



24 July 2015

**SUMMARY OF SUBMISSIONS MADE ON THE DRAFT REFUGEE AMENDMENT BILL, 2015**

The Portfolio Committee on Home Affairs resolved to initiate the Refugees Amendment Bill, 2015 (the "draft Bill"). The Committee complied with Rule 238(1) by tabling a memorandum in the National Assembly on 20 May 2015. The Committee requested and was granted permission by the House to introduce legislation amending the Refugees Act, 1998 (Act No. 130 of 1998) and to proceed with the legislative proposal. (See National Assembly Minutes 19-2015 dated 4 June 2015, page 2132).

Prior notice of introduction of the draft Bill, together with an explanatory summary of the draft Bill as well as the draft Bill, was published in the Government Gazette No. 38893, dated 19 June 2015. The notice also contained an invitation to interested persons and institutions to submit written representations on the draft Bill by 17 July 2015.

Seven public submissions were received in response to the latest amendment to the Refugee Act. The following table contrasts the clauses in the draft bill alongside the organisations and their comments from these submissions.

2015 Clause /Section	Stakeholder, comment & suggestions
Clause 1 or 21(5)(a)	<p><b>Agency for Refugee Education, Skills Training &amp; Advocacy (ARESTA):</b> The subsection permits public access to the Refugee Appeals Authority (RAA) hearings if the asylum seeker gives consent. ARESTA recommends this clause be revised to require the asylum seeker's written and informed consent. Left undefined and ambiguous, the term "consent" may be misconstrued to include implied actions and be uninformed and thus the consent shall be invalid.</p> <p>Does the RAA then have authority to open the hearing to "any member of the public or media," or is access limited to those the asylum seeker has consented to? Asylum seekers should be given the option to specify which members of the public and media he or she consents to attending the hearing.</p> <p>ARESTA suggest "the Refugee Appeals Authority may, on application and on conditions it deems fit, allow any person or the media to attend or report on its hearing..." To the best of ARESTA's knowledge, the subsection does not clarify whether a person can only attend the hearing, or may attend and report on the hearing, or if it is only members of the media that can attend the hearings for purposes of reporting.</p>
Clause 1 Or 21(5)(b)	<p><b>ARESTA:</b> As it is written, this subsection gives the greatest weight to public interest, while other key aspects of the asylum seeker's confidentiality, including protection of identity and risk to life, are merely listed as "relevant factors."</p> <p>The amendment should clarify that the RAA may allow public access only if it finds that it is an exceptional circumstance in which public interest exceeds the essential aim of the Act to protect the asylum-seeker and the integrity of the system.</p> <p>The amendment should include a clause that allows a review process whereby asylum seekers may appeal any decision to grant access without their consent. This review process must come before any member of the public accesses the hearing.</p> <p>ARESTA recommends that the clause in (5)(b) be amended to read as "all relevant factors, including but not limited to--", be inserted to allow the consideration of other factors that may be relevant but are not listed and by inserting the words, "providing that there is no serious possibility that anybody's safety may be jeopardized if the information were to be made public."</p> <p>It will be important for the RAA which is already overburdened with appeals, to prepare for the additional administrative tasks, increased volume of applications for public access, and the necessary institution of an appeals process that will accompany this transition.</p>

<p>Clause 1 or 21(5)(a)</p>	<p><b>Mail and Guardian:</b> It is inappropriate to adopt the interim wording of the court ruling given its limitations in defining the specific manner in which the Appeal Board/Authority should exercise its discretionary power. In order to strike an appropriate balance between the asylum seeker and the public interest, the following draft is thus proposed:</p> <p><i>The confidentiality of asylum applications and information contained therein must be ensured at all times, save that in proceedings before the Refugee Appeal Board/Authority, the Refugee Appeal Board may on application or of its own accord allow any person or persons to attend a hearing, subject to conditions determined by it.</i></p> <p><i>a) In determining whether any person or persons are to be allowed to attend a hearing of the Appeal Board, the Appeal Board shall have regard to the following considerations:</i></p> <p><i>(i) the attitude of the appellant, who shall be given the option of waiving confidentiality;</i></p> <p><i>(ii) the need to balance the interests of the appellant in retaining confidentiality with the public interest in full disclosure of the evidence led at the hearing;</i></p> <p><i>(iii) the need to protect the integrity of the appeal proceedings;</i></p> <p><i>(iv) the identity of the appellant and the extent to which he or she may be considered a public figure; (The Courts version is quite different: "the need to protect the identity and dignity of the asylum seeker")</i></p> <p><i>(v) the grounds advanced for claiming disclosure or for refusing it;</i></p> <p><i>(vi) whether the information is already in the public domain and if so, in what circumstances it reached the public domain (including the role, if any, played by the appellant in placing the information in the public domain) and for how long and to what extent it has been in the public domain; and</i></p> <p><i>(vii) the impact of the disclosure or non-disclosure on the fairness of the proceedings and the rights of the appellant."</i></p>
<p>Entire Bill</p>	<p><b>COSATU Parliamentary Office:</b> COSATU supports the Refugee Amendment Bill on the basis of the following key points:</p> <ol style="list-style-type: none"> <li>1. It is in line with the Constitutional Court judgement requiring the Refugee Act's amendment to ensure that it is line with the Constitution.</li> <li>2. The Bill further enhances our constitutional provisions for transparency and accountability.</li> <li>3. It provides for the Board to take into account the safety and security needs of the applicants and their families.</li> <li>4. It also takes into account the public's needs for transparency and accountability.</li> </ol> <p>COSATU are disappointed that the Department of Home Affairs (DHA) failed to adhere to the ruling of the Constitutional Court to introduce legislation within two years as required.</p>
<p>Entire Bill</p>	<p><b>Law Society of South Africa (LSSA)</b> Supports the proposed amendments as they are in line with the recommendations of the Constitutional Court in <i>Mail and Guardian Media Limited and Others v MJ Chipu and Others CCT 136/12 [2013]</i>.</p>
<p>Entire Bill</p>	<p><b>Lawyers for Human Rights (LHR):</b> Support the Bill but are disappointed that the Department of Home Affairs (DHA) failed to adhere to the ruling of the Constitutional Court to introduce legislation within two years as required.</p> <p>We encourage Parliamentarians to continue to be vigilant in ensuring that the DHA lives up to its constitutional and legislative obligations given its emerging pattern of non-compliance with court orders by the department and its officials.</p>

Entire Bill	<p><b>Catholic Parliamentary Liaison Office (CPLO):</b> According to the explanatory memorandum, "[T]he Refugees Amendment Act, 2008 (Act No.33 of 2008), which dissolves the Refugee Appeal Board and establishes the Refugee Appeals Authority, has not come into operation as yet". This is extremely worrying. The Refugees Amendment Act was signed into law in 2008, yet it has still not been implemented in 2015. Such a long delay is highly problematic, and needs urgent attention from the relevant parties.</p> <p>We urge that no further delays take place, so that the Amendment can be passed in time for the deadline of 27 September 2015.</p>
Entire Bill	<p><b>Jo'burg Child Welfare:</b> Challenges in terms of children having to give testimony require special protections under the constitution and the Child Act and should be accorded to children at hearings before the Refugee Appeals Board. Generally speaking, quasi-judicial forums, administrative tribunals or alternative dispute resolution mechanisms in South Africa do not offer any special protection to children. It is submitted that this should change to ensure that when a child is put before such a forum, that their rights are protected. It is therefore asserted that the proposed amendment should contain the following:</p> <ol style="list-style-type: none"> <li>a. Emphatic provision that no media should be present at a Refugee Appeals Board Hearing at which an appellant is a child;</li> <li>b. That the media should be precluded from publishing any information that could lead to the identification of a child appellant;</li> <li>c. That provision should be made for proceedings concerning children to be held <i>in camera</i>;</li> <li>d. That in the event that the presiding Appeal Board Member is of the view that a child's testimony before the Refugee Appeals Board would result in undue mental or emotional hardship that the child be entitled to testify through an intermediary;</li> <li>e. That the appropriate resources should be made available to facilitate the provision of the above.</li> </ol>