

REPUBLIC OF SOUTH AFRICA

REFUGEES AMENDMENT BILL

*(As amended by the Portfolio Committee on Home Affairs (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF HOME AFFAIRS)

[B 11D—2008]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Refugees Act, 1998, so as to amend, insert and delete certain definitions; to provide for delegation of powers; to provide for certain matters with regard to the establishment of Refugee Reception Offices; to provide for the dissolution of the Standing Committee for Refugee Affairs and the Refugee Appeal Board; to provide for the establishment of the Refugee Appeals Authority; to provide for the clarification and revision of procedures relating to refugee status determination; to provide for obligations and rights of asylum seekers; to provide for the repeal of certain obsolete provisions; and to effect certain technical corrections; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 130 of 1998

1. The following section is hereby substituted for section 1 of the Refugees Act, 1998 (hereinafter referred to as the principal Act):

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“Definitions

1. In this Act, unless the context [shows that another meaning is intended] indicates otherwise—

[(i)] ‘**abusive application for asylum**’ means an application for asylum made—

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(a) with the purpose of defeating or evading criminal or civil proceedings or the consequences thereof; or

(b) after the refusal of one or more prior applications without any substantial change having occurred in the applicant’s personal circumstances or in the situation in his or her country of origin;

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[(xiv)

(ii) ‘**Aliens Control Act, 1991**’ means the Aliens Control Act, 1991 (Act No. 96 of 1991); (xxiv)

(iii) ‘**Appeal Board**’ means the Refugee Appeal Board, established by section 12; (ii)

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(iv)] ‘**asylum**’ means refugee status recognised in terms of this Act; [(iii)]

- [(v)] **‘asylum seeker’** means a person who is seeking recognition as a refugee in the Republic; [(iv)]
- [(vi)] **‘asylum seeker permit’** means a permit contemplated in section 22; [(v)]
- ‘biometrics’** means the measurable physiological or behavioural characteristics that can be used in verifying the identity of individuals, and may include the use of photographs, fingerprints, hand measurements, signature verification, facial patterns and retinal patterns; 5
- [(vii)] **‘child’** means any person under the age of 18 years; [(x)]
- ‘court’** means a magistrate’s court; 10
- [(viii)] **‘Department’** means the Department of Home Affairs; [(vii)]
- [(ix)] **‘dependant’**, in relation to an asylum seeker or a refugee, includes [the spouse,] any unmarried child or any destitute, aged or infirm member of the immediate family of such asylum seeker or refugee; [(i)] 15
- [(x)] **‘Director-General’** means the Director-General of the Department; [(viii)]
- [(xi)] **‘fraudulent application for asylum’** means an application for asylum based without reasonable cause on [facts,] information, documents or representations which the applicant knows to be false and [which facts, information, documents or representations] are intended to materially affect the outcome of the application; [(vi)] 20
- ‘immediate family’** means the immediate family as defined in section 1 of the Immigration Act;
- ‘Immigration Act’** means the Immigration Act, 2002 (Act No. 13 of 2002); 25
- [(xii)] **‘[(xii)] manifestly unfounded application’** means an application for asylum made on grounds other than those on which such an application may be made under this Act; [(xi)]”
- ‘marriage’** means— 30
- (a) either a marriage or a civil partnership concluded in terms of the Civil Union Act, 2006 (Act No. 17 of 2006);
- (b) a marriage concluded in terms of— 35
- (i) the Marriage Act, 1961 (Act No. 25 of 1961); or
- (ii) the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998);
- (c) a marriage concluded in terms of the laws of a foreign country; or
- (d) a marriage concluded in terms of Islamic or other religious rites; 40
- [(xii)] **‘Minister’** means the Minister of Home Affairs; [(xiii)]
- [(xiv)] **‘prescribed’** means prescribed by regulation;
- [(xv)] **‘refugee’** means any person who has been granted asylum; [(xviii)]
- ‘Refugee Appeals Authority’** means the Refugee Appeals Authority established in terms of section 8A;
- [(xvi)] **‘Refugee Reception Office’** means a Refugee Reception Office established under section 8(1); [xx] 45
- [(xvii)] **‘Refugee Reception Officer’** means a Refugee Reception Officer referred to in section 8(2); (xix)]
- [(xviii)] **‘Refugee Status Determination Officer’** means a Refugee Status Determination Officer referred to in section 8(2); [(xxi)] 50
- [(xix)] **‘regulation’** means any regulation made under this Act; [(xvi)]
- ‘residence’** means a status recognised by competent authorities of a particular country that affords a person the right to sojourn in that country with the rights and obligations attached thereto;
- [(xx)] **‘rules’** means the rules made by the Appeal Board under section 14(2); (xv)] 55
- [(xxi)] **‘social group’** includes[, among others,] a group of persons of particular gender, sexual orientation, disability, class or caste; [(xii)]
- ‘spouse’** means a person who is a party to— 60
- (a) a marriage as defined in terms of this Act; or
- (b) a permanent homosexual or heterosexual relationship as prescribed;

- [(xxii)] **‘Standing Committee’ means the Standing Committee for Refugee Affairs, established by section 9; (xvii)]**
- [(xxiii)] **‘this Act’ includes the regulations made in terms of this Act; [(ix)] ‘unfounded application’, in relation to an application for asylum in terms of section 21, means an application—** 5
- (a) made on the grounds other than those contemplated in section 3;
- or
- (b) made on the grounds contemplated in section 3, but which is without merit;
- [(xxiv)] **‘UNHCR’ means the United Nations High Commissioner for Refugees. [(xxii)].”.** 10

Insertion of section 1A in Act 130 of 1998

2. The following section is hereby inserted in the principal Act after section 1:

“Interpretation and application of Act

- 1A.** This Act must be interpreted and applied in a manner that is 15
consistent with—
- (a) the 1951 United Nations Convention Relating to the Status of Refugees;
 - (b) the 1967 United Nations Protocol Relating to the Status of Refugees;
 - (c) the 1969 Organization of African Unity Convention Governing the 20
Specific Aspects of Refugee Problems in Africa;
 - (d) the 1948 United Nations Universal Declaration of Human Rights; and
 - (e) any domestic law or other relevant convention or international agreement to which the Republic is or becomes a party.”.

Amendment of section 2 of Act 130 of 1998 25

3. Section 2 is hereby amended by the substitution for paragraph (b) of the following paragraph:

- “(b) his or her life, physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or other events seriously disturbing **[or disrupting]** public order in **[either]** any part or the whole of 30
that country.”.

Amendment of section 3 of Act 130 of 1998

4. Section 3 of the principal Act is hereby amended by the substitution for paragraphs (a), (b) and (c) of the following paragraphs, respectively:

- “(a) owing to a well-founded fear of being persecuted by reason of his or her race, 35
gender, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or 40
- (b) owing to external aggression, occupation, foreign domination or other events seriously disturbing **[or disrupting]** public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge **[elsewhere]** in another place outside his or her country of origin or nationality; or 45
- (c) is a spouse or dependant of a person contemplated in paragraph (a) or (b).”.

Amendment of section 4 of Act 130 of 1998

5. Section 4 of the principal Act is hereby amended by—

- (a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 50
- “A person does not qualify for refugee status for the purposes of this Act if **[there is]** the Refugee Status Determination Officer reason to believe that he or she—”;

- (b) the substitution in subsection (1) for paragraph (b) of the following paragraph:
 “(b) has committed **[a crime which is not of a political nature and which, if committed in the Republic, would be punishable by imprisonment]** a serious non-political crime outside the country of refuge prior to his or her admission to that country as a refugee; or”; 5
 and
 (c) the substitution in subsection (1) for paragraph (d) of the following paragraph:
 “(d) enjoys the protection of any other country in which he or she **[has taken residence]** is a recognised refugee, permanent resident or citizen.”. 10

Amendment of section 5 of Act 130 of 1998

6. Section 5 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:
 “(c) he or she becomes a permanent resident or a citizen of the Republic or acquires the nationality of some other country and enjoys the protection of **[the] that country [of his or her new nationality]**: Provided that a person whose permanent residence status is withdrawn is not prevented from re-applying for refugee status; or”. 15

Repeal of section 6 of Act 130 of 1998

7. Section 6 of the principal Act is hereby repealed. 20

Substitution of section 7 of Act 130 of 1998

8. The following section is hereby substituted for section 7 of the principal Act:

“Delegation of powers

7. (1) The Minister may, subject to the conditions that he or she may deem necessary, delegate any power conferred on him or her by this Act, excluding a power referred to in section 8B(2), 8F, 8G or 38, to any officer or employee of the Department, but shall not be divested of any power so delegated. 25
 (2) The Director-General may, subject to the conditions that he or she may deem necessary, delegate any power conferred on him or her by this Act, excluding a power referred to in section 8I, to any officer or employee of the Department, but shall not be divested of any power so delegated.”. 30

Substitution of heading to Chapter 2 of Act 130 of 1998

9. The following heading is hereby substituted for the heading to Chapter 2 of the principal Act: 35
“REFUGEE RECEPTION OFFICES[, STANDING COMMITTEE FOR REFUGEE AFFAIRS] AND REFUGEE [APPEAL BOARD] APPEALS AUTHORITY”.

Substitution of section 8 of Act 130 of 1998

10. The following section is hereby substituted for section 8 of the principal Act: 40

“Refugee Reception Office

8. (1) The Director-General may, by notice in the *Gazette*, establish as many Refugee Reception Offices in the Republic as he or she[, **after consultation with the Standing Committee,**] regards as necessary for the purposes of this Act. 45
 (2) Each Refugee Reception Office must consist of at least **[one Refugee Reception Officer and]** one Refugee Status Determination Officer who must—

- (a) be **[officers]** an officer of the Department, designated by the Director-General **[for a term of office determined by the Director-General]**; and
 - (b) have such qualifications, experience and knowledge of refugee matters **[as] that** makes **[them]** him or her capable of performing **[their]** his or her functions in terms of this Act. 5
- (3) The Director-General **[must, with the approval of the Standing Committee, ensure that each officer appointed under this section receives the additional training necessary to enable such officer to perform his or her functions properly]** must appoint such number of officers as he or she deems necessary to perform administrative functions connected with the Refugee Reception Office.”. 10

Insertion of sections 8A to 8J in Act 65 of 1996

11. The following sections are hereby inserted, in the principal Act after section 8:

“Refugee Appeals Authority 15

8A. (1) There is hereby established a Refugee Appeals Authority.

(2) The Refugee Appeals Authority is independent and must function without any bias.

(3) The headquarters of the Refugee Appeals Authority must be determined by the Minister. 20

Composition of Refugee Appeals Authority

8B. (1) The Refugee Appeals Authority consists of—

- (a) a chairperson who is legally qualified; and
- (b) such number of other members as the Minister may determine, having regard to the likely volume of work to be performed by the Refugee Appeals Authority: Provided that at least one of such members is legally qualified. 25

(2) The chairperson and other members of the Refugee Appeals Authority are appointed by the Minister with due regard to their experience, qualifications and expertise, as well as their ability to perform the functions of the Refugee Appeals Authority properly. 30

Functions of Refugee Appeals Authority

8C. (1) The Refugee Appeals Authority must—

- (a) subject to subsection (2), determine any appeal lodged in terms of this Act; and
- (b) advise the Minister on any matter which the Minister refers to the Refugee Appeals Authority. 35

(2) An appeal contemplated in subsection (1)(a) must be determined by such number of members of the Refugee Appeals Authority as the chairperson may deem necessary: Provided that at least one of such members is legally qualified. 40

(3) The Refugee Appeals Authority may determine its own procedure and make its own rules, which may not be in conflict with the provisions of this Act.

(4) Rules made under subsection (3) must be published in the Gazette. 45

Term of office of members of Refugee Appeals Authority

8D. (1) A member of the Refugee Appeals Authority serves for a period of five years and is eligible for reappointment upon expiry of his or her term of office.

(2) A member may resign by tendering a written notice of resignation to the Minister. 50

Disqualification from membership

8E. A person may not be appointed as a member of the Refugee Appeals Authority if that person—	
(a) is not a South African citizen;	5
(b) has been sentenced to imprisonment without the option of a fine during the preceding four years;	
(c) is an unrehabilitated insolvent;	
(d) has been judicially declared of unsound mind;	
(e) has been removed from an office of trust on account of misconduct involving theft, fraud or corruption; or	10
(f) is a political office bearer.	

Removal from office of member of Refugee Appeals Authority

8F. (1) The Minister may remove a member of the Refugee Appeals Authority from office on account of misconduct or inability to perform the functions of his or her office effectively and efficiently.	15
(2) The Minister may remove a member of the Refugee Appeals Authority in terms of subsection (1) if such member has been given an opportunity to make representations or comments on the matter and the Minister has taken any such representations or comments into consideration.	20

Filling of vacancies in Refugee Appeals Authority

8G. Whenever a vacancy arises in the Refugee Appeals Authority as a result of death, resignation or removal from office of a member of the Refugee Appeals Authority, the Minister may appoint a suitable person for the remainder of the term of office of such member.	25
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Remuneration of members of Refugee Appeals Authority

8H. The members of the Refugee Appeals Authority must receive such remuneration, allowances and other benefits as the Minister may determine with the concurrence of the Minister of Finance.	
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Administrative staff of Refugee Appeals Authority 30

8I. The administrative work connected with the performance of the functions of the Refugee Appeals Authority must be performed by officers of the Department designated by the Director-General for that purpose.	
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Annual Reports of Refugee Appeals Authority

8J. (1) The Refugee Appeals Authority must, within 30 days after the end of each financial year, prepare a report on all its activities during that financial year and on its financial position as at the end of that financial year.	35
(2) The Refugee Appeals Authority must, immediately after the report contemplated in subsection (1) is finalised, submit the report together with the audited balance sheet and accounts pertaining to the funds of the Refugee Appeals Authority to the Minister for tabling in Parliament.”.	40

Repeal of sections 9 to 20 of Act 130 of 1998

12. Sections 9 to 20 of the principal Act are hereby repealed.

Amendment of section 21 of Act 130 of 1998

13. Section 21 of the principal Act is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:

“(1) An application for asylum must be made in person in accordance with the prescribed procedures to a **[Refugee Reception Officer]** Refugee Status Determination Officer at any Refugee Reception Office or at any other place designated by the Director-General by notice in the *Gazette*. 5

(2) The Refugee Status Determination Officer must, upon receipt of the application contemplated in subsection (1), deal with such application in terms of section 24. 10

(3) When making an application for asylum, every applicant, including his or her spouse and dependants, must have his or her **[fingerprints or other prints]** biometrics taken in the prescribed manner **[and every applicant who is 16 years old or older must furnish two recent photographs of himself or herself of such dimensions as may be prescribed].”** 15

Insertion of sections 21A and 21B in Act 130 of 1998

14. The following sections are hereby inserted in the principal Act after section 21:

“Unaccompanied child and person with mental disability

21A. (1) Any unaccompanied child who is found under circumstances that clearly indicate that he or she is an asylum seeker and a child in need of care contemplated in the Children’s Act, 2005 (Act No. 38 of 2005), must— 20

- (a) be issued with an asylum seeker permit in terms of section 22; and
- (b) in the prescribed manner, be brought before the Children’s Court in the district in which he or she was found, to be dealt with in terms of the Children’s Act, 2005. 25

(2) Any person with a mental disability who is found under circumstances that clearly indicate that he or she is an asylum seeker must—

- (a) be issued with an asylum seeker permit in terms of section 22; and
- (b) in the prescribed manner, be referred to a health establishment contemplated in the Mental Health Care Act, 2002 (Act No. 17 of 2002), to be dealt with in terms of that Act. 30

Spouse and dependants of asylum seekers and refugees

21B. (1) A person who applies for refugee status in terms of section 21 and who would like one or more of his or her spouse and dependants to be granted refugee status must, when applying for asylum, include the details of such spouse and dependants in the application. 35

(2) Any refugee whose child is born in the Republic must, within one month of the birth of his or her child, register such a child as a dependant at any Refugee Reception Office. 40

(3) Where a dependant of a recognised refugee is within the Republic in accordance with an asylum seeker permit or has been granted asylum in terms of this Act and ceases to be a dependant by virtue of marriage or cessation of his or her dependence upon the recognised refugee, as the case may be, he or she may apply in the prescribed manner to be permitted to continue to remain within the Republic in accordance with the provisions of this Act. 45

(4) Where a spouse of a recognised refugee is within the Republic in accordance with an asylum seeker permit or has been granted asylum in terms of this Act and ceases to be the spouse as a result of divorce or death of the recognised refugee, as the case may be, he or she may be permitted to continue to remain within the Republic in accordance with the provisions of this Act: Provided that, in the case of divorce, the Director-General is satisfied that a good faith spousal relationship existed between the recognised refugee and such spouse for a period of at least two years after having been granted asylum. 50 55

(5) Nothing contained in this Act prevents a dependant who has, in terms of subsection (3), been permitted to continue to remain in the Republic from applying for recognition as a refugee in accordance with the provisions of this Act.”.

Amendment of section 22 of Act 130 of 1998

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15. Section 22 of the principal Act is hereby amended by—

(a) the substitution for subsections (1), (2), (3) and (4) of the following subsections, respectively:

“(1) The **[Refugee Reception Officer]** Refugee Status Determination Officer must, pending the outcome of an application in terms of section 21(1), [issue to] refer the applicant to the officers contemplated in section 8(3) to be issued with an asylum seeker permit in the prescribed form allowing the applicant to sojourn in the Republic temporarily, subject to any conditions[, determined and endorsed by the [Standing Committee] Director-General, which are not in conflict with the Constitution or international law [and are endorsed by the Refugee Reception Officer on the permit]. 10 15

(2) Upon the issue of a permit in terms of subsection (1), any permit issued to the applicant in terms of the **[Aliens Control Act, 1991,]** Immigration Act becomes null and void[, and must **[forthwith]** be returned to the Director-General for cancellation. 20

(3) **[A Refugee Reception Officer]** The officers contemplated in section 8(3) [may] must, pending the decision on the application in terms of section 21, from time to time extend the period for which a permit has been issued in terms of subsection (1)[, or amend the conditions subject to which a permit has been so issued]. 25

(4) The permit referred to in subsection (1) must contain **[a recent photograph and the fingerprints or other prints]** the biometrics of the holder thereof **[as prescribed].**”; 30

(b) by the deletion of subsection (5); and

(c) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:

The **[Minister]** Director-General may at any time withdraw an asylum seeker permit in the prescribed manner if—.

Substitution of section 23 of Act 130 of 1998

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16. The following section is hereby substituted for section 23 of the principal Act:

“Detention of asylum seeker

23. If the **[Minister]** Director-General has withdrawn an asylum seeker permit in terms of section 22(6), he or she may, subject to section 29, cause the holder to be arrested and detained pending the finalisation of the application for asylum, in the manner and place determined by him or her with due regard to human dignity.”. 40

Amendment of section 24 of Act 130 of 1998

17. Section 24 of the principal Act is hereby amended by—

(a) the deletion of subsection (1); 45

(b) the substitution for subsections (2), (3) and (4) of the following subsections, respectively:

“(2) When considering an application for asylum, the Refugee Status Determination Officer—

(a) must have due regard **[for the rights set out in section 33 of the Constitution]** to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and in particular[, ensure that the applicant fully understands the procedures, his or her rights and responsibilities and the evidence presented; and 50

(b) may consult with or invite a UNHCR representative to furnish information on specified matters.

(3) The Refugee Status Determination Officer must at the conclusion of the hearing—

(a) grant asylum; **[or]**

(b) reject the application as manifestly unfounded, abusive or fraudulent; or

(c) reject the application as unfounded; **[or**

(d) refer any question of law to the Standing Committee].

(4) If an application is rejected in terms of subsection (3)(b) or (c), the Refugee Status Determination Officer must—

(a) furnish the applicant with written reasons [must be furnished to the applicant] within five working days after the date of the rejection [or referral];

(b) **[the record of proceedings and a copy of the reasons referred to in paragraph (a) must be submitted to the Standing Committee within 10 working days after the date of the rejection or referral] inform the applicant of his or her right to appeal in terms of section 24B.”; and**

(c) by the addition of the following subsections:

“(5) An asylum seeker whose application for asylum has been rejected in terms of subsection (3)(b) or (c), must be dealt with in terms of the Immigration Act, unless he or she lodges an appeal in terms of section 24A(1).

(6) An application must be deemed to be abandoned if the asylum seeker has not renewed his or her asylum seeker permit within 90 days after it has expired: Provided that the asylum seeker advances valid reasons for the non-renewal of the asylum seeker permit.”.

Repeal of sections 25 and 26 of Act 130 of 1998

18. Sections 25 and 26 of the principal Act are hereby repealed.

Insertion of sections 24A and 24B in Act 130 of 1998

19. The following sections are hereby inserted in the principal Act after section 24:

“Review of applications rejected in terms of section 24(3)(b)

24A. (1) The Director-General must review any decision taken by a Refugee Status Determination Officer in terms of section 24(3)(b).

(2) Before reaching a decision, the Director-General may—

(a) request any person who is in a position to do so to provide him or her with information relevant to the matter being dealt with;

(b) make such further inquiries into the matter being dealt with as he or she deems appropriate; and

(c) request the applicant to provide such other information as the Director-General may deem necessary.

(3) The Director-General may confirm or set aside a decision made in terms of section 24(3)(b).

(4) The Director-General must inform the Refugee Status Determination Officer concerned of his or her decision in the prescribed manner and within the prescribed time.

Appeals to Refugee Appeals Authority

24B. (1) Any asylum seeker whose application has been rejected in terms of section 24(3)(b) or (c) may lodge an appeal with the Refugee Appeals Authority in the prescribed manner.

(2) The Refugee Appeals Authority may, after having determined an appeal, confirm, set aside or substitute any decision taken by a Refugee Status Determination Officer in terms of section 24(3)(b) or (c).

- (3) Before making a decision, the Refugee Appeals Authority may—
- (a) invite a UNHCR representative to make oral or written representations;
 - (b) request the attendance of any person who, in its opinion, is in a position to provide the Refugee Appeals Authority with relevant information;
 - (c) of its own accord make further inquiries; or
 - (d) request the asylum seeker to appear before it or to provide any such other information as it may deem necessary.
- (4) The Refugee Appeals Authority must allow legal representation upon the request of the asylum seeker.
- (5) The Refugee Appeals Authority must refer a matter back to the Refugee Status Determination Officer to deal with such asylum seeker in terms of this Act if new information, which is material to the application, is presented during the appeal.”.

Amendment of heading to Chapter 5 of Act 130 of 1998

20. The following heading is hereby substituted for the heading to Chapter 5 of the principal Act:

“RIGHTS AND OBLIGATIONS OF REFUGEES AND ASYLUM SEEKERS”.

Substitution of section 27 of Act 130 of 1998

21. The following section is hereby substituted for section 27 of the principal Act:

“Protection and general rights of refugees

27. A refugee is entitled to—

- (a) a formal written recognition of refugee status in the prescribed form;
- (b) full legal protection, which includes the rights set out in Chapter 2 of the Constitution of the Republic of South Africa, 1996, except those rights that only apply to citizens;
- (c) permanent residence in terms of section 27(d) of the Immigration Act after five years of continuous residence in the Republic from the date on which he or she was granted asylum, if the Director-General, after considering all the relevant factors and within a reasonable period of time, certifies that he or she would remain a refugee indefinitely;
- (d) an identity document referred to in section 30;
- (e) a travel document if he or she applies in the prescribed manner; and
- (f) seek employment.”.

Insertion of section 27A in Act 130 of 1998

22. The following section is hereby inserted in the principal Act after section 27:

“Protection and general rights of asylum seekers

27A. An asylum seeker is entitled to—

- (a) a formal written recognition as an asylum seeker in the prescribed form pending finalisation of his or her application for asylum;
- (b) the right to remain in the Republic pending the finalisation of his or her application for asylum;
- (c) the right not to be unlawfully arrested or detained; and
- (d) the rights contained in the Constitution of the Republic of South Africa, 1996, in so far as those rights apply to an asylum seeker.”.

Amendment of section 28 of Act 130 of 1998

23. Section 28 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) If an order is made under this section for the removal from the Republic of a refugee, any spouse or dependant of such refugee who has not been granted asylum, may be included in such an order and removed from the Republic if such spouse or dependant has been afforded a reasonable opportunity to apply for asylum but has failed to do so, or if his or her application for asylum has been rejected.”.

Substitution of section 29 of Act 130 of 1998

24. The following section is hereby substituted for section 29 of the principal Act:

“Restriction of detention

29. (1) No person may be detained in terms of this Act for a longer period than is reasonable and justifiable and any detention exceeding 30 days must be reviewed immediately by **[a judge of the High Court of the provincial division]** a court in whose area of jurisdiction the person is detained, **[designated by the Judge President of that division for that purpose]** and such detention must be reviewed in this manner immediately after the expiry of every subsequent period of 30 days of detention.

(2) The detention of a child must be used only as a measure of last resort and for the shortest **[appropriate]** possible period of time, taking into consideration the principle of family unity and the best interest of the child.”.

Substitution of section 30 of Act 130 of 1998

25. The following section is hereby substituted for section 30 of the principal Act:

“Identity document to refugee

30. A refugee must, upon application in the prescribed manner and on the prescribed form, be issued with an identity card or document similar to a South African identity card or document.”.

Repeal of sections 31, 32 and 33 of Act 130 of 1998

26. Sections 31, 32 and 33 of the principal Act are hereby repealed.

Substitution of section 34 of Act 130 of 1998

27. The following section is hereby substituted for section 34 of the principal Act:

“Obligations of refugees

34. (1) A refugee must—
 (a) abide by the laws of the Republic; and
 (b) inform the Refugee Reception Office of his or her residential address and of any changes to that address.
 (2) The address contemplated in subsection (1) is, for the purposes of this Act, deemed to be the address to which the service of processes or correspondence may be made.”.

Insertion of section 34A in Act 130 of 1998

28. The following section is hereby inserted in the principal Act after section 34:

“Obligations of asylum seekers

34A. (1) An asylum seeker must—

- (a) abide by the laws of the Republic; 5
- (b) renew his or her permit in person at any Refugee Reception Office in the Republic; and
- (c) inform the Refugee Reception Office of his or her residential address and of any changes to that address so provided. 10

(2) The address contemplated in subsection (1) is, for the purposes of this Act, deemed to be the address to which the service of processes or correspondence may be made.”.

Substitution of section 36 of Act 130 of 1998

29. The following section is hereby substituted for section 36 of the principal Act:

“Withdrawal of refugee status 15

36. (1) Subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and after consideration of all the relevant facts, the Director-General may withdraw a person’s refugee status if such person—

- (a) has been recognised as a refugee due to fraud, forgery or false or misleading information of a material or substantial nature in relation to the application; 20
- (b) has been recognised as a refugee due to an error, omission or oversight committed by the Refugee Status Determination Officer in good faith; or 25
- (c) ceases to qualify for refugee status in terms of section 5.

(2) A person whose refugee status is withdrawn in terms of subsection (1), must be dealt with in terms of the Immigration Act, unless he or she lodges an appeal in terms of subsection (3).

(3) A person whose refugee status is withdrawn in terms of subsection (1), may lodge an appeal with the Refugee Appeals Authority within a period of 30 days from the date of receipt of the decision.”. 30

Amendment of section 37 of Act 130 of 1998

30. Section 37 of the principal Act is hereby amended by the deletion of the word “or” at the end of paragraph (c) and the addition of the following paragraphs: 35

“(e) intentionally assists a person to receive public services to which such person is not entitled; or

(f) provides false, inaccurate or unauthorised documentation, or any benefit to a person, or otherwise assists such person to disguise his or her identity or status, or accepts undue financial or other considerations, to perform an act or to exercise his or her discretion in terms of this Act,”. 40

Amendment of section 38 of Act 130 of 1998

31. Section 38 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (b) and (d) of the following paragraphs, respectively:

“(b) the manner in which and period within which a matter must be referred to the [Standing Committee] Refugee Appeals Authority; 45

(d) the manner in which and the period [in] within which applications for asylum which are [manifestly] unfounded, fraudulent or abusive, must be dealt with;”.

Repeal of sections 39 and 40 of Act 130 of 1998

32. Section 39 and 40 of the principal Act are hereby repealed.

Transitional provisions and savings

33. (1) The Standing Committee for Refugee Affairs established by section 9 of the principal Act and the Refugee Appeal Board established by section 12 of the principal Act are hereby dissolved. 5

(2) The members of the Standing Committee for Refugee Affairs and the Refugee Appeal Board in office immediately before this Act takes effect, become members of the Refugee Appeals Authority established by section 8A and must be regarded as having been appointed to the Refugee Appeals Authority in terms of section 8B(2). 10

(3) The Minister must appoint one of the members contemplated in subsection (2) as chairperson of the Refugee Appeals Authority.

(4) The members contemplated in subsection (2) holds office for the unexpired period for which such members have been appointed as members of the Standing Committee for Refugee Affairs or Refugee Appeal Board, as the case may be, as at the date of such members' assumption of office in the Refugee Appeals Authority in terms of subsection (2). 15

(5) Any reviews pending before the Standing Committee for Refugee Affairs immediately before this Act takes effect, must be regarded as reviews before the Director-General and must be dealt with by the Director-General in terms of the principal Act, as amended by this Act. 20

(6) Any matters pending before the Refugee Appeal Board immediately before this Act takes effect must be regarded as matters before the Refugee Appeals Authority and must be dealt with by the Refugee Appeals Authority in terms of the principal Act, as amended by this Act. 25

(7) Any decisions and determinations made by the Standing Committee for Refugee Affairs and the Refugee Appeal Board in terms of the principal Act immediately before this Act takes effect, remain in force.

Short title and commencement

34. This Act is called the Refugees Amendment Act, 2008, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 30

MEMORANDUM ON THE OBJECTS OF THE REFUGEES AMENDMENT BILL, 2008

1. OBJECTS OF BILL

- 1.1 The main objective of this Bill is to substitute definitions, provide for the alignment of certain wording of the Refugees Act, 1998 (Act No. 130 of 1998) (hereinafter referred to as “the Act”), with the wording in the 1969 OAU Convention and the 1951 UN Convention, provide for the delegation of powers for the Director-General, provide for certain matters with regard to the establishment of Refugee Reception Offices by the Director-General, provide for the establishment of the Refugee Appeals Authority, provide for clarification and revision of procedures relating to refugee status determination, provide for obligations and rights of asylum seekers, repeal certain sections, effect certain technical corrections and provide for matters connected therewith.
- 1.2 The Bill seeks to align the Act with departmental and governmental policies on refugee matters. The Bill further provides that the Refugee Reception Office consists of at least one Refugee Status Determination Officer who deals with the determination of applications for asylum, as well as such number of officers as the Director-General may appoint to perform administrative functions connected with the refugee status determination process.
- 1.3 The Bill also seeks to dissolve the existing Standing Committee for Refugee Affairs and the Refugee Appeal Board and establishes the Refugee Appeals Authority. The Bill further provides for the accountability of such Refugee Appeals Authority in that the Refugee Appeals Authority must, at the end of each financial year, prepare a report on all its activities during that financial year and on its financial position as at the end of that financial year. This annual report must be submitted to the Minister for tabling in Parliament.
- 1.4 The Bill further seeks to align the provisions of the Act with the provisions of the Children’s Act, 2005 (Act No. 38 of 2005) (hereinafter referred to as “the Children’s Act”), in that it provides that any unaccompanied child who is found under circumstances that clearly indicates that he or she is an asylum seeker and a child in need of care as contemplated in the Children’s Act, must be issued with an asylum seeker permit and must be brought before the Children’s Court for the district in which he or she was found, to be dealt with in terms of the Children’s Act. Furthermore, the Bill seeks to provide for any person with a mental disability who is found under circumstances that clearly indicates that he or she is an asylum seeker to be dealt with in terms of the Mental Health Care Act, 2002 (Act No. 17 of 2002).

2. INSTITUTIONS CONSULTED

The following Departments and bodies have been consulted:

- All Government Departments;
- COSATU;
- Crime Intelligence, Border Integrity Intelligence Centre;
- Education Rights Forum;
- Education Rights Project;
- Human Rights Watch;
- Independent Complaints Directorate (ICD);
- Lawyers for Human Rights;
- Law Society of South Africa;
- Legal Resources Centre;
- National Intelligence Coordinating Committee;
- Office of the Public Protector;
- Public Service Commission;
- South African Human Rights Commission;
- South African Police Service (Ports of Entry);
- United Nations High Commission for Refugees;

- University of Cape Town Law Clinic (Refugee Rights Project); and
- Zimbabwe Exiles Forum.

3. CONSTITUTIONAL IMPLICATIONS

None

4. FINANCIAL IMPLICATIONS FOR STATE

The merging of the Refugee Appeals Board and the Standing Committee for Refugee Affairs will have both financial and contractual implications. The newly established Refugee Appeals Authority may have implications relating to capacity and infrastructure which may have further financial implications.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Department of Home Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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