

REPUBLIC OF SOUTH AFRICA

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# REFUGEES AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 75); initiated by the Portfolio Committee on Home Affairs; Bill and prior notice of introduction thereof published in Government Gazette No. 38893 of 19 June 2015)  
(The English text is the official text of the Bill)*

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(PORTFOLIO COMMITTEE ON HOME AFFAIRS)

**[B 19—2015]**

ISBN 978-1-4850-0244-4

No. of copies printed ..... 1 800

**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.

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# BILL

**To amend the Refugees Act, 1998, so as to confer a discretion upon the Refugee Appeals Authority to allow the public and the media access to its proceedings in appropriate cases; 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 21 of Act 130 of 1998, as amended by section 13 of Act 33 of 2008**

**1.** Section 21 of the Refugees Act, 1998 (Act No. 130 of 1998), (hereinafter referred to as “the principal Act”), is hereby amended by the substitution for subsection (5) of the following subsection: 5

“(5) The confidentiality of asylum applications and the information contained therein must be ensured at all times, except that the Refugee Appeals Authority may, on application and on conditions it deems fit, allow any person or the media to attend or report on its hearing if— 10

(a) the asylum seeker gives consent; or  
(b) the Refugee Appeals Authority 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— 15

- (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 20
- (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.”. 25

**Transitional provision**

**2.** The reference to “Refugee Appeals Authority” in section 21(5) of the principal Act as amended by section 1 of this Act must be construed as a reference to the “Refugee Appeal Board” as provided for in the principal Act until such time that section 11 of the Refugees Amendment Act, 2008 (Act No. 33 of 2008), comes into operation. 5

**Short title and commencement**

**3.** This Act is called the Refugees Amendment Act, 2015, and comes into operation on 27 September 2015.

## MEMORANDUM ON THE OBJECTS OF THE REFUGEES AMENDMENT BILL, 2015

### 1. INTRODUCTION

On 27 September 2013, the Constitutional Court, in the *Mail and Guardian Media Limited and Others v MJ Chipu and others* CCT 136/12 [2013] matter (“the *Chipu* case”), declared section 21(5) of the Refugees Act, 1998 (Act No. 130 of 1998), inconsistent with section 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.

The declaration of invalidity was suspended for a period of two years from the date of the order to enable Parliament to correct the constitutional defect in section 21(5) of the Refugees Act, 1998. Pending the correction of the defect, or the expiry of the two-year period, whichever occurs first, the Constitutional Court provided a temporary reading-in order into section 21(5) of the Refugees Act, 1998, conferring a discretion on the Refugee Appeal Board, on application and on conditions it deems fit, to allow any person to attend or report on its hearings. The two-year period ends on 26 September 2015.

### 2. OBJECTS OF THE BILL

The Bill addresses the Constitutional Court judgment in the *Chipu* case by amending section 21(5) of the Refugees Act, 1998, so as to confer a discretion on the Refugee Appeals Authority (the name of the Refugee Appeal Board after the Refugees Amendment Act, 2008 (Act No. 33 of 2008)), on application and on conditions it deems fit, to allow any person, including the media, to attend or report on its hearings.

### 3. CONTENTS OF THE BILL

#### Clause 1

Clause 1 amends section 21(5) of the Refugees Act, 1998, so as to confer a discretion on the Refugee Appeals Authority (the name of the Refugee Appeal Board after the Refugees Amendment Act, 2008 (Act No. 33 of 2008)), on application and on conditions it deems fit, to allow any person, including the media, to attend or report on its hearings.

Clause 1 further provides that this discretion conferred on the Refugee Appeals Authority must be exercised with due regard to relevant factors, such as whether the asylum seeker consents to such third party’s attendance or access; or whether it is in the public interest to allow such attendance or reporting after taking into account all relevant factors.

#### Clause 2

In light of the fact that the Refugees Amendment Act, 2008 (Act No.33 of 2008), which dissolves the Refugee Appeal Board and establishes the Refugee Appeals Authority, has not come into operation as yet, clause 2 provides that any reference to the “Refugee Appeals Authority” in this Bill must be construed as a reference to the “Refugee Appeal Board” as provided for in the Refugees Act, 1998, until such time that section 11 of the Refugees Amendment Act, 2008, comes into operation.

#### Clause 3

Clause 3 provides for the short title and the commencement date.

**4. ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

None.

**5. FINANCIAL IMPLICATIONS FOR THE STATE**

None.

**6. DEPARTMENTS, BODIES, OR PERSONS CONSULTED**

The following stakeholders were consulted—

- Department of Home Affairs

**7. CONSTITUTIONAL IMPLICATIONS**

The Constitutional Court's declaration of invalidity of section 21(5) of the Refugees Act, 1998, will take effect on 26 September 2015. The temporary reading-in order will then also fall away. Should this Bill not come into operation on 27 September 2015, there would be a gap in the law.

**8. PARLIAMENTARY PROCEDURE**

- 8.1 The Committee proposes that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedures set out in section 74 or 76 of the Constitution apply.
- 8.2 The Committee is of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.





