

DECLARATION OF INTENTION TO APPLY FOR ASYLUM HOW TO SHOW THAT I WANT TO APPLY FOR ASYLUM?

IMPORTANT POINTS TO NOTE FIRST

- You do not need to come to the Scalabrini Centre. Please download, print, and complete the form yourself. It is for all provinces in South Africa.
- This form is only for new asylum seekers, above the age of 18.
- A new asylum seeker is a person who is fleeing conflict, violence or persecution and should indicate an intention to apply for asylum in South Africa.
- This form is not an application for an asylum visa and it is not a permit.
- This form is not from Home Affairs but is a way to prove to authorities that you intend to apply for asylum.
- This form does not need a police stamp, but should be signed by you and by a witness. (A witness can be a friend, family member or someone else you might know who can witness you signing the declaration.)
- Once completed, keep the form and court order with you at all times.
- This form is for protective purposes only, it cannot be used to look for a job or open a bank account.

If you are a new asylum seeker, but have not been able to apply for asylum yet, you can download a form to help protect yourself.

Please keep checking Scalabrini's social media for updates on asylum applications at the Refugee Reception Offices. We will update you as soon as we have more information.

SEE INFOGRAPHIC, DECLARATION FORM AND COURT ORDER ON THE NEXT PAGES





WHAT DO THE COURT AND THE LAW SAY?

The Constitutional Court confirmed that sections of the Refugees Act denying access to asylum for new asylum seekers who want to apply for asylum are unconstitutional and have been struck down as invalid.

The law says: a person who is a new asylum seeker cannot be sent back to their country before they've had a chance to apply for asylum. This goes against South Africa's Constitution and the Refugees Act - no one should be sent back to a place where they might be in danger. This is called the principle of non-refoulement.

"Until an applicant's refugee status has been finally determined, the principle of non-refoulement protects the applicant from deportation." Ashebo, 2023, paragraph 29

You can prove that you want to apply for asylum by completing the "Declaration of Intention to Apply for Asylum" form, attached to this infographic.

FILL OUT THE FORM



STEP 1: PRINT THE PDF

Print the PDF attached to this infographic

This is a "Declaration of Intention to Apply for Asylum" form and the Court Order.



STEP 2: FILL IN THE FORM

Fill in the form

- Line 1: Write your name
- Line 2: Write the name of your country
- Line 3: Write your birth date
- At the bottom: In front of a witness, write your name, today's date, and sign your name. After you have done this then the witness must sign too. A witness can be anybody that you know. They need to sign the form to confirm that they saw that you signed.

THIS FORM IS
**FREE OF
CHARGE.**
DO NOT PAY
ANYONE FOR IT.



STEP 3: STAPLE ALL THE PAGES

Staple all the pages (Declaration of Intent to Apply for Asylum and the Court Order) together and carry them with you.

This form is your way of showing that you want to apply for asylum. The court confirms that a person who is a new asylum seeker cannot be sent back to their country before they've had a chance to apply for asylum. Do not go to the police station to stamp it. Your signature is fine and all that is needed to confirm your intention. Don't take this form to a Refugee Reception Office.

PLEASE NOTE:

This form is for new asylum seekers (newcomers) only. People who are fleeing conflict, violence or persecution are new asylum seekers and should indicate an intention to apply for asylum in South Africa. This intention form cannot and must not be used by people who have already received their asylum seeker visa or permit, or have received a final rejection decision.

Please understand that this is not a permit but is a declaration of intention and a valid copy of a court order.



EXAMPLE OF THE FORM



Declaration of Intention to Apply for Asylum

I YOUR NAME from YOUR COUNTRY born on BIRTHDATE hereby indicate and confirm my intention to apply for asylum in terms of sec on 21 (1)(b) of the Refugees Act 130 of 1998.

I want to apply for asylum in South Africa. I have been advised of the Constitutional Court order on 7 July 2026 in the case of Scalabrini Centre of Cape Town v Minister of Home Affairs and Others CCT126/25 [2026]. In the case the Court confirmed sections 4(1)(f), 4(1)(h), 4(1)(i) and 21(1B) of the Refugees Act 130 of 1998 are unconstitutional and invalid. The Constitutional Court found these provisions infringe and violate *"the principle of non-refoulement and the cluster of fundamental rights at the heart of non-refoulement protection, including the rights of children"* [para 107]. The unconstitutional sections *"prevent asylum seekers from accessing a merits based assessment of their claim"* [paras 97 and 107] - denying access to asylum for new asylum seeker applicants based on the sections is unconstitutional. A copy of the order is attached to this declaration.

I understand that anyone who expresses an intention to apply for asylum cannot be deported to the country they fled from, until their asylum application has been received, considered, and processed to conclusion, including all interviews, appeals and reviews. Sending a new asylum seeker back to their country before this is against the law, specifically the principle of non-refoulement set out in section 2 of the Refugees Act and goes against the Constitution. The Constitutional Court has confirmed that: *"the right to seek asylum should be made available to every... foreigner who evinces [shows] an intention to apply for asylum, and a proper determination procedure should be embarked upon"* (Aboire 2021 CC para 42) The Constitutional Court also confirmed that *"Until an applicant's refugee status has been finally determined, the principle of non-refoulement protects the applicant from deportation"* (Ashebo 2023 CC para 29). The principle of non-refoulement prevents the Department of Home Affairs from initiating deportation proceedings against new asylum seekers who have expressed an intention to apply for asylum.

Name YOUR NAME

Date TODAY'S DATE

Signature YOUR SIGNATURE

Witness Name NAME OF YOUR WITNESS

Date TODAY'S DATE

Signature WITNESS SIGNATURE

FIND THE FORM AND COURT ORDER ON THE NEXT PAGE



**THIS FORM IS
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Declaration of Intention to Apply for Asylum

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I want to apply for asylum in South Africa. I have been advised of the Constitutional Court order on 7 July 2026 in the case of Scalabrini Centre of Cape Town v Minister of Home Affairs and Others CCT126/25 [2026]. In the case the Court confirmed sections 4(1)(f), 4(1)(h), 4(1)(i) and 21(1B) of the Refugees Act 130 of 1998 are unconstitutional and invalid. The Constitutional Court found these provisions infringe and violate *“the principle of non-refoulement and the cluster of fundamental rights at the heart of non-refoulement protection, including the rights of children”* [para 107]. The unconstitutional sections *“prevent asylum seekers from accessing a merits based assessment of their claim”* [paras 97 and 107] - denying access to asylum for new asylum seeker applicants based on the sections is unconstitutional. A copy of the order is attached to this declaration.

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Name _____

Date _____

Signature _____

Witness Name _____

Date _____

Signature _____



CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 126/25

In the matter between:

SCALABRINI CENTRE OF CAPE TOWN

First Applicant

**TRUSTEES OF THE SCALABRINI
CENTRE OF CAPE TOWN**

Second Applicant

and

MINISTER OF HOME AFFAIRS

First Respondent

**DIRECTOR-GENERAL, DEPARTMENT
OF HOME AFFAIRS**

Second Respondent

**CHIEF DIRECTOR OF ASYLUM SEEKER
MANAGEMENT, DEPARTMENT OF
HOME AFFAIRS**

Third Respondent

**REFUGEE APPEALS AUTHORITY
OF SOUTH AFRICA**

Fourth Respondent

**STANDING COMMITTEE FOR
REFUGEE AFFAIRS**

Fifth Respondent

and

HELEN SUZMAN FOUNDATION

First Amicus Curiae

AMNESTY INTERNATIONAL

Second Amicus Curiae

**GLOBAL STRATEGIC LITIGATION
COUNCIL FOR REFUGEE RIGHTS**

Third Amicus Curiae

INTERNATIONAL DETENTION COALITION

Fourth Amicus Curiae

**UNITED NATIONS HIGH COMMISSIONER
FOR REFUGEES**

Fifth Amicus Curiae

Neutral citation: *Scalabrini Centre of Cape Town and Another v Minister of Home Affairs and Others* [2026] ZACC 30

Coram: Dambuza J, Kollapen J, Majiedt J, Mhlantla J, Opperman AJ, Rogers J, Savage J and Tshiqi J

Judgment: Majiedt J (unanimous)

Heard on: 12 February 2026

Decided on: 7 July 2026

Summary: Refugees Act 130 of 1998 — asylum applications — principle of non-refoulement — procedural non-compliance cannot bar asylum applications without assessment of merits — abstract constitutional challenge — subordinate legislation in constitutional adjudication

ORDER

On application for confirmation of the order of the High Court of South Africa, Western Cape Division, Cape Town:

1. The order of the High Court of South Africa, Western Cape Division, Cape Town, declaring sections 4(1)(f), 4(1)(h), 4(1)(i) and 21(1B) of the Refugees Act 130 of 1998 inconsistent with the Constitution and invalid, is confirmed.
2. The respondents must, jointly and severally, pay the applicants' costs, including the costs of two counsel.

JUDGMENT

MAJIEDT J (Dambuza J, Kollapen J, Mhlantla J, Opperman AJ, Rogers J, Savage J and Tshiqi J concurring):

Introduction

[1] In this confirmation application, the Court is being asked to confirm the order made by the Full Court of the High Court of South Africa, Western Cape Division, Cape Town (High Court), on 15 May 2025,¹ declaring as inconsistent with the Constitution and invalid:

- (a) Sections 4(1)(f), 4(1)(h), 4(1)(i) and 21(1B) of the Refugees Act;² and
- (b) Regulations 8(1)(c)(i), 8(2), 8(3) and 8(4) of the Refugee Regulations.³

I shall refer to the impugned sections and impugned regulations collectively as “the impugned provisions”.

[2] It is trite that declarations of invalidity made against regulations do not require confirmation by this Court,⁴ but the first to fifth respondents purported to seek leave to appeal the High Court’s finding that the impugned regulations are unconstitutional and invalid. This purported application for leave to appeal is fatally defective and impacts our assessment regarding the confirmation of invalidity.

¹ *Scalabrini Centre of Cape Town v Minister of Home Affairs* [2025] 3 All SA 827 (WCC) (High Court Part B judgment).

² 130 of 1998.

³ Refugees Regulations GN 1707 GG 42932, 27 December 2019.

⁴ *Dawood v Minister of Home Affairs; Shalabi v Minister of Home Affairs; Thomas v Minister of Home Affairs* [2000] ZACC 8; 2000 (3) SA 936 (CC); 2000 (8) BCLR 837 (CC) (*Dawood*) at para 11; *Minister of Home Affairs v Liebenberg* [2001] ZACC 3; 2001 (11) BCLR 1168 (CC); 2002 (1) SA 33 (CC) at para 13; *Satchwell v President of Republic of South Africa* [2002] ZACC 18; 2002 (6) SA 1 (CC); 2002 (9) BCLR 986 (CC) at para 2; *Mulowayi v Minister of Home Affairs* [2019] ZACC 1; 2019 (4) BCLR 496 (CC) (*Mulowayi*) at para 27; and *Scalabrini Centre v Minister of Home Affairs* [2023] ZACC 45; 2024 (3) SA 330 (CC); 2024 (4) BCLR 592 (CC) (*Scalabrini I*) at para 26.

may effectively determine both its purpose and its constitutionality is further evidence of its irrationality. The purpose of primary legislation cannot fluctuate according to the content of later regulations. That indeterminacy thwarts the claim that the section is constitutionally sound on its face.

[104] This indeterminacy has grave constitutional implications. Reliance on future or variable regulations engages rule of law concerns, including legality, certainty and the separation of powers. That undermines the respondents' claim that the section is constitutionally sound on its face.

[105] Consequently, the actions taken by immigration officers in terms of the section are incapable of rational justification, and without regulations the section cannot operate independently. It is trite that the exercise of public power must be lawful, within the bounds of the empowering provision and rationally related to the purpose for which the power was conferred.¹¹² The assessment of rationality is an objective one, and the question is not what Parliament subjectively believed the purpose of the provision was, but whether it is objectively capable of advancing a legitimate purpose.¹¹³

[106] The compelling conclusion is that section 21(1B) permits the arbitrary exercise of power that is connected to no legitimate government purpose and therefore fails on rationality, and is unconstitutional.

Conclusion on unconstitutionality and remedy

[107] The impugned sections prevent asylum seekers from accessing a merits-based assessment of their claims on the basis of procedural non-compliance. Section 4(1)(f),

¹¹² *S v Makwanyane* [1995] ZACC 3; 1995 (2) SACR 1 (CC); 1995 (3) SA 391 (CC); 1995 (6) BCLR 665 (CC) at para 156; *Prinsloo v Van der Linde* [1997] ZACC 5; 1997 (3) SA 1012 (CC); 1997 (6) BCLR 759 (CC) at para 24; *New National Party* above n 73 at paras 19 and 24; *Pharmaceutical Manufacturers Association of South Africa: In re Ex parte President of South Africa* [2000] ZACC 1; 2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC) (*Pharmaceutical Manufacturers*) at paras 85 and 90; *United Democratic Movement v President of South Africa (No 2)* [2002] ZACC 21; 2002 (11) BCLR 1179; 2003 1 SA 495 (CC) at para 55; and *Affordable Medicines Trust v Minister of Health* [2005] ZACC 3; 2005 (6) BCLR 529 (CC); 2006 (3) SA 247 (CC) at paras 74-9.

¹¹³ *Pharmaceutical Manufacturers* id at para 90.

(h) and (i) have the effect of disqualifying applicants from refugee status before their claims are substantively assessed, violating the principle of *non-refoulement* and the cluster of fundamental rights at the heart of *non-refoulement* protection, including the rights of children. The legislative scheme is further complicated by multiple, confusing and inconsistent thresholds, and these overlapping standards, governing essentially the same inquiry, provide no meaningful guidance as to their content or application.

[108] In addition, section 21(1B) is unconstitutional when considered with, and without, the now-invalid regulations as interpreted by this Court's previous jurisprudence. It forms part of a legislative framework preventing asylum seekers from entering the asylum process and obtaining a determination on the merits of their claims. When considered in isolation, it becomes vague and functionally ineffective, mandating an interview to determine whether "valid reasons" exist for the absence of an asylum transit visa, but providing no criteria for that determination, no guidance to officials and no clear legal consequence flowing from the outcome of the interview. In either case, the provision fails to advance a legitimate governmental purpose and permits the arbitrary exercise of public power.

[109] In summary: sections 4(1)(f), 4(1)(h) and 4(1)(i) and 21(1B) are unconstitutional and the High Court's order must be confirmed. Scalabrini correctly pointed out before us that the respondents did not seek an order of suspension of the declaration of invalidity and a reading-in order, if we were minded to confirm the High Court's order.

Costs

[110] As explained, the respondents litigated exceptionally poorly in this case in relation to leave to appeal the High Court's striking down of the regulations. They must pay the costs, and it must be said that this case came close to a consideration of a punitive costs order, similar to that in *Ex parte Minister of Home Affairs*.¹¹⁴ The gross

¹¹⁴ *Ex parte Minister of Home Affairs* above n 60.

laxity and disturbing ineptitude in this case are matters of grave concern and should not be repeated.

[111] There is a further matter of concern, over and above the myriad procedural shortcomings, that exacerbates the respondents' already lamentable conduct. In advancing their submissions on the merits during the hearing, the respondents' counsel made sweeping and unsupported assertions regarding Afghan and Bangladeshi nationals' involvement in human trafficking in South Africa.¹¹⁵ Advancing such claims, particularly in the absence of any evidentiary foundation, not only undermined the integrity of the state's case, but also introduced rhetoric that risks being perceived as xenophobic or racially charged. This is not inconsequential – submissions of this nature, when advanced before this Court, carry the potential to shape broader societal narratives about refugees and may adversely affect the protection of their rights. While the state is entitled to pursue legitimate interests in immigration control, that cannot justify reliance on unsubstantiated and prejudicial characterisations. This, too, is deserving of strong deprecation.

[112] I make the following order:

1. The order of the High Court of South Africa, Western Cape Division, Cape Town, declaring sections 4(1)(f), 4(1)(h), 4(1)(i) and 21(1B) of the Refugees Act 130 of 1998 inconsistent with the Constitution and invalid, is confirmed.
2. The respondents must, jointly and severally, pay the applicants' costs, including the costs of two counsel.

¹¹⁵ Reference was made during oral argument to a "kidnapping industry" allegedly run by these foreign nationals.