

Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 630

Cape Town Kaapstad

18 December 2017

No. 41343

THE PRESIDENCY

No. 1452

18 December 2017

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 11 of 2017: Refugees Amendment Act, 2017

DIE PRESIDENSIE

No. 1452

18 Desember 2017

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No. 11 van 2017: Wysigingswet op Vlugtelinge, 2017

ISSN 1682-5843







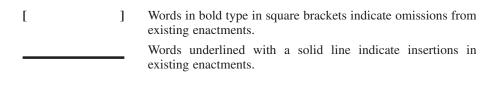
AIDS HELPLINE: 0800-0123-22 Prevention is the cure

Refugees Amendment Act, 2017

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GENERAL EXPLANATORY NOTE:



(English text signed by the President) (Assented to 14 December 2017)

ACT

To amend the Refugees Act, 1998, so as to amend and insert certain definitions; to include further provisions relating to disqualification from refugee status; to provide for integrity measures to combat fraud and corruption among staff members at Refugee Reception Offices, the Standing Committee and the Refugee Appeals Authority; 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; to provide for transitional provisions; and to provide for matters connected therewith.

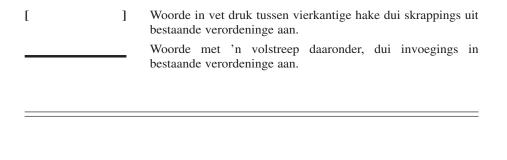
BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: follows:-

Amendment of section 1 of Act 130 of 1998, as amended by section 1 of Act 33 of 2008 and section 1 of Act 12 of 2011

- 1. Section 1 of the Refugees Act, 1998 (Act No. 130 of 1998) (hereinafter referred to 5 as the "principal Act"), is hereby amended—
 - (a) by the substitution for the definition of "asylum seeker permit" of the following definition:
 - " 'asylum seeker [permit] visa' means a [permit] visa contemplated in section 22;";
 - (b) by the substitution for the definition of "dependant" of the following definition:
 - "'dependant' in relation to an asylum seeker or a refugee, means any unmarried minor dependant child, whether born prior to or after the application for asylum, a spouse or any destitute, aged or infirm 15 [member of the immediate family] parent of such asylum seeker or refugee who is dependent on him or her, and who is included by the asylum seeker in the application for asylum or, in the case of a dependant child born after the application for asylum, is registered in terms of section 21B(2);

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ALGEMENE VERDUIDELIKENDE NOTA:



(Engelse teks deur die President geteken) (Goedgekeur op 14 Desember 2017)

WET

Tot wysiging van die Wet op Vlugtelinge, 1998, ten einde sekere omskrywings te wysig en in te voeg; verdere bepalings aangaande diskwalifikasie van vlugtelingstatus in te sluit; voorsiening te maak vir integriteitsmaatreëls om bedrog en korrupsie onder personeellede by Vlugtelingontvangskantore, die Staande Komitee en die Appèlowerheid oor Vlugtelinge te bekamp; bepalings uit te sluit wat na die Statusbepalingskomitee verwys; sekere bepalings te vervang wat met die Appèlowerheid oor Vlugtelinge verband hou; voorsiening te maak vir die herinstelling van die Staande Komitee vir Vlugtelingsake en om bykomende bevoegdhede aan die Staande Komitee op te lê; bykomende bevoegdhede aan die Direkteur-generaal op te lê; die prosedure aangaande voorwaardes wat aan visums vir asielversoekers en die opgee van aansoeke geheg is, duidelik te maak; voorsiening te maak vir die intrekking van vlugtelingstatus ten opsigte van kategorieë vlugtelinge; vir bykomende misdrywe en strawwe voorsiening te maak; om vir oorgangsbepalings voorsiening te maak; en om vir aangeleenthede wat daarmee in verband staan voorsiening te maak.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 130 van 1998, soos gewysig deur artikel 1 van Wet 33 van 2008 en artikel 1 van Wet 12 van 2011

- 1. Artikel 1 van die Wet op Vlugtelinge, 1998 (Wet No. 130 van 1998) (hierna die "Hoofwet" genoem), word hierby gewysig—
 - (a) deur die omskrywing van "afhanklike" deur die volgende omskrywing te vervang:
 - "' 'afhanklike' met betrekking tot 'n asielversoeker of 'n vlugteling, ook die gade, enige ongetroude minderjarige afhanklike kind, hetsy voor of na die aansoek om asiel gebore, 'n gade of enige behoeftige, bejaarde of verswakte [familielid] ouer van daardie asielversoeker of vlugteling wat van hom of haar afhanklik is, en wat deur die asielversoeker in die aansoek om asiel ingesluit is, of in die geval van 'n afhanklike kind wat na die aansoek om asiel gebore is, wat ingevolge artikel 21B(2) 15 geregistreer is;";
 - (b) deur die omskrywing van "asielversoekerspermit" deur die volgende omskrywing te vervang:
 - "[asielversoekerspermit] 'asielverskoersvisum' 'n [permit] visum in artikel 22 beoog;";

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- (c) by the deletion of the definition of "immediate family";
- (d) by the substitution for the definition of "marriage" of the following definition:

" 'marriage' means—

- (a) either a marriage or a civil partnership concluded in terms of the Civil Union Act, 2006 (Act No. 17 of 2006);
- (b) a marriage concluded in terms of—
 - (i) the Marriage Act, 1961 (Act No. 25 of 1961); or
 - (ii) the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998); or
- (c) a marriage concluded in terms of the laws of a foreign country; [or 10]
- (d) a marriage concluded in terms of Islamic or other religious rites;]";
- (e) by the insertion after the definition of "Refugee Reception Office" of the following definition:
 - "'Refugee Status Determination Officer' means an officer referred to in section 8(2);";
- (f) by the insertion after the definition of "spouse" of the following definition:

 ""Standing Committee, many the Standing Committee for Refugee
 - "'Standing Committee' means the Standing Committee for Refugee Affairs established by section 9A;"; and
- (g) by the deletion of the definition of "Status Determination Committee".

Substitution of section 4 of Act 130 of 1998, as amended by section 5 of Act 33 of 2008 and section 2 of Act 12 of 2011

2. The following section is hereby substituted for section 4 of the principal Act:

"Exclusion from refugee status

- **4.** (1) [A person] An asylum seeker does not qualify for refugee status for 25 the purposes of this Act if [the Status Determination Committee] a Refugee Status Determination Officer has reason to believe that he or she—
- (a) has committed a crime against peace, a crime involving torture, as defined in the Prevention and Combating of Torture of Persons Act, 2013 (Act No. 13 of 2013), a war crime or a crime against humanity, 30 as defined in any international legal instrument dealing with any such crimes; or
- (b) has committed a crime <u>outside the Republic</u>, which is not of a political nature and which, if committed in the Republic, would be punishable by imprisonment without the option of a fine; or
- (c) has been guilty of acts contrary to the objects and principles of the United Nations [Organisation] or the [Organisation of African Unity] African Union; or
- (d) enjoys the protection of any other country in which he or she is a recognised refugee, [permanent] resident or citizen[.]; or 40
- (e) has committed a crime in the Republic, which is listed in Schedule 2 of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), or which is punishable by imprisonment without the option of a fine; or
- (f) has committed an offence in relation to the fraudulent possession, acquisition or presentation of a South African identity card, passport, travel document, temporary residence visa or permanent residence permit; or
- (g) is a fugitive from justice in another country where the rule of law is upheld by a recognised judiciary; or
- (h) having entered the Republic, other than through a port of entry designated as such by the Minister in terms of section 9A of the Immigration Act, fails to satisfy a Refugee Status Determination Officer that there are compelling reasons for such entry; or

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(c) deur die omskrywing van "huwelik" deur die volgende omskrywing te vervang:		
"'huwelik'—		
(a) óf 'n huwelik óf 'n [burgerlike genootskap] siviele verbintenis gesluit ingevolge die 'Civil Union Act', 2006 (Wet No. 17 van 2006);		
(b) 'n huwelik gesluit ingevolge—		
(i) die Huwelikswet, 1961 (Wet No. 25 van 1961); of		
(ii) die Wet op Erkenning van Gebruiklike Huwelike, 1998 (Wet		
<u>No.</u> 120 van 1998); <u>of</u>	10	
(c) 'n huwelik gesluit ingevolge die wette van 'n vreemde land; [of		
(d) 'n huwelik gesluit ingevolge Islamitiese of ander religieuse		
gebruike;]";		
(d) deur die omskrywing van "onmiddellike familie" te skrap;	1.5	
(e) deur die volgende omskrywing na die omskrywing van "regulasie" in te voeg:"Staande Komitee' die Staande Komitee vir Vlugtelingsake by artikel		
9A ingestel;";		
(f) deur die omskrywing van "Statusbepalingskomitee" te skrap; en		
(g) deur die volgende omskrywing na die omskrywing van "Vlugtelingontvangs-		
kantoor" in te voeg:	20	
"'Vlugtelingstatusbepalingsbeampte' 'n Vlugtelingstatusbepalings-		
beampte in artikel 8(2) bedoel;".		
Vervanging van artikel 4 van Wet 130 van 1998, soos gewysig deur artikel 5 van Wet 33 van 2008 en artikel 2 van Wet 12 van 2011		
2. Artikel 4 van die Hoofwet word hierby deur die volgende artikel vervang:	25	
"Uitsluiting van vlugtelingstatus		
4. (1) By die toepassing van hierdie Wet kwalifiseer 'n [persoon]		
asielversoeker nie vir vlugtelingstatus nie indien [die Statusbepalings-		
komitee] 'n Vlugtelingstatusbepalingsbeampte rede het om te glo dat hy of		
sy—	30	
(a) 'n misdryf teen die vrede, 'n misdryf wat marteling behels, soos		
omskryf in die 'Prevention and Combating of Torture of Persons Act',		
2013 (Wet No. 13 van 2013), 'n oorlogsmisdaad of 'n misdaad teen die		
mensdom soos omskryf in 'n internasionale regsdokument wat vir		
sulke misdade voorsiening maak, gepleeg het; of	35	

(b) 'n misdaad buite die Republiek gepleeg het wat nie van 'n politieke aard is nie en waarvoor, indien dit in die Republiek gepleeg was, gevangenisstraf sonder die opsie van 'n boete opgelê sou word; of

(c) skuldig was aan dade in stryd met die oogmerke en beginsels van die Verenigde Nasies [Organisasie] of die [Organisasie vir Eenheid in 40 Afrika] Afrika-unie; of

(d) die beskerming van enige ander land waar hy of sy [gaan woon het]

'n erkende vlugteling, inwoner of burger is, geniet; of
(e) 'n misdaad in die Republiek gepleeg het wat in Bylae 2 van die Strafproseswysigingswet, 1997 (Wet No. 105 van 1997), vermeld word of wat strafbaar is met gevangenisstraf sonder die opsie van 'n

'n misdaad gepleeg het in verband met die bedrieglike besit, verkryging of voorlegging van 'n Suid-Afrikaanse identiteitskaart, paspoort, reisdokument, visum vir tydelike verblyf of permit vir permanente verblyf; of

'n voortvlugtige voor die gereg is in 'n ander land waar die oppergesag van die reg deur 'n erkende regsbank gehandhaaf word; of

(h) die Republiek nie deur 'n binnekomshawe as sodanig aangewys deur die Minister ingevolge artikel 9A van die 'Immigration Act', binnegekom het nie en nie 'n Vlugtelingstatusbepalingsbeampte kan oortuig dat daar dwingende redes vir die binnekoms is nie; of

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- (i) has failed to report to the Refugee Reception Office within five days of entry into the Republic as contemplated in section 21, in the absence of compelling reasons, which may include hospitalisation, institutionalisation or any other compelling reason: Provided that this provision shall not apply to a person who, while being in the Republic on a valid visa, other than a visa issued in terms of section 23 of the Immigration Act, applies for asylum.
- (2) For the purposes of subsection (1)(c), no exercise of a human right recognised under international law may be regarded as being contrary to the objects and principles of the United Nations [Organisation] or the 10 [Organisation of African Unity] African Union."

Amendment of section 5 of Act 130 of 1998, as amended by section 6 of Act 33 of 2008

- 3. Section 5 of the principal Act is hereby amended by the substitution for subsection
 (1) of the following subsection:

 (1) A paragraph assess to small further professes status for the purposes of this Act if
 - "(1) A person ceases to qualify for refugee status for the purposes of this Act if—
 - (a) he or she voluntarily [reavails] re-avails himself or herself in the prescribed circumstances of the protection of the country of his or her nationality; or
 - (b) having lost his or her nationality, he or she by some voluntary and formal act re-acquires it; or
 - (c) he or she becomes a permanent resident or a citizen of the Republic or acquires the nationality of some other country and enjoys the protection of that country: Provided that a person whose permanent residence status is withdrawn is not prevented from re-applying for refugee status; or
 - (d) he or she voluntarily re-establishes himself or herself in the country which he or she left or outside of which he or she remained owing to fear of persecution, or returns to visit such country; or
 - (e) he or she can no longer continue to refuse to avail himself or herself of the protection of the country of his or her nationality because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist and no other circumstances have arisen which justify his or her continued recognition as a refugee[.]; or
 - (f) he or she has committed a crime in the Republic, which is listed in Schedule 2 of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), or which is punishable by imprisonment without the option of a fine; or
 - (g) he or she has committed an offence in relation to the fraudulent possession, acquisition or presentation of a South African identity card, passport, travel document, temporary residence visa or permanent residence permit; or
 - (h) the Minister may issue an order to cease the recognition of the refugee status of any individual refugee or category of refugees, or to revoke such status.". 40

Amendment of section 7 of Act 130 of 1998, as substituted by section 8 of Act 33 of 2008

- **4.** Section 7 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
 - "(1) The Minister may, subject to the conditions that he or she may **[deem]** 45 consider necessary, delegate any power conferred on him or her by this Act, excluding a power referred to in section **[8B (2),]** 8A(3), 8B(1)(b), 8F, **[8G,]** 9A(3), 9B(b), 9F or 38, to any officer or employee of the Department, but shall not be divested of any power so delegated.".

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- (i) versuim het om binne vyf dae vanaf binnekoms in die Republiek by die Vlugtelingontvangskantoor aan te meld soos in artikel 21 beoog, sonder dwingende redes, wat hospitalisering, institusionalisering of enige ander dwingende rede kan insluit: Met dien verstande dat hierdie bepaling nie van toepassing is nie op 'n persoon wat, terwyl hy of sy met 'n geldige visum in die Republiek is, behalwe 'n visum wat ingevolge artikel 23 van die 'Immigration Act' uitgereik is, om asiel aansoek doen.
- (2) By die toepassing van subartikel (1)(c) mag geen uitoefening van 'n mensereg wat kragtens die volkereg erken word, gereken word as synde in stryd te wees met die oogmerke en beginsels van die Verenigde Nasies [Organisasie] of die [Organisasie vir Eenheid in Afrika] Afrika-unie nie.".

Wysiging van artikel 5 van Wet 130 van 1998, soos gewysig deur artikel 6 van Wet 33 van 2008

- **3.** Artikel 5 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:
 - "(1) By die toepassing van hierdie Wet hou 'n persoon op om vir vlugtelingstatus te kwalifiseer indien hy of sy—
 - (a) sigself in die voorgeskrewe omstandighede vrywillig aan die beskerming van 20 die land van sy of haar nasionaliteit heronderwerp; of
 - (b) na verlies van sy of haar nasionaliteit dit weer deur die een of ander vrywillige en formele handeling verkry; of
 - (c) 'n permanente inwoner of 'n burger van die Republiek word of die nasionaliteit van 'n ander land verkry en die beskerming van daardie land 25 geniet: Met dien verstande dat 'n persoon wie se permanenteverblyfstatus ingetrek is, nie daarvan weerhou word om weer om vlugtelingstatus aansoek te doen nie; of
 - (d) sigself vrywillig hervestig in die land wat hy of sy verlaat het of waarheen hy of sy nie kon terugkeer nie weens vrees vir vervolging, of terugkeer om sodanige land te besoek; of
 - (e) nie langer kan weier om sigself aan die beskerming van die land van sy of haar nasionaliteit te onderwerp nie aangesien die omstandighede met betrekking waartoe hy of sy as 'n vlugteling erken is, ophou bestaan het en geen ander omstandighede opgeduik het wat sy of haar voortgesette erkenning as 'n 35 vlugteling regverdig nie; of
 - (f) 'n misdaad in die Republiek gepleeg het, wat in Bylae 2 tot die Strafregwysigingswet, 1997 (Wet No. 105 van 1997), vermeld word, of wat strafbaar is met gevangenisstraf sonder die opsie van 'n boete; of
 - (g) 'n misdryf in verband met die bedrieglike besit, verkryging of voorlegging van 'n Suid-Afrikaanse identiteitskaart, paspoort, reisdokument, visum vir tydelike verblyf of 'n permit vir permanente verblyf, gepleeg het; of
 - (h) indien die Minister 'n bevel uitreik om die erkenning van die vlugtelingstatus van enige individuele vlugteling of kategorie vlugtelinge te staak of om sodanige status in te trek.".

Wysiging van artikel 7 van Wet 130 van 1998, soos vervang deur artikel 8 van Wet 33 van 2008

- **4.** Artikel 7 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:
 - "(1) Die Minister kan, behoudens die voorwaardes wat hy of sy nodig ag, 'n 50 bevoegdheid wat hierdie Wet aan hom of haar verleen, uitgesonderd 'n bevoegdheid bedoel in artikel [8B(2),] 8A(3), 8B(1)(b), 8F, [8G] 9A(3), 9B(b), 9F of 38, aan 'n beampte of werknemer van die Departement delegeer, maar is nie ontdoen van 'n bevoegdheid wat so gedelegeer is nie."

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Substitution of heading to Chapter 2 of Act 130 of 1998, as amended by section 9 of Act 33 of 2008

5. The following heading is hereby substituted for the heading to Chapter 2 of the principal Act:

"REFUGEE RECEPTION OFFICES, STANDING COMMITTEE FOR REFUGEE AFFAIRS AND REFUGEE APPEALS AUTHORITY".

Amendment of section 8 of Act 130 of 1998, as amended by section 10 of Act 33 of 2008 and section 3 of Act 12 of 2011

- **6.** Section 8 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections:
 - "(1) **[The]** Notwithstanding the provisions of any other law, the Director-General may, by notice in the *Gazette*, establish as many Refugee Reception Offices in the Republic as he or she regards as necessary for the purposes of this Act and may disestablish any Refugee Reception Office, by notice in the *Gazette*, if considered necessary for the proper administration of this Act.
 - (2) Each Refugee Reception Office must consist of at least one [Status Determination Committee established by the Director-General in the prescribed manner to consider and deal with applications for asylum in accordance with section 24: Provided that the Status Determination Committee may establish subcommittees consisting of no less than two members] 20 officer of the Department, designated by the Director-General as a Refugee Status Determination Officer.".

Substitution of section 8B of Act 130 of 1998, as inserted by section 11 of Act 33 of 2008

7. The following section is hereby substituted for section 8B of the principal Act: 25

"Composition of Refugee Appeals Authority

- 8B. [(1)] The Refugee Appeals Authority consists of—
- (a) a chairperson who is legally qualified; and
- (b) such number of other <u>legally qualified</u> members as the Minister may [determine, having regard to the likely volume of work to be 30 performed by the Refugee Appeals Authority: Provided that at least one of such members is legally qualified] appoint from time to time, having regard to the volume of work to be performed by the Refugee Appeals Authority.
- [(2) The chairperson and other members of the Refugee Appeals 35 Authority are appointed by the Minister with due regard to their experience, qualifications and expertise, as well as their ability to perform the functions of the Refugee Appeals Authority properly.]".

Amendment of section 8C of Act 130 of 1998, as inserted by section 11 of Act 33 of 2008 and amended by section 4 of Act 12 of 2011 40

- **8.** Section 8C of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:
 - "(2) An appeal contemplated in subsection (1)(a) must be determined by a single member or such number of members of the Refugee Appeals Authority as the chairperson may [deem] consider necessary[: Provided that at least one of such 45 members is legally qualified]."

Vervanging van opskrif van Hoofstuk 2 van Wet 130 van 1998, soos gewysig deur artikel 9 van Wet 33 van 2008

5. Die opskrif van Hoofstuk 2 van die Hoofwet word hierby deur die volgende opskrif vervang:

"VLUGTELINGONTVANGSKANTORE, STAANDE KOMITEE VIR VLUGTELINGSAKE EN APPÈLOWERHEID OOR VLUGTELINGE".

Wysiging van artikel 8 van Wet 130 van 1998, soos gewysig deur artikel 10 van Wet 33 van 2008 en artikel 3 van Wet 12 van 2011

- **6.** Artikel 8 van die Hoofwet word hierby gewysig deur subartikels (1) en (2) deur die volgende subartikels te vervang:
 - "(1) [Die] Ondanks die bepalings van enige ander wet, kan die Direkteurgeneraal [kan], by kennisgewing in die *Staatskoerant*, soveel Vlugtelingontvangskantore in die Republiek instel as wat hy of sy nodig ag vir die doeleindes van hierdie Wet en kan enige Vlugtelingontvangskantoor, by kennisgewing in die *Staatskoerant*, ontbind indien dit vir die behoorlike administrasie van hierdie Wet nodig geag word.
 - (2) Elke Vlugtelingontvangskantoor moet uit ten minste een [Statusbepalingskomitee bestaan wat op die voorgeskrewe wyse deur die Direkteur-generaal ingestel is, om aansoeke om asiel ooreenkomstig artikel 24 te oorweeg en te hanteer: Met dien verstande dat die Statusbepalingskomitee subkomitees kan 20 instel wat uit minstens twee lede bestaan] beampte van die Departement, deur die Direkteur-generaal as Vlugtelingstatusbepalingsbeampte aangewys, bestaan.".

Vervanging van artikel 8B van Wet 130 van 1998, soos ingevoeg deur artikel 11 van Wet 33 van 2008

7. Artikel 8B van die Hoofwet word hierby deur die volgende artikel vervang: 25

"Samestelling van Appèlowerheid oor Vlugtelinge

- 8B. [(1)] Die Appèlowerheid oor Vlugtelinge bestaan uit—
- (a) 'n voorsitter wat oor regskwalifikasies beskik; en
- (b) die getal ander lede met regskwalifikasies wat die Minister [kan bepaal, met inagneming van die waarskynlike hoeveelheid werk 30 wat deur die Appèlowerheid oor Vlugtelinge verrig moet word:

 Met dien verstande dat minstens een van hierdie lede oor regskwalifikasies beskik] van tyd tot tyd aanstel, met inagneming van die volume werk wat die Appèlowerheid oor Vlugtelinge moet verrig.
- [(2) Die voorsitter en ander lede van die Appèlowerheid oor 35 Vlugtelinge word deur die Minister aangestel met behoorlike inagneming van hulle ondervinding, kwalifikasies en kundigheid, asook hulle vermoë om die werksaamhede van die Appèlowerheid oor Vlugtelinge behoorlik te kan verrig.]".

Wysiging van artikel 8C van Wet 130 van 1998, soos ingevoeg deur artikel 11 van 40 Wet 33 van 2008 en gewysig deur artikel 4 van Wet 12 van 2011

- **8.** Artikel 8C van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:
 - "(2) 'n Appèl beoog in subartikel (1)(a) moet beslis word deur 'n enkele lid of deur die getal lede van die Appèlowerheid oor Vlugtelinge wat die voorsitter nodig 45 ag[: Met dien verstande dat minstens een van daardie lede oor regskwalifikasies beskik].".

Amendment of section 8D of Act 130 of 1998, as inserted by section 11 of Act 33 of 2008

9. Section 8D of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) [A member of the Refugee Appeals Authority serves for a period of five years and is eligible for reappointment upon expiry of his or her term of office] Notwithstanding the provisions of any other law, a member of the Refugee Appeals Authority is appointed for any period not exceeding five years at a time and may be reappointed for any number of additional periods, any of which may not exceed five years at a time."

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Amendment of section 8E of Act 130 of 1998, as inserted by section 11 of Act 33 of 2008 and amended by Act 12 of 2011

10. The following section is hereby substituted for section 8E of the principal Act:

"Disqualification from membership

8E. A person may not be appointed as a member of the Refugee Appeals 15 Authority if that person—

- (a) is not a South African citizen, unless the Minister considers that he or she possesses such skills and expertise as would significantly enhance the capacity of the Refugee Appeals Authority;
- (b) has been sentenced to imprisonment without the option of a fine 20 during the preceding [four] seven years;
- (c) is an unrehabilitated insolvent;
- (d) has been judicially declared of unsound mind;
- (e) has been removed from an office of trust on account of misconduct [involving theft, fraud or corruption]; [or]

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- (f) is a political office bearer holding a position in the national executive structure of any political party[.];
- (g) has been removed from a previous position on account of theft, fraud or corruption;
- (h) refuses to submit to a vetting investigation in accordance with section 2A of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), when required to do so; or
- (i) fails any investigation referred to in paragraph (h).".

Amendment of section 8F of Act 130 of 1998, as inserted by section 11 of Act 33 of 2008

11. Section 8F of the principal Act is hereby amended by the addition after subsection (2) of the following subsection:

"(3) The Minister may summarily remove a member of the Refugee Appeals Authority from office if such member becomes disqualified in terms of section 8E.".

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Repeal of section 8G as inserted by section 11 of Act 33 of 2008

12. Section 8G of the principal Act is hereby repealed.

Insertion of sections 9A to 9H in Act 130 of 1998

13. The following sections are hereby inserted in the principal Act after section 9:

"Standing Committee for Refugee Affairs

- **9A.** (1) There is hereby established a Standing Committee for Refugee Affairs.
- (2) The Standing Committee is independent and must function without any fear, favour or prejudice.
- (3) The headquarters of the Standing Committee must be determined by \mid 50 the Minister.

Wysiging van artikel 8D van Wet 130 van 1998, soos ingevoeg deur artikel 11 van Wet 33 van 2008

- **9.** Artikel 8D van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:
 - "(1) ['n Lid van die Appèlowerheid oor Vlugtelinge dien vir 'n tydperk van vyf jaar en kan weer aangestel word by die verstryking van sy of haar ampstermyn] Ondanks die bepalings van enige ander wet, word 'n lid van die Appèlowerheid oor Vlugtelinge vir enige tydperk van hoogstens vyf jaar op 'n keer aangestel en kan heraangestel word vir enige getal bykomende tydperke, waarvan nie een meer as vyf jaar op 'n keer mag wees nie.".

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Wysiging van artikel 8E van Wet 130 van 1998, soos ingevoeg deur artikel 11 van Wet 33 van 2008 en gewysig deur Wet 12 van 2011

10. Artikel 8E van die Hoofwet word hierby deur die volgende artikel vervang:

"Onbevoegdheid ten opsigte van lidmaatskap

- **8E.** 'n Persoon kan nie as lid van die Appèlowerheid oor Vlugtelinge 15 aangestel word nie indien daardie person—
- (a) nie 'n Suid-Afrikaanse burger is nie, tensy die Minister van mening is dat hy of sy oor vaardighede en kundigheid beskik wat die kapasiteit van die Appèlowerheid oor Vlugtelinge beduidend sal verbeter;
- (b) in die voorafgaande [vier] sewe jaar gevonnis is tot gevangenisstraf 20 sonder die keuse van 'n boete;
- (c) 'n ongerehabiliteerde insolvent is;
- (d) geregtelik as geestesversteurd verklaar is;
- (e) uit 'n vertrouensamp ontslaan is op grond van onbehoorlike gedrag [wat diefstal, bedrog of korrupsie behels]; [of]

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- (f) 'n politieke ampsdraer is wat 'n posisie in die nasionale uitvoerende struktuur van enige politieke party beklee;
- (g) weens diefstal, bedrog of korrupsie uit 'n vorige posisie verwyder is;
- (h) weier om sigself aan 'n klaringsondersoek ooreenkomstig artikel 2A van die Wet op Nasionale Strategiese Intelligensie, 1994 (Wet No. 39 van 1994), te onderwerp wanneer dit van hom of haar vereis word; of

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(i) enige ondersoek in paragraaf (h) bedoel, nie slaag nie.".

Wysiging van artikel 8F van Wet 130 van 1998, soos ingevoeg deur artikel 11 van Wet 33 van 2008

- **11.** Artikel 8F van die Hoofwet word hierby gewysig deur die volgende subartikel na 35 subartikel (2) by te voeg:
 - "(3) Die Minister kan 'n lid van die Appèlowerheid oor Vlugtelinge summier uit 'n amp verwyder indien daardie lid ingevolge artikel 8E onbevoeg word.".

Herroeping van artikel 8G soos ingevoeg deur artikel 11 van Wet 33 van 2008

12. Artikel 8G van die Hoofwet word hierby herroep.

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Invoeging van artikels 9A tot 9H in Wet 130 van 1998

13. Die volgende artikels word hierby na artikel 9 in die Hoofwet ingevoeg:

"Staande Komitee vir Vlugtelingsake

- **9A.** (1) 'n Staande Komitee vir Vlugtelingsake word hierby ingestel.
- (2) Die Staande Komitee is onafhanklik en moet sonder enige vrees, begunstiging of benadeling funksioneer.
- (3) Die hoofkwartier van die Staande Komitee moet deur die Minister bepaal word.

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Composition of Standing Committee

9B.	The	Standing	Committee	consists	of—
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- (a) a chairperson who is legally qualified; and
- (b) such number of other legally qualified members as the Minister may appoint from time to time, having regard to the volume of work to be 5 performed by the Standing Committee.

Functions of Standing Committee

9C. (1) The Standing Committee—

- (a) must determine any review in terms of section 24A;
- (b) must, in the event that an asylum seeker is permitted to work or study in the Republic, determine the period and conditions in terms of which such asylum seeker may work or study whilst awaiting the outcome of his or her application for asylum;
- (c) may monitor and supervise all decisions taken by Refugee Status Determination Officers and may approve, disapprove or refer any such decision back to the Refugee Reception Office with recommendations as to how the matter must be dealt with; and
- (d) must advise the Minister or Director-General on any matter referred to it by the Minister or Director-General, including training that may be provided to members of staff at Refugee Reception Offices.
- (2) Any function performed by the Standing Committee in terms of this Act must be determined by a single member or, in particular matters, such number of members of the Standing Committee as the chairperson may consider necessary.

Term of office of members of Standing Committee

- **9D.** (1) Notwithstanding the provisions of any other law, a member of the Standing Committee is appointed for any period not exceeding five years at a time and may be reappointed for any number of additional periods, any of which may not exceed five years at a time.
- (2) A member may resign by tendering a written notice of resignation to \mid 30 the Minister.

Disqualification from membership

- **9E.** A person may not be appointed as a member of the Standing Committee if that person—
- (a) is not a South African citizen, unless the Minister considers that he or she possesses such skills and expertise as would significantly enhance the capacity of the Standing Committee;
- (b) has been sentenced to imprisonment without the option of a fine during the preceding seven years;
- (c) is an unrehabilitated insolvent;
- (d) has been judicially declared of unsound mind;
- (e) has been removed from an office of trust on account of misconduct;
- is a political office bearer holding a position in the national executive structure of any political party;
- (g) has been removed from a previous position on account of theft, fraud or corruption:
- (h) refuses to submit to a vetting investigation in accordance with section 2A of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994) when required to do so; or
- (i) fails any investigation referred to in paragraph (h).

Removal from office of member of Standing Committee

9F. (1) The Minister may remove a member of the Standing Committee from office on account of misconduct or inability to perform the functions of his or her office effectively and efficiently.

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Samestelling van Staande Komitee

9B. Die Staande Komitee bestaan uit-

- 'n voorsitter met regskwalifikasies; en
- (b) die getal ander lede met regskwalifikasies soos die Minister van tyd tot tyd aanstel, met inagneming van die volume werk wat die Staande | 5 Komitee moet verrig.

Werksaamhede van Staande Komitee

9C. (1) Die Staande Komitee-

- (a) moet enige hersiening ingevolge artikel 24A beslis;
- (b) moet, indien 'n asielversoeker toegelaat word om in die Republiek te werk of te studeer, die tydperk en voorwaardes ingevolge waarvan daardie asielversoeker mag werk of studeer terwyl die uitslag van sy of haar aansoek om asiel afgewag word, bepaal;
- (c) kan al die besluite deur die Vlugtelingstatusbepalingsbeampte geneem, monitor en daaroor toesig hou en kan enige sodanige besluit goedkeur, afkeur of terugverwys na die Vlugtelingontvangskantoor met aanbevelings oor hoe die aangeleentheid hanteer moet word; en
- (d) moet die Minister of Direkteur-generaal van raad bedien oor enige aangeleentheid deur die Minister of Direkteur-generaal na die Komitee verwys, met inbegrip van opleiding wat aan personeellede van Vlugtelingontvangskantore voorsien kan word.
- (2) 'n Werksaamheid ingevolge hierdie Wet deur die Staande Komitee verrig moet deur 'n enkele lid beslis word of, in besondere aangeleenthede, deur sodanige getal lede van die Staande Komitee soos die voorsitter nodig mag ag.

Ampstermyn van lede van Staande Komitee

- **9D.** (1) Ondanks die bepalings van enige ander wet, word 'n lid van die Staande Komitee aangestel vir 'n tydperk van hoogstens vyf jaar op 'n keer en kan heraangestel word vir enige getal bykomende tydperke, waarvan nie een tydperk meer as vyf jaar op 'n slag mag wees nie.
- (2) 'n Lid kan bedank deur 'n skriftelike kennisgewing van bedanking by die Minister in te dien.

Onbevoegdheid vir lidmaatskap

- **9E.** 'n Persoon kan nie as 'n lid van die Staande Komitee aangestel word nie, indien daardie persoon-
- (a) nie 'n Suid-Afrikaanse burger is nie, tensy die Minister van oordeel is dat hy of sy vaardighede en kundigheid het wat die kapasiteit van die Staande Komitee aansienlik sal verbeter;
- (b) in die voorafgaande sewe jaar tot gevangenisstraf sonder die opsie van 'n boete gevonnis is;
- 'n ongerehabiliteerde insolvent is;
- (d) geregtelik as geestesversteurd verklaar is;
- (e) uit 'n vertrouensamp onthef is op grond van onbehoorlike gedrag;
- 'n politieke ampsdraer is wat 'n posisie in die nasionale uitvoerende struktuur van enige politieke party beklee;
- weens diefstal, bedrog of korrupsie uit 'n vorige posisie verwyder is;
- weier om sigself aan 'n klaringsondersoek ooreenkomstig artikel 2A van die Wet op Nasionale Strategiese Intelligensie, 1994 (Wet No. 39 van 1994), te onderwerp wanneer dit van hom of haar vereis word; of
- enige ondersoek in paragraaf (h) bedoel, nie slaag nie.

Ontheffing van amp as lid van Staande Komitee

9F. (1) Die Minister kan 'n lid van die Staande Komitee uit die amp onthef op grond van wangedrag of onvermoë om die werksaamhede van sy of haar amp doeltreffend en doelmatig te verrig.

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> (2) The Minister may remove a member of the Standing Committee in terms of subsection (1) if such member has been given an opportunity to make representations or comments on the matter and the Minister has taken

> (3) The Minister may summarily remove a member of the Standing Committee from office if such member becomes disqualified in terms of section 9E.

Remuneration of members of Standing Committee

any such representations or comments into consideration.

9G. The members of the Standing Committee must receive such remuneration, allowances and other benefits as the Minister may determine 10 with the concurrence of the Minister of Finance.

Administrative staff of Standing Committee

9H. The administrative work connected with the functions of the Standing Committee must be performed by officers of the Department, designated by the Director-General for that purpose.".

Insertion of section 20A in Act 130 of 1998

14. The following section is hereby inserted in the principal Act after section 20:

"Crime prevention and integrity measures

20A. (1) The Director-General must, as soon as possible after the commencement of this Act, and from time to time thereafter, and without 20 probable cause, direct all members and administrative staff of the Standing Committee, Refugee Appeals Authority and all members of staff at any Refugee Reception Office, including persons who are not members of staff but who perform any function at such an Office, to be subjected to measures to test the integrity of those persons for purposes of—

(a) combating or preventing fraud, corruption or any crime of which dishonesty is an element; and

enhancing the integrity of, and confidence in, the asylum seeker and refugee system.

(2) Measures to test the integrity of persons as referred to in subsection 30 (1) may include-

(a) the gathering of information, as prescribed, by a duly authorised official in relation to-

(i) criminal records;

(ii) financial records;

(iii) personal information; or

(iv) any other information which may be relevant, to determine the integrity of a person; and

(b) psychometric tests.

(3) (a) The information referred to in subsection (2) must, in the 40 prescribed manner, be stored securely.

(b) No person may disclose any information which he or she obtained in the exercise of his or her powers or the performance of his or her duties in terms of this section, except—

(i) to any other person who of necessity requires it for the performance of 45 his or her functions in terms of this section;

(ii) if he or she is a person who of necessity supplies it in the performance of his or her functions in terms of this section;

(iii) information which is required in terms of any law or as evidence in any court of law or in any disciplinary proceedings; or

(iv) to any competent authority which requires it for the institution, or an investigation with a view to the institution, of any criminal proceed-

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- (2) Die Minister kan 'n lid van die Staande Komitee ingevolge subartikel (1) onthef indien sodanige lid 'n geleentheid gegun is om vertoë te rig of kommentaar te lewer oor die aangeleentheid en die Minister sodanige vertoë en kommentaar in oorweging geneem het.
- (3) Die Minister kan 'n lid van die Staande Komitee summier uit die amp | 5 onthef indien sodanige lid ingevolge artikel 9E onbevoeg word.

Vergoeding van lede van Staande Komitee

9G. Die lede van die Staande Komitee moet sodanige vergoeding, toelaes en ander voordele ontvang wat die Minister, met die instemming van die Minister van Finansies, bepaal.

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Administratiewe personeel van Staande Komitee

9H. Die administratiewe werk wat met die werksaamhede van die Staande Komitee gepaard gaan, moet deur beamptes van die Departement gedoen word wat deur die Direkteur-generaal vir daardie doel aangewys is.".

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Invoeging van artikel 20A in Wet 130 van 1998

14. Die volgende artikel word hierby na artikel 20 in die Hoofwet ingevoeg:

"Maatreëls vir misdaadvoorkoming en integriteit

20A. (1) Die Direkteur-generaal moet, so gou as moontlik na die inwerkingtreding van hierdie Wet en van tyd tot tyd daarna, en sonder waarskynlike oorsaak gelas dat alle lede en administratiewe personeel van die Staande Komitee, Appèlowerheid oor Vlugtelinge en alle personeellede by enige Vlugtelingontvangskantoor, met inbegrip van persone wat nie personeellede is nie, maar wat enige werksaamheid by so 'n Kantoor verrig, aan maatreëls onderwerp word om daardie persone se integriteit te toets ten einde—

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- (a) bedrog, korrupsie of enige misdaad waarvan oneerlikheid deel uitmaak, te bekamp of te voorkom; en
- (b) die integriteit van, en vertroue in, die asielversoeker- en vlugtelingstelsel te verbeter.
- (2) Maatreëls om die integriteit van persone te toets soos in subartikel (1) bedoel, kan insluit—
- (a) die insameling van inligting, soos voorgeskryf, deur 'n beampte met gepaste magtiging in verband met—
 - (i) kriminele rekords;

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- (ii) finansiële rekords;
- (iii) persoonlike inligting; of
- (iv) enige ander inligting wat tersaaklik kan wees om iemand se integriteit te bepaal; en

(b) psigometriese toetse.

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- (3) (a) Die inligting in subartikel (2) bedoel moet op die voorgeskrewe wyse veilig geberg word.
- (b) Niemand mag enige inligting bekend maak wat hy of sy in die uitoefening van sy of haar bevoegdhede of die verrigting van sy of haar pligte ingevolge hierdie artikel verkry het nie, behalwe—

of 45

- (i) aan enigiemand anders wat dit uit noodsaak vir die verrigting van sy of haar werksaamhede ingevolge hierdie artikel benodig;
- (ii) as hy of sy dit uit noodsaak in die verrigting van sy of haar werksaamhede ingevolge hierdie artikel voorsien;
- (iii) inligting wat ingevolge enige wet as getuienis in enige geregshof of in enige dissiplinêre verrigtinge benodig word; of
- (iv) aan enige bevoegde owerheid wat dit benodig vir die instel van, of 'n ondersoek met die oog op die instel van, enige strafregtelike verrigtinge of enige siviele verrigtinge soos beoog in Hoofstuk 5 of 6

ings or any civil proceedings as contemplated in Chapter 5 or 6 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).

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- (4) Any information gathered in terms of subsection (2) may be used for purposes of—
- (a) instituting criminal, civil or disciplinary proceedings against any person referred to in subsection (1);
- (b) evidence in criminal, civil or disciplinary proceedings, subject to the approval of the presiding officer in any such proceedings regarding the admissibility of such information; or
- (c) a vetting investigation in accordance with section 2A of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994).
- (5) A person contemplated in subsection (1) who is a member of the public service and who refuses to subject himself or herself to a vetting investigation as contemplated in subsection (4)(c) when instructed to do so, or who fails such investigation, is subject to such disciplinary measures as may be in operation for members of the public service at the time."

Amendment of section 21 of Act 130 of 1998, as amended by section 13 of Act 33 of 2008

- 15. Section 21 of the principal Act is hereby amended—
 - (a) by the substitution for subsection (1) of the following subsection:

 "(1)(a) Upon reporting to the Refugee Reception Office within five
 - "(1)(a) Upon reporting to the Refugee Reception Office within five days of entry into the Republic, an asylum seeker must be assisted by an officer designated to receive asylum seekers.
 - (b) An application for asylum must be made in person in accordance with the prescribed procedures[, within five days of entry into the Republic,] to a Refugee Status Determination Officer at any Refugee Reception Office or at any other place designated by the Director-General by notice in the *Gazette*.";
 - (b) by the insertion after subsection (1) of the following subsections:
 - "(1A) Prior to an application for asylum, every applicant must submit or her biometrics or other data, as prescribed, to an immigration officer at a designated port of entry or a Refugee Reception Office.
 - (1B) An applicant who may not be in possession of an asylum transit visa as contemplated in section 23 of the Immigration Act, must be interviewed by an immigration officer to ascertain whether valid reasons exist as to why the applicant is not in possession of such visa.
 - (1C) The Director-General may, by notice in the *Gazette*, require any category of asylum seekers to report to any particular or designated Refugee Reception Office or other place specially designated as such when lodging an application for asylum, if the Director-General considers it necessary for the proper administration of this Act.
 - (1D) For purposes of subsection (1C), a category of asylum seekers refers to asylum seekers from a particular country of origin or geographic area or of a particular gender, religion, nationality, political opinion or social group.";
 - (c) by the insertion after subsection (2) of the following subsection:
 - "(2A) When making an application for asylum, every applicant must declare all his or her spouses and dependants, whether in the Republic or elsewhere, in the application for asylum.";
 - (d) by the substitution in subsection (4) for paragraph (a) of the following 50 paragraph:
 - "(a) such person has applied for asylum in terms of subsection (1), until a decision has been made on the application and, where applicable, such [person has had an opportunity to exhaust his or her rights of review or appeal in terms of Chapter 4] application has been reviewed in terms of section 24A or where the applicant exercised his or her right to appeal in terms of section 24B; or"; and

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- van die Wet op die Voorkoming van Georganiseerde Misdaad, 1998 (Wet No. 121 van 1998).
- (4) Enige inligting wat ingevolge subartikel (2) ingesamel is, kan gebruik word ten einde-
- (a) strafregtelike, siviele of dissiplinêre verrigtinge teen enigiemand bedoel in subartikel (1), in te stel:
- (b) as getuienis te dien in strafregtelike, siviele of dissiplinêre verrigtinge, behoudens die goedkeuring van die voorsittende beampte in enige sodanige verrigtinge aangaande die toelaatbaarheid van sodanige inligting; of
- 'n keuringsondersoek te doen ooreenkomstig artikel 2A van die Wet op Nasionale Strategiese Intelligensie, 1994 (Wet No. 39 van 1994).
- (5) Iemand in subartikel (1) beoog wat 'n lid van die staatsdiens is en wat weier om sigself by opdrag aan 'n keuringsondersoek te onderwerp soos in subartikel (4)(c) beoog, of wat sodanige ondersoek nie slaag nie, is 15 onderworpe aan sodanige dissiplinêre maatreëls wat op daardie tydstip vir staatsdienslede in plek is.".

Wysiging van artikel 21 van Wet 130 van 1998, soos gewysig deur artikel 13 van Wet 33 van 2008

- 15. Artikel 21 van die Hoofwet word hierby gewysig—
 - (a) deur subartikel (1) deur die volgende subartikel te vervang: "(1) (a) By aanmelding by die Vlugtelingontvangskantoor binne vyf dae vanaf binnekoms van die Republiek moet 'n asielversoeker deur 'n offisier bygestaan word wat aangewys is om asielversoekers te ontvang.
 - (b) 'n Aansoek om asiel moet persoonlik ooreenkomstig die 25 voorgeskrewe prosedures by 'n Vlugtelingstatusbepalingsbeampte by 'n Vlugtelingontvangskantoor of by enige ander plek deur die Direkteurgeneraal by kennisgewing in the Staatskoerant aangewys, gedoen word.":
 - (b) deur die volgende subartikels na subartikel (1) in te voeg:
 - "(1A) Voor 'n aansoek om asiel, moet elke applikant sy of haar biometriese besonderhede of ander data, soos voorgeskryf, by immigrasiebeampte by 'n aangewese toegangspoort of 'n Vlugtelingontvangskantoor indien.
 - (1B) 'n Applikant wat nie 'n asieltransitovisum in sy of haar besit het soos in artikel 23 van die 'Immigration Act' beoog nie, moet deur 'n immigrasiebeampte ondervra word om vas te stel of geldige redes bestaan waarom die applikant nie so 'n visum het nie.
 - (1C) Die Direkteur-generaal kan, by kennisgewing in die Staatskoerant, vereis dat enige kategorie asielversoekers by enige bepaalde of aangewese Vlugtelingontvangskantoor of ander plek spesiaal as sodanig aangewys, aanmeld wanneer hulle 'n aansoek om asiel indien, as die Direkteur-generaal dit vir die behoorlike administrasie van hierdie Wet nodig ag.
 - (1D) By die toepassing van subartikel (1C), verwys 'n kategorie van asielversoekers na asielversoekers van 'n bepaalde land van oorsprong of geografiese gebied of van 'n bepaalde geslag, geloof, nasionaliteit, politieke mening of maatskaplike groep.";
 - (c) deur die volgende subartikel na subartikel (2) in te voeg:
 - "(2A) Wanneer aansoek om asiel gedoen word, moet elke applikant al 50 sy of haar gades en afhanklikes, hetsy in die Republiek of elders, in die aansoek om asiel verklaar.";
 - (d) deur in subartikel (4) paragraaf (a) deur die volgende paragraaf te vervang:
 - "(a) daardie persoon ingevolge subartikel (1) aansoek om asiel gedoen het en alvorens 'n besluit oor die aansoek geneem is en, waar van 55 toepassing, daardie [persoon die geleentheid gehad het om sy of haar hersieningsreg of reg tot appèl ingevolge Hoofstuk 4 uit te put] aansoek ingevolge artikel 24A hersien is of waar die applikant sy of haar reg op appèl ingevolge artikel 24B uitgeoefen het; of"; en

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- (e) by the addition after subsection (5) of the following subsections:
 - "(6) An application for asylum, which is found to contain false, dishonest or misleading information, whether by a Refugee Status Determination Officer, when considering the application, the Standing Committee, when reviewing, monitoring or supervising a decision or the Refugee Appeals Authority, when adjudicating an appeal, must be rejected.
 - (7) It is presumed that a person who has indicated a language of preference in an application for asylum, understands and is proficient in such language.".

Amendment of section 21A of Act 130 of 1998, as inserted by section 14 of Act 33 of 2008

- 16. Section 21A of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 - "Any person [with] reasonably suspected to have a mental disability who is found 15 under circumstances that clearly indicate that he or she is an asylum seeker, must—".

Amendment of section 21B of Act 130 of 1998, as inserted by section 14 of Act 33 of 2008 and amended by section 6 of Act 12 of 2011

- 17. Section 21B of the principal Act is hereby amended—
 - (a) by the insertion after subsection (2) of the following subsection:
 - "(2A) Any child of an asylum seeker born in the Republic and any person included as a dependant of an asylum seeker in the application for asylum has the same status as accorded to such asylum seeker.";
 - (b) by the substitution for subsection (3) of the following subsection:
 - "(3) Where a dependant of a recognised refugee [is within the Republic in accordance with an asylum seeker permit or has been granted asylum in terms of this Act and] ceases to be a dependant by virtue of marriage or cessation of his or her dependence upon the recognised refugee, as the case may be, he or she may apply in the 30 prescribed manner to be permitted to continue to remain within the Republic in accordance with the provisions of this Act."; and
 - (c) by the insertion after subsection (3) of the following subsection:
 - "(3A) Where a dependant of an asylum seeker ceases to be a dependant by virtue of marriage or cessation of his or her dependence upon the asylum seeker, as the case may be, he or she may apply for asylum himself or herself in accordance with the provisions of this Act.".

Substitution of section 22 of Act 130 of 1998, as amended by section 15 of Act 33 of 2008

18. The following section is hereby substituted for section 22 of the principal Act: 40

"Asylum seeker visa

- **22.** (1) An asylum seeker whose application in terms of section 21(1) has not been adjudicated, is entitled to be issued with an asylum seeker visa, in the prescribed form, allowing the applicant to sojourn in the Republic temporarily, subject to such conditions as may be imposed, which are not in conflict with the Constitution or international law.
- (2) Upon the issue of a visa in terms of subsection (1), any previous visa issued to the applicant in terms of the Immigration Act becomes null and void and must be returned to the Director-General for cancellation.
- (3) The visa referred to in subsection (1) must contain the biometrics of $| 50 \rangle$ the holder thereof.

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- (e) deur die volgende subartikels na subartikel (5) in te voeg:
 - "(6) Indien gevind word, hetsy deur 'n Vlugtelingstatusbepalingsbeampte by die oorweging van die aansoek, die Staande Komitee, by die hersiening, monitor van of toesig oor 'n besluit of deur die Appèlowerheid oor Vlugtelinge, dat 'n aansoek om asiel vals, oneerlike of misleidende inligting bevat, moet daardie aansoek van die hand gewys word.
 - (7) Daar word veronderstel dat iemand wat 'n voorkeurtaal in 'n aansoek om asiel aangedui het, daardie taal verstaan en dit goed kan beheers.".

Wysiging van artikel 21A van Wet 130 van 1998, soos deur artikel 14 van Wet 33 10 van 2008 ingevoeg

16. Artikel 21A van die Hoofwet word hierby gewysig deur in subartikel (2) die woorde wat paragraaf (*a*) voorafgaan deur die volgende woorde te vervang:

"Daar word aan 'n **[geestesgestremde]** persoon <u>wat na redelike vermoede</u> geestesgestremd is, wat onder omstandighede gevind word wat duidelik aandui dat 15 hy of sy 'n asielversoeker is—".

Wysiging van artikel 21B van Wet 130 van 1998, soos ingevoeg deur artikel 14 van Wet 33 van 2008 en gewysig deur artikel 6 van Wet 12 van 2011

- 17. Artikel 21B van die Hoofwet word hierby gewysig—
 - (a) deur die volgende subartikel na subartikel (2) in te voeg:

"(2A) 'n Kind van 'n asielversoeker wat in die Republiek gebore is en enigiemand wat as 'n afhanklike van 'n asielversoeker ingesluit is in die aansoek om asiel het dieselfde status as wat aan die asielversoeker verleen word.";

- (b) deur subartikel (3) deur die volgende subartikel te vervang:
 - "(3) Waar 'n afhanklike van 'n erkende vlugteling [ooreenkomstig 'n asielversoekerspermit in die Republiek is of indien aan hom of haar asiel ingevolge hierdie Wet verleen is, en hy of sy] ophou om 'n afhanklike te wees uit hoofde van sy of haar huwelik of omdat hy of sy nie meer van die erkende vlugteling afhanklik is nie, na gelang van die geval, kan hy of sy op die voorgeskrewe wyse aansoek doen om toegelaat te word om ooreenkomstig die bepalings van hierdie Wet binne die Republiek te bly."; en
- (c) deur die volgende subartikel na subartikel (3) in te voeg:
 - "(3A) Waar 'n afhanklike van 'n asielversoeker ophou om 'n 35 afhanklike te wees uit hoofde van sy of haar huwelik of omdat hy of sy nie meer van die asielversoeker afhanklik is nie, na gelang van die geval, kan hy of sy self ooreenkomstig die bepalings van hierdie Wet vir sigself om asiel aansoek doen."

Vervanging van artikel 22 van Wet 130 van 1998, soos gewysig deur artikel 15 van $\,40$ Wet 33 van 2008

18. Artikel 22 van die Hoofwet word hierby deur die volgende artikel vervang:

"Asielversoekersvisum

- **22.** (1) 'n Asielversoeker wie se aansoek ingevolge artikel 21(1) nie bereg is nie, het die reg om 'n asielversoekersvisum te kry, in die voorgeskrewe vorm, wat die applikant toelaat om tydelik in die Republiek te vertoef, behoudens voorwaardes wat opgelê kan word wat nie met die Grondwet of volkereg onbestaanbaar is nie.
- (2) By die uitreiking van 'n visum ingevolge subartikel (1), word enige vorige visum wat ingevolge die 'Immigration Act' aan die applikant uitgereik is, van nul en gener waarde en moet na die Direkteur-generaal teruggestuur word vir intrekking.
- (3) Die visum in subartikel (1) bedoel, moet die biometrika van die houer daarvan bevat

- (4) The visa referred to in subsection (1) may, pending the decision on the application in terms of section 21, from time to time be extended for such period as may be required.
- (5) The Director-General may at any time prior to the expiry of an asylum seeker visa withdraw such visa in the prescribed manner if—
- (a) the applicant contravenes any condition endorsed on that visa;
- (b) the application for asylum has been found to be manifestly unfounded, abusive or fraudulent;
- (c) the application for asylum has been rejected; or
- (d) the applicant is or becomes ineligible for asylum in terms of section 4 or 5.
- (6) An asylum seeker may be assessed to determine his or her ability to sustain himself or herself, and his or her dependants, either with or without the assistance of family or friends, for a period of at least four months.
- (7) If, after assessment, it is found that an asylum seeker is unable to sustain himself or herself and his or her dependants, as contemplated in subsection (6), that asylum seeker may be offered shelter and basic necessities provided by the UNHCR or any other charitable organisation or person.
- (8) The right to work in the Republic may not be endorsed on the asylum seeker visa of any applicant who—
- (a) is able to sustain himself or herself and his or her dependants, as contemplated in subsection (6);
- (b) is offered shelter and basic necessities by the UNHCR or any other charitable organisation or person, as contemplated in subsection (7); or
- (c) seeks to extend the right to work, after having failed to produce a letter of employment as contemplated in subsection (9): Provided that such extension may be granted if a letter of employment is subsequently produced while the application in terms of section 21 is still pending.
- (9) In the event that the right to work or study is endorsed on the asylum seeker visa, the relevant employer, in the case of a right to work, and the relevant educational institution, in the case of a right to study, must furnish the Department with a letter of employment or of enrolment at the educational institution, as the case may be, in the prescribed form within a period of 14 days from the date of the asylum seeker taking up employment or being enrolled, as the case may be.

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- (10) An employer or educational institution contemplated in subsection (9) who or which fails to comply with the duty imposed in that subsection, or fraudulently issues the letter contemplated in that subsection, is guilty of an offence and liable upon conviction to a fine not exceeding R20 000.
- (11) The Director-General must revoke any right to work as endorsed on an asylum seeker visa if the holder thereof is unable to prove that he or she is employed after a period of six months from the date on which such right was endorsed.
- (12) The application for asylum of any person who has been issued with a visa contemplated in subsection (1) must be considered to be abandoned and must be endorsed to this effect by the Standing Committee on the basis of the documentation at its disposal if such asylum seeker fails to present himself or herself for renewal of the visa after a period of one month from the date of expiry of the visa, unless the asylum seeker provides, to the satisfaction of the Standing Committee, reasons that he or she was unable to present himself or herself, as required, due to hospitalisation or any other form of institutionalisation or any other compelling reason.
- (13) An asylum seeker whose application is considered to be abandoned in accordance with subsection (12) may not re-apply for asylum and must be dealt with as an illegal foreigner in terms of section 32 of the Immigration Act.

- (4) Die visum in subartikel (1) bedoel kan, hangende die besluit oor die aansoek ingevolge artikel 21, van tyd tot tyd met die nodige tydperk verleng word.
- (5) Die Direkteur-generaal kan daardie visum te eniger tyd voor die verstryking van 'n asielversoekersvisum op die voorgeskrewe wyse intrek indien—
- (a) die applikant enige voorwaarde wat op daardie visum aangebring is, verbreek:
- (b) gevind is dat die aansoek om asiel klaarblyklik ongegrond, misbruikend of bedrieglik was;
- (c) die aansoek om asiel van die hand gewys is; of
- (d) die applikant ingevolge artikel 4 of 5 vir asiel ongeskik is of word.
- (6) 'n Asielversoeker kan geassesseer word om sy of haar vermoë te bepaal om sigself, en sy of haar afhanklikes, met of sonder die bystand van familie of vriende, vir 'n tydperk van ten minste vier maande te onderhou.
- (7) Indien daar, na assessering, gevind word dat 'n asielversoeker sigself en sy of haar afhanklikes nie kan onderhou soos in subartikel (6) beoog nie, kan skuiling en basiese middele deur die VNHKV of enige ander welsynsorganisasie of persoon voorsien, aan die asielversoeker gebied word.
- (8) Die reg om in die Republiek te werk kan nie aangebring word nie op die asielversoekersvisum van 'n applikant wat—
- (a) sigself en sy of haar afhanklikes kan onderhou, soos in subartikel (6) beoog:
- (b) skuiling en basiese middele van die VNHKV of enige ander welsynsorganisasie of persoon gebied word, soos in subartikel (7) beoog; of
- (c) beoog om die reg om te werk te verleng, nadat 'n aanstellingsbrief nie getoon kon word nie soos in subartikel (9) beoog: Met dien verstande dat sodanige verlenging toegestaan kan word indien 'n aanstellingsbrief daarna verstrek word terwyl die aansoek ingevolge artikel 21 steeds hangende is.
- (9) Indien die reg om te werk of te studeer op die asielversoekersvisum aangebring is, moet die tersaaklike werkgewer, in die geval van 'n reg om te werk, en die tersaaklike onderwysinrigting, in die geval van 'n reg om te studeer, die Departement voorsien van 'n aanstellingsbrief of van 'n registrasiebrief by die onderwysinrigting, na gelang van die geval, in die voorgeskrewe vorm binne 14 dae vanaf die datum van die aanstelling of inskrywing van die asielversoeker, na gelang van die geval.
- (10) 'n Werkgewer of onderwysinrigting in subartikel (9) beoog wat versuim om te voldoen aan die plig in daardie subartikel opgelê, of wat die brief beoog in daardie subartikel op 'n bedrieglike wyse uitreik, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete van hoogstens R20 000.
- (11) Die Direkteur-generaal moet enige reg om te werk soos op die asielversoekersvisum aangebring, intrek indien die houer daarvan nie kan bewys dat hy of sy werk het na 'n tydperk van ses maande vanaf die datum waarop daardie reg aangebring is nie.
- (12) Die aansoek om asiel van enige persoon aan wie 'n visum beoog in subartikel (1), uitgereik is, moet geag word opgegee te wees en moet te dien effekte deur die Staande Komitee geëndosseer word op grond van dokumentasie tot die Staande Komitee se beskikking indien die asielversoeker versuim om sigself aan te meld vir hernuwing van die visum na 'n tydperk van een maand vanaf die vervaldatum van die visum, tensy die asielversoeker, tot bevrediging van die Staande Komitee, redes voorsien waarom hy of sy sigself nie, soos vereis, kon aanmeld nie weens hospitalisasie of enige ander vorm van institusionalisering of enige ander dwingende rede.
- (13) 'n Asielversoeker wie se aansoek ooreenkomstig subartikel (12) as opgegee beskou word, kan nie heraansoek om asiel doen nie en moet as 'n onwettige vreemdeling ingevolge artikel 32 van die 'Immigration Act' hanteer word.

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(14) Any person who fails to return a visa in accordance with subsection (2), or fails to comply with any condition set out in a visa issued in terms of this section, or is in possession of an expired visa, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.".

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Amendment of section 23 of Act 130 of 1998, as amended by section 16 of Act 33 of 2008

19. The following section is hereby substituted for section 23 of the principal Act:

"Detention of asylum seeker

23. If the Director-General has withdrawn an asylum seeker [permit] 10 visa in terms of section 22[(6)](5), he or she may, subject to section 29, cause the holder to be arrested and detained pending the finalisation of the application for asylum, in the manner and place determined by him or her with due regard to human dignity.".

Amendment of section 24 of Act 130 of 1998, as amended by section 17 of Act 33 of 15 2008 and section 7 of Act 12 of 2011

- 20. Section 24 of the principal Act is hereby amended—
 - (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 - "When considering an application for asylum, the [Status Determina- 20 tion Committee] Refugee Status Determination Officer";
 - (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
 - "The [Status Determination Committee] Refugee Status Determination Officer must at the conclusion of the hearing conducted in the prescribed manner, but subject to monitoring and supervision, in the case of paragraphs (a) and (c), and subject to review, in the case of paragraph (b), by any member of the Standing Committee designated by the chairperson for this purpose—";
 - (c) by the substitution in subsection (4) for the words preceding paragraph (a) of 30 the following words:
 - "If an application is rejected in terms of subsection (3)(b) or (c), the [Status Determination Committee] Refugee Status Determination Officer must—";
 - (d) by the substitution in subsection (5) for paragraph (a) of the following 35 paragraph:
 - "(a) An asylum seeker whose application for asylum has been rejected in terms of subsection (3)(b) and confirmed by the [Director-General] Standing Committee in terms of section 24A[(3)](2), must be dealt with as an illegal foreigner in terms of section 32 of 40 the Immigration Act."; and
 - (e) by the deletion of subsection (6).

Substitution of section 24A of Act 130 of 1998, as inserted by section 19 of Act 33 of 2008 and amended by section 8 of Act 12 of 2011

21. The following section is hereby substituted for section 24A of the principal Act: 45

(14) Enigiemand wat versuim om 'n visum ooreenkomstig subartikel (2) terug te gee of versuim om te voldoen aan enige voorwaarde uiteengesit in 'n visum ingevolge hierdie artikel uitgereik, of in besit van 'n verstreke visum is, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of gevangenisstraf vir 'n tydperk van hoogstens vyf jaar, of met 'n 5 boete sowel as sodanige gevangenisstraf."

Wysiging van artikel 23 van Wet 130 van 1998, soos gewysig deur artikel 16 van Wet 33 van 2008

19. Artikel 23 van die Hoofwet word hierby deur die volgende artikel vervang:

"Aanhouding van asielversoeker

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23. Indien die Direkteur-generaal 'n [asielversoekerspermit] asielversoekersvisum ingevolge artikel 22[(6)](5) ingetrek het, kan hy of sy, behoudens artikel 29, die houer laat arresteer en laat aanhou hangende die afhandeling van die aansoek om asiel, op die wyse en by die plek wat die Direkteur-generaal bepaal, met behoorlike inagneming van die houer se 15 menswaardigheid.".

Wysiging van artikel 24 van Wet 130 van 1998, soos gewysig deur artikel 17 van Wet 33 van 2008 en artikel 7 van Wet 12 van 2011

- 20. Artikel 24 van die Hoofwet word hierby gewysig-
 - (a) deur in subartikel (2) paragrawe (a) en (b) onderskeidelik deur die volgende 20 paragrawe te vervang:
 - "(a) moet die [Statusbepalingskomitee] Vlugtelingstatusbepalingsbeampte die "Promotion of Administrative Justice Act", 2000 (Wet 3 van 2000), behoorlik in ag neem en, in besonder, verseker dat die applikant die prosedures, sy of haar regte en 25 verantwoordelikhede en die getuienis wat aangebied is, ten volle verstaan; en
 - (b) kan die [Statusbepalingskomitee] <u>Vlugtelingstatusbepalingsbeampte</u> 'n VNHKV-verteenwoordiger raadpleeg of uitnooi om inligting oor bepaalde sake te verstrek.";
 - (b) deur in subartikel (3) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
 - "Die **[Statusbepalingskomitee]** Vlugtelingstatusbepalingsbeampte moet aan die einde van die verhoor gehou soos voorgeskryf, maar onderhewig aan monitering en toesig, in die geval van paragrawe (a) en (c), en onderhewig aan hersiening, in die geval van paragraaf (b), deur enige lid van die Staande Komitee vir hierdie doel deur die voorsitter aangewys—";
 - (c) deur in subartikel (4) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
 - "Indien 'n aansoek ingevolge subartikel $(3)\underline{(b)}$ of (c) afgekeur word, moet die [**Statusbepalingskomitee**] <u>Vlugtelingstatusbepalingsbeampte—</u>";
 - (d) deur in subartikel (5) paragraaf (a) deur die volgende paragraaf te vervang:

 "(a) 'n Asielversoeker wie se aansoek om asiel ingevolge subartikel 45

 (3)(b) afgekeur is en ingevolge artikel 24A[(3)](2) deur die

 [Direkteur-generaal] Staande Komitee bevestig is, moet as 'n onwettige vreemdeling ingevolge artikel 32 van die 'Immigration'
 - (e) deur subartikel (6) te skrap.

Act' hanteer word."; en

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Vervanging van artikel 24A van Wet 130 van 1998, soos ingevoeg deur artikel 19 van Wet 33 van 2008 en gewysig deur artikel 8 van Wet 12 van 2011

21. Artikel 24A van die Hoofwet word hierby deur die volgende artikel vervang:

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"Review by Standing Committee

- **24A.** (1) The Standing Committee must review any decision taken by a Refugee Status Determination Officer in terms of section 24(3)(b) and may act in terms of section 9C(1)(c) in respect of any decision taken in terms of section 24(3)(a) or (c).
- (2) A review contemplated in subsection (1) must be determined by a single member or, in particular matters, such number of members of the Standing Committee as the chairperson may consider necessary.
- (3) The Standing Committee may, after having determined a review, confirm, set aside or substitute any decision taken by a Refugee Status Determination Officer in terms of section 24(3)(b).
- (4) The Standing Committee must inform the Refugee Reception Office, where the application for asylum was lodged, of its decision within five working days of such decision, whereafter the Standing Committee is *functus officio*.".

Amendment of section 24B of Act 130 of 1998, as inserted by section 19 of Act 33 of 2008 and amended by section 9 of Act 12 of 2011

- 22. Section 24B of the principal Act is hereby amended—
 - (a) by the substitution for subsection (1) of the following subsection:
 - "(1) Any asylum seeker whose application has been rejected in terms 20 of section 24(3)(c) may lodge an appeal with the Refugee Appeals Authority in the prescribed manner and within the prescribed period.";
 - (b) by the substitution for subsection (2) of the following subsection:
 - "(2) The Refugee Appeals Authority may, after having determined an appeal, confirm, set aside or substitute any decision taken by a [Status 25 **Determination Committee**] Refugee Status Determination Officer in terms of section 24(3)(*c*)."; and
 - (c) by the substitution for subsection (5) of the following subsection:
 - "(5) The Refugee Appeals Authority must refer the matter back to the [Status Determination Officer] Refugee Status Determination Officer 30 to deal with such asylum seeker in terms of this Act if new information, which is material to the application, is presented during the appeal."

Amendment of section 27 of Act 130 of 1998, as substituted by section 21 of Act 33 of 2008 and amended by section 10 of Act 12 of 2011

- **23.** Section 27 of the principal Act is hereby amended by the substitution for 35 paragraph (c) of the following paragraph:
 - "(c) apply for permanent residence in terms of section 27(d) or 31(2)(b) of the Immigration Act after [five] ten years of continuous residence in the Republic from the date on which he or she was granted asylum, if the [Minister] Standing Committee, after considering all the relevant factors and within a reasonable period of time, including efforts made to secure peace and stability in the refugee's country of origin, certifies that he or she would remain a refugee indefinitely;".

Substitution of section 28 of Act 130 of 1998, as amended by section 23 of Act 33 of 2008 45

24. The following section is hereby substituted for section 28 of the principal Act:

"Removal and detention of refugees and asylum seekers

- **28.** (1) Subject to section 2, a refugee, asylum seeker or categories of refugee or asylum seeker may be removed from the Republic on grounds of national security, national interest or public order.
 - (2) A removal under subsection (1) may only be ordered by the Minister.

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"Hersiening deur Staande Komitee

- **24A.** (1) Die Staande Komitee moet enige beslissing ingevolge artikel 24(3)(b) deur 'n Statusbepalingsbeampte gevel, hersien en kan ingevolge artikel 9C(1)(c) handel ten opsigte van enige beslissing ingevolge artikel 24(3)(a) of (c) gevel.
- (2) 'n Hersiening in subartikel (1) beoog moet deur 'n enkele lid beslis word of, in besondere aangeleenthede, sodanige getal lede van die Staande Komitee wat die voorsitter nodig ag.
- (3) Die Staande Komitee kan, nadat 'n hersiening beslis is, enige beslissing ingevolge artikel 24(3)(b) deur 'n Vlugtelingstatusbepalingsbeampte gevel, tersyde stel of vervang.
- (4) Die Staande Komitee moet die Vlugtelingontvangskantoor, waar die aansoek om asiel ingedien is, van die komitee se beslissing verwittig binne vyf dae na daardie beslissing, waarna die Staande Komitee *functus officio* is.".

Wysiging van artikel 24B van Wet 130 van 1998, soos ingevoeg deur artikel 19 van Wet 33 van 2008 en gewysig deur artikel 9 van Wet 12 van 2011

- 22. Artikel 24B van die Hoofwet word hierby gewysig-
 - (a) deur subartikel (1) deur die volgende subartikel te vervang:
 - "(1) 'n Asielversoeker wie se aansoek ingevolge artikel 24(3)(c) 20 afgekeur is, kan op die voorgeskrewe wyse en binne die voorgeskrewe tydperk 'n appèl by die Appèlowerheid oor Vlugtelinge aanteken.";
 - (b) deur subartikel (2) deur die volgende subartikel te vervang:
 - "(2) Die Appèlowerheid oor Vlugtelinge kan, nadat hy tot 'n beslissing oor 'n appèl gekom het, 'n beslissing wat deur 'n **[Statusbepalingskomitee]** Vlugtelingstatusbepalingsbeampte ingevolge artikel 24(3)(c) gevel is, bekragtig, tersyde stel of vervang."; en
 - (c) deur subartikel (5) deur die volgende subartikel te vervang:
 - "(5) Die Appèlowerheid oor Vlugtelinge moet 'n aangeleentheid terugverwys na die [Statusbepalingskomitee] Vlugtelingstatusbepalingskomitee, wat met die asielversoeker ingevolge hierdie Wet moet handel, indien nuwe inligting wat wesenlik betrekking het op die aansoek, gedurende die appèl aangebied is.".

Wysiging van artikel 27 van Wet 130 van 1998, soos vervang deur artikel 21 van Wet 33 van 2008 en gewysig deur artikel 10 van Wet 12 van 2011

- **23.** Artikel 27 van die Hoofwet word hierby gewysig deur paragraaf (c) deur die volgende paragraaf te vervang:
 - "(c) permanente verblyf ingevolge artikel 27(d) of 31(2)(b) van die 'Immigration Act' aansoek doen na [vyf] 10 jaar van ononderbroke verblyf in die Republiek vanaf die datum waarop asiel aan hom of haar verleen is indien die 40 [Minister] Staande Komitee, na oorweging van al die toepaslike faktore en binne 'n redelike tydperk, met inbegrip van pogings aangewend om vrede en stabiliteit in die vlugteling se land van oorsprong te bewerkstelling, sertifiseer dat hy of sy onbepaald 'n vlugteling sal bly;".

Vervanging van artikel 28 van Wet 130 van 1998, soos vervang deur artikel 23 van 45 Wet 33 van 2008

24. Artikel 28 van die Hoofwet word hierby deur die volgende artikel vervang:

"Verwydering en aanhouding van vlugtelinge en asielversoekers

- **28.** (1) Behoudens artikel 2 kan 'n vlugteling, asielversoeker of kategorieë van vlugteling of asielversoeker uit die Republiek verwyder word op grond van nasionale veiligheid, nasionale belang of openbare orde.
- (2) 'n Verwydering kragtens subartikel (1) kan slegs deur die Minister gelas word.

- (3) Any visa or status granted to a refugee or asylum seeker who is removed from the Republic in terms of this section is revoked.
- (4) If an order is made under this section for the removal from the Republic of a refugee or asylum seeker, any dependant of such refugee or asylum seeker who has not been granted asylum, may be included in such an order and removed from the Republic.
- (5) Any refugee or asylum seeker ordered to be removed under this section may be detained pending his or her removal from the Republic.".

Amendment of section 34 of Act 130 of 1998, as substituted by section 27 of Act 33 of 2008

- **25.** Section 34 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 - "(b) inform the Refugee Reception Office of his or her residential address and of any changes to that address within 30 days.".

Amendment of section 34A of Act 130 of 1998, as inserted by section 28 of Act 33 of 15 2008

- **26.** Section 34A of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:
 - "(c) inform the Refugee Reception Office of his or her residential address and of any changes to that address [so provided] within 30 days.". 20

Substitution of section 36 of Act 130 of 1998, as amended by section 29 of Act 33 of 2008 and section 11 of Act 12 of 2011

27. The following section is hereby substituted for section 36 of the principal Act:

"Withdrawal of refugee status

- **36.** (1) Subject to the provisions of the Promotion of Administrative 25 Justice Act, 2000 (Act No. 3 of 2000), and after consideration of all the relevant facts, the Standing Committee may withdraw a person's refugee
- (a) such person has been recognised as a refugee due to fraud, forgery or false or misleading information of a material or substantive nature in | 30 relation to the application;
- (b) such person has been recognised as a refugee due to an error, omission or oversight; or
- (c) such person ceases to qualify for refugee status in terms of section 5.
- (2) The Standing Committee must, in the prescribed manner, inform each affected person contemplated in subsection (1) of its intention to withdraw his or her status as a refugee, as well as the reasons for the withdrawal and such person may, within the prescribed period, make a written submission with regard thereto: Provided that no such notice is required if the withdrawal is requested by the refugee concerned.
- (3) In the event that the Minister has issued an order to cease the recognition of refugee status in respect of a category of refugees, the Standing Committee must implement such resolution by withdrawing the refugee status of such category as a whole by notice in the Gazette.
- (4) A person whose refugee status is withdrawn in terms of subsection (1) or (3) must be dealt with as an illegal foreigner in terms of section 32 of the Immigration Act.".

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- (3) 'n Visum of status toegestaan aan 'n vlugteling of asielversoeker wat ingevolge hierdie artikel uit die Republiek verwyder word, word herroep.
- (4) Indien 'n bevel kragtens hierdie artikel gegee word vir die verwydering uit die Republiek van 'n vlugteling of asielversoeker, kan 'n afhanklike van daardie vlugteling of asielversoeker aan wie asiel nie toegestaan is nie, in daardie bevel ingesluit word en uit die Republiek verwyder word.
- (5) 'n Vlugteling of asielversoeker wat kragtens 'n bevel ingevolge hierdie artikel gegee uit die Republiek verwyder moet word, kan aangehou word hangende sy of haar verwydering uit die Republiek.".

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Wysiging van artikel 34 van Wet 130 van 1998, soos vervang deur artikel 27 van Wet 33 van 2008

- **25.** Artikel 34 van die Hoofwet word hierby gewysig deur in subartikel (1) paragraaf (*b*) deur die volgende paragraaf te vervang:
 - "(b) die Vlugtelingontvangskantoor inlig van sy of haar woonadres en <u>binne</u> 15 30 dae van enige verandering in daardie adres.".

Wysiging van artikel 34A van Wet 130 van 1998, soos ingevoeg deur artikel 28 van Wet 33 van 2008

- **26.** Artikel 34A van die Hoofwet word hierby gewysig deur in subartikel (1) paragraaf (c) deur die volgende paragraaf te vervang:
 - "(c) die Vlugtelingontvangskantoor inlig van sy of haar woonadres en binne 30 dae van enige verandering in daardie adres [aldus verskaf].".

Vervanging van artikel 36 van Wet 130 van 1998, soos gewysig deur artikel 29 van Wet 33 van 2008 en artikel 11 van Wet 12 van 2011

27. Artikel 36 van die Hoofwet word hierby deur die volgende artikel vervang: 25

"Intrekking van vlugtelingstatus

36. (1) Behoudens die bepalings van die 'Promotion of Administrative Justice Act', 2000 (Wet No. 3 van 2000), en na inagneming van al die tersaaklike feite, kan die Staande Komitee 'n persoon se vlugtelingstatus intrek indien—

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- (a) daardie persoon weens bedrog, vervalsing of vals of misleidende inligting van 'n wesenlike aard in verband met die aansoek as vlugteling erken is;
- (b) daardie persoon weens 'n fout, weglating of nalate as 'n vlugteling erken is; of
- (c) daardie persoon ingevolge artikel 5 ophou om vir vlugtelingstatus te kwalifiseer.
- (2) Die Staande Komitee moet elke geraakte persoon in subartikel (1) beoog, op die voorgeskrewe wyse inlig van die voorneme om sy of haar status as 'n vlugteling in te trek, asook die redes vir die intrekking en sodanige persoon kan, binne die voorgeskrewe tydperk, 'n skriftelike voorlegging in verband daarmee doen: Met dien verstande dat so 'n kennisgewing nie vereis word indien die intrekking deur die betrokke vlugteling aangevra word nie.
- (3) Indien die Minister 'n bevel uitgereik het om die erkenning van vlugtelingstatus ten opsigte van 'n kategorie vlugtelinge te staak, moet die Staande Komitee sodanige besluit in werking stel deur die vlugtelingstatus van daardie kategorie as 'n geheel by kennisgewing in die Staatskoerant, in te trek.
- (4) Iemand wie se vlugtelingstatus ingevolge subartikel (1) of (3) ingetrek word, moet as 'n onwettige vreemdeling ingevolge artikel 32 van die 'Immigration Act' hanteer word.''.

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Amendment of section 37 of Act 130 of 1998, as amended by section 30 of Act 33 of 2008

- 28. Section 37 of the principal Act is hereby amended—
 - (a) by the substitution for paragraph (f) of the following paragraph:
 - "(f) provides false, inaccurate or unauthorised documentation, or any benefit to a person, or otherwise assists such person to disguise his or her identity or status, or accepts undue financial or other considerations, to perform [an] any act or to exercise his or her discretion in terms of this Act[,]; or"; and
 - (b) by the addition after paragraph (f) of the following paragraphs:
 - "(g) as a public servant, intentionally provides false, inaccurate or unauthorised documentation or benefit, or otherwise facilitates a person to disguise his or her identity or status, or accepts any undue financial or other consideration to perform any act, or to exercise his or her discretion in terms of this Act; or
 - (h) wilfully, or through gross negligence, produces a false certification or document contemplated by this Act or any other Act administered by the Department; or
 - (i) manufactures or provides, or causes the manufacturing or provision of a document purporting to be a document issued or administered by the Department, while not being a duly authorised officer of the Department,".

Amendment of section 38 of Act 130 of 1998, as amended by section 31 of Act 33 of 2008 and section 12 of Act 12 of 2011

- **29.** Section 38 of the principal Act is hereby amended by the substitution in subsection 25 (1) for paragraph (*b*) of the following paragraph:
 - "(b) the manner in which and period within which a matter must be referred to the Standing Committee or Refugee Appeals Authority;".

Repeal of section 33 of Act 33 of 2008

30. Section 33 of the Refugees Amendment Act, 2008 (Act No. 33 of 2008), is hereby 30 repealed.

Transitional provisions

- **31.** (1) The Refugee Appeal Board established by section 12 of the principal Act is hereby dissolved and the Refugee Appeals Authority assumes all the rights and obligations of the Refugee Appeal Board.
- (2) Any appeal pending before the Refugee Appeal Board immediately before this Act takes effect must be regarded as an appeal to be determined by the Refugee Appeals Authority in terms of the principal Act as amended by this Act.
- (3) Any instruction, agreement, resolution, decision and determination made by the Refugee Appeal Board prior to this Act coming into effect remain in force and must be regarded as legally concluded by the Refugee Appeals Authority.
- (4) Any matter pending before the Standing Committee immediately before this Act takes effect must be regarded as a matter to be determined by the Standing Committee in terms of the principal Act as amended by this Act.".

Substitution of words or phrases

32. The principal Act is hereby amended by the substitution for the word or phrase—

- (a) "asylum seeker permit", wherever it occurs, of the phrase "asylum seeker visa";
- (b) "permit", in relation to an asylum seeker permit, wherever it occurs, of the word "visa"; and

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Wysiging van artikel 37 van Wet 130 van 1998, soos gewysig deur artikel 30 van Wet 33 van 2008

- 28. Artikel 37 van die Hoofwet word hierby gewysig—
 - (a) deur paragraaf (f) deur die volgende paragraaf te vervang:
 - "(f) vals, onakkurate of ongemagtigde dokumentasie verskaf of 'n voordeel bied aan 'n persoon, of sodanige persoon andersins bystaan om sy of haar identiteit of status te verberg of te verbloem, of onbehoorlike finansiële of ander teenprestasies aanvaar om ingevolge hierdie Wet op te tree of sy of haar diskresie uit te oefen[,]; of"; en

(b) deur die volgende paragrawe na paragraaf (f) by te voeg:

- "(g) as 'n staatsamptenaar, opsetlik vals, onakkurate of ongemagtigde dokumentasie verskaf of 'n voordeel bied aan 'n persoon, of sodanige persoon andersins bystaan om sy of haar identiteit of status te verberg of te verbloem, of onbehoorlike finansiële of ander teenprestasie aanvaar om ingevolge hierdie Wet op te tree of sy of haar diskresie uit te oefen; of
- (h) met opset, of deur growwe nalatigheid, 'n vals sertifisering of dokument beoog deur hierdie Wet of enige ander Wet deur die Departement geadministreer, produseer; of
- (i) 'n dokument produseer of verskaf, of laat produseer of verskaf, wat beweer om 'n dokument te wees wat deur die Departement uitgereik of geadministreer is, terwyl hy of sy nie 'n behoorlik gemagtigde beampte van die Departement is nie,".

Wysiging van artikel 38 van Wet 130 van 1998, soos gewysig deur artikel 31 van 25 Wet 33 van 2008 en artikel 12 van Wet 12 van 2011

- **29.** Artikel 38 van die Hoofwet word hierby gewysig deur in subartikel (1) paragraaf (*b*) deur die volgende paragraaf te vervang:
 - "(b) die wyse waarop en tydperk waarbinne 'n aangeleentheid na die Staande Komitee of Appèlowerheid oor Vlugtelinge verwys moet word;". 30

Herroeping van artikel 33 van Wet 33 van 2008

30. Artikel 33 van die Wysigingswet op Vlugtelinge, 2008 (Wet No. 33 van 2008), word hierby herroep.

Oorgangsbepalings

- **31.** (1) Die Appèlraad oor Vlugtelinge by artikel 12 van die Hoofwet ingestel word hierby ontbind en die Appèlowerheid oor Vlugtelinge neem al die regte en verpligtinge van die Appèlraad oor Vlugtelinge op.
- (2) Enige appèl hangende voor die Appèlraad oor Vlugtelinge onmiddellik voordat hierdie Wet van krag word, moet geag word 'n appèl te wees wat ingevolge die Hoofwet soos deur hierdie Wet gewysig, deur die Appèlowerheid oor Vlugtelinge beslis moet word
- (3) Enige instruksie, ooreenkoms, besluit, beslissing en bepaling deur die Appèlraad oor Vlugtelinge gevel voordat hierdie Wet van krag geword het, bly van krag en moet geag word regmatig deur die Appèlowerheid oor Vlugtelinge afgehandel te wees.
- (4) Enige aangeleentheid wat voor die Staande Komitee hangende is onmiddellik voordat hierdie Wet van krag word, moet geag word 'n aangeleentheid te wees wat ingevolge die Hoofwet soos deur hierdie Wet gewysig, beslis moet word.

Vervanging van woorde of frases

- 32. Die Hoofwet word hierby gewysig deur die vervanging van die woord of frase—
 - (a) "asielversoekerspermit", waar dit ook al voorkom, deur die frase 50 "asielversoekersvisum";
 - (b) "permit", in verband met 'n asielversoekerspermit, waar dit ook al voorkom, deur die woord "visum"; en

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(c) "Status Determination Committee", wherever it occurs, of the phrase "Refugee Status Determination Officer".

Short title and commencement

33. This Act is called the Refugees Amendment Act, 2017, and comes into operation immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011).

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(c) "Statusbepalingskomitee", waar dit ook al voorkom, deur die woord "Vlugtelingstatusbepalingsbeampte".

Kort titel en inwerkingtreding

33. Hierdie Wet heet die Wysigingswet op Vlugtelinge, 2017, en tree in werking onmiddellik na die inwerkingtreding van die Wysigingswet op Vlugtelinge, 2008 (Wet No. 33 van 2008) en die Wysigingswet op Vlugtelinge, 2011 (Wet No. 12 van 2011).

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001 Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za Publications: Tel: (012) 748 6053, 748 6061, 748 6065