

REFUGEES ACT 130 OF 1998

[ASSENTED TO 20 NOVEMBER 1998]

[DATE OF COMMENCEMENT: 1 APRIL 2000]

(English text signed by the President)

as amended by¹

Refugees Amendment Act 33 of 2008

[with effect from a date to be proclaimed - see [PENDLEX](#)]

Refugees Amendment Act 12 of 2011

[with effect from immediately after the commencement of the Refugees Amendment Act 33 of 2008 - see [PENDLEX](#)]

[NB: The Act has been amended by the substitution for the words 'Refugee Status Determination Officer', wherever they occur, of the words 'Status Determination Committee' by s. 13 of the Refugees Amendment Act 12 of 2011, a provision which will be put into operation immediately after the commencement of the Refugees Amendment Act 33 of 2008.]

ACT

To give effect within the Republic of South Africa to the relevant international legal instruments, principles and standards relating to refugees; to provide for the reception into South Africa of asylum seekers; to regulate applications for and recognition of refugee status; to provide for the rights and obligations flowing from such status; and to provide for matters connected therewith.

Preamble

WHEREAS the Republic of South Africa has acceded to the 1951 Convention Relating to Status of Refugees, the 1967 Protocol Relating to the Status of Refugees and the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa as well as other human rights instruments, and has in so doing, assumed certain obligations to receive and treat in its territory refugees in accordance with the standards and principles established in international law,

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

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¹

S. 54 (1) of the Immigration Act 13 of 2002 amended the Refugees Act 130 of 1998 to the extent set out in Schedule 3 to Act 13 of 2002 with effect from 12 March 2003 (Proc R13 in GG 24951 of 20 February 2003). Schedule 3 to Act 13 of 2002 was subsequently substituted by s. 48 of the Immigration Amendment Act 19 of 2004 with effect from 1 July 2005 (Proc R30 in GG 27725 of 27 June 2005). The substituted text of Schedule 3 does not amend the Refugees Act 130 of 1998.

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CHAPTER 1

INTERPRETATION, APPLICATION AND ADMINISTRATION OF ACT (ss 1-7)

1 Definitions

[NB: Definitions of **'biometrics'**, **'dependant'**, **'manifestly unfounded application'** and **'unfounded application'** have been substituted, the definition of **'Refugee Status Determination Officer'** has been deleted and the definition of **'Status Determination Committee'** has been inserted by s. 1 of the Refugees Amendment Act 12 of 2011, a provision which will be put into operation immediately after the commencement of the Refugees Amendment Act 33 of 2008. See [PENDLEX](#).]

In this Act, unless the context shows that another meaning is intended-

'abusive application for asylum' means an application for asylum made-

- (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;

'Aliens Control Act, 1991,' means the Aliens Control Act, 1991 (Act 96 of 1991);

'Appeal Board' means the Refugee Appeal Board, established by section 12;

'asylum' means refugee status recognised in terms of this Act;

'asylum seeker' means a person who is seeking recognition as a refugee in the Republic;

'asylum seeker permit' means a permit contemplated in section 22;

'child' means any person under the age of 18 years;

'Department' means the Department of Home Affairs;

'dependant', in relation to an asylum seeker or a refugee, includes the spouse, any unmarried dependent child or any destitute, aged or infirm member of the family of such asylum seeker or refugee;

'Director-General' means the Director-General of the Department;

'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;

'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;

'Minister' means the Minister of Home Affairs;

'prescribed' means prescribed by regulation;

'refugee' means any person who has been granted asylum in terms of this Act;

'Refugee Reception Office' means a Refugee Reception Office established under section 8 (1);

'Refugee Reception Officer' means a Refugee Reception Officer referred to in section 8 (2);

'Refugee Status Determination Officer' means a Refugee Status Determination Officer referred to in section 8 (2);

'regulation' means any regulation made under this Act;

'rules' means the rules made by the Appeal Board under section 14 (2);

'social group' includes, among others, a group of persons of particular gender, sexual orientation, disability, class or caste;

'**Standing Committee**' means the Standing Committee for Refugee Affairs, established by section 9;

'**this Act**' includes the regulations;

'**UNHCR**' means the United Nations High Commissioner for Refugees.

[NB: S. 1 has been substituted and a s. 1A has been inserted by ss. 1 and 2, respectively, of the Refugees Amendment Act 33 of 2008, provisions which will be put into operation by proclamation. See [PENDLEX.](#)]

2 General prohibition of refusal of entry, expulsion, extradition or return to other country in certain circumstances

Notwithstanding any provision of this Act or any other law to the contrary, no person may be refused entry into the Republic, expelled, extradited or returned to any other country or be subject to any similar measure, if as a result of such refusal, expulsion, extradition, return or other measure, such person is compelled to return to or remain in a country where-

- (a) he or she may be subjected to persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group; or
- (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 part or the whole of that country.

[NB: Para. (b) has been substituted by s. 3 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX.](#)]

3 Refugee status

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, 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

[NB: Para. (a) has been substituted by s. 4 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX.](#)]

- (b) owing to external aggression, occupation, foreign domination or 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; or

[NB: Para. (b) has been substituted by s. 4 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX.](#)]

- (c) is a dependant of a person contemplated in paragraph (a) or (b).

[NB: Para. (c) has been substituted by s. 4 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX.](#)]

4 Exclusion from refugee status

(1) A person does not qualify for refugee status for the purposes of this Act if there is reason to believe that he or she-

- (a) has committed a crime against peace, a war crime or a crime against humanity, as defined in any international legal instrument dealing with any such crimes; or

- (b) has committed a crime which is not of a political nature and which, if committed in the Republic, would be punishable by imprisonment; or

[NB: Para. (b) has been substituted by s. 5 (b) of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See **PENDLEX**. Para. (b) has subsequently been substituted by s. 2 (b) of the Refugees Amendment Act 12 of 2011, a provision which will be put into operation immediately after the commencement of the Refugees Amendment Act 33 of 2008. See **PENDLEX**.]

- (c) has been guilty of acts contrary to the objects and principles of the United Nations Organisation or the Organisation of African Unity; or
- (d) enjoys the protection of any other country in which he or she has taken residence.

[NB: Sub-s. (1) has been amended and para. (d) has been substituted by s. 5 (a) and (c), respectively, of the Refugees Amendment Act 33 of 2008, provisions which will be put into operation by proclamation. See **PENDLEX**. Sub-s. (1) has subsequently been amended by s. 2 (a) of the Refugees Amendment Act 12 of 2011, a provision which will be put into operation immediately after the commencement of the Refugees Amendment Act 33 of 2008. See **PENDLEX**.]

(2) For the purposes of subsection (1) (c), no exercise of a human right recognised under international law may be regarded as being contrary to the objects and principles of the United Nations Organisation or the Organisation of African Unity.

5 Cessation of refugee status

(1) A person ceases to qualify for refugee status for the purposes of this Act if-

- (a) he or she voluntarily reavails himself or herself of the protection of the country of his or her nationality; or
- (b) having lost his or her nationality, he or she by some voluntary and formal act reacquires it; or
- (c) he or she becomes a citizen of the Republic or acquires the nationality of some other country and enjoys the protection of the country of his or her new nationality; or

[NB: Para. (c) has been substituted by s. 6 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See **PENDLEX**.]

- (d) he or she voluntarily re-establishes himself or herself in the country which he or she left; or
- (e) he or she can no longer continue to refuse to avail himself or herself of the protection of the country of his or her nationality because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist and no other circumstances have arisen which justify his or her continued recognition as a refugee.

(2) Subsection (1) (e) does not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality.

(3) The refugee status of a person who ceases to qualify for it in terms of subsection (1) may be withdrawn in terms of section 36.

6 Interpretation, application and administration of Act

(1) This Act must be interpreted and applied with due regard to-

- (a) the Convention Relating to the Status of Refugees (UN, 1951);
- (b) the Protocol Relating to the Status of Refugees (UN, 1967);
- (c) the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU, 1969);
- (d) the Universal Declaration of Human Rights (UN, 1948); and
- (e) any other relevant convention or international agreement to which the Republic is or becomes a party.

(2) The Minister is responsible for the administration of this Act.

[NB: S. 6 has been repealed by s. 7 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

7 Delegation of powers and duties

(1) The Minister may delegate any power granted to, or duty imposed upon, him or her in terms of this Act, except the duty referred to in section 6 (2), to an officer in the Department.

(2) A power or duty so delegated must be exercised or performed in accordance with the directions of the Minister, who may at any time withdraw such delegation.

(3) A delegation under subsection (1) does not prevent the Minister from exercising the power or performing the duty in question himself or herself.

[NB: S. 7 has been substituted by s. 8 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX.](#)]

CHAPTER 2

REFUGEE RECEPTION OFFICES, STANDING COMMITTEE FOR REFUGEE AFFAIRS AND REFUGEE APPEAL BOARD (ss 8-20)

[NB: The heading has been substituted by s. 9 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX.](#)]

8 Refugee Reception Office

(1) The Director-General may 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.

(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 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 makes them capable of performing their functions.

[NB: Sub-s. (2) has been substituted by s. 3 (a) of the Refugees Amendment Act 12 of 2011, a provision which will be put into operation immediately after the commencement of the Refugees Amendment Act 33 of 2008. See [PENDLEX.](#)]

(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.

[NB: Sub-s. (3) has been deleted by s. 3 (b) of the Refugees Amendment Act 12 of 2011, a provision which will be put into operation immediately after the commencement of the Refugees Amendment Act 33 of 2008. S. 8 has been substituted and ss. 8A to 8J have been inserted by ss. 10 and 11, respectively, of the Refugees Amendment Act 33 of 2008, provisions which will be put into operation by proclamation. See [PENDLEX.](#) Ss. 8C (2) and 8E (f) have been substituted by ss. 4 and 5, respectively, of the Refugees Amendment Act 12 of 2011, provisions which will be put into operation immediately after the commencement of the Refugees Amendment Act 33 of 2008. See [PENDLEX.](#)]

9 Standing Committee for Refugee Affairs

(1) There is hereby established a Standing Committee for Refugee Affairs.

(2) The Standing Committee must function without any bias and must be independent.

(3) The headquarters of the Standing Committee must be determined by the Minister.

[NB: S. 9 has been repealed by s. 12 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

10 Composition of Standing Committee

(1) The Standing Committee must consist of-

- (a) a chairperson; 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 Committee.

(2) The chairperson and other members of the Standing Committee must be appointed by the Minister with due regard to their experience, qualifications and expertise, as well as their ability to perform the functions of their office properly.

(3) A person may not be appointed as a member of the Standing Committee if he or she-

- (a) is not a South African citizen;
- (b) has been sentenced to imprisonment without the option of a fine during the preceding four years.

(4) At least one of the members of the Standing Committee must be legally qualified.

[NB: S. 10 has been repealed by s. 12 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

11 Powers and duties of Standing Committee

The Standing Committee-

- (a) may formulate and implement procedures for the granting of asylum;
- (b) may regulate and supervise the work of the Refugee Reception Offices;
- (c) may liaise with representatives of the UNHCR or any nongovernmental organisation;
- (d) must advise the Minister or Director-General on any matter referred to it by the Minister or Director-General;
- (e) must review decisions by Refugee Status Determination Officers in respect of manifestly unfounded applications;
- (f) must decide any matter of law referred to it by a Refugee Status Determination Officer;
- (g) must monitor the decisions of the Refugee Status Determination Officers; and
- (h) must determine the conditions relating to study or work in the Republic under which an asylum seeker permit may be issued.

[NB: S. 11 has been repealed by s. 12 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

12 Establishment of Refugee Appeal Board

(1) There is hereby established a Refugee Appeal Board.

(2) The headquarters of the Appeal Board must be determined by the Minister.

(3) The Appeal Board must function without any bias and must be independent.

[NB: S. 12 has been repealed by s. 12 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

13 Composition of Appeal Board

(1) Minister with due regard to a person's suitability to serve as a member by virtue of his or her experience, qualifications and expertise and his or her capability to perform the functions of the Appeal Board properly.

(2) At least one of the members of the Appeal Board must be legally qualified.

(3) A person may not be appointed as a member of the Appeal Board if he or she-

- (a) is not a South African citizen;
- (b) has been sentenced to imprisonment without the option of a fine during the preceding four years.

[NB: S. 13 has been repealed by s. 12 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

14 Powers and duties of Appeal Board

- (1) The Appeal Board must-
- (a) hear and determine any question of law referred to it in terms of this Act;
 - (b) hear and determine any appeal lodged in terms of this Act;
 - (c) advise the Minister or Standing Committee regarding any matter which the Minister or Standing Committee refers to the Appeal Board.

(2) The Appeal Board may determine its own practice and make its own rules.

(3) Rules made under subsection (2) must be published in the *Gazette*.

[NB: S. 14 has been repealed by s. 12 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

15 Meetings of Standing Committee and Appeal Board

In the case of both the Standing Committee and the Appeal Board-

- (a) meetings must be convened by the chairperson;
- (b) the majority of members constitutes a quorum;
- (c) decisions must be taken by a majority of votes, and in the case of an equality of votes, the chairperson has a casting vote.

[NB: S. 15 has been repealed by s. 12 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

16 Periods of office of members of Standing Committee and Appeal Board

In the case of both the Standing Committee and the Appeal Board-

- (a) a member is appointed for five years;
- (b) any member is eligible for reappointment upon expiry of his or her term of office;
- (c) any member may resign by tendering a written notice of resignation to the Minister.

[NB: S. 16 has been repealed by s. 12 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

17 Removal from office of member of Standing Committee or Appeal Board

(1) Any member of the Standing Committee or Appeal Board may be removed from office by the Minister on account of misconduct or inability to perform the functions of his or her office properly.

(2) The Minister may only act in terms of subsection (1) if the member concerned and the relevant chairperson have been given an opportunity to make representations or comments on the matter and the Minister has taken any such representations and comments into consideration.

[NB: S. 17 has been repealed by s. 12 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

18 Filling of vacancies in Standing Committee or Appeal Board

The Minister may appoint a suitable person in a vacancy arising from the death, resignation or removal from office of a member of the Standing Committee or Appeal Board, for the remainder of the term of office of the member in respect of whom the vacancy has occurred.

[NB: S. 18 has been repealed by s. 12 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

19 Remuneration of members of Standing Committee and Appeal Board

The members of the Standing Committee and the Appeal Board must receive such remuneration, allowances and other benefits as may be determined by the Minister with the approval of the Minister of Finance.

[NB: S. 19 has been repealed by s. 12 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

20 Administrative staff of Standing Committee and Appeal Board

The administrative work connected with the performance of the functions of the Standing Committee and the Appeal Board, must be performed by officers of the Department, designated by the Director-General for that purpose.

[NB: S. 20 has been repealed by s. 12 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

CHAPTER 3 APPLICATION FOR ASYLUM (ss 21-24)

21 Application for asylum

(1) An application for asylum must be made in person in accordance with the prescribed procedures to a Refugee Reception Officer at any Refugee Reception Office.

[NB: Sub-s. (1) has been substituted by s. 13 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX.](#)]

(2) The Refugee Reception Officer concerned-

- (a) must accept the application form from the applicant;
- (b) must see to it that the application form is properly completed, and, where necessary, must assist the applicant in this regard;
- (c) may conduct such enquiry as he or she deems necessary in order to verify the information furnished in the application; and
- (d) must submit any application received by him or her, together with any information relating to the applicant which he or she may have obtained, to a Refugee Status Determination Officer, to deal with it in terms of section 24.

[NB: Sub-s. (2) has been substituted by s. 13 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX.](#)]

(3) When making an application for asylum, every applicant must have his or her fingerprints or other prints 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.

[NB: Sub-s. (3) has been substituted by s. 13 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX.](#)]

(4) Notwithstanding any law to the contrary, no proceedings may be instituted or continued against any person in respect of his or her unlawful entry into or presence within the Republic if-

- (a) such person has applied for asylum in terms of subsection (1), until a decision has been made on the application and, where applicable, such person has had an opportunity to exhaust his or her rights of review or appeal in terms of Chapter 4; or
- (b) such person has been granted asylum.

(5)² The confidentiality of asylum applications and the information contained therein must be ensured at all times.

[NB: Ss. 21A and 21B have been inserted by s. 14 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX](#). S. 21B (2) has been substituted by s. 6 of the Refugees Amendment Act 12 of 2011, a provision which will be put into operation immediately after the commencement of the Refugees Amendment Act 33 of 2008. See [PENDLEX](#).]

22 Asylum seeker permit

(1) The Refugee Reception Officer must, pending the outcome of an application in terms of section 21 (1), issue to the applicant an asylum seeker permit in the prescribed form allowing the applicant to sojourn in the Republic temporarily, subject to any conditions, determined by the Standing Committee, which are not in conflict with the Constitution or international law and are endorsed by the Refugee Reception Officer on the permit.

[NB: Sub-s. (1) has been substituted by s. 15 (a) of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX](#).]

(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, becomes null and void, and must forthwith be returned to the Director-General for cancellation.

[NB: Sub-s. (2) has been substituted by s. 15 (a) of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX](#).]

(3) A Refugee Reception Officer may 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.

[NB: Sub-s. (3) has been substituted by s. 15 (a) of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX](#).]

(4) The permit referred to in subsection (1) must contain a recent photograph and the fingerprints or other prints of the holder thereof as prescribed.

[NB: Sub-s. (4) has been substituted by s. 15 (a) of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX](#).]

(5) A permit issued to any person in terms of subsection (1) lapses if the holder departs from the Republic without the consent of the Minister.

[NB: Sub-s. (5) has been deleted by s. 15 (b) of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

² In *Mail & Guardian Media Ltd and Others v Chipu NO and Others* 2013 (6) SA 367 (CC) the Constitutional Court declared s. 21 (5) to be inconsistent with s. 16 (1) (a) and (b) of the Constitution 'to the extent that it precludes members of the public or the media from attending proceedings of the Refugee Appeal Board in all cases and fails to confer a discretion upon the Refugee Appeal Board to allow the public and media access to its proceedings in an appropriate case.' This declaration of invalidity is to be suspended for a period of two years to enable Parliament to correct the constitutional defect in s. 21 (5). Pending the correction of the defect, or the expiry of the two-year period, whichever occurs first, s 21 (5) is to be read as follows:

'The confidentiality of asylum applications and the information contained therein must be ensured at all times, except that the Refugee Appeal Board may, on application and on conditions it deems fit, allow any person or the media to attend or report on its hearing if-

- (a) the asylum seeker gives consent; or
- (b) the Refugee Appeal Board concludes that it is in the public interest to allow any person or the media to attend or report on its hearing, after taking into account all relevant factors including:
 - (i) the interests of the asylum seeker in retaining confidentiality;
 - (ii) the need to protect the integrity of the asylum process;
 - (iii) the need to protect the identity and dignity of the asylum seeker;
 - (iv) whether the information is already in the public domain;
 - (v) the likely impact of the disclosure on the fairness of the proceedings and the rights of the asylum seeker; and
 - (vi) whether allowing any person or the media access to its proceedings or allowing the media to report thereon would pose a credible risk to the life or safety of the asylum seeker or of his or her family, friends or associates.'

- (6) The Minister may at any time withdraw an asylum seeker permit if-
- (a) the applicant contravenes any conditions endorsed on that permit; or
 - (b) the application for asylum has been found to be manifestly unfounded, abusive or fraudulent; or
 - (c) the application for asylum has been rejected; or
 - (d) the applicant is or becomes ineligible for asylum in terms of section 4 or 5.

[NB: Sub-s. (6) has been amended by s. 15 (c) of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX.](#)]

(7) Any person who fails to return a permit in accordance with subsection (2), or to comply with any condition set out in a permit issued in terms of this section, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

23 Detention of asylum seeker

If the Minister 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.

[NB: S. 23 has been substituted by s. 16 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX.](#)]

24 Decision regarding application for asylum

(1) Upon receipt of an application for asylum the Refugee Status Determination Officer-

- (a) in order to make a decision, may request any information or clarification he or she deems necessary from an applicant or Refugee Reception Officer;
- (b) where necessary, may consult with and invite a UNHCR representative to furnish information on specified matters; and
- (c) may, with the permission of the asylum seeker, provide the UNHCR representative with such information as may be requested.

[NB: Sub-s. (1) has been deleted by s. 17 (a) of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

(2) When considering an application the Refugee Status Determination Officer must have due regard for the rights set out in section 33 of the Constitution, and in particular, ensure that the applicant fully understands the procedures, his or her rights and responsibilities and the evidence presented.

[NB: Sub-s. (2) has been substituted by s. 17 (b) of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX.](#) Sub-s. (2) has subsequently been amended by s. 7 (a) of the Refugees Amendment Act 12 of 2011, a provision which will be put into operation immediately after the commencement of the Refugees Amendment Act 33 of 2008. See [PENDLEX.](#)]

(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.

[NB: Sub-s. (3) has been substituted by s. 17 (b) of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX.](#) Sub-s. (3) has subsequently been amended by s. 7 (b) of the Refugees Amendment Act 12 of 2011, a provision which will be put into operation immediately after the commencement of the Refugees Amendment Act 33 of 2008. See [PENDLEX.](#)]

- (4) If an application is rejected in terms of subsection (3) (b)-
- (a) 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.

[NB: Sub-s. (4) has been substituted and sub-ss. (5) and (6) have been added by s. 17 (b) and (c), respectively, of the Refugees Amendment Act 33 of 2008, provisions which will be put into operation by proclamation. See [PENDLEX](#). Sub-s. (4) has subsequently been amended and sub-s. (5) has subsequently been substituted by s. 7 (c), (d) and (e) of the Refugees Amendment Act 12 of 2011, provisions which will be put into operation immediately after the commencement of the Refugees Amendment Act 33 of 2008. See [PENDLEX](#). Ss. 24A and 24B have been inserted by s. 19 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. S. 24A (1) and (4) have subsequently been substituted and ss. 24A (5) and (6) have been added by s. 8 of the Refugees Amendment Act 12 of 2011, a provision which will be put into operation immediately after the commencement of the Refugees Amendment Act 33 of 2008. See [PENDLEX](#). S. 24B (1), (2) and (5) have subsequently been substituted by s. 9 of the Refugees Amendment Act 12 of 2011, a provision which will be put into operation immediately after the commencement of the Refugees Amendment Act 33 of 2008. See [PENDLEX](#).]

CHAPTER 4 REVIEWS AND APPEALS (ss 25-26)

25 Review by Standing Committee

(1) The Standing Committee must review any decision taken by a Refugee Status Determination Officer in terms of section 24 (3) (b).

- (2) Before reaching a decision, the Standing Committee may-
- (a) invite the UNHCR representative to make oral or written representations;
 - (b) request the attendance of any person who is in a position to provide it with information relevant to the matter being dealt with;
 - (c) on its own accord make such further enquiry and investigation into the matter being dealt with as it may deem appropriate; and
 - (d) request the applicant to appear before it and to provide such other information as it may deem necessary.

- (3) The Standing Committee-
- (a) may confirm or set aside a decision made in terms of section 24 (3) (b); and
 - (b) must decide on a question of law referred to it in terms of section 24 (3) (d).

(4) The Standing Committee must inform the Refugee Status Determination Officer concerned of its decision in the prescribed manner and within the prescribed time.

(5) After the Standing Committee has decided a question of law referred to it in terms of section 24 (3) (d), the Standing Committee must refer the application back to the Refugee Status Determination Officer with such directives as are necessary and the Refugee Status Determination Officer must decide the application in terms of the directives.

[NB: S. 25 has been repealed by s. 18 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

26 Appeals to Appeal Board

(1) Any asylum seeker may lodge an appeal with the Appeal Board in the manner and within the period provided for in the rules if the Refugee Status Determination Officer has rejected the application in terms of section 24 (3) (c).

(2) The Appeal Board may after hearing an appeal confirm, set aside or substitute any decision taken by a Refugee Status Determination Officer in terms of section 24 (3).

- (3) Before reaching a decision, the Appeal Board may-
- (a) invite the UNHCR representative to make oral or written representations;
 - (b) refer the matter back to the Standing Committee for further inquiry and investigation;
 - (c) request the attendance of any person who, in its opinion, is in a position to provide the Appeal Board with relevant information;
 - (d) of its own accord make further inquiry or investigation;
 - (e) request the applicant to appear before it and to provide any such other information as it may deem necessary.

(4) The Appeal Board must allow legal representation upon the request of the applicant.

[NB: S. 26 has been repealed by s. 18 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

CHAPTER 5 RIGHTS AND OBLIGATIONS OF REFUGEES (ss 27-34)

[NB: The heading has been substituted by s. 20 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX](#).]

27 Protection and general rights of refugees

A refugee-

- (a) is entitled to a formal written recognition of refugee status in the prescribed form;
- (b) enjoys full legal protection, which includes the rights set out in Chapter 2 of the Constitution and the right to remain in the Republic in accordance with the provisions of this Act;
- (c) is entitled to apply for an immigration permit in terms of the Aliens Control Act, 1991, after five years' continuous residence in the Republic from the date on which he or she was granted asylum, if the Standing Committee certifies that he or she will remain a refugee indefinitely;
- (d) is entitled to an identity document referred to in section 30;
- (e) is entitled to a South African travel document on application as contemplated in section 31;
- (f) is entitled to seek employment; and
- (g) is entitled to the same basic health services and basic primary education which the inhabitants of the Republic receive from time to time.

[NB: S. 27 has been substituted and a s. 27A has been inserted by ss. 21 and 22, respectively, of the Refugees Amendment Act 33 of 2008, provisions which will be put into operation by proclamation. See [PENDLEX](#). Para. (c) has subsequently been substituted by s. 10 of the Refugees Amendment Act 12 of 2011, a provision which will be put into operation immediately after the commencement of the Refugees Amendment Act 33 of 2008. See [PENDLEX](#).]

28 Rights of refugees in respect of removal from Republic

(1) Subject to section 2, a refugee may be removed from the Republic on grounds of national security or public order.

(2) A removal under subsection (1) may only be ordered by the Minister with due regard for the rights set out in section 33 of the Constitution and the rights of the refugee in terms of international law.

(3) If an order is made under this section for the removal from the Republic of a refugee, any dependant of such refugee who has not been granted asylum, may be included in such an order and removed from the Republic if such 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.

[NB: Sub-s. (3) has been substituted by s. 23 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX](#).]

(4) Any refugee ordered to be removed under this section may be detained pending his or her removal from the Republic.

(5) Any order made under this section must afford reasonable time to the refugee concerned to obtain approval from any country of his or her own choice, for his or her removal to that country.

29 Restriction of detention

(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 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.

(2) The detention of a child must be used only as a measure of last resort and for the shortest appropriate period of time.

[NB: S. 29 has been substituted by s. 24 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX.](#)]

30 Identity document to refugee

(1) A refugee must be issued with an identity document which must contain-

- (a) an identity number of the holder compiled in the prescribed manner;
- (b) the holder's surname, full forenames, gender, date of birth and the place or country where he or she was born;
- (c) the country of which the holder is a citizen, if any;
- (d) a recent photograph of the holder; and
- (e) the holder's fingerprints or other prints, taken and displayed in the prescribed manner.

(2) An identity document referred to in subsection (1) must be in the prescribed form.

[NB: S. 30 has been substituted by s. 25 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX.](#)]

31 Travel document to refugee

A refugee may apply for a travel document in the prescribed manner.

[NB: S. 31 has been repealed by s. 26 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

32 Unaccompanied child and mentally disabled person

(1) Any child who appears to qualify for refugee status in terms of section 3, and who is found under circumstances which clearly indicate that he or she is a child in need of care as contemplated in the Child Care Act, 1983 (Act 74 of 1983), must forthwith be brought before the Children's Court for the district in which he or she was found.

(2) The Children's Court may order that a child contemplated in subsection (1) be assisted in applying for asylum in terms of this Act.

(3) Any mentally disabled person who appears to qualify for refugee status in terms of section 3 must be assisted in applying for asylum in terms of this Act.

[NB: S. 32 has been repealed by s. 26 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

33 Dependants of refugee

(1) A person who qualifies for refugee status in terms of section 3 (a) or (b) and who would like one or more of his or her dependants who have accompanied him or her to the Republic to receive asylum must, when applying for asylum, also assist every such dependant to apply for asylum in terms of this Act or apply on behalf of any such dependant who is not able to apply by himself or herself.

(2) 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 reason of his or her marriage, his or her attaining the age of majority or the cessation of his or her dependence upon 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.

(3) Upon the death of a recognised refugee or upon his or her divorce, every person who, immediately before such death or divorce was within the Republic in terms of this Act as a dependant of such recognised refugee, may be permitted to continue to remain within the Republic in accordance with the provisions of this Act.

(4) Nothing contained in this Act may prevent a dependant of a recognised refugee or a person who has, in terms of subsection (2) or (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.

[NB: S. 33 has been repealed by s. 26 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

34 Obligations of refugees

A refugee must abide by the laws of the Republic.

[NB: S. 34 has been substituted and a s. 34A has been inserted by ss. 27 and 28, respectively, of the Refugees Amendment Act 33 of 2008, provisions which will be put into operation by proclamation. See [PENDLEX](#).]

CHAPTER 6 SUPPLEMENTARY AND GENERAL PROVISIONS (ss 35-41)

35 Reception and accommodation of asylum seekers in event of mass influx

(1) The Minister may, if he or she considers that any group or category of persons qualify for refugee status as is contemplated in section 3, by notice in the *Gazette*, declare such group or category of persons to be refugees either unconditionally or subject to such conditions as the Minister may impose in conformity with the Constitution and international law and may revoke any such declaration by notice in the *Gazette*.

(2) The Minister may, after consultation with the UNHCR representative and the Premier of the province concerned, designate areas, centres or places for the temporary reception and accommodation of asylum seekers or refugees or any specific category or group of asylum seekers or refugees who entered the Republic on a large scale, pending the regularisation of their status in the Republic.

(3) The Minister may appoint any person as a manager of an area, centre or place designated under subsection (2).

(4) The Minister may at any time withdraw the designation of an area, centre or place contemplated in subsection (2).

36 Withdrawal of refugee status

(1) If a person has been recognised as a refugee erroneously on an application which contains any materially incorrect or false information, or was so recognised due to fraud, forgery, a false or misleading representation of a material or substantial nature in relation to the application or if such person ceases to qualify for refugee status in terms of section 5-

- (a) the Standing Committee must inform such person of its intention of withdrawing his or her classification as refugee and the reasons therefor; and
- (b) such person may, within the prescribed period, make a written submission with regard thereto.

(2) After consideration of all material facts and with due regard for the rights set out in section 33 of the Constitution, the Standing Committee may withdraw such recognition and such person may be dealt with as a prohibited person under the Aliens Control Act, 1991.

(3) Any refugee whose recognition as such is withdrawn in terms of subsection (1) may be arrested and detained pending being dealt with in terms of the Aliens Control Act, 1991.

[NB: S. 36 has been substituted by s. 29 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX](#). Sub-s. (1) has subsequently been amended by s. 11 of the Refugees Amendment Act 12 of 2011, a provision which will be put into operation immediately after the commencement of the Refugees Amendment Act 33 of 2008. See [PENDLEX](#).]

37 Offences and penalties

Any person who-

- (a) for the purpose of entering, or remaining in, the Republic or of facilitating or assisting the entry into or residence in the Republic of himself or herself or any other person, commits any fraudulent act or makes any false representation by conduct, statement or otherwise; or
- (b) fails to comply with or contravenes the conditions subject to which any permit has been issued to him or her under this Act; or
- (c) without just cause refuses or fails to comply with a requirement of this Act; or
- (d) contravenes or fails to comply with any provision of this Act, if such contravention or failure is not elsewhere declared an offence,

[NB: Paras. (e) and (f) have been added by s. 30 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX](#).]

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

38 Regulations

(1) The Minister may make regulations relating to-

- (a) a large-scale influx of asylum seekers into the Republic;
- (b) the manner in which and period within which a matter must be referred to the Standing Committee;

[NB: Para. (b) has been substituted by s. 31 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX](#).]

- (c) the forms to be used under certain circumstances and the permit to be issued pending the outcome of an application for asylum;
- (d) the manner and the period in which applications for asylum which are manifestly unfounded, fraudulent or abusive, must be dealt with;

[NB: Para. (d) has been substituted by s. 31 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation. See [PENDLEX](#). Para. (d) has subsequently been substituted by s. 12 of the Refugees Amendment Act 12 of 2011, a provision which will be put into operation immediately after the commencement of the Refugees Amendment Act 33 of 2008. See [PENDLEX](#).]

- (e) the conditions of sojourn in the Republic of an asylum seeker, while his or her application is under consideration;
- (f) the provision of interpreters at all levels of the determination process; and
- (g) any other matter which is necessary or expedient to prescribe in order that the objects of this Act may be achieved.

(2) A regulation under subsection (1) (a) may only be made in consultation with the Premier of any province into which the influx takes place.

39 Training of staff

The Director-General must, in consultation with the Standing Committee, take such steps as to ensure the appropriate training of any person-

- (a) to whom powers are delegated in terms of this Act; or
- (b) who is appointed in any capacity in terms of this Act.

[NB: S. 39 has been repealed by s. 32 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

40 Transitional arrangements

Any person who, immediately before the commencement of this Act, was in the process of applying for asylum or was a recognised refugee must be regarded as having applied for asylum or as having been recognised as a refugee in terms of this Act, and the provisions of this Act apply in all respects to such applicant and his or her application and such refugee, as the case may be.

[NB: S. 40 has been repealed by s. 32 of the Refugees Amendment Act 33 of 2008, a provision which will be put into operation by proclamation.]

41 Short title and commencement

This is the Refugees Act, 1998, which comes into operation on a date determined by the President by proclamation in the *Gazette*.

PENDLEX: Refugees Act 130 of 1998 after amendment by the Refugees Amendment Act 33 of 2008

Section 1 - Definitions

In this Act, unless the context indicates otherwise-

'abusive application for asylum' means an application for asylum made-

- (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;

'asylum' means refugee status recognised in terms of this Act;

'asylum seeker' means a person who is seeking recognition as a refugee in the Republic;

'asylum seeker permit' means a permit contemplated in section 22;

'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;

'child' means any person under the age of 18 years;

'court' means a magistrate's court;

'Department' means the Department of Home Affairs;

'dependant', in relation to an asylum seeker or a refugee, includes any unmarried dependent child or any destitute, aged or infirm member of the immediate family of such asylum seeker or refugee;

'Director-General' means the Director-General of the Department;

'fraudulent application for asylum' means an application for asylum based without reasonable cause on information, documents or representations which the applicant knows to be false and are intended to materially affect the outcome of the application;

'immediate family' means the immediate family as defined in section 1 of the Immigration Act;

'Immigration Act' means the Immigration Act, 2002 (Act 13 of 2002);

'marriage' means-

- (a) either a marriage or a civil partnership concluded in terms of the Civil Union Act, 2006 (Act 17 of 2006);
- (b) a marriage concluded in terms of-
 - (i) the Marriage Act, 1961 (Act 25 of 1961); or
 - (ii) the Recognition of Customary Marriages Act, 1998 (Act 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;

'Minister' means the Minister of Home Affairs;

'prescribed' means prescribed by regulation;

'refugee' means any person who has been granted asylum in terms of this Act;

'Refugee Appeals Authority' means the Refugee Appeals Authority established in terms of section 8A;

'Refugee Reception Office' means a Refugee Reception Office established under section 8 (1);

'Refugee Reception Officer' means a Refugee Reception Officer referred to in section 8 (2);

'Refugee Status Determination Officer' means a Refugee Status Determination Officer referred to in section 8 (2);

'regulation' means any regulation made under this Act;

'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;

'rules' means the rules made by the Appeal Board under section 14 (2);

'social group' includes a group of persons of particular gender, sexual orientation, disability, class or caste;

'spouse' means a person who is a party to-

- (a) a marriage as defined in terms of this Act; or
- (b) a permanent homosexual or heterosexual relationship as prescribed;

'this Act' includes the regulations made in terms of this Act;

'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;

'UNHCR' means the United Nations High Commissioner for Refugees.

Section 1A - Interpretation and application of Act

This Act must be interpreted and applied in a manner that is 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 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.

Section 2 (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 public order in any part or the whole of that country.

Section 3 (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

Section 3 (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

Section 3 (c)

is a spouse or dependant of a person contemplated in paragraph (a) or (b).

Section 4 (1) - words preceding para. (a)

A person does not qualify for refugee status for the purposes of this Act if the Refugee Status Determination Officer has reason to believe that he or she-

Section 4 (1) (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; or

Section 4 (1) (d)

enjoys the protection of any other country in which he or she is a recognised refugee, permanent resident or citizen.

Section 5 (1) (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 that country: Provided that a person whose permanent residence status is withdrawn is not prevented from re-applying for refugee status; or

Section 6 - repealed

Section 7 - Delegation of powers

(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.

(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.

Chapter 2 - heading

REFUGEE RECEPTION OFFICES AND REFUGEE APPEALS AUTHORITY

Section 8 - Refugee Reception Office

(1) The Director-General may, by notice in the *Gazette*, establish as many Refugee Reception Offices in the Republic as he or she regards as necessary for the purposes of this Act.

(2) Each Refugee Reception Office must consist of at least one Refugee Status Determination Officer who must-

- (a) be an officer of the Department, designated by the Director-General; and
- (b) have such qualifications, experience and knowledge of refugee matters that makes him or her capable of performing his or her functions in terms of this Act.

(3) The Director-General must appoint such number of officers as he or she deems necessary to perform administrative functions connected with the Refugee Reception Office.

Section 8A - Refugee Appeals Authority

(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.

Section 8B - Composition of Refugee Appeals Authority

(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.

(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.

Section 8C - Functions of Refugee Appeals Authority

(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.

(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.

(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*.

Section 8D - Term of office of members of Refugee Appeals Authority

(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.

Section 8E - Disqualification from membership

A person may not be appointed as a member of the Refugee Appeals Authority if that person-

- (a) is not a South African citizen;
- (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
- (f) is a political office bearer.

Section 8F - Removal from office of member of Refugee Appeals Authority

(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.

(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.

Section 8G - Filling of vacancies in Refugee Appeals Authority

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.

Section 8H - Remuneration of members of Refugee Appeals Authority

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.

Section 8I - Administrative staff of Refugee Appeals Authority

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.

Section 8J - Annual Reports of Refugee Appeals Authority

(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.

(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.

Sections 9 to 20 - repealed

Section 21 (1)

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

Section 21 (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.

Section 21 (3)

When making an application for asylum, every applicant, including his or her spouse and dependants, must have his or her biometrics taken in the prescribed manner.

Section 21A - Unaccompanied child and person with mental disability

(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 38 of 2005), must-

- (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.

(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 17 of 2002), to be dealt with in terms of that Act.

Section 21B - Spouse and dependants of asylum seekers and refugees

(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.

(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.

(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.

(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.

(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.

Section 22 (1)

The Refugee Status Determination Officer must, pending the outcome of an application in terms of section 21 (1), 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 Director-General, which are not in conflict with the Constitution or international law.

Section 22 (2)

Upon the issue of a permit in terms of subsection (1), any permit issued to the applicant in terms of the Immigration Act becomes null and void and must be returned to the Director-General for cancellation.

Section 22 (3)

The officers contemplated in section 8 (3) 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).

Section 22 (4)

The permit referred to in subsection (1) must contain the biometrics of the holder thereof.

Section 22 (5) - deleted

Section 22 (6) - words preceding paragraph (a)

The Director-General may at any time withdraw an asylum seeker permit in the prescribed manner if-

Section 23 - Detention of asylum seeker

If the 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.

Section 24 (1) - deleted

Section 24 (2)

When considering an application for asylum, the Refugee Status Determination Officer-

- (a) must have due regard to the provisions of the Promotion of Administrative Justice Act, 2000 (Act 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
- (b) may consult with or invite a UNHCR representative to furnish information on specified matters.

Section 24 (3)

The Refugee Status Determination Officer must at the conclusion of the hearing-

- (a) grant asylum;
- (b) reject the application as manifestly unfounded, abusive or fraudulent; or
- (c) reject the application as unfounded

Section 24 (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 within five working days after the date of the rejection;
- (b) inform the applicant of his or her right to appeal in terms of section 24B.

Section 24 (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).

Section 24 (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.

Section 24A - Review of applications rejected in terms of section 24 (3) (b)

(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.

Section 24B - Appeals to Refugee Appeals Authority

(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.

Chapter 5 - heading

RIGHTS AND OBLIGATIONS OF REFUGEES AND ASYLUM SEEKERS

Sections 25 and 26 - repealed

Section 27 - Protection and general rights of refugees

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.

Section 27A - Protection and general rights of asylum seekers

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.

Section 28 (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.

Section 29 - Restriction of detention

(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 court in whose area of jurisdiction the person is detained, 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 possible period of time, taking into consideration the principle of family unity and the best interest of the child.

Section 30 - Identity document to refugee

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.

Sections 31, 32 and 33 - repealed

Section 34 - Obligations of refugees

- (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.

Section 34A - Obligations of asylum seekers

- (1) An asylum seeker must-
 - (a) abide by the laws of the Republic;
 - (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.

(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.

Section 36 - Withdrawal of refugee status

(1) Subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act 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;
- (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
- (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.

Section 37 (e)

intentionally assists a person to receive public services to which such person is not entitled; or

Section 37 (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,

Section 38 (1) (b)

the manner in which and period within which a matter must be referred to the Refugee Appeals Authority;

Section 38 (1) (d)

the manner in which and the period within which applications for asylum which are unfounded, fraudulent or abusive, must be dealt with;

Sections 39 and 40 - repealed

PENDLEX: *Refugees Act 130 of 1998* after amendment by the *Refugees Amendment Act 12 of 2011*

Section 1 - Definitions

'biometrics' means photographs, fingerprints (including palm prints), hand measurements, signature verification or retinal patterns, that may be used to verify the identity of individuals;

'dependant', in relation to an asylum seeker or a refugee, 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;

'manifestly unfounded application' means an application for asylum made on grounds other than those contemplated in section 3;

'Refugee Status Determination Officer' - deleted

'Status Determination Committee' means the Status Determination Committee or any of its subcommittees contemplated in section 8 (2);

'unfounded application', in relation to an application for asylum in terms of section 21, means an application made on the grounds contemplated in section 3, but which is without merit;

Section 4 (1) - words preceding para. (a)

A person does not qualify for refugee status for the purposes of this Act if the Status Determination Committee has reason to believe that he or she-

Section 4 (1) (b)

has committed 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; or

Section 8 (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.

Section 8 (3) - deleted

Section 8C (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.

Section 8E (f)

is a political office bearer holding a position in the national executive structure of any political party.

Section 21B (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 in terms of the Births and Deaths Registration Act, 1992 (Act 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.

Section 24 (2) - words preceding para. (a)

When considering an application for asylum, the Status Determination Committee-

Section 24 (3) - words preceding para. (a)

The Status Determination Committee must at the conclusion of the hearing conducted in the prescribed manner-

Section 24 (4) - words preceding para. (a)

If an application is rejected in terms of subsection (3) (c), the Status Determination Committee must-

Section 24 (4) (a)

furnish the applicant with written reasons within five working days after the date of the rejection; and

Section 24 (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).

Section 24A (1)

The Director-General must review any decision taken by the Status Determination Committee in terms of section 24 (3) (b).

Section 24A (4)

The Director-General must inform the Status Determination Committee of his or her decision in the prescribed manner and within the prescribed time.

Section 24A (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).

Section 24A (6)

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

Section 24B (1)

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

Section 24B (2)

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

Section 24B (5)

The Refugee Appeals Authority must refer the matter back to the 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.

Section 27 (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 Minister, after considering all the relevant factors and within a reasonable period of time, certifies that he or she would remain a refugee indefinitely;

Section 36 (1) - words preceding para. (a)

Subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), and after consideration of all the relevant facts, the Minister may withdraw a person's refugee status if such person-

Section 36 (1) (b)

has been recognised as a refugee due to an error, omission or oversight committed by the Status Determination Committee; or

Section 38 (1) (d)

the manner in which and the period within which applications for asylum which are manifestly unfounded, fraudulent or abusive, must be dealt with;

General amendment of Act 130 of 1998 made by Act 12 of 2011

The expression 'Status Determination Committee' has been substituted for the expression 'Refugee Status Determination Officer', wherever it occurs.
