

# CHILDREN'S RIGHTS TO EDUCATION, HEALTH CARE AND SOCIAL ASSISTANCE

LAWYERS FOR HUMAN RIGHTS

 terre des hommes  
Help for Children in Need

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## CHILDREN'S RIGHTS TO EDUCATION, HEALTH CARE AND SOCIAL ASSISTANCE

Section 28 of the Constitution specifies a set of fundamental rights for children. These rights include the right to basic nutrition, shelter, basic health care services and social services.

Section 28 also states that a child's best interests are of paramount importance in every matter concerning the child. The Constitution recognises that children require extra protection because they are dependent on others for their safety and well-being.

## ACCESS TO EDUCATION

### Who has the right to access education?

Section 29(1)(a) of the South African Constitution state that "everyone has the right to basic education" and section 29(1)(b) says that everyone has the right to further education" and that the state must make such education available and accessible." This includes:

- Children with disabilities
- Undocumented children
- Asylum seekers and
- Refugee children
- Stateless children
- Migrant children

### At what age is a child supposed to start school?

In terms of the School Act, it is compulsory for children to attend school from the first day of the school year in which the child turns seven until the last day of the school year in which the child turns 15, or the end of grade 9, whichever comes first

### Admission to public schools

no learner may be refused admission to a public school on the grounds that his/her parents

- Is undocumented or does not have a birth certificate
- Is unable to pay or has not paid the school fees
- Does not subscribe to the mission statement of the school
- Has refused to enter into a contract in terms of which the parent waives any claim for damages arising out of the education of the learner

**Are you struggling to have your child place at school? Below is a provincial list of officials from the Department of Basic Education who work on placements:**

<b>Gauteng</b> Ms Mmule Madonsela Tel: 011 355 0640 Cell: 083 401 7644 Email: <a href="mailto:mmule.madonsela@gauteng.gov.za">mmule.madonsela@gauteng.gov.za</a>	<b>Eastern Cape</b> Mr Mbuyiseli Sandi Tel: 040 608 4764/608 4788 Cell: 079 875 3397 Email: <a href="mailto:mbuyiseli.sandi@ecdoe.gov.za">mbuyiseli.sandi@ecdoe.gov.za</a>
<b>Free State</b> Mr Tlhoriso Mtholo Tel: 051 447 4038 Cell: 079 503 5955 Email: <a href="mailto:TlhorisoMtholo@gmail.com">TlhorisoMtholo@gmail.com</a> / <a href="mailto:idmg@edu.fs.gov.za">idmg@edu.fs.gov.za</a>	<b>Kwa Zulu-Natal</b> Mr Nhlanhla Mthentwa <a href="tel:0333418647">Tel: 033 341 8647</a> / <a href="tel:0333418646">033 341 8646</a> Cell: 079 503 5955 Email: <a href="mailto:Nhlanhla.Mthetwa@kzndoe.gov.za">Nhlanhla.Mthetwa@kzndoe.gov.za</a>
<b>Limpopo</b> Mr Moss Mulaudzi/Mr Rasethaba <a href="tel:0152909441">Tel: 015 290 9441</a> / <a href="tel:0152909420">015 290 9420</a> Cell: 079 511 8494/082 881 7439 Email: <a href="mailto:Mulaudzia@edu.limpopo.gov.za">Mulaudzia@edu.limpopo.gov.za</a>	<b>Mpumalanga</b> Ms Mthethwa/Mr Mambane <a href="tel:0137660904">Tel: 013 766 0904</a> (0996)/0909 Cell: 083 653 7176/078 671 0620 Email: <a href="mailto:mteu@nwpg.gov.za">mteu@nwpg.gov.za</a> / <a href="mailto:bmoen@nwpg.gov.za">bmoen@nwpg.gov.za</a>
<b>Northern Cape</b> Mr Brian White/ Mr Malunga <a href="tel:0538396661">Tel: 053 839 6661</a> /6808 Cell: 071 422 1810/083 736 7077 Email: <a href="mailto:brianwhite@ncdoe.gov.za">brianwhite@ncdoe.gov.za</a> / <a href="mailto:abfmalunga@gmail.com">abfmalunga@gmail.com</a>	<b>North West</b> Dr Teu/Ms Moeng <a href="tel:0183973097">Tel: 018 397 3097</a> Cell: 079 515 6269/078 671 0620 Email: <a href="mailto:mteu@nwpg.gov.za">mteu@nwpg.gov.za</a> / <a href="mailto:bmoen@nwpg.gov.za">bmoen@nwpg.gov.za</a>
<b>Western Cape</b> Mr William Jantjies <a href="tel:0214672613">Tel: 021 467 2613</a> Cell: 071 353 8832/071 351 6912 Email: <a href="mailto:William.jantjies@westerncape.gov.za">William.jantjies@westerncape.gov.za</a>	



## ACCESS TO HEALTH CARE

Section 27 of the Constitution provides that everyone has the right to have access to health care services, including reproductive health care services and no one may be refused emergency medical treatment.

Section 28(1)(c) of the Constitution provides that "Every child has the right to basic health care services".

### Health care services

- Free primary health care for everyone
- Free health care for pregnant women and children under six years
- Free health care for social grant recipients

### In terms of the law, what health services do migrant person have to pay for and which ones are free?

**Free services:** These include services for termination of pregnancy; infectious diseases such as HIV and TB; psychiatric assistance; and services in terms of the Criminal Procedure Act 51 of 1977. Remember, according to national law and policy, pregnant and lactating women, and children under six, regardless of nationality, are entitled to free health services. The change in policy in Gauteng on this issue is being challenged in court.

**Emergency healthcare:** These services refer to urgent medical care. According to the Constitution, no one may be refused this service. However, South African citizens, asylum seekers, refugees, undocumented persons from the SADC region and those with a temporary or permanent residency permit will be billed for the services according to their income through a means test. Persons affected by statelessness and undocumented person from the SADC region also have access to the services but will be charged the highest hospital fees.

**Primary healthcare:** These services are provided at the level of clinics and community healthcare centres (CHCs). CHCs are larger than clinic and smaller than hospitals and

have doctors and nurses attending to patients. In addition to main sites, there are also mobile and satellite clinics to offer services. The free services offered at clinics and CHCs include sexual and reproductive health services where health service users can obtain contraceptives, HIV and TB testing and treatment.

There are currently no restrictions issued by the Minister of Health on the list of people eligible for primary health services and therefore everyone, regardless of nationality, or other characteristics, must be provided with the relevant free health services. The Minister could expand the range of free services currently available, in consultation with the Minister of Finance.

**Hospital treatment:** Hospitals ordinarily treat serious illnesses that cannot be dealt with at clinics or at CHCs, such as performing surgery and providing emergency treatment. Unless it is an emergency, a person cannot present themselves at a hospital without a referral from a clinic, CHC, or a private doctor.

South African citizens, asylum seekers, refugees, undocumented persons from the SADC region and those with a temporary or permanent residency permit will be billed for the services according to their income through a means test. Persons affected by statelessness and undocumented persons from outside the SADC region also have access to the services but will be charged the highest hospital fees.

### Medical xenophobia

Medical xenophobia is a term used by scholars to describe the negative attitudes, perceptions and practices of healthcare providers towards migrant person based on their nationality. The healthcare providers include nurses, doctors, administrative clerks, and security personnel. The healthcare system in South Africa is an "advanced state of despair in large parts of the country" where the public system is struggling to meet everyone's needs and the staff is overstretched. Therefore, even South Africans systemic barriers in accessing healthcare services.