

**PRESENTATION BY  
THE SCALABRINI CENTRE OF CAPE TOWN  
ON THE REFUGEES AMENDMENT BILL [B-12, 2016]  
TO THE PORTFOLIO COMMITTEE ON HOME AFFAIRS**

**15 NOVEMBER 2016**

The Scalabrini Centre of Cape Town (SCCT) is a registered not-for-profit organisation that perceives migration as an opportunity and is committed to alleviating poverty and promoting development in the Western Cape while fostering integration between migrants, refugees, and South Africans. The Scalabrini Fathers have been providing welfare services in Cape Town to displaced communities since 1994. In providing assistance, the SCCT advocates respect for human rights and utilises a holistic approach that considers all basic needs including advocacy, development, and welfare services. Our comments are based on our extensive and direct experiences in the area of refugee and migrant rights through direct assistance, paralegal services, research and community outreach.

We welcome this opportunity to discuss the proposed Refugees Amendment Bill ('the Bill') with the Portfolio Committee. With our presentation we do not wish to reread our submission verbatim but rather to take any questions the honourable members may have and expand on the ongoing fundamental challenges within the asylum system and how, in our view, some of the provisions of the Bill will complicate and exacerbate these challenges. The most critical needs in terms of legislative adjustments at the present time are a functioning appeal system and we welcome the Bill's provisions to make a more flexible administrative system for the appeal process. However, many of the provisions seek to add further administrative layers and duties into the application and adjudication process that we believe will not address the protracted nature of the asylum process and therefore not have the desired effect.

Our presentation will focus on:

1. The Green Paper process and the Bill's significant shift from the principle of urban refugee protection
2. The historic and ongoing challenges with the implementation of the Refugees Act
3. Concerns regarding capacity for implementation

## **1. The Green Paper process and the Bill's significant shift from the principle of urban refugee protection**

At the outset we are concerned that many of the proposed amendments to the Refugees Act represent a significant shift away from the urban refugee protection framework as established by the Refugees Act. Most concerning is the move towards providing shelter and support to asylum seekers through UNHCR and friends and family as opposed to asylum seekers supporting themselves. This proposal has not been fully elaborated on despite its significant implications for the refugee protection system and society more generally.

It is our belief that such drastic changes should be involved in a larger policy development process that is currently ongoing through the Green Paper on International Migration process. The Green Paper was published for comment by the Department in June of this year and is the result of a number of meetings and consultations with civil society and experts held by the Department during 2015 as well as submissions from the public. It seeks to inform a subsequent White Paper which will formalize South Africa's migration policy going forward. It is our submission that given the drastic changes proposed in the Bill and the ongoing policy development process, only the necessary amendments to keep the Refugees Act functional should be adopted and that wholesale change at this point in time is counterproductive and undermines the Green Paper process.

## **2. The historic and ongoing challenges with the implementation of the Refugees Act**

As noted in our written submission, it is in our view that the primary challenge of the refugee protection system since it went into force has been one of implementation. South Africa's urban refugee protection system, championed for its progressive provisions, allows for asylum seekers and refugees to lead meaningful lives and contribute to society and just as importantly does not rely heavily on the South African state for the provision of shelter and support.

A critical challenge with the protection framework that in turn has a wide effect on all aspects of the refugee system has been the protracted nature of the adjudication process and the low quality of refugee status determination decisions. These first-instance decisions consistently contain serious errors of law, disregard country of origin information and the individual claimant's circumstances, contain generic 'copy and paste' sections, and fail to meet the standards of procedural fairness. These errors affect those asylum seekers most in need including those from such countries with serious human rights abuses and outright conflict such as Burundi, the Democratic Republic of Congo (DRC), and Somalia as well as the most vulnerable, including unaccompanied minors and the disabled. The decisions rendered are so poor they cannot be reviewed as there is no basis to review them and instead the Refugee Appeal Board (RAB) must review each decision *de novo*. This adds significantly to the RAB's workload and ability to process applications fairly and efficiently. At the present time, our office has only been able to assist five asylum seekers in having their appeal hearings heard before the RAB in the past two years. The poor decisions also negatively affect the Standing Committee for Refugee Affairs (SCRA) who are required to review a high number of

rejections with minimal assistance and information from the first-instance decision. Often, an asylum seeker's written file contains serious errors of fact such as the wrong place or country of origin, the omission of family members, and incorrect capture of the asylum seeker's name and date of birth. All of these issues make appeal and review decisions more difficult to conduct accurately with regard to the fundamental human rights of the applicant.

This dynamic then unnecessarily protracts the refugee status determination process for an extended period of time. Instead of deserving applicants receiving refugee status within a reasonable period of time after application, they are instead stuck in limbo as an asylum seeker with temporary status for years, especially those awaiting an appeal hearing. This requires repeated trips to the Refugee Reception Office of application for extensions of their permit over significant periods of time. This of course exacerbates access problems at Refugee Reception Offices (RRO) and adds to the administrative burden on the Department. It can also be extremely difficult for an asylum seeker, who often has limited resources, to continually report for permit renewals. In Cape Town, the closure of the Cape Town RRO now requires many asylum seekers resident here to travel long distances to their office of application (either Pretoria, Musina or Durban) and this has resulted in many applicants' documentation eventually expiring.

While the Department has indicated at various times that the timeframe for adjudication of asylum applications has been reduced, our offices still consistently see individuals from countries such as Somalia and the DRC whose applications are still pending over a number of years. It is therefore critical that the amendments creating the Refugee Appeals Authority be treated with the utmost importance. It is our submission that unless the fundamental issue of accurately and efficiently identifying those in need of protection is addressed, the refugee protection system will continue to have administrative difficulties and cannot function effectively. Further, if the quality of decisions at this level can be improved and made within a reasonable period of time, a number of the proposed amendments will no longer be necessary or will be less likely to negatively affect genuine refugees (such as the adjustments to the right to work the provisions for the abandonment of claims).

### **3. Concerns regarding capacity for implementation**

In light of the above and the difficult with implementation of the current framework, we are concerned that many of the Bill's proposed amendments add further administrative requirements for both the reception of asylum seekers as well as during the adjudication process. This includes a number of layers that do not relate to refugee protection but will instead divert resources away from this goal. For example, the proposed amendments to regarding a five day requirement to apply for asylum and the provisions for irregular entry will add unnecessary determination processes to the system that do not relate to refugee protection despite the great risk these pose to genuine refugees. Perhaps most important proposed amendment, and most difficult to implement, is the 'sustainability determination process' which is envisioned to determine if an asylum seeker should be able to work or receive assistance from friends and family or UNHCR pending final determination of their asylum claims. While it is our submission that this process must be elaborated on further for clarity, by both the Department and UNHCR, from the available details it is hard to envision how such a

process could be implemented in a fair manner. Any attempt to undertake this provision would require a significant amount of resources. And while the consequences are great for the asylum seeker, whose livelihood is dependent upon this process, there are also implications for society as failure to implement this proposal efficiently will lead to a sizeable population of asylum seekers without legal means to support themselves, and thus foster conditions for exploitation.

In consideration of the above, it is our submission that instead of introducing amendments that contain awkward and unnecessary processes to the asylum application process prior to the conclusion of policy development process, the Department would benefit more, both in terms of refugee protection and in cost, by committing to strengthening the refugee status determination process. Until this fundamental issue is adequately addressed, we believe that the asylum system is unlikely to function as envisioned. We hope that due consideration will be given to the above as you deliberate over the proposed amendments to the Refugees Act.

Sincerely,

Corey R. Johnson  
Advocacy Officer