

Words in bold type in the original text are in italics in this translation. Words in italics in the original text are in bold type in this translation.

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)

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REPUBLIC OF SOUTH AFRICA
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.

REFUGEES AMENDMENT BILL

BILL

To amend the Refugees Act, 1998, so as to amend, insert and delete certain definitions; to clarify how applications for refugee status rejected as manifestly unfounded and unfounded must be dealt with; to empower the Director-General to establish the Status Determination Committee; to revise the provisions relating to withdrawal of refugee status; 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, as amended by section 1 of Act 33 of 2008

1. Section 1 of the Refugees Act, 1998 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the substitution for the definition of “**biometrics**” of the following definition:

“**‘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 (including palm prints), hand measurements, signature verification [, facial patterns and] or retinal patterns, that may be used to verify the identity of individuals;”;
 - (b) by the substitution for the definition of “**dependant**” of the following definition:

“**‘dependant’**, in relation to an asylum seeker or a refugee, [includes] means any unmarried dependant child or any destitute, aged or infirm member of the immediate family of such asylum seeker or refugee who is dependent on him or her;”;
 - (c) by the substitution for the definition of “**manifestly unfounded application**” of the following definition:

“**‘manifestly unfounded application’** means an application for asylum made on grounds other than those contemplated in section 3;”;
 - (d) by the deletion of the definition of “**Refugee Status Determination Officer**”;

(e) by the insertion after the definition of “**spouse**” of the following definition:
 “**‘Status Determination Committee’** means the Status Determination Committee or any of its subcommittees contemplated in section 8(2);”
 and

(f) by the substitution for the definition of “**unfounded application**” of the following definition:

“**‘unfounded application’**, in relation to an application for asylum in terms of section 21, means an application[—

(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;”**

Amendment of section 4 of Act 130 of 1998, as amended by section 5 of Act 33 of 2008

2. Section 4 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“A person does not qualify for refugee status for the purposes of this Act if the [**Refugee Status Determination Officer**] Status Determination Committee has reason to believe that he or she—”;

(b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) has committed [**a serious non-political crime outside the country of refuge prior to his or her admission to that country as a refugee**] a crime which is not of a political nature and which, if committed in the Republic, would be punishable by imprisonment without the option of a fine”.

Amendment of section 8 of Act 130 of 1998, as amended by section 10 of Act 33 of 2008

3. Section 8 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) Each Refugee Reception Office must consist of at least one Status Determination Committee established by the Director-General in the prescribed manner to consider and deal with applications for asylum in accordance with section 24: Provided that the Status Determination Committee may establish subcommittees consisting of no less than two members.”;

(b) by the deletion of subsection (3).

Amendment of section 8C of Act 130 of 1998 as inserted by section 11 of Act 33 of 2008

4. Section 8C of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) An appeal contemplated in subsection (1)(a) must be determined by a single member or 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.”.

Amendment of section 8E of Act 130 of 1998, as inserted by section 11 of Act 33 of 2008

5. Section 8E of the principal Act is hereby amended by the substitution for paragraph (f) of the following paragraph:

“(f) is a political office bearer holding a position in the national executive structure of any political party.”.

Amendment of section 21B of Act 130 of 1998, as inserted by section 14 of Act 33 of 2008

6. Section 21B of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any asylum seeker or 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] in terms of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), and submit the certificate issued in terms of that Act at any Refugee Reception Office, to be included as a dependant of such asylum seeker or refugee.”

Amendment of section 24 of Act 130 of 1998, as amended by section 17 of Act 33 of 2008

7. Section 24 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“When considering an application for asylum, the [Refugee Status Determination Officer] Status Determination Committee—”;

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The [Refugee Status Determination Officer] Status Determination Committee must at the conclusion of the hearing conducted in the prescribed manner—”;

(c) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“If an application is rejected in terms of subsection (3)[(b) or] (c), the [Refugee Status Determination Officer] Status Determination Committee must—”;

(d) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) furnish the applicant with written reasons within five working days after the date of the rejection; and”;

(e) by the substitution for subsection (5) of the following subsection:

“(5) (a) An asylum seeker whose application for asylum has been rejected in terms of subsection (3)(b) and confirmed by the Director-General in terms of section 24A(3), must be dealt with in terms of the Immigration Act.

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

Amendment of section 24A of Act 130 of 1998, as inserted by section 19 of Act 33 of 2008

8. Section 24A of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Director-General must review any decision taken by [a Refugee Status Determination Officer] the Status Determination Committee in terms of section 24(3)(b).”;

(b) by the substitution for subsection (4) of the following subsection:

“(4) The Director-General must inform the [Refugee Status Determination Officer] Status Determination Committee of his or her decision in the prescribed manner and within the prescribed time.”; and

(c) by the addition of the following subsections:

“(5) An application reviewed in terms of this section is deemed to have been finalised upon receipt of the said decision by the applicant in accordance with subsection (6).

(6) The Status Determination Committee must, in the prescribed manner, inform the applicant of the outcome of the review and the consequences thereof.”

Amendment of section 24B of Act 130 of 1998, as inserted by section 19 of Act 33 of 2008

9. Section 24B of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(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.”;
- (b) by the substitution for subsection (2) of the following subsection:
- “(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] Status Determination Committee in terms of section 24(3)[(b) or] (c).”;
- (c) by the substitution for subsection (5) of the following subsection:
- “(5) The Refugee Appeals Authority must refer the matter back to the [Refugee Status Determination Officer] Status Determination Committee 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 section 27 of Act 130 of 1998, as substituted by section 21 of Act 33 of 2008

10. Section 27 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:
- “(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] Minister, after considering all the relevant factors and within a reasonable period of time, certifies that he or she would remain a refugee indefinitely.”.

Amendment of section 36 of Act 130 of 1998, as amended by section 29 of Act 33 of 2008

11. Section 36 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “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] Minister may withdraw a person’s refugee status if such person—”;
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
- “(b) has been recognised as a refugee due to an error, omission or oversight committed by the [Refugee Status Determination Officer in good faith] Status Determination Committee; or”.

Amendment of section 38 of Act 130 of 1998, as amended by section 31 of Act 33 of 2008

12. Section 38 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:
- “(d) the manner in which and the period within which applications for asylum which are manifestly unfounded, fraudulent or abusive, must be dealt with”.

Substitution of words in Act 130 of 1998

13. The principal Act is hereby amended by the substitution for the words “Refugee Status Determination Officer”, wherever they occur, of the words “Status Determination Committee”.

Short title and commencement

14. This Act is called the Refugees Amendment Act, 2010, and comes into operation immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008).

MEMORANDUM ON THE OBJECTS OF THE REFUGEES AMENDMENT BILL, 2010

1. BACKGROUND AND OBJECTS OF BILL

1.1 The main objective of the Refugees Amendment Bill, 2010 (the Bill), is to amend the Refugees Act, 1998 (Act No. 130 of 1998) (the principal Act), as amended by the Refugees Amendment Act, 2008 (Act No. 33 of 2008) (the 2008 Amendment Act), in order to clarify how applications for refugees status rejected as manifestly unfounded and unfounded must be dealt with.

1.2 As defined in the Act, a manifestly unfounded application is an application for asylum made on grounds other than those on which such an application may be made under the Act. Those grounds are listed in section 3 of the Act, as follows:

“Subject to Chapter 3, a person qualifies for refugee status for the purposes of this Act if that person—

- (a) owing to a well-founded fear of being persecuted by reason of his or her race, 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
- (b) owing to external aggression, occupation, foreign domination or other events seriously disturbing 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 in another place outside his or her country of origin or nationality; or
- (c) is a spouse or dependant of a person contemplated in paragraph (a) or (b).”

An unfounded application, on the other hand, is an application made on the above grounds but which is without merit.

1.3 Asylum seekers whose applications are rejected as manifestly unfounded, abusive or fraudulent in terms of section 24(3)(b) need not apply for an appeal in terms of section 24B. Their applications are automatically reviewed by the Director-General in terms of section 24A.

1.4 Applications rejected in terms of section 24(3)(c) as unfounded, on the other hand, are dealt with by the Refugees Appeals Authority in terms of section 24B.

1.5 However, sections 24(4) and (5) and 24B(1) and (2) of the principal Act, as amended by the 2008 Amendment Act, still make reference to section 24(3)(b) applications as appealable to the Appeals Authority. For instance, in terms of section 24(4) the Refugee Status Determination Officer must inform the applicant of his or her right to appeal in terms of section 24B if an application is rejected in terms of subsection (3)(b) or (c).

1.6 Furthermore, in terms of section 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 Refugees Appeals Authority in the prescribed manner.

1.7 The Bill therefore seeks to clarify the situation by creating a committee that will deal with applications for asylum in terms of the Act instead of the Refugee Status Determination Officer, as is currently the case. This amendment will ensure that the applications for asylum in terms of the Act are dealt with efficiently, promptly and in a less subjective fashion.

1.8 Once the committee has decided on the applications in terms of section 24(3)(b) (reject them as manifestly unfounded applications) the Director-General will automatically review such decision under section 24A. If the applications are rejected as unfounded in terms of section 24(3)(c), the asylum seeker may lodge an appeal with the Refugee Appeals Authority.

2. CLAUSE BY CLAUSE ANALYSIS

2.1 **Clause 1** amends, inserts and deletes certain definitions of the principal Act.

2.2 **Clause 2** amends section 4(1)(b) of the principal Act by excluding a person that has committed a crime that is not of a political nature and, if committed in the Republic, would be punishable by imprisonment, from qualifying for refugee status.

2.3.1 **Clause 3** substitutes section 8(2) of the principal Act, which provides for the Refugee Status Determination Officer for each Refugee Reception Office established

and provides for the establishment by the Director-General in the prescribed manner of the Status Determination Committee for all Refugee Reception Offices, to consider and deal with applications for asylum in accordance with section 24 of the principal Act.

2.3.2 This clause further deletes section 8(3) of the principal Act, which requires the Director-General to appoint administrative staff connected to the functions of the Refugee Reception Offices.

2.4 **Clause 4** amends section 8E (f) of the principal Act by adding the words "holding a position in the national executive structure of any political party" in paragraph (f).

2.5.1 **Clause 5** substitutes section 21B(2) of the principal Act, which provides for the registration of a child born of a Refugee as a dependant at any Refugee Reception Office, by providing for registration of such a child and a child born of an asylum seeker in terms of Births and Deaths Registration Act, 1992 (Act No. 51 of 1992).

2.5.2 **Clause 5** further provides for an asylum seeker or refugee to submit the certificate issued in terms of the Births and Deaths Registration Act, 1992, at any Refugee Reception Office, in order to have the said child included as a dependant of such asylum seeker or refugee.

2.6.1 **Clause 6** amends section 24 of the principal Act by deleting subsection (2)(b), which provides that a United Nations High Commission on Refugees or its representative may be consulted or invited to furnish information on specified matters. This clause further amends section 24 in order to substitute the words "Refugee Status Determination Officer" for the words "Status Determination Committee" in subsections (2), (3) and (4).

2.6.2 This clause further provides for a hearing by the Status Determination Committee to be conducted in the prescribed manner.

2.6.3 This clause further amends section 24(4) in order to separate applications that are rejected as manifestly unfounded, abusive or fraudulent from being dealt with in the same procedure as applications rejected as unfounded applications.

2.7.1 **Clause 7** amends section 24A of the principal Act by the addition of subsection (5), which provides that an application reviewed by the Director-General is deemed to have been finalised upon receipt of the decision by the applicant in accordance with subsection (6).

2.7.2 This clause further adds subsection (6) to section 24A, which requires the Status Determination Committee to inform the applicant of the outcome of the review and the consequences thereof, in the prescribed manner.

2.8.1 **Clause 8** amends section 24B of the principal Act in order to separate applications that are rejected as manifestly unfounded, abusive or fraudulent from being dealt with in the same procedure as applications rejected as unfounded applications. The effect of the amendment will be that an applicant whose application has been rejected as manifestly unfounded, abusive or fraudulent, cannot lodge an appeal to the Refugee Appeals Authority. Such a rejection will be reviewed by the Director-General.

2.8.2 This clause furthermore deletes subsection (3)(a), which provides that the Refugee Appeals Authority may invite a United Nations High Commission on Refugees representative to make oral or written representations before the Refugee Appeals Authority makes a decision.

2.9 **Clause 9** amends section 27 of the Act by empowering the Minister instead of the Director-General to review the status of refugee after five years of continuous residence in the Republic.

2.10 **Clause 10(a)** amends section 36(1) of the principal Act, which gives the Director-General a discretion to withdraw a person's refugee status under certain circumstances. The proposed amendment seeks to empower the Minister instead of the Director-General to withdraw a person's refugee status.

Clause 10(b), on the other hand, amends section 36(1)(b), which gives the Director-General a discretion to withdraw a person's refugee status if such person has been recognised as a refugee due to an error, omission or oversight committed by the Refugee Status Determination Officer in good faith, by substituting the words "Refugee Status Determination Officer" for the words "Status Determination Committee". This clause further removes the words "in good faith" from this paragraph. In essence that means the Director-General, now substituted for the Minister, may withdraw a person's refugee status if such person has been recognised as a refugee due to an error, omission or oversight by the Status Determination Committee, whether such error, omission or oversight was made in good faith or not.

2.11 **Clause 11** amends section 38(1)(d) of the principal Act in order to effect a certain technical correction.

2.12 **Clause 12** amends the principal Act by substituting the words "Refugee Status Determination Officer", wherever they occur, for the words "Status Determination Committee".

2.13 **Clause 13** deals with the short title and commencement.

3. INSTITUTIONS CONSULTED

None.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Home Affairs are of the opinion that the 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 sections 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.