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South African Citizenship Amendment Bill [B17-2010]:
Public Submission by People Against Suffering, Suppression, Oppression and Poverty (PASSOP)
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Core Recommendations:

- Citizenship should be granted to all who are born in South Africa.
- The time spent living in South Africa prior to and upon receiving refugee status should count towards the number of years required of a permanent resident to apply for citizenship by naturalization.
- Refugees, in addition to permanent residents, should be eligible for citizenship through marriage.

Overview

The law should take the most vulnerable applicants – minors, refugees, and asylum seekers – into special consideration when defining the path to attaining South African citizenship. While the South African Citizenship Amendment Bill [B17-2010] makes some concessions for those seeking citizenship – such as allowing a child born in South Africa to non-South African citizens who have permanent residence in the Republic of South Africa (RSA) to become a citizen by naturalization if he or she resides in the RSA from the time of birth to the time of attaining major age – it does not do enough to ease the process for the aforementioned vulnerable groups. Citizenship offers a person the ability to fully engage with a democracy, which benefits both the citizen and the country. This policy memo outlines three recommendations that focus on the needs of these groups that Parliament should include in the proposed amendment bill.

Grant Citizenship at Birth

Currently, South African law dictates citizenship exclusively through the citizenship of one's parents – *jus sanguinis* – and not by the location of one's birth – *jus soli* – when determining the nationality of someone born inside of the RSA. These two concepts are not mutually exclusive. *Jus soli* should be incorporated into South Africa law as a guiding legal principle alongside *jus sanguinis*, granting citizenship to anyone born in the RSA, regardless of the citizenship of either or both of his or her parents. By implementing laws the use both *jus soli* and *jus sanguinis*, South Africa will also address the issue of stateless children, which can happen if they are born in a country that follows *jus sanguinis* and whose parents from citizens of a country that follows *jus soli*. South Africa should follow the lead of more 30 other countries, including the United States, Canada, and Brazil, that include *jus soli* in their citizenship and nationality laws.

Legal Application of Jus Soli *in the United States*

The 14th Amendment to the United States Constitution states: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State

wherein they reside." This means anyone born in the United States, except those born to parents who are foreign diplomats or have diplomatic immunity, is a citizen of the United States.

Legal Application of Jus Soli *in Canada*
Subsection 3(1)(a) of Canada's Citizenship Act states: "Subject to this Act, a person is a citizen if (a) the person was born in Canada after February 14, 1977 … ." The only exception is if the child is born to foreign diplomats or those who receive the privileges of foreign diplomats.

Legal Application of Jus Soli *in Brazil*
Article 12 of the Brazilian Federal Constitution states: "The following are Brazilians:
I - by birth: a) those born in the Federative Republic of Brazil, even if of foreign parents, provided that they are not at the service of their country… ."

Intended Impact for Children
Children, no matter where they are born, are a vulnerable group that requires more support and attention than adults. Those born to refugee and asylum seeker parents are even more vulnerable as they lack the protection and rights offered by residence in the country where their parents have citizenship.

On World Refugee Day in 2007, King Kadende, a 15-year-old refugee from Rwanda, gave a speech in Cape Town, entitled "The Plight of Refugee Child." In his speech, Kadende outlined several issues – including access to documentation, social services, and childhood education – that alienate children born to refugee and asylum seeker parents from their adopted community; he claims these result in the children feeling humiliated, discriminated against, and targeted for xenophobia. He said: "Children who were born here in South Africa, whose parents were refugees, are not recognized by South Africans. They are regarded as foreigners, and refugees. They are denied opportunities (Valid South African Identity Cards and other documents) hence experiencing inequality."[1]

As a signatory to the Convention on the Rights of the Child (CRC), South Africa has an obligation to support all children within the RSA, including those born to parents who are not South African citizens. The CRC includes two points that are of interest because of how they relate to children who currently do not receive South African citizenship when born here.

- Article 2 states: A State must ensure the rights "of each child within (its) jurisdiction without discrimination of any kind."
- Article 3 states: "In all actions concerning children... the best interests of the child shall be a primary consideration."

Lack of South African citizenship for children born in South Africa has a negative impact on the needs and development of these children. The current policy of South Africa fails to fulfill either of these aforementioned articles of the CRC. Granting citizenship to those born in the RSA, regardless of who their parents are, will assist with their assimilation into the South African community in which they will live. Additionally, lack of citizenship potentially results in children not gaining access to services to which they have a right; citizenship should be granted to remedy the problem.

1 King Kadende, "The Plight of Refugee Child" (speech, Cape Town, Western Cape, 20 June 2007).

By incorporating *jus soli* into the South African Citizenship Amendment Bill [B17-2010], South Africa will join a group of countries that already adhere to the principle and in turn address the issues that arise from the country's current singular focus on *jus sanguinis*.

Standardize Naturalization Time Requirements

Right now, those seeking citizenship through naturalization are required to live in the RSA as a permanent resident for one year prior to application and a total of four in the previous eight years, totaling a total of five years during the nine years prior to being eligible for citizenship. The proposed amendment act seeks to change this to require five continuous years of permanent residence prior to applying. This requirement mirrors what is required of refugees who wish to apply for permanent residence, as detailed in the Refugees Amendment Act of 2008. This means a refugee must live in the RSA for a minimum of ten years, most likely to be accrued consecutively, before being eligible for naturalization. This is excessive, especially when one takes into consideration the unknown period of time required to first gain refugee status. The proposed legislation should consider the time a person spends as an asylum seeker and a refugee as equivalent to that of a permanent resident, thus matching the number of years required for naturalization eligibility to that which is required of permanent residents.

This concept is currently included in U.S. immigration law. The Immigration and Nationality Act states: "Any alien who is found upon inspection and examination by an immigration officer pursuant to paragraph (1) or after a hearing before an immigration judge to be admissible (except as otherwise provided under subsection (c)) as an immigrant under this Act at the time of the alien's inspection and examination shall, notwithstanding any numerical limitation specified in this Act, be regarded as lawfully admitted to the United States for permanent residence as of the date of such alien's arrival into the United States."[2] A refugee is required to file for permanent residence after one year of being in the United States; an asylum seeker is eligible, but not required, to apply for permanent residence after one year. Upon receiving permanent residence, he or she is only required to live in the country for another four years before being eligible for citizenship. The residency card is backdated one year so that his or her time spent as a refugee or asylee counts toward the five requisite years for citizenship.

The Department of Home Affairs is currently unable to process asylum applications in the 180 days outlined in the Refugee Act, leaving many applicants in limbo for years. The United Nations Refugee Agency estimates there are 309,794 asylum seekers in South Africa as of January 2010; this number comes from approximately 171,700 cases undecided at the end of 2009 and 138,100 cases undecided at the end of 2008.[3] The excessive waiting period to learn if one is a refugee or not cannot be blamed on the applicant and therefore he or she should not be penalized for this.

By counting the years of living in the RSA while under consideration for and after receiving refugee status towards fulfilling the time requirement for naturalization, the law will be standardized in how citizenship eligibility is applied to refugees and permanent residents; both categories of applicants will need to live in the RSA for five continuous years prior to submitting an application. It will also accelerate a refugee's ability to restart and rebuild the life he or she was forced to leave behind upon fleeing his or her country of origin.

2 Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 24 December 1952, Stat. 8 U.S.C. 1159.

3 United Nations High Commissioner for Refugees, "South Africa," UN Refugee Agency, http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e485aa6# (accessed on 2 August 2010).

Citizenship Through Marriage

The current text on citizenship through marriage states a permanent resident is eligible for naturalization if he or she is married to a South African citizen " … for a period of not less than two years immediately preceding the date of his or her application and after the date of his or her marriage to such citizen … ." The proposed amendment replaces this text with that which says a permanent resident is eligible if he or she is "… (b) ordinarily resident in the Republic for a prescribed period; and (c) married to such citizen during the period contemplated in paragraph (b) … ." The vague language related to how long – "prescribed period" – someone must reside in the RSA and be married to a South African citizen leaves room for discretionary application of the law and is therefore unacceptable. A defined amount of time should be in the proposed amendment.

Citizenship should be granted to the spouse of a South African citizen if: a) the applicant is either a permanent resident or refugee, b) has been married for at least one year prior to applying, and c) if he or she has lived in the RSA continuously for at least one year prior to applying. Citizenship should be retained even if the marriage is dissolved by choice after two years if the applicant submits an application to be naturalized prior to ending the marriage. If the spouse of a South African citizen is made a widow or widower, citizenship should still be retained even if the death occurred before two years of marriage was attained if the spouse remains a continuous resident in South Africa for two years after the marriage was initiated.

Refugees should be included in the same category as permanent residents. Therefore, a refugee who marries a South African citizen should be eligible to apply for citizenship after at least one year of entering into the aforementioned marriage and living in the RSA for at least one continuous year.