**1. REPORT OF THE PORTFOLIO COMMITTEE ON HOME AFFAIRS ON THE PUBLIC HEARINGS ON THE REFUGEEES AMENDMENT BILL [B12-2016], DATED 21 FEBRUARY 2017**

The Portfolio Committee on Home Affairs (the Committee) having conducted public hearings on the Refugees Amendment Bill [B12-2016], reports as follows:

**1. INTRODUCTION**

The Department of Home Affairs (DHA) tabled and introduced the Refugees Amendment Bill [B12-2016] on 15 September 2016. The Committee published the Bill on 9 October 2016 for public comments by 28 October 2016. It was published in all official languages and placed on the Parliament website. The first public hearings took place on 15 November 2016 and the second took place on 24 January 2017.

The purpose of the Bill is to omit provisions referring to the Status Determination Committee; to substitute certain provisions relating to the Refugee Appeals Authority; to provide for the re-establishment of the Standing Committee for Refugee Affairs and to confer additional powers on the Standing Committee; to confer additional powers on the Director-General; to clarify the procedure relating to conditions attached to asylum seeker visas and abandonment of applications; to revise provisions relating to the review of asylum applications; to provide for the withdrawal of refugee status in respect of categories of refugees; to provide for additional offences and penalties; and to combat fraud and corruption among staff members.

Of the twenty total written submissions nine organisations were invited to also make oral comments. The Department of Home Affairs officials were in attendance of the public hearings.

On 15 November 2016, the Portfolio Committee on Home Affairs heard submissions from Refugee Law, Scalabrini Centre of Cape Town, the International Network of Congolese Lawyers and the Legal Resource Centre. This was followed by the public hearings on 24 January 2017 by the following organisations: the Centre for Constitutional Rights, Amnesty International South Africa, the Rwandan Refugee Community Association, Lawyers for Human Rights and the Consortium for Refugees and Migrants in South Africa.

**2. BRIEFING BY INTERESTED ORGANISATIONS ON THE REFUGEES AMENDMENT BILL [B12-2016].**

**2.1 BRIEFING BY THE REFUGEE LAW (RL)**

Mr. Martin Bauwens indicated that he was concerned that the Bill seeks to exclude asylum seekers who did not enter South Africa through an official port of entry, those who failed to apply within five days given at the port of entry and those that are running from justice in their own countries. He submitted that the DHA cannot deal with their capacity issues given ongoing budget constraints and thus could not deal with the additional work load on top of the current existing backlogs. In addition RSDOs were not properly assessing applications at present and would be hard pressed to assess whether fugitives from justice applying for asylum were doing so from an impartial judicial system.

With regards to cessation of Refugee status, he submitted that an individual should be judged on an individual basis if they visit their home countries after being granted a refugee status, before automatically having their status revoked. A refugee who committed a crime, whilst in the Republic of South Africa should not automatic lose their refugee status but rather be subject to the local legal system since deporting them could lead to their deaths.

The Bill further seeks to impose vetting to the Standing Committee on Refugee Affairs (SCRA) and Refugee Appeals Board (RAB) as well as that applications that are found to contain false, dishonest and misleading information *must* be rejected by SCRA and RAB. He also submitted that the use of polygraphs during vetting was inconsistent with international standards. These requirements all compromised the independence of these quasi-judicial entities.

In terms of the right to work and study for asylum seekers, he stated that it was unfair to be no longer be automatic right. The DHA will have to secure commitment from the United Nations High Commission for Refugees (UNHCR) to provide asylum seekers with shelter. This will also create an extra workload for the already overburdened DHA Immigration staff by having to assess the applicant’s ability to sustain themselves.

He further indicated that the DHA should do away with the unfounded and manifestly unfounded applications, such that the SCRA and RAB could be merged into a single appeal body and that SCRA certification of refugees for permanent residence (PR) should no longer be required but rather those who had been on the system for over five years should automatically be eligible for PR.

**2.2. BRIEFING BY THE SCALABRINI CENTRE OF CAPE TOWN (SCCT).**

Mr Corey Johnson, made the presentation together with Mr A Mohamed, the Western Cape Chairman of the Somali Association of South Africa. Mr Johnson indicated that the presentation would focus on the Green Paper on International Migration process, the historic implementation of the Refugees Act and the capacity and implementation proposals.

He indicated that Scalabrini was also concerned with taking away of the right to work and study for asylum seekers. It is recommended in the Bill that the issue of shelter for asylum seekers is moved towards UNHCR and friends and family as opposed to asylums seekers supporting themselves. Scalabrini believed that this significant policy shift that should rather first be discussed through the Green Paper on International Migration and only the necessary amendments to keep the Refugees Act functional should be adopted. The current Refugee Amendment Bill, according to Scalabrini, undermines the Green Paper process.

Scalabrini further noted that the implementation of the Refugees Act has always been a challenge for the DHA. There have been a protracted adjudication process for most applicants and a generally low quality of refugee status determination decisions. The DHA has been cutting and pasting country information when a decision was made and this affects genuine asylum seekers who are in need of protection. This also renders the decisions to review as very difficult and it increased the workload of the RAB. Mr Johnson indicated that in the past two years, only five of the many cases referred by Scalabrini had been heard by RAB.

Genuine asylum seekers in the process for a protracted period of time are stuck in limbo. There are repeated trips to the Refugees Reception Offices (RROs). With the closure of the Cape Town and Johannesburg RROs, asylum seekers have to travel to long distances to either Pretoria, Musina or Durban. This has resulted in many applicants’ documents expiring.

The SCCT was concerned with the requirement of five days for asylum seekers to avail themselves at the nearest RROs as well as the exclusion of applications by those making irregular entry to the Republic. According to them, this adds an unnecessary determination process which is not related to the protection of asylum seekers.

Mr A Mohamed, from the Western Cape Chairman of the Somali Association of South Africa added to the presentation. He indicated that the five day was impractical and impossible to enforce. This is due to the fact that when asylum seekers arrive in South Africa, they do not know the laws of the country and some might not able to read or speak the local language. This is over and above the limited capacity of the DHA to event acknowledge the applications within the current two week requirement. He acknowledged that South Africa has the best reputation for human rights which should not be compromised by these amendments.

**2.3. BRIEFING BY THE INTERNATIONAL NETWORK OF CONGOLESE LAWYERS (INCL)**

Mr Jean Claude Kazaku and Mr Kizito Kabengele made the presentation. The Bill seeks to delay and remove the right to apply for Permanent Residence on the grounds of the refugee being in the country for five years increasing this to ten years. This creates a long term burden on the DHA which now has to extend permits for twice as long.

Other issues highlighted were backlogs, corruption and the capacity at the DHA, as well as the issuing of more universally recognisable Identity and travelling documents. They further indicated the right to work and study were acquired in the Court of Law in South Africa. Rather than seek to exclude refugees, they should be integrated into South African society and should be educated about their civic duties.

In conclusion, they thanked the DHA for the assistance given thus far to asylum seekers.

**2.4. BRIEFING BY THE LEGAL RESOURCES CENTER (LRC)**

Mr William Kerfort, made the presentation. He raised a concern with regard to amendments while the Green Paper on International Migration was still ongoing. The LRC recommends that the Bill be suspended until the Green Paper has been finalised into the White Paper.

He further indicated South Africa has signed various international instruments such as the 1951 Refugee Convention and the Organisation of African Unity Convention Governing the Specific Aspects of Refugees in Africa. These conventions were binding and signed without reservations and required that that refugees shall enjoy fundamental rights and freedoms without discrimination.

The Refugees Act mirrors many aspects of the 1951 Refugee Convention and the 1969 AU Convention. The LRC’s submission was that the current Bill is clear deviation from the two conventions. The Bill is even more restrictive than the 2015 Draft Bill.

The LRC indicated that the current Bill does not comply with UNHCR guidelines and recommendations. The LRC recommends that the DHA should rather focus on building capacity for the department to implement the act as is.

In making specific comments on the Bill, the LRC welcomes the deletion of the word “legally” married. The LRC maintained that asylum seekers who marry after arrival in South Africa, should be allowed to add dependants because the adjudication of the application takes time to be finalised and in the process applicants get married. The members of the immediate family should continue to be included in the definition of defendant given the particular familiar structures prevalent in Africa.

The right to study is enshrined in Section 29 of the Constitution. Section 3(1) of the South African School Act makes primary and lower schooling compulsory for all children. With regard to the right to work, he mentioned the 2004 Watchenuka case. The limiting of the right to work will unnecessarily lead refugees to depend on social assistance from the state which is already fiscally challenged.

**2.5. BRIEFING BY THE CENTRE FOR CONSTITUTINAL RIGHTS (CFCR)**

Ms P Dube made the introduction and indicated that Ms C Botha will make the presentation. She mentioned that CFCR welcomes the amendments to the Bill, however, do have concerns regarding certain amendments which might render it unconstitutional.

Ms Botha indicated that the CFCR has concerns with regards to the disqualification and cessation of refugee status; the lack of procedural safeguards regarding oversight of Refugee Status Determination Officers’ discretionary powers; the functions of the Standing Committee and the application for asylum seeker visas.

She indicated that the right to dignity in terms of Section 10 of the Constitution was not only limited to citizens and that restricting the right to work and study for asylum seekers compromised this.

South Africa is party to the 1951 Refugee Convention and the 1969 African Union’s Convention. Article 33(1) of the 1951 Convention indicates that no state shall return an asylum seeker to his or her country of origin if his or her life would be danger.

She further indicated that clause 2 of the Bill should adhere to Article 1F of the 1951 Convention. The new exclusion clauses of the refugee bill would be determined by one individual; the RSDO. She maintained that the exclusion could be subjective if it was done by one individual and lead to persons being excluded for reasons less important than their lives being placed at risk. The CFCR submitted that clause 2 from section 4(1) (f) to (i) should not be included in the Bill.

She further indicated that there should be an obligation on the Standing Committee to monitor the decisions of the RSDO, to review and rejected of the applications. The CFCR further submitted the DHA reconsider of substitution of the Status Determination Committees rather than RSDOs or that all decisions of the RSDOs have to be monitored and supervised.

The CFCR maintained that the monitoring of the RSDO will be done by DHA staff and that the RSDO is a staff member of the DHA and there is a risk of institutional bias. The CFCR was also concerned about the taking away the right to work and study of asylum seekers. The Bill indicates that there will be an assessment test conducted if the asylum seeker will be able to sustain himself and his dependents for at least 4 months. It is not clear how this cumbersome task would be done.

**2.6. BRIEFING BY THE LEGAL AMNESTY INTERNATIONAL SOUTH AFRICA (AISA)**

Ms Shange-Buthane made the presentation and she indicated that many of the AISA members are also asylum seekers and in refugee organisations. AISA had a consultative meeting with its stakeholders before making the submission on the Refugees Amendment Bill. The concern AISA raised was that the DHA was undertaking the review of the migration policy and these amendments. The understanding was that the International Migration Policy is meant to provide guidance to Immigration and Refugee laws. Their view was also that the amendments to Refugees should be held in abeyance until the migration policy is finalised. AISA, nonetheless made comments on the Bill.

There was a concern in changing the definitions from asylum seeker permit to asylum seeker visa. According to AISA a visa permits a person to stay in the country for a short period and the length of the stay of the asylum seeker is unknown. AISA maintained that the term ‘asylum seeker permit’ be retained.

The definition of a dependent is limited to minor children of asylum seekers and it should not exclude dependent children above the age majority and children who are under guardianship.

AISA made comments on the exclusion from refugee status on the basis of an asylum seeker who has committed crime in the Republic. AISA maintained that any person whether a South African citizen or asylum seeker should be prosecuted in accordance to the law. South Africa should not deny an asylum seeker the right to apply for refugee status because of capital punishment in their country of origin. It should be emphasised that AISA does not condone crime, but there are countries, for instance which do not uphold the rights of Lesbian Gay Bisexual Trans/Inter sexual and Queer persons and make them punishable by law.

AISA recommends that the Committee retain the 10 days wherein the asylum seeker should reach the nearest Refugee Reception Offices (RROs). The reason being that there are long queues at RROs and it is not possible for asylum seekers to be serviced within five days.

The right of asylum seekers to work and study should not be taken away from them as it is essential for their dignity which is guaranteed in the Constitution. The appeal process for rejections is very lengthy and migrants need a sustainable means to survive.

Ms Mpilo Shange-Buthane indicated that she would share with the Committee a 2008 Report titled ‘Talk for US Please’ which highlights the difficulties faced by migrants.

**2.7. BRIEFING BY THE RWADAN REFUGEE COMMUNITY ASSOCIATION (RRCA)**

Mr N Coertse indicated that there was no problem with the Principal Act. The challenge at the DHA was not the system but people who are not answering phones, responding to letters, the security guards taking bribes and the filing system not being in order, etc.

Asylum seekers according to the Bill would not be allowed to run businesses nor the right to work and study. He made an example of the Somali case, where the majority rely on running small businesses, which in turn often employed South Africans. Work should be extended to self-employment. According to him, the applications of the new amendments should also not be retrospective.

**2.8. BRIEFING BY THE LAWEYRS FOR HUMAN RIGHTS (LHR)**

Ms S Ekambaram made the presentation and also called for the withdrawal of the Bill because the Green Paper on International Migration Policy has not been finalised. She indicated that the LHR sees approximately 25 asylum seekers per day at one RRO. She indicated that if people are illegal in the country, South Africa must enforce the law.

She indicated that the DHA 96 percent rejection rate of asylum applications was shown to be questionable by available research whereas this is used by the DHA as a basis that migrants were abusing the asylum process. LHR indicated that the quality of decisions of the Refugee Status Determination Officers was very poor and that procedures were not followed contributing to the high rejection rate.

**2.9. BRIEFING BY THE CONSORTUIM FOR REFUGEES AND MIGRANTS IN SOUTH AFRICA (CORMSA)**

Ms R Dadoo made the presentation and reported that CoRMSA is comprised of 25 asylum seeker organisations. The submission on CoRMSA reflects the views of these organisations. She also raised the matter of the International Migration Policy which seeks to reframe the policy narrative. CoRMSA also believes that the DHA should have completed the migration policy before proceeding with the Refugees Bill.

She raised the issue with the definition of dependent. The amendment seeks to limit the dependents that are supposed to be included in the asylum seeker’s claim. It now also requires that the asylum seeker write the names of all possible dependents on their claims, when they may not be familiar with what is entitled, not expect to see family in the future nor even know whether they are alive.

The additional reasons for exclusion from refugee status in the Bill creates confusion around irregular migration in the Immigration Act as well as on the humanitarian principles of the Refugee Act and the obligations under the UN Refugee Convention. These provisions are too open to subjective interpretation by RSDOs.

If the right to work and study of the asylum seeker is removed and an asylum seeker is unable to support themselves there was no assurance of the indicated support by UNHCR and even if it was given could create a backlash because South Africans would not be benefiting. It was mentioned that most asylum seekers are self-employed.

**6. DELIBERATIONS AND RECOMMENDATIONS BY THE COMMITTEE ON THE SUBMISSIONS**

The DDG for Immigration Services, Mr Mckay made a clarification with regard to the Green Paper on international Migration and these amendments on the Bill. He reported that the amendments seek to deal with immediate issues such as corruption while the policy will dealt with the broader migration environment. He indicated that SCRA and RAB are now expected to meet as a Committee whereas the amendments seek to ensure that individual members can meet on appeals thus improving turnover times. The five day requirement was the alignment of the Refugees Act with the Immigration Act.

After the presentation on 15 November 2016, the Committee engaged with the presenters. During the discussion, some members of the Committee felt that the refugee law was adequate at present. The asylum seekers and the DHA just needed to comply better. If they feel that the law is unjust, they have the right to approach the Courts for relief. Other members of the Committee were in favour of the amendments. It was clear from several presenters that the five day requirement for asylum seekers to avail themselves to the nearest RROs was not enough. Some recommended between 15 – 20 days. It was mentioned that the DHA simply does not have the capacity to handle the volume of applications.

The Committee on 24 January 2017 engaged with the presentation and made the following points: It was indicated that in terms of international instruments relating to Refugees, the Committee will seek advice from its legal services to assist the Committee. States have different circumstances and the international instruments had to be adapted in its domestic laws. The DHA has been classified as a security cluster department and has to ensure that all people including foreigners are protected while in the country.

The Committee raised an issue on what the difference between a refugee and an economic migrant is since it appears to be that the majority of the people who come to South Africa are economic migrants.

The Committee indicated that their constituencies are saying South Africa’s borders are porous and thus South Africa should only allow people who are genuine refugees. The issue of long queues is not only felt by asylum seekers but South Africans as well at the DHA offices. On the issue of dependants, the Committee was concerned about human trafficking.

The Committee agreed that DHA should improve humanitarian relations but South Africa also needs to protect the economic interests of citizens. The average citizen does not differentiate between asylum seekers and refugees and they raise complaints such as that Somalis do not run their spaza shops in line with health regulations.

RRCA indicated that ordinarily asylum seekers come without documents. If a person arrives with a child and there is nothing that connects the two, the DHA will find it difficult to tell if the asylum seekers and the minor child are related

The Committee indicated that the amendments were based on the current policy whereas the green Paper is not yet before Parliament and is still being discussed by the DHA and stakeholders.

The Committee further expressed concern that the presentations were not addressing what the Bill seeks to achieve such as combating fraud among DHA staff, the replacement of the status determination Committee with Status Determination Officers.

Ms Ekambaram commended the DHA falling under the security cluster as this could address the issue of child trafficking.

The Committee indicated that organisations should assist with regard to why certain countries were receiving more asylum seekers than others.

There was a suggestion of ten days for asylum seekers to present themselves to the nearest RROs. The Committee wanted to know what informs ten days and not 30 days. In the response, it was mentioned that RROs see asylum seekers of different nationalities on different days. The five days currently in the legislation will expire before asylum seeker could be allowed to present themselves.

With regard to the International Immigration Policy, the Committee indicated that it could take time before it is finalised and implemented.

CoRMSA proposed a roundtable discussion if the amendments will apply retrospectively to asylum seekers who are already in the country.