

The Immigration Act in turn sets out the rights that other categories of non-nationals are entitled to. This is particularly important in relation to socio-economic rights, for example refugees are entitled to the same basic services as provided by government within the resources available to it.

Undocumented migrants would not necessarily enjoy this same level of socio-economic rights but they are entitled to be treated with dignity and respect in a fair, humane and equitable manner as part of the human race.

The obligations of non-nationals

As rights are synonymous with obligations, non-nationals have the duty to respect and abide by the laws of the land, just in as much the same way as citizens.

Xenophobia

The term Xenophobia is described as the general and irrational dislike of foreigners which is usually based on unfounded myths and stereotypes. It manifests itself in different ways such as insulting name calling, deadly attacks and institutionalised denial of basic services to non-nationals which is all contrary to the spirit and guarantees provided in our Constitution.

There are lots of misconceptions regarding non-nationals such as the numbers and consequently becoming the scapegoat for all social ills and unrealised economic expectations. A collaborative and multi-faceted approach by all of society is required to complement the efforts of the Commission in promoting and protecting non-nationals so as to achieve a just and equal society.

Contact the SAHRC for more information.

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Non South Africans

**also have rights
regardless of their
nationality**



Non-National and their rights

The South African Human Rights Commission (Commission) protects the rights of all people in South Africa, including non-nationals. It does this by using its powers in terms of the Act that governs it and by also working in partnership with a wide range of stakeholders to promote equality for all.

The different categories of non-nationals

The term non-nationals refers to the broad category of people who are not citizens or nationals of the country that they are in. In our case, this means that anyone who is not a South African citizen. The Immigration Act makes use of the term "foreigner" which it defines as an individual who is not a citizen or a resident.

To help you understand the different categories of non-nationals, it is important to know the reasons why people move from one country to another. This then informs the type of permit or authorisation that is needed to allow a person to be in the country as issued by the government, through the Department of Home Affairs.

Refugees

The Refugees Act 130 of 1998 defines a refugee as a person who has a well founded fear of being mistreated because of his/her race, tribe, religion, nationality, political opinion or membership of a particular social group.

Therefore, refugees are people who have been forced to flee their countries in fear of their lives because of persecution, human rights violations,



civil war or armed conflict. Refugees are people who have been officially recognised by the government as people in need of protection and are then granted special leave or status to remain in the country in the form of a refugee permit

Asylum seekers

Asylum seekers are people who have filed their applications for refugee status with the Department of Home Affairs but whose claims are still being processed by the relevant authorities. While they await the outcome of their application, they are issued with an asylum seeker permit, issued in terms of the Refugees Act.

The Immigration Act 13/2002 sets out the different categories of other non-nationals and the requirements for each category, such as:

Undocumented migrants

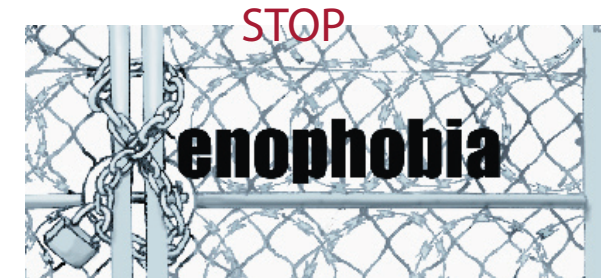
Often there is confusion in the use of the term as the general public sometimes wrongly assumes that all non-nationals are illegally in the country.

Undocumented migrants are those foreigners without the necessary authorization to be in the country, hence the popular term of illegal immigrants. The country is unable to give exact numbers of how many undocumented migrants are in the country due to the very nature of the status of people falling under this category.

Temporary residents

These have the necessary authorization through a permit that allows them to stay in the country for a limited period. As indicated at the outset, the underlying reason why a person is in the country informs the type of permit that is issued to any non-national. The Immigration Act lists these categories as tourists, students, medical treatment, crew, relatives, retired persons, exchange, corporate, work and diplomatic permits.

Permanent residents have the necessary authorisation to live in South Africa on a permanent basis. They are also entitled to the same rights as citizens, with a few exceptions such as South African nationality, voting rights and holding high office in sensitive government positions.



The rights of non-nationals

Many of the rights in the Bill of Rights, including socio-economic rights, are conferred on everyone and the Constitutional Court has held that the word "everyone" cannot be construed as referring only to citizens. The Refugees Act sets out the rights that refugees are entitled to such as the right to security of person, to study, to seek employment, to freedom of movement as the country does not currently have camps and most importantly, not to be forcibly returned to a country where he or she may be persecuted.