**CONSOLIDATED PUBLIC COMMENTS RECEIVED AND INPUTS BY THE DEPARTMENT OF HOME AFFAIRS**

**DRAFT IMMIGRATION AMENDMENT BILL**

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| **Section** | **Section description** | **Commentor** | **Comments** | **Department’s response** |
| **1.** | **Amendment of section 1 of Act 13 of 2002, as amended by section 2 of Act 19 of 2004, section 1 of Act 3 of 2007 and section 2 of Act 13 of 2011**  Section 1 of the of the Immigration Act, 2002 (Act No. 13 of 2002) (hereinafter referred to as the “principal Act”), is hereby amended by the insertion after the definition  of ‘citizen’ of the following definition:  “ **‘Constitution’** means the Constitution of the Republic of South Africa, 1996;”. | Consortium for Refugees and Migrants in South Africa (CoRMSA)  Lawyers for Human Rights | ***Page 6, Amendment of section 1 of Act 13 of 2002, as amended by section 2 of Act 19 of 2004, section 1 of Act 3 of 2007 and section 2 of Act 13 of 2011.***  CoRMSA welcomes the continuing commitment of the South African Government to recognise the South African Constitution as the principal and supreme law of the republic. CoRMSA believes that with this recognition of the Constitution, the rights set out under chapter 2 of the Constitution will be respected and upheld as the cornerstone of democracy in South Africa. The Bill enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom with no prejudice based on nationalities, race or gender.  LHR agrees with the inclusion of a specific reference to the Constitution. Although this does not affect the legal application of the Constitution to the Immigration Act, it does serve as an important reminder to all role-players of the primacy of the Constitution in all matters under the Act. | Noted.  Noted.  Reason why definition of “Constitution” was added in the Bill is because the term is used in many parts of the Act but it is not defined. It is necessary to define it, as the Interpretation Act still refers to the 1993 interim Constitution. |
| **2.** | **Amendment of section 34 of Act 13 of 2002, as amended by sections 35 and 47 of Act 19 of 2004**  Section 34 of the principal Act is hereby amended—  *(a)* by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:  “Without the need for a warrant, but subject to subsection (1A), an immigration officer may arrest an illegal foreigner or cause him or her to be arrested, and shall, irrespective of whether such foreigner is arrested, deport him or her or cause him or her to be deported and may, pending his or her deportation, detain him or her or cause him or her to be detained in a manner and at a place determined by the Director-General[,]: **[provided]** Provided that the foreigner concerned—”;  *(b)* by the substitution in subsection (1) for paragraphs *(b), (c)* and *(d)* of the following paragraphs:  *“(b)* **[may at any time request any officer attending to him or her that his or her detention for the purpose of deportation be confirmed by warrant of a Court, which, if not issued within 48 hours of such request, shall cause the immediate release of such foreigner]** shall be brought before a court in person within 48 hours from the time of his or her arrest, or not later than the first court day after the expiry of the 48 hours if the 48 hours expired outside an ordinary court day, for the court to determine whether to confirm the detention, for a period not exceeding 30 calendar days, for the purposes of deportation, failing which such foreigner shall immediately be released;  *(c)* shall be informed upon arrest or immediately thereafter of the rights set out in section 35(2) of the Constitution and the rights set out in the preceding two paragraphs, when possible, practicable and available in a language that he or she understands;  *“(d)* may not be held in detention for longer than 30 calendar days without **[a warrant of a Court]** appearing in court in person, which court on good and reasonable grounds may extend such detention for an adequate period not exceeding 90 calendar days: Provided further that the court may grant no more than two further extensions of detention, for a period not  exceeding 30 calendar days at a time, where the deportation of such foreigner cannot be effected as a result of lack of cooperation, as prescribed, from such foreigner or the relevant authority of his or her country of origin or nationality; and”; and  *(c)* by the insertion after subsection (1) of the following subsection:  “(1A) An immigration officer may arrest and detain an illegal foreigner for purposes of deportation if—  *(a)* the immigration officer has determined that the foreigner is an illegal foreigner in terms of the Act; and  *(b)* following the outcome of the prescribed interview, the immigration officer is of the view that the arrest and detention is justified in the circumstances.”. | Refugee Legal and Advocacy Centre (RLAC)  Law Society of the Northern Provinces | RLAC have taken note of the proposed amendments in this section to make arrest of illegal foreigners fair and in line with the judicial process. We agree that detained foreigners must appear before a court of law within 48 hours from the time of the arrest. This indeed is in line with international process standards. We also have noted that a detained foreigner cannot be detained for more than 30 days unless the detention is confirmed by a court of law. In countries like the U.S., the right to a fair and speedy trial is considered an absolute right, upheld in terms of the 6th Amendment of the U.S. Constitution as a protection of individual rights, liberties, and dignity.  We recommend however that there be guidelines that provide for the guidance of immigration officials in the discharge of their duties regarding arrest. We also appreciate that each case is ordinarily unique and implore the system to provide for the use of discretion when needed.  We welcome in particular provisions of subsection 2*(c)* which provide for the outcome of a “prescribed interview” and applaud this amendment.  We recognize and appreciate the need to provide for guidelines to officials regarding such intricate matters and believe that it will be of great aid to both foreigners arriving here and officials.  The amendments that are proposed align with the Court Order handed down by the Constitutional Court in the matter of *Lawyers Human Rights vs Minister of Home Affairs and others* *(2017) ZACC22* but perhaps there was not enough emphasis or particularity on providing guidance to the Immigration Officers as to when he/she may arrest someone and this needs elucidation in the Bill. | Minimum guidelines will be included in the Bill (i.e. discretion to be exercised in favour of freedom) and the minimum type of questions that must be considered at the prescribed interview (i.e. health of the illegal foreigner, assets of the illegal foreigner, family ties of the illegal foreigner and if the illegal foreigner has a business).  Noted |
|  |  | University of Cape Town (UCT) | ***A discretion whether to detain a person must always be construed in favorem*** ***libertatis (in favour of freedom or liberty)***  UCT welcomes the requirement provided for in the draft Bill which requires that when an immigration official arrests an illegal foreigner it must be subject to subsection (1A) which has been incorporated by the Draft Bill and requires the immigration official to interview an illegal foreigner in order to determine if the “arrest and detention is justified in the circumstances”.  Our concern however is that the draft Bill does not set out clearly what questions will form this enquiry or what the immigration official will consider. The draft Bill merely requires the immigration official to conduct the “prescribed interview” however no clarity is given as to what this interview entails.  We suggest that the draft Bill provides some guidance to immigration officials in order to ensure that there is no unfretted and arbitrary exercise of discretion. Though we do not advocate for a closed list of things that an immigration official may consider we however suggest guidance. For example, the following are some of the factors that should form part of the enquiry into whether a person should be detained pending deportation, including:  *(a)* Is there a risk of them absconding if released? Have they previous been detained for purposes of deportation and absconded?  *(b)* Do they have a fixed address, any assets or a bank account?  *(c)* Do they have ties, such as family members in South Africa, which make it less likely that they will abscond?  *(d)* Do they accept the need for them to return to their home country, and/or are they willing to return voluntarily if released? Do they have the means to purchase a ticket for land, air or sea travel and depart on a set date?  ***The assistance of a competent interpreter when necessary.***  No mention in the draft Bill is made to the use of a competent interpreter during the interview contemplated in section 1A of the Draft Bill. The use of a competent interpreter is an integral component of an inquiry into whether the illegal foreigner must be detained for purposes of deportation. In *Katshingu v Standing Committee for Refugee Affairs and Others (unreported decision of the WCC: case number 197264/2010: 2 November 2011 per Bozalek, J)*, a case which dealt with the failure on the part of a Refugee Status Determination Officer to provide an interpreter during an interview was held by the court to be “an egregious shortcoming rendering the entire process to be unfair”.  The illegal foreigner must have an opportunity, through the use of an interpreter, to participate meaningfully in the interview.  A competent interpreter must also be provided for with regards to section 34(1*)(a)* of the Draft Bill which requires that the foreigner concerned must be notified in writing of the decision to deport them and must also be informed of their right to appeal such a decision in terms of the Immigration Act. If the above notification in terms 34(1*)(a)* of the Draft Bill is not properly explained to a foreigner in a language that they understand then this safeguard will be meaningless if they do not fully appreciate their rights.  The only provision in section 34(1*)(c)* of the Draft Bill regarding language only requires that the rights of an illegal foreigner be informed of their rights “when it is possible, practical and available in the language that he or she understands”. It is submitted that the right to have rights explained in a language that a foreigner understands should not be qualified but “when possible, practical and available” because of the potential risk of grave unfairness which may result. As noted above, a competent interpreter is integral throughout this process as it ensures that the foreigner is fully appraised of their rights. This will ensue that they will be able to exercise their rights especially in relation to the process set out in section 34(1*)(d)* read with regulation 33(4) which governs the manner in which the warrant of detention may be extended.  In terms of section 34(1*)(d)* an illegal foreigner may not be detained for longer than 30 days without a warrant of a Court. If immigration officials wish to detain any detainee for more than 30 days, they must apply to the relevant court for an extension of the detention.  The procedure for such an application is governed by Regulation 33(4) of the Immigration Regulations which regulation prescribes and sets out the timeframes for the various elements of an extension application. A vital element of these timeframes is that the detainee should be given three full days to prepare written representations opposing the extension of their detention. It is therefore vital that a foreigner be provided with an interpreter in order for them to make such representations.  ***The extension of the 120-day maximum period to 180 days***  Section 34(1*)(d)* of the Draft Bill empowers a court to extend the detention of a foreigner for an additional two further times “for a period not exceeding 30 calendar days at a time where the deportation of such foreigner cannot be effected as a result of lack of cooperation, as prescribed, from such foreigner or the relevant authority of his or her country of origin or nationality”.  The Draft Bill therefore creates a scenario where a foreigner could be potentially detained for an additional period of 60 days which would bring the total period of detention to 180 days. The two instances when this can take place if the foreigner does not “cooperate” or when the embassy of the foreign national also does not “cooperate”.  The Draft Bill does not clarify what is meant by a lack of cooperation. In any event, we submit that it is grossly unfair to hold any person in detention for effectively 6 months before they are deported.  The previous requirement that no one is detained for no longer than 120 days for purposes of deportation was already in itself a long period and to extend it further is contrary to constitutional and international law principles that protect the right to liberty. This is worrying in light of the fact that a foreigner has no authority over the actions of their embassy and to punish them for any lack of cooperation is egregious. We therefore suggest that this provision be removed. | Minimum guidelines will be included in the Bill (i.e. discretion to be exercised in favour of freedom) and the minimum type of questions that must be considered at the prescribed interview (i.e. health of the illegal foreigner, assets of the illegal foreigner, family ties of the illegal foreigner and if the illegal foreigner has a business).  It may not be possible and practicable to provide interpretation services at the point of arrest as, for an example, a person may be arrested at his or her own premises and an interpreter may not be readily available at that point. This service will however be made available when undertaking other processes after the arrest (when they appear in Court).  It should be borne in mind that section 35 of the Constitution requires that a person must be given information in a language that he or she **understands**. The right in section 35 of the Constitution is thus not a right to an interpreter, but a right to be provided with information in a language that he or she understands.  The Department is of the view that the words “when it is possible, practical and available” must be removed in light of the provisions of section 35(4) of the Constitution.  Lack of cooperation entails, amongst others, not providing information as to his or her country of origin or any other relevant information required in order to facilitate the deportation of the illegal foreigner.  The Department will consider including this in the draft Bill as a minimum, but also include in the Regulations other instances that may arise. |
|  |  | Corruption Watch  Consortium for Refugees and Migrants in South Africa (CoRMSA) | Section 34(1)*(b)* states that foreign nationals may at any time request the attending officer to furnish a warrant confirmed by a Court of the arrest or detention with purpose of deportation. This is a problematic feature as it places a significant burden on the person who is detained, the foreign national to demand compliance with due process. To prescribe for foreign nationals to only have access of their warrant of arrest which informs the reasons for arrest to be made only on request by the detainee is an onerous burden, particularly because the request can only be made after an infringement of a constitutional right has occurred.    **We therefore submit that the foreign national must at all times be made aware of the reason and status of their arrest or detention. Further this feature must be implemented through reasonable and accessible means so as to allow foreign nationals to fully understand all material facts, for example the process must be available in the foreign national’s medium of instruction.**  ***S 34 (1)(d)***  We accept the prescribed periods of detention and applaud the reasonable measures put in place to ensure foreign nationals are not detained for excessive periods without just legal process taking place which would inform their status. We further note the amendment calls for no more than two 30 calendar days extensions by a competent court can be made in instances where the deportation cannot be effected.  **We therefore submit, that in instances such as the latter clear process or procedure be included in the Act so as to prevent the release of a detainee only to later be arrested once again. Without the inclusion of a process in this instance present a gap which has the potential to fundamentally impact the human dignity and human rights of foreign nationals seeking relief in the Republic.**  ***Amendment on section 34(1)(b) and 1(a)***  CoRMSA is satisfied that section 34(b) is amended to make sure that the Court process and oversight is recognised and followed accordingly. This will also serve the constitutional mandate that of “Everyone is equal before the law and has the right to equal protection and benefit of the law” stated on section 9 of the Constitution.  This amendment also gives rise to section 35*(d)(i)* of the Constitution that “Everyone who is arrested for allegedly committing an offence has the right- to be brought before a court as soon as reasonably possible, but not later than 48 hours after the arrest”.  CoRMSA recommends that the words “ordinary court day” be clarified on the finalamendmentto prohibit an immigration officer from subjecting the detainee to the denial of access to justice based on the ambiguity of the phrase ordinary court day. CoRMSA also recommends that the Court on reviewing the detention should not only look at the legal basis but also consider the peculiarity of detention.  ***Amendment on section 34(1)(d).***  CoRMSA is further pleased with the amendment to section 34*(1)(d)* especially with the fact that the detainee will be offered an opportunity to appear in person before the court of law. This will definitely ensure that access to justice is upheld and respected. It should be noted that the detainee/s that is not brought before the court on the specified time frame by the court (30 calendar days) should be released with immediate effect and that detention should be considered unlawful.  However, CoRMSA is concerned about the “two further extensions of detention” based on the “lack of cooperation (from the relevant authority)”as this maysubject the detainee to a further detention on a matter beyond his or her control. Some of the detainees are forced to leave their place of origin to another country for safety reasons and the relevant authority may be the cause of their forced migration. We recommend that this part of the section be removed or deleted from the section as it may subject the detainees to further oppression and denial of access to justice. The phrase “lack of cooperation” can beinterpreted in different ways to suit the definers in manyoccasions hence we recommend the deletion of removal of the phrase.  We further recommend that subjecting the forced migration detainees to their country of origin (through lack of cooperation) may cause further victimisation on the detainee/s and they are already victims of maltreatment and inhumane actions such as torture, persecution etc. We recommend that the Committee take into account the length of the detainee/s incarceration that may subject them to hardship going beyond the unavoidable level of suffering inherent during their detention because of their country of origin.  ***On insertion after subsection (1)***  CoRMSA welcomes the proposed insertion on section 1*(a*) with the following recommendations to be considered; Arrest and Detention is carried out in accordance with section 35(2) (a to e) of the Constitution of the republic which indicate that: Everyone who is detained, including every sentenced prisoner, has the right to be informed promptly of the reason for being detained; to choose, and to consult with, a legalpractitioner, and to beinformed of this right promptly; to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly; to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released; to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment. | Reference is made to a section that has been deleted in the Amendment Bill.  Noted.  The court will determine whether or not, based on the information provided, the illegal foreigner should further be detained. We cannot prescribe to the Court as to how it should function in making its determination. The Court will make the determination based on the information provided.  Noted.  The wording of the Bill in this regard is similar to what is stated in section 35(1)*(d)* the Constitution.  We have however found an example where the term “court day” has been defined, namely in section 50 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).  To make it clear, the Committee may want to include a definition in the Immigration Act.  .  Noted.  This seems to be talking to asylum seekers. In this regard, the Refugee Act, 1998 (Act No. 130 of 1998) is applicable and asylum seekers need to follow the provisions of the said Act, read together with its Regulations. Asylum seekers are thus protected by the provisions of the said Refugees Act.  Reference to section 35(2) of the Constitution appears in clause 2*(b)* of the Bill, which amends section 34(1)*(c)* of the Immigration Act. |
|  |  | Lawyers for Human Rights | ***Changes to s 34(1)(b) and s34(1A)***  It is suggest that the term “to confirm” is too restrictive as outlined in the case-law above.  According to the case law, the court must not only look at the legal or procedural basis for detention, i.e. that the person is an illegal foreigner as defined in section 1 of the Act, but must also consider whether, substantively, the detention is justified or necessary in the circumstances. By using the term “to confirm” the section, as proposed, conceals that the court must consider the merits of the continued detention; and that the detainee has a right to challenge the lawfulness of the detention in person in accordance with section 35(2)(d) of the Constitution.  We submit, therefore, that the court reviewing the detention under section 34(1)(b) will not be limited to the legal basis but will also be able to decide on whether the detention is justified in the circumstances. This will have the benefit of requiring the immigration officer who is exercising her or his discretion to detain to justify the detention as per the circumstances of the individual. In light of our submissions above, we would therefore suggest changing the phrase “to confirm” to “to authorise”. This change of wording would signal to the court that the decision is not just to repeat the immigration officer’s findings, but to analyse the justification behind the detention.  The phrase “to authorise” would also signal to the court that the court is in control of the detention process and that an immigration officer’s decision to detain for 30 days is not binding.  It can be reduced to any period not exceeding 30 days. For example, a detainee may have family who can prove their lawful status in a period of less than 30 days. The court can authorise detention for that lesser period in order for the evidence to be presented.  We further rely on the inclusion of the prescribed interview under subsection 34(1A) of the Act.  We see the inclusion of this requirement in the principal legislation as a positive step to ensuring that immigration officers exercise their discretion in favour of freedom as required by the Supreme Court of Appeal in *Ulde.* It is worth noting that the regulations in terms of section 34(1A) will be critical to giving effect to the principles and case law enunciated herein.  ***Changes to s34(1)(d)***  We are concerned, however, with the inclusion of two additional periods of 30-day detention in the case where a detainee or their country of origin is not cooperating and would recommend the removal of this clause.   1. Firstly, we are concerned with the concept of the “lack of cooperation”. This term is vague and requires further description in the Act. Non-cooperation could be based on a wide range of motivations, including fear of removal to face persecution or torture to intentionally withholding information to avoid deportation.   There are times when the person’s country of origin is at issue between the detainee and the Department of Home Affairs. Where an individual states that they are from Country A, but they do not have any proof of that and Country A refuses to accept them that does not necessarily mean that they are being uncooperative. The lack of proof, particularly in a region that has been marked by discrimination and civil war, should not result in additional 60 days’ “punishment”.   1. Secondly, the decision by a government not to accept a non-national should not create legal burdens on an individual detainee. This should not be a ground to deprive someone of liberty because of the actions of their government. The Working Group on Arbitrary Detention, a subsidiary body of the United Nations, recognised that detentions ought to be considered unlawful where the cause for same is beyond the control of the migrant. To illustrate this point, the Working Group specifically refers to a case where “the consular representation of the country of origin does not cooperate”. We submit that this would amount to arbitrary detention without just cause and a violation of section 12(1*)(a)* of the Constitution.   The inclusion of “country of origin or nationality” also points to a problem which has been pointed out by members of the Portfolio Committee: stateless individuals whose countries of habitual residence will not accept them. This is subjecting a group of some of the most vulnerable among migrants to further and unnecessary detention.  Importantly, the rationale for the additional 30-day periods has not been included in the Act or in the Memorandum to the Bill. Unless the rationale is to punish, the additional 30-day periods will not likely result in cooperation or further the purposes of deportation. As this section is likely to be struck down as unconstitutional for its vagueness and lack of a just cause (particularly where a state is being uncooperative), we would suggest that it be removed and replaced with a more structured tool. Another possibility is the inclusion of a criminal offence of non-cooperation similar to section 34(4) of the Act where the state will have to prove beyond a reasonable doubt that the detainee is being uncooperative. This may prevent a situation where an administrative dispute is translated into being uncooperative resulting in additional and unjustified detention. | Immigration Officers have the power to arrest and detain an illegal foreigner for purposes of deportation. The court therefore needs to confirm such detention within the 48 hour period following the arrest based on the information presented to court with counter arguments from the illegal foreigner. Part of the confirmation process is thus to analyse whether or not the detention is justifiable.  Noted.  Lack of cooperation entails, amongst others, not providing information as to his or her country of origin or any other relevant information required in order to facilitate the deportation of the illegal foreigner.  The Department will consider including this in the draft Bill as a minimum, but also include in the Regulations other instances that may arise.  When there is civil war in a country, that illegal foreigner should rely on the provisions of the Refugees Act and apply for asylum when he or she enters the Republic.  This thus speaks to asylum seekers and the Refugees Act, read together with its Regulations, will be applicable to those applying for asylum. However, if a person has not applied for asylum, and such person is an illegal foreigner, he or she must be deported in terms of the provisions of the Immigration Act.  Lack of cooperation entails, amongst others, not providing information as to his or her country of origin or any other relevant information required in order to facilitate the deportation of the illegal foreigner.  The Department will consider including this in the draft Bill as a minimum, but also include in the Regulations other instances that may arise. |
|  |  | Scalabrini  Centre of Cape Town (SCCT) | ***Clause 2(c)***  Clause 2*(c)* does not adequately provide guidance to an immigration officer in matters of arrest and detention, and that clause 2(d), where the current formulation may lead to cases of extended arbitrary detention without judicial safeguards and oversight.  The current formulation of clause 2*(c)* contained in the Bill is overly broad in that it can easily be interpreted to mean that an illegal foreigner must be detained. While 1A*(b)* states that the immigration officer may arrest the illegal foreign if he or she are 'of the view that the arrest and detention is justified in the circumstances', it could be interpreted by an officer that an arrest and detention is justified as the person is deemed to be an 'illegal foreigner'. Put simply, the lack of legal status could justify any detention because that is the 'circumstance' to be considered.  No further direction or criteria is provided which means the current wording is woefully inadequate and continues to run the risk of falling foul of the same criticism levelled by the Constitutional Court against section 34(1) of the Act. The formulation goes against the in *favorem libertatis* requirement.  The SCCT recommends that Clause 2*(c*) be amended to provide more guidance to the Immigration Officer in line with the findings of the court and to ensure that that officers must exercise their discretion in favour of liberty.  ***Recommendation No. 1***  Clause 2*(c)* is amended to ensure Immigration Officers exercise their discretion and use detention for deportation as a measure of last resort. The SCCT recommends Clause 2*(c)* be amended to read as follows (additions underlined):  “(1A) An immigration officer may, where necessary, arrest and detain an illegal foreigner for purposes of deportation if—  (a) the immigration officer has determined that the foreigner is an illegal foreigner in terms of the Act; and  (b) following the outcome of the prescribed interview, and after considering the relevant facts, less coercive measures, and exercising their discretion, the immigration officer is of the view that the arrest and detention is justified in the circumstances.”  ***Clause 2(d)***  In *Silva v Minister of Safety and Security*, the Court underscored the importance of liberty, stating that: ‘a detained person has an absolute right not to be deprived of his freedom for one second longer than necessary by an official who cannot justify his detention’. We are concerned that the current wording of this provision may result in extended cases of arbitrary detention that runs afoul of the finding of the court in Silva.  Whereas the current Bill ensures that an individual detained as an illegal foreigner is afforded the right to appear before a magistrate, Clause 2(d) does not explicitly grant the same safeguard in regards to the extension of a warrant for 30 calendar days.  The first detention and appearance is to confirm the individual's status as an illegal foreigner whereas the extension of a period of detention by another 60 days relates to a lack of cooperation on behalf of the detainee or embassy. This formulation falls afoul of the same deficiency identified by the court in section 34(1) – that the immigration officer is given a wide discretion to determine the detention, and the detainee is unable to appear to rebut or address any issues relating to their detention. The current formulation has this same flaw only the criteria are now if either the detainee or consulate officials are being uncooperative. There are no guidelines as to what uncooperative may mean or any oversight measures to ensure that the Immigration Officer is actively working on the case and that there are in fact realistic chances for expulsion.  Lastly, we note that the Memo of Objects states that the Bill does not have cost implications, yet the detention of foreign nationals for an additional period would involve extra costs that have not been considered.  ***Recommendation No. 2***  The SCCT recommends that Clause 2(d) be amended to ensure that if the state seeks to extend a detainee's detention beyond 120 days as a result of a lack of cooperation on the behalf of the detainee or relevant authority, that the detainee be brought before a court in person to determine whether to confirm the detention. | Minimum guidelines will be included in the Bill (i.e. discretion to be exercised in favour of freedom) and the minimum type of questions that must be considered at the prescribed interview (i.e. health of the illegal foreigner, assets of the illegal foreigner, family ties of the illegal foreigner and if the illegal foreigner has a business).  The word “may” denotes a discretion to the immigration officer to arrest and detain, and this discretion will be guided as mentioned above.  It is the Department’s understanding that an illegal foreigner will be present during any court appearance by an immigration officer in respect of the affected illegal foreigner’s detention. |
| **3.** | **Short title and commencement** | None. | None. | None. |