrol children into public schools. A clear policy and policy directives on how to deal with such cases would be useful.

***ii. Requirement of documents as a prerequisite to school enrolment and registration***

The policy stipulates that the following documents are required to register a child at a public school:

1. Birth certificate
2. Immunization card
3. Transfer card / Last school report card

The policy makes provision for a child to be registered provisionally if these documents are not available and the parent/guardian may be given a reasonable time to produce these documents.

We find that schools are generally turning learners away if they are unable to produce any of these documents. There is no attempt to assist learners or to provisionally accept them, pending the availability of these documents.

Additionally if a school is full, they are obliged to refer learners to the Department of Education at a district level. We find that schools are not issuing this information to learners/parents and that the usual practise is to merely turn learners away.

***iii. Fee Exemptions***

Our concern with fee exemptions primarily is that parents/care givers of refugee, asylum seeker and even undocumented children have great difficulty in accessing the forms for fee exemptions. We have seen cases of unaccompanied foreign children who were under severe pressure to pay school fees despite having no means of financial or other support. We have seen cases where the schools have

handed over cases such as these to debt collectors who have proceeded to aggressively pursue unaccompanied foreign children with the unfortunate result of causing the child to leave the school.

The Consortium for Refugees and Migrants in South Africa made recommendations around the issue of foreign children's rights of access to education in its 2009 report. We have included some of these recommendations here. The full report can be found on the cormsa website: [www.cormsa.org.za](http://www.cormsa.org.za).

### **Re: Access to Education**

While relatively few refugee and migrant families have children of school-going age, severe obstacles remain for migrant children to access education. New national research suggests that 24% of the school-age children of asylum seekers are not in school. The reasons for this include, in order of importance, being unable to afford school fees; being without documents; being unable to afford transport, uniforms or books for school; and finding the local schools full.

The May 2008 attacks created obstacles to children's access to education due to, among other things, parents' fears of allowing their children back into unstable communities and the cost of transport for those sheltered far from their original schools.

It has further been noted that non-national children in schools report being regularly subjected to xenophobic comments by teachers or other students.

### **Recommendations**

1. The Department of Education needs to clarify the conflict between the South African Schools Act and the Immigration Act to ensure that children are not excluded from their right to basic education as a result of the ambiguous wording in section 39 of the Immigration Act.
2. Revise the Admission Policy for Ordinary Public Schools to reflect the right of children without South African birth certificates to access education.
3. Remove the reference to the Aliens Control Act from the Admission Policy for Ordinary Public Schools, replacing it with reference to the Immigration Act of 2002.
4. Ensure that all schools are trained to recognise the various forms of refugee and asylum documentation and grant children access on the basis of these documents.
5. DoE needs to further find systematic ways (possibly through subsidies) of addressing the hidden costs of education like school uniforms, transport to schools and these should be extended to cover refugee/migrant children.
6. Enhance capacity-building and training of all school staff members to address issues of xenophobia and to improve different groups of foreigners' access to education; there is therefore a need for the Race and Values Directorate within DoE to intensify its work.

**Re: Aspects affecting quality education:**

It has been noted that in specific locations, such as some inner city areas and some border areas, migrants, refugees and asylum seeker children have been accused of increasing overcrowding in schools. In most cases, their numbers are not significant compared with the numbers of South African children moving around the country and needing schooling, and therefore such capacity challenges are actually governmental planning problems rather than actual problems of volume.

There are very few adaptations in the South African education system – e.g. if individual schools offer additional instruction in migrant and refugee languages (e.g. French in some inner city schools), this is done on independent initiative of those schools rather than as a general policy of the education system. Certain schools in areas with large immigrant and refugee populations do make special provision for refugees and migrants in terms of learner support. The medium of instruction in primary education is the dominant indigenous language in each part of the country, and secondary education may either be in the local language, English or Afrikaans. Research suggests that foreign children do not have more difficulties dealing with the language of instruction in schooling than South African children (often of different linguistic background than to locally dominant language) do.

**It is thus recommended that learner support for non-citizen children be part of the formal policy of the education system and not be left at the discretion of individual schools.**

**Re: documentation and protection**

Although there is a well developed legal and policy framework for securing the rights of migrant children in South Africa regardless of their documentation, the framework is poorly implemented and significant abuses of migrant children's rights continue.

**Recommendations**

1. The Department of Education (DoE) should issue a directive to all schools to ensure that their admission policies do not require study permits from children who did not enter the country under such a permit (for instance, asylum seeker/refugee children)
2. The DoE should work together with the Department of Social Development to facilitate access for permanent and circular migrant children to schools and shelters.
3. DoE should work closely with other government departments (e.g. SAPS, Department of Labour) to ensure that the rights of refugee/migrant children are not violated and that they are not denied access to education. This is especially important in cases of child labour when children are supposed to be at school.

4. The DoE should intensify its engagement with the Department of Social Development to identify cases needing social work intervention before this has a negative effect on a learner. This is also important where refugee/migrant children need to be linked with programmes like Bana Pele. On the other hand, the Department of Social Development should increase the number of social workers who can assist unaccompanied minors and work closely with humanitarian agencies, including community-based organisations. It should also support the development of in-house training for social workers
5. Civil society and government should work to extend services for children to areas near the borders with Lesotho and Mozambique and this includes the right to education.

Kaajal Ramjathan-Keogh

Head: Refugee and Migrant Rights Programme

Lawyers for Human Rights

[Kaajal@lhr.org.za](mailto:Kaajal@lhr.org.za)

Sicel'mpilo Shange-Buthane

Advocacy Officer

Consortium for Refugees and Migrants in South Africa

[mpilo@cormsa.org.za](mailto:mpilo@cormsa.org.za)

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<sup>i</sup> *Cormsa's members are: Amnesty International, South Africa Chapter, The Black Sash, Centre for the Study of Violence and Reconciliation, Christians for Peace in Africa, Coordinating Body of Refugee Communities, Durban Refugee Service Providers Network, Forced Migration Studies Programme, University of the Witwatersrand, Jesuit Refugee Service, Lawyers for Human Rights, Musina Legal Advice Office, Refugee Children's Project, Refugee Ministries Centre, Refugee Pastoral Care, Sonke Gender Justice, South African Red Cross Society, Southern Africa Centre for Survivors of Torture, Tutumike Refugee Network, Cape Town, University of Cape Town Law Clinic, University of the Witwatersrand Law Clinic.*