



# Government Gazette

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## **THE PRESIDENCY**

No. 1274

26 November 2008

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 33 of 2008: Refugees Amendment Act, 2003.**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

## 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.

*(English text signed by the President.)*  
*(Assented to 21 November 2008.)*

## ACT

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

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## Amendment of section 1 of Act 130 of 1998

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

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## Definitions

1. In this Act, unless the context [shows that another meaning is intended] indicates otherwise—
- (i) ‘**abusive application for asylum**’ means an application for asylum made—
- (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:
- [(xiv)]
- (ii) ‘**Aliens Control Act, 1991**’ means the Aliens Control Act, 1991 (Act No. 96 of 1991); (xxiv)
- (iii) ‘**Appeal Board**’ means the Refugee Appeal Board, established by section 12; (ii)
- (iv) ‘**asylum**’ means refugee status recognised in terms of this Act; [(iii)]
- (v) ‘**asylum seeker**’ means a person who is seeking recognition as a refugee in the Republic; [(iv)]
- [(vi)] ‘**asylum seeker permit**’ means a permit contemplated in section 22; [(v)]
- ‘biometrics’ means the measurable physiological or behavioural characteristics that can be used in verifying the identity of individuals,

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- and may include the use of photographs, fingerprints, hand measurements, signature verification, facial patterns and retinal patterns;
- [(vii)] **'child'** means any person under the age of 18 years; [(x)]
- 'court'** means a magistrate's court;
- [(viii)] **'Department'** means the Department of Home Affairs; [(vii)] 5
- [(ix)] **'dependant'**, in relation to an asylum seeker or a refugee, includes **[the spouse,]** any unmarried dependant child or any destitute, aged or infirm member of the immediate family of such asylum seeker or refugee; [(i)]
- [(x)] **'Director-General'** means the Director-General of the Department; 10
- [(viii)]
- [(xi)] **'fraudulent application for asylum'** means an application for asylum based without reasonable cause on **[facts,]** information, documents or representations which the applicant knows to be false and **[which facts, information, documents or representations]** are 15 intended to materially affect the outcome of the application; [(vi)]
- 'immediate family'** means the immediate family as defined in section 1 of the Immigration Act;
- 'Immigration Act'** means the Immigration Act, 2002 (Act No. 13 of 2002); 20
- [(xii)] **'manifestly unfounded application'** means an application for asylum made on grounds other than those on which such an application may be made under this Act; [(xi)]
- 'marriage'** means—
- (a) either a marriage or a civil partnership concluded in terms of the Civil Union Act, 2006 (Act No. 17 of 2006); 25
- (b) a marriage concluded in terms of—
- (i) the Marriage Act, 1961 (Act No. 25 of 1961); or
- (ii) the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998); 30
- (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;
- [(xii)] **'Minister'** means the Minister of Home Affairs; [(xiii)]
- [(xiv)] **'prescribed'** means prescribed by regulation; 35
- [(xv)] **'refugee'** means any person who has been granted asylum in terms of this Act; [(xviii)]
- 'Refugee Appeals Authority'** means the Refugee Appeals Authority established in terms of section 8A;
- [(xvi)] **'Refugee Reception Office'** means a Refugee Reception Office established under section 8(1); [xx] 40
- [(xvii)] **'Refugee Reception Officer'** means a Refugee Reception Officer referred to in section 8(2); (xix)]
- [(xviii)] **'Refugee Status Determination Officer'** means a Refugee Status Determination Officer referred to in section 8(2); [(xxi)] 45
- [(xix)] **'regulation'** means any regulation made under this Act; [(xvi)]
- 'residence'** means a status recognised by competent authorities of a particular country that affords a person the right to sojourn in that country with the rights and obligations attached thereto;
- [(xx)] **'rules'** means the rules made by the Appeal Board under section 14(2); (xv)] 50
- [(xxi)] **'social group'** includes[, among others,] a group of persons of particular gender, sexual orientation, disability, class or caste; [(xii)]
- 'spouse'** means a person who is a party to—
- (a) a marriage as defined in terms of this Act; or 55
- (b) a permanent homosexual or heterosexual relationship as prescribed;
- [(xxii)] **'Standing Committee'** means the Standing Committee for Refugee Affairs, established by section 9; (xvii)]
- [(xxiii)] **'this Act'** includes the regulations made in terms of this Act; [(ix)] 60
- '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;  
 [(xxiv)] ‘UNHCR’ means the United Nations High Commissioner for Refugees. [(xxii)].”.

**Insertion of section 1A in Act 130 of 1998**

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

**“Interpretation and application of Act**

**1A.** This Act must be interpreted and applied in a manner that is 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.”.

**Amendment of section 2 of Act 130 of 1998**

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

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

**Amendment of section 3 of Act 130 of 1998**

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

- “(a) owing to a well-founded fear of being persecuted by reason of his or her race, 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 **[or disrupting]** public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge **[elsewhere]** in another place outside his or her country of origin or nationality; or  
 (c) is a spouse or dependant of a person contemplated in paragraph (a) or (b).”.

**Amendment of section 4 of Act 130 of 1998**

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

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

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

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

“(b) has committed **[a crime which is not of a political nature and which, if committed in the Republic, would be punishable by imprisonment]** a serious non-political crime outside the country of refuge prior to his or her admission to that country as a refugee; or”;  
 and

- (c) the substitution in subsection (1) for paragraph (d) of the following paragraph:  
 “(d) enjoys the protection of any other country in which he or she **[has taken residence]** is a recognised refugee, permanent resident or citizen.”.

#### Amendment of section 5 of Act 130 of 1998

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6. Section 5 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

- “(c) he or she becomes a permanent resident or a citizen of the Republic or acquires the nationality of some other country and enjoys the protection of **[the] that country [of his or her new nationality]**; Provided that a person whose permanent residence status is withdrawn is not prevented from re-applying for refugee status; or”.

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#### Repeal of section 6 of Act 130 of 1998

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

#### Substitution of section 7 of Act 130 of 1998

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

##### “Delegation of powers

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

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(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.”.

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#### Substitution of heading to Chapter 2 of Act 130 of 1998

9. The following heading is hereby substituted for the heading to Chapter 2 of the principal Act:

**“REFUGEE RECEPTION OFFICES[, STANDING COMMITTEE FOR REFUGEE AFFAIRS] AND REFUGEE [APPEAL BOARD] APPEALS AUTHORITY”.**

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#### Substitution of section 8 of Act 130 of 1998

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

##### “Refugee Reception Office

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

(2) Each Refugee Reception Office must consist of at least **[one Refugee Reception Officer and]** one Refugee Status Determination Officer who must—

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(a) be **[officers]** an officer of the Department, designated by the Director-General **[for a term of office determined by the Director-General]**; and

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(b) have such qualifications, experience and knowledge of refugee matters **[as]** that makes **[them]** him or her capable of performing **[their]** his or her functions in terms of this Act.