

GENERAL NOTICE

NOTICE 591 OF 2015

INVITATION TO COMMENT ON DRAFT REFUGEES AMENDMENT BILL, 2015

Notice is hereby given that the Portfolio Committee on Home Affairs intends to introduce the Refugees Amendment Bill, 2015.

A copy of the draft Refugees Amendment Bill, 2015, and a Memorandum setting out its objectives are included in the Schedule to this Notice in fulfilment of the requirements of Rules 241(c) and 241(3) of the Rules of the National Assembly.

Interested persons, including institutions and Non-Governmental Organisations (NGOs), are hereby invited to submit written comments on the draft Bill to the Secretary to Parliament by **17 July 2015**. Written submissions may be delivered by hand to the Office of the Secretary to Parliament for the attention of Mr E Mathonsi, Old Assembly Building, Parliament Street, Cape Town; or mailed to the Secretary to Parliament, PO Box 15, Cape Town, 8000; or emailed to emathonsi@parliament.gov.za. In all instances, please advise Mr E Mathonsi, Committee Secretary, of the written submission at the following number: 021 403 8326.

18 June 2015

Issued by Mr BL Mashile, MP

Chairperson of the Portfolio Committee on Home Affairs

REPUBLIC OF SOUTH AFRICA

REFUGEES AMENDMENT BILL

*(As initiated by the Portfolio Committee on Home Affairs, as a Committee Bill,
for introduction in the National Assembly (proposed section 75); prior notice of
introduction published in Government Gazette No.38893.....of
..19 June 2015...)*

(The English text is the official text of the Bill.)

(Portfolio Committee on Home Affairs)

[B --- 2015]

GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Refugees Act, 1998, so as to 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.

BE 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) (“the principal Act”) is hereby amended by the substitution for subsection (5) of the following subsection:

“(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—

- (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—

 - (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.”

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.

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 will address 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 practices.
-