

Bo (Pr) / Home Affairs



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**DRAFT SUMMARY OF HEARINGS ON THE REFUGEE AMMENDMENT BILL [B 11-200]**

BILL 2007	Refugees ACT 1998	Proposals	From
1[(v)] 'biometrics' means the measurable physiological or behavioural characteristics that can be used in verifying the identity of individuals, and includes the use of photographs, fingerprints, hand measurements, signature verification, results of deoxyribonucleic acid (DNA) testing, facial patterns and retinal patterns;	New definition	The provision seems to oblige the use of all of the measurements. Substitute the word "includes" for the words "may include."	UCT Law Clinic
[(ix)] 'dependant', in relation to an asylum seeker or a refugee, includes [the spouse,] any unmarried child or any destitute, aged or infirm member of the immediate family of such asylum seeker or refugee;	"dependant", in relation to an asylum seeker or a refugee, includes the spouse, any unmarried dependent child or any destitute, aged or infirm member of the family of such asylum seeker or refugee;	the proposed definition might be construed as intended to establish a closed list of persons who qualify as dependants when the range of human circumstances, especially in the refugee context can be so varied. Proposes the term " <b>or any person shown to be lawfully dependant</b> " be inserted after the phrase "of the immediate family".	The Immigration and Refugee Law Committee of the Law Society of South Africa (LSSA)
[(xi)] 'fraudulent application for asylum' means an application for asylum based without reasonable cause on facts, information, documents or representations which the applicant knows to be false and [which facts, information, documents or representations] are intended to materially affect the outcome of the application;	"fraudulent application for asylum" means an application for asylum based without reasonable cause on facts, information, documents or representations which the applicant knows to be false and which facts, information, documents or representations are intended to materially affect the outcome of the application;	As presently worded, the definition includes applications based on "facts which the applicant knows to be false" which is a <i>non sequitur</i>	LSSA

<p>[(xii)] 'spouse' means a person who is a party to— (a) a marriage as defined in terms of this Act; or (b) a permanent homosexual or heterosexual relationship as prescribed;</p> <p>[(xxii)] 'Standing Committee' means</p>	<p>New Insertion</p>	<p>For continuity, propose combine into: "a permanent homosexual or heterosexual relationship as contemplated in the Immigration Act"</p>	<p>LSSA</p>
<p>1[(xvi)] 'residence' means a status recognised by competent authorities of a particular country that affords a person the right to sojourn in that country with the rights and obligations attached thereto;</p>	<p>New Insertion... Article 1(e) of the UN Convention Relating to the Status of Refugees: This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.</p>	<p>Conflation of the two concepts—nationality and residence. Harmonize with Article 1(e) of the UN Convention. More specifically, substitute the words "that are attached to his or her nationality of that country" for the words "which are attached to the possession of the nationality of that country."</p>	<p>UCT Law Clinic</p>
<p>1(xxiii) 'unfounded application', in relation to an application for asylum in terms of section 21, means an application— (a) made on the grounds other than those contemplated in section 3; Or (b) made on the grounds contemplated in section 3 but which is without merit;</p>	<p>1(xii) manifestly unfounded application— means an application for asylum made on grounds other than those on which such an application may be made under this Act; (xi)</p>	<p>The definitions of the terms "manifestly unfounded" and "Refugee Reception Office" should be retained. The proposed definition of an unfounded application should not have the proposed (a) included.</p>	<p>Standing Committee on Refugee Affairs (SCRA)</p>
<p>2. The following section is hereby inserted in the principal Act after section 1:</p> <p><b>"Interpretation and application of Act</b></p> <p><b>1A.</b> This Act must be interpreted and applied in a manner that is consistent with—</p> <p>(a) the 1951 United Nations Convention Relating to the Status of Refugees;</p> <p>(b) the 1967 United Nations Protocol Relating to the Status of Refugees;</p> <p>(c) the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa;</p> <p>(d) the 1948 United Nations Universal</p>	<p><b>"Interpretation and application of Act</b></p> <p>6. (1) This Act must be interpreted and applied with due regard to—</p> <p>(a) the Convention Relating to the Status of Refugees (UN, 1951);</p> <p>(b) the Protocol Relating to the Status of Refugees (UN, 1967);</p> <p>(c) the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU, 1969);</p> <p>(d) the Universal Declaration of Human</p>	<p>Applying the Refugees Act in compliance with the Immigration Act may in certain cases conflict with the protection that section 2 seeks to provide on refugees and asylum seekers. In particular, UNHCR is concerned that the protection against forcible return may be compromised for asylum seekers who without any fault, fail to report to refugee reception offices within 14 days in terms of section 23 of the Immigration Act 2002. Immigration Act is catered for under Clause 29 of the Bill relating to 36(2) of the Refugees Act Therefore the wording of the former section 6(1) (a-e) should be maintained in section 2A.</p>	<p>United Nation High Commissioner for Refugees (UNHCR)</p>

<p>Declaration of Human Rights; and (e) the Immigration Act.”</p>	<p>Rights (UN, 1948) and (e) any other relevant convention or international agreement to which the Republic is or becomes a party. (2) The Minister is responsible for the administration of this Act.</p>	<p>(e) Why has the original section been omitted? The result would be to provide less protection to refugees and asylum seekers. (e) there are many pieces of domestic legislation that have relevance to the management of refugees Unless there is a particular reason for its inclusion – which should be clearly articulated – propose that 'the Immigration Act' be deleted.</p>	<p>Legal Resource Centre (LRC)</p>
<p>3. Section 2 is hereby amended by the substitution for paragraph (b) of the following paragraph: “(b) his or her life, physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or other events seriously disturbing [or disrupting] public order in [either] any part or the whole of that country.”.</p>	<p>2. Notwithstanding any provision of this Act or any other law to the contrary, no person may be refused entry into the Republic, expelled, extradited or returned to any other country or be subject to any similar measure, if as a result of such refusal, expulsion, extradition, return or other measure, such person is compelled to return to or remain in a country where- (a) he or she may be subjected to persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group; or (b) his or her life, physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or other events seriously disturbing or disrupting public order in either part or the whole of that country.</p>	<p>Section 2 of the Act must correspond exactly with section 3. This is not currently the case nor is it in the Bill. Section 2 of the Act aims at entrenching the principle of <i>not refoulment</i> and S.3 determines who it is that should not be <i>refouled</i> therefore they cannot differ. It is recommended that section 2 of the Act be amended to simply refer to the persons mentioned in section 3.</p>	<p>SCRA</p>
<p><b>Refugee status</b> 4. Section 3 of the principal Act is hereby amended by the substitution for paragraphs (a), (b) and (c) of the following paragraphs, respectively:“(a) owing to a well-founded fear of being persecuted by reason of his or her race, <u>gender</u>, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her</p>	<p><b>Refugee status</b> 3. Subject to Chapter 3, a person qualifies for refugee status for the purposes of this Act if that person- (a) owing to a well-founded fear of being persecuted by reason of his or her race, <b>tribe</b>, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of</p>	<p>(i) Given the wide meaning of ethnicity or race, or membership of a particular social group, the word <b>tribe</b> can be deleted from the subsection as it is redundant.  (b) Suggest that a further category be inserted after "political opinion" namely "adherence to or refusal to adhere to local custom."</p>	<p>UNHCR  LRC</p>

<p>nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it;....</p> <p>(b) owing to external aggression, occupation, foreign domination or other events seriously disturbing [or disrupting] public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge [elsewhere] in another place outside his or her country of origin or nationality;</p> <p>(c) is a <u>spouse</u> or dependant of a person contemplated in paragraph (a) or (b)."</p>	<p>that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or</p> <p>(b) owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either a part or the whole of is or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere: or</p> <p>(c) is a dependant of a person contemplated in paragraph (a) or (b).</p>	<p>(c)The Department has not applied the concept of <b>derivative status</b> as provided for under this subsection. In some cases, it has led to situations whereby a husband is granted asylum while the spouse is rejected and thus creating a situation whereby the principle of the <b>family unity</b> is jeopardized. Attention is needed by the Department when regulations are drafted.</p> <p>Section 38 should include a subsection in which the manner for spouses and dependants who are outside the country at the time the principal applicant applies for asylum, to be reunited in South Africa.</p> <p>(c)Suggest that spouses who arrive after their partners be able to join their application in view of family unity and reunification.</p>	<p>TFC</p> <p>UNHCR</p> <p>Lawyers for Human Rights (LHR)</p>
<p><b>Exclusion from refugee status</b></p> <p>5. Section 4 of the principal Act is hereby amended by— (a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words: "A person does not qualify for refugee status for the purposes of this Act if <b>[there is]</b> the Refugee Status</p>	<p><b>Exclusion from refugee status</b></p> <p>4(1)(a) A person does not qualify for refugee status for the purposes of this Act if there is <b>reason to believe</b> that he or she has committed a crime against peace, a war crime or a crime against humanity, as defined in any international legal instrument dealing with any such crimes; or has</p>	<p>(a) clarifies that only a refugee status determination officer may decide that an asylum seeker does not qualify for refugee status, but still does not set out procedures e.g. can such a person appeal the decision and, if so, who considers the appeal. Suggest such complicated matters to be referred to the DG and should not be subject to delegation (there are very few such cases) consequences of falling under this section should be clearly spelt out.</p> <p>Change "reason to believe" to "<b>serious</b> reason to believe" to align</p>	<p>SCRA</p> <p>LHR</p>

<p>Determination Officer has reason to believe that he or she—";</p> <p>(b) the substitution in subsection (1) for paragraph (b) of the following paragraph: "(b) has committed [a crime which is not of a political nature and which, if committed in the Republic, would be punishable by imprisonment] a serious non-political crime outside the country of refuge prior to his or her admission to that country as a refugee; or"; and (c) the substitution in subsection (1) for paragraph (d) of the following paragraph: "(d) enjoys the protection of any other country in which he or she [has taken residence] is a recognised refugee, permanent resident or citizen."</p> <p>(2)(c) the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa;</p>	<p>committed a crime which is not of a political nature and which, if committed in the Republic, would be punishable by imprisonment; or has been guilty of acts contrary to the objects and principles of the United Nations Organisation or the Organisation of African Unity; or enjoys the protection of any other country in which he or she has taken residence.</p> <p>6(1)(c) the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU, 1969)</p>	<p>this section with Section of the OAU Convention and Article 1(F) of the UN Conventions.</p> <p>??? By defining the person whose "reason to believe" is relevant, the amendment may have the effect of taking the decision away from the courts and placing it exclusively in the (subjective) hands of an administrative decision maker (whose decision would only be subject to review on the grounds of gross irregularity).</p> <p>(b) Define non-political crime.</p> <p>(b) should read "in the Republic" and not "in the country of refuge".</p> <p>(b) Section should include reference to whether the crime would qualify as a serious offence in RSA to exclude crimes like homosexuality that may qualify as serious non-political crimes in some countries</p> <p>(d) Remove the words "recognized refugee." because the mere holding of refugee status from another country should not lead to exclusion from status in South Africa as there are many cases where refugees cannot continue to remain in first country of asylum for security reasons. Is RSA be able to send them back, if they are recognised elsewhere?</p> <p>(2) Replace 'Organisation of African Unity' with 'African Union'.</p>	<p>LRC</p> <p>LRC</p> <p>SCRA</p> <p>LHR</p> <p>UCT Law Clinic, UNHCR</p> <p>LHR</p>
<p>8. The following section is hereby substituted for section 7 of the principal Act: "<b>Delegation of powers</b>"</p> <p>(1) The Minister may, subject to the conditions that he or she may deem necessary, delegate any power conferred on him or her by this Act, excluding a power referred to in section 8B(2), 8F, 8G or 38, to any officer or employee in the public service, but must not be divested of any power so delegated.</p> <p>(2) The Director-General may, subject to the conditions that he or she may deem necessary, delegate any power conferred on him or her by this Act, excluding a</p>	<p>7(1) The Minister may delegate any power granted to, or duty imposed upon, him or her in terms of this Act, except the duty referred to in section 6(2), to an officer in the Department.</p> <p>(2) A power or duty so delegated must be exercised or performed in accordance with the directions of the Minister, who may at any time withdraw such delegation.</p> <p>(3) A delegation under subsection (1) does not prevent the Minister from exercising the power or performing the duty in question himself or herself.</p> <p>36. (1) If a person has been recognised as a refugee erroneously on an application</p>	<p>(1)The Minister's power to delegate under the proposed amendment to section 36 of the Act should also be excluded under this section. Section 36, as proposed, will allow the DG to withdraw refugee status and the Minister to consider appeals against the decision of the DG.</p> <p>(2) These functions should not be delegated to any Public servant rather only to DHA employees.</p>	<p>SCRA</p> <p>LHR</p>

<p>power referred to in section 8I, to any officer or employee in the public service, but must not be divested of any power so delegated.”.</p>	<p>which contains any materially incorrect or false information, or was so recognised due to fraud, forgery, a false or misleading representation of a material or substantial nature in relation to the application or if such person ceases to qualify for refugee status in terms of section 5--</p>		
<p><b>10. "Refugee Reception Office</b></p> <p>(1) The Director-General may, by notice in the <i>Gazette</i>, establish as many Refugee Reception Offices in the Republic as he or she, <b>after consultation with the Standing Committee,</b> regards as necessary for the purposes of this Act. (2) Each Refugee Reception Office must consist of at least <b>[one Refugee Reception Officer and]</b> one Refugee Status Determination Officer who must— (a) be <b>[officers]</b> an officer of the Department, designated by the Director-General <b>[for a term of office determined by the Director-General];</b> and (b) have such qualifications, experience and knowledge of refugee matters as makes <b>[them]</b> him or her capable of performing <b>[their]</b> his or her functions, in terms of this Act.</p> <p>(3) The Director-General <b>[must, with the approval of the Standing Committee, ensure that each officer appointed under this section receives the additional training necessary to enable such officer to perform his or her functions properly]</b> may appoint such number of officers as he or she deems necessary to perform administrative functions connected with</p>	<p>8. (1) The Director-General may establish as many Refugee Reception Offices in the Republic as he or she, after consultation with the Standing Committee, regards as necessary for the purposes of this Act.</p> <p>(2) Each Refugee Reception Office must consist of at least one Refugee Reception Officer and one Refugee Status Determination Officer who must- (a) be officers of the Department, designated by the Director-General for a term of office determined by the Director-General; and (b) have such qualifications, experience and knowledge of refugee matters as makes them capable of performing their functions.</p> <p>(3) The Director-General must, with the approval of the Standing Committee, ensure that each officer appointed under this section receives the additional training necessary to enable such officer to perform his or her functions properly.</p>	<p>(1) The removal of the Refugee Reception Officer from the Act does not remove the function performed by this official. An RSDO should be a dedicated decision maker and should perform the minimum of administration tasks. Refugee Reception Officer or administrative official should be retained.</p> <p>(3) The ongoing training of DHA staff is of vital importance. Either Section 8(3) of the Act must be re-inserted in the Bill, perhaps included as sub-section 4 of section 10, with the deletion of the words "with the approval of the Standing Committee;" or that Section 39 of the Act is not repealed.</p> <p>(3) removal of SCRA from staffing decisions in favour of the Director General is of concern with regard to the previous independent oversight role it played relating to: (1) ensuring officials received necessary training (2) regulating the work of the Refugee Reception Offices; and (3) liaising with representatives of nongovernmental</p>	<p>SCRA</p> <p>UCT law Clinic, UNHCR, LHR</p> <p>LRC</p>

<p>the Refugee Reception Office.”.</p>		<p>organisation.</p> <p>Suggest inserting (4) "The Director General may regulate and supervise the work of the Refugee Reception Offices" <i>this duty was undertaken by the SCRA, which has now been abolished. For the purposes of accountability, it is critical that the work of the Refugee Reception Offices be regularly monitored and supervised. The DG may still delegate this power in line with Section 7(2).</i></p>	<p>LHR</p>
<p>11. The following sections are hereby inserted, in the principal Act <i>after</i> section 8:</p> <p><b>"Refugee Appeals Authority"</b></p> <p><b>8A.</b> (1) There is hereby established a Refugee Appeals Authority.</p> <p>(2) The Refugee Appeals Authority is independent and must function without any bias.</p> <p>(3) The headquarters of the Refugee Appeals Authority must be determined by the Minister.</p>	<p>9-20. The refugee appeals authority replaces the SCRA and Appeals board.</p>	<p>Question on Numbering: Why 8A-J after 8 and not section 9 (1-10). Will create confusion in verbal references.</p>	<p>Research Unit</p>
<p><b>11. Composition of Refugee Appeals Authority</b></p> <p><b>8B.</b> (1) The Refugee Appeals Authority consists of—</p> <p>(a) a chairperson who is legally qualified; and (b) such number of other members as the Minister may determine, having regard to the likely volume of work to be performed by the Refugee Appeals Authority.</p> <p>(2) The chairperson and other members of the Refugee Appeals 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.</p>	<p>9-20. The refugee appeals authority replaces the SCRA and Appeals board</p>	<p>The envisaged section 8(B) requires the Chairperson to be legally qualified but it is the members who will be making decisions and should be legally qualified.</p> <p>(a) This requires only that the person has obtained a qualification lawfully. The clause presumably intended to convey that the chairperson must have a qualification in law. proposes that the requirement read as follows - " is a practising attorney in good standing with the relevant provincial law society or an advocate who is a member of the Bar, with a minimum of five years experience in a related field of law and includes a retired senior Regional Magistrate or Judge of the High Court."</p>	<p>SCRA, Refugee Appeal Board (RAB)</p> <p>LSSA</p>

<p><b>11. Functions of Refugee Appeals Authority</b></p> <p><b>8C.</b> (1) The Refugee Appeals Authority must— (a) Determine any appeal lodged in terms of this Act; and (b) advise the Minister regarding any matter which the Minister refers to the Refugee Appeals Authority.</p> <p>(2) An appeal contemplated in subsection (1)(a) must be determined by the chairperson and such number of members of the Refugee Appeals Authority as the chairperson may deem necessary.</p> <p>(3) The Refugee Appeals Authority may determine its own procedure and make its own rules, which may not be in conflict with the provisions of this Act.</p> <p>(4) Rules made under subsection (3) must be published in the <i>Gazette</i>.</p>	<p>9-20. The refugee appeals authority replaces the SCRA and Appeals board.</p> <p>11.(a) The Standing Committee- may formulate and implement procedures for the granting of asylum;</p> <p>14(1)The Appeal Board must-</p> <p>(a) hear and determine any question of law referred to it in terms of this Act;</p> <p>(b) hear and determine any appeal lodged in terms of this Act;</p> <p style="text-align: right;">See def 11-14 UNHCR</p>	<p>Unlike SCRA, the Appeals authority has no responsibility to monitor Refugee -Reception Offices or -Determination officers. This and or the specific responsibility of the Director of Refugee Affairs need to be mentioned.</p> <p>Removal of powers to "formulate and implement procedures for the granting of asylum" in S.11(a) of the Act, means such procedures are not subject to any independent scrutiny – including that of the legislature.</p> <p>(1) The has left out the word "hear" contained in the section 14(1)(a) of the present Act. It is accepted international practice that all appeals must be "heard" before they can be determined.</p> <p>(2)The Chairperson to be party to every consideration of appeals logistically impossible and would mean that only one case could be considered at a time.</p> <p>Proposed amendment: <i>An appeal contemplated in subsection 1(a) must be determined by the Chairperson or such number of legally qualified members of the Refugee Appeals Authority as the Chairperson may deem necessary</i></p> <p>All appeals to be in writing and considered on paper rather than personal hearings which are very time consuming. Act allows the Appeals Authority to request the applicant to appear before it when necessary.</p> <p>(4) biometric testing raises concerns consider the large scale of intended deployment and the protecting the collected data from abuse no specific provisions are made for the safekeeping of such information provisions to ensure done cheaply, efficiently and quickly.</p> <p>Act must provide for procedures for determining appeals on emergency basis. In such cases the Appeal Authority should be reduced to one legally qualified member appointed by the Chairperson.</p> <p>Given the existence of the refugee reception offices in the country,</p>	<p>UCT Law Clinic</p> <p>LRC</p> <p>RAB</p> <p>SCRA</p> <p>LHR, RAB</p> <p>SCRA, RAB</p> <p>LRC</p> <p>UNHCR</p>
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		the Act should provide the possibility of the regional refugee appeal authorities in order to avoid backlogs at appeal levels.	
<p><b>11. Inserting 8E.</b> A person may not be appointed as a member of the Refugee Appeals Authority if that person— (a) is not a South African citizen;</p> <p>(b) has been sentenced to imprisonment without the option of a fine during the preceding four years; (c) is an unrehabilitated insolvent;</p> <p>(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 (f) is a political office bearer.</p>	<p><b>9-20.</b> The refugee appeals authority replaces the SCRA and Appeals board.</p>	<p>8E (b) should be reworded. As it is it would allow for a serious, dishonest offender to serve on an authority that is supposed to be upholding human rights.</p> <p>(f) define "political office bearer".</p>	<p>SCRA</p> <p>LRC</p>
<p><b>11. Inserting 8G</b> Filling of vacancies in Refugee Appeals Authority 8G. Whenever a vacancy arises at the Refugee Appeals Authority as a result of death, resignation or removal from office of a member of the Refugee Appeals Authority, the Minister may appoint a suitable person for the remainder of the term of office of such member.</p>		<p>Refer back to Section 8E in order to clarify whether the same kinds of limitations apply equally to the identity of members of the authority and to co-opted members or not.</p>	<p>LRC</p>
<p><b>11. Inserting 8J.</b> (1) The Refugee Appeals Authority must, within 30 days after the end of each financial year, prepare a report on all its activities during that financial year and on its financial position as at the end of that financial year.</p> <p>(2) The Refugee Appeals Authority must, immediately after the report contemplated in subsection (1) is finalised, submit the report together with</p>		<p>This authority is far too small to employ a CFO and will use the Department's budgeting, expenditure and reporting expenditure for work done by the SCRA and the RAB.</p>	<p>SCRA</p>

<p>the audited balance sheet and accounts pertaining to the funds of the Refugee Appeals Authority to the Minister for tabling in Parliament."</p>			
<p>13. Section 21 of the principal Act is hereby amended by—  <u>(a) the substitution for subsections (1), (2) and (3) of the following subsections, respectively:</u>          "(1) An application for asylum must be made in person in accordance with the prescribed procedures to a <b>[Refugee Reception Officer]</b> Refugee Status Determination Officer at any Refugee Reception Office or <i>at any other place designated by the Director-General.</i>          (2) The Refugee Status Determination Officer must, upon receipt of the application contemplated in subsection (1), deal with it in terms of section 24.          (3) When making an application for asylum, every applicant, including his or her spouse and dependants, must have his or her <b>[fingerprints or other prints]</b> biometrics taken in the prescribed manner <b>[and every applicant who is 16 years old or older must furnish two recent photographs of himself or herself of such dimensions as may be prescribed]."</b>  <u>and (b) by the substitution in subsection (4) for paragraph (a) of the following</u></p>	<p><b>Application for asylum</b>  <b>21. (1)</b> An application for asylum must be made in person in accordance with the prescribed procedures to a Refugee Reception Officer at any Refugee Reception Office.          (2) The Refugee Reception Officer concerned must accept the application form from the applicant; must see to it that the application form is properly completed, and, where necessary, must assist the applicant in this regard; may conduct such enquiry as he or she deems necessary in order to verify the information furnished in the application; and must submit any application received by him or her, together with any information relating to the applicant which he or she may have obtained, to a Refugee Status Determination Officer, to deal with it in terms of section 24.          (3) When making an application for asylum, every applicant must have his or her fingerprints or other prints taken in the prescribed manner and every applicant who is 16 years old or older must furnish two recent photographs of himself or herself of such dimensions as may be prescribed.          (4) Notwithstanding any law to the contrary, no proceedings may be instituted or</p>	<p>The proposal to scrap the statutory powers of refugee reception officers and consolidating such powers into the status determination officers. The number of RSDO must be increased substantially to deal with applications. Accountability of such officers is a critical matter which must be provided for.</p> <p>(1) Add " any other place designated by the Director General <b>by notice in the Gazette"</b>          (1)The LSSA Committee proposes that the phrase "<i>or at any other place</i>" be deleted as this could result in the seat of a car or plane or army detention centre being designated on an <i>ad hoc</i> basis as the place at which an application is to be made.</p> <p>(3) Biometrics, as defined, include taking fingerprints and photographs - However it also includes taking DNA samples. The justification for this grave invasion of the asylum seeker's rights to privacy, dignity and equality is not made clear as there is no provision in the Act for who manages this data base, who has access to it and why, who oversees or acts as an appeal mechanism to protect the privacy of asylum seekers. The LSSA Committee urges that such a critical issue not be left to regulation but be addressed by Parliament.</p> <p>Replace the provision as follows "When making an application for asylum, every applicant, including his or her dependants or spouse, must have his or her biometrics <b>and photographs</b> of himself or herself taken in the prescribed form."</p> <p>(4)(a) Revise to read..." such person has applied for asylum or <b>is in the process of applying for asylum</b> in terms of subsection (1)...."  <i>to persons who are in the process of applying, for example by</i></p>	<p>UNHCR</p> <p>LHR</p> <p>LSSA</p> <p>LSSA</p> <p>UCT Law Clinic</p> <p>LHR</p>



<p>he or she is an asylum seeker must— (a) be issued with an asylum seeker permit in terms of section 22; and (b) in the prescribed manner, be referred to a health establishment contemplated in the Mental Health Care Act, 2002 (Act No. 17 of 2002), to be dealt with in terms of that Act.</p>		<p>(2)(a) be issued with an asylum seeker permit in terms of Section 22 <b>by the RSDO</b></p> <p>(2)(b) "in the prescribed manner, be referred <b>by the RSDO</b> to a health establishment....."</p>	<p>LHR</p>
<p><b>14. Inserting 21B</b>  <b>Spouse and dependants of refugees</b>  (1) A person who applies for refugee status in terms of section 21, and who would like one or more of his or her spouse and dependants to be granted refugee status must, when applying for asylum, include such spouse and dependants in the application.</p> <p>(2) Any refugee whose child is born in the Republic must, within one month of the birth of his or her child, register such a child as a <i>dependant at the Refugee Reception Office that processed his or her application.</i></p>	<p>New Insertion</p>	<p>Revise title: Spouse and Dependants of Refugees <b>and Asylum Seekers</b></p> <p>Note on numbering, should these sections (A,B,C) not be numbered 21(2) a,b,c?  Replace the number "(2)" with "(3) or (4)."</p> <p>(1) What is the potential impact of this section on the principle of family unity and the right to dignity, in the case of cessation of dependency particularly for persons who have been living within the Republic for an extended period of time?  (1) "A person who applies for refugee status in terms of Section 21, and who would like one or more of his or her spouse and dependants to be granted refugee status, <del>must when applying for asylum,</del> must include the details of such spouse and dependants in the application". <i>assumes that the spouse or dependants of a person applying for asylum will arrive in South Africa together and does not make provision to arrive in the country later</i></p> <p>21B(2) "Any <b>asylum seeker</b> or refugee whose child is born...."  (2) unenforceable and unreasonable overruling the existing Court Order that an asylum seeker or refugee may process his or her status at their newest regular address. Suggest replacing with "...dependant at a Refugee Office"</p> <p>(2) It is impractical to legislate that births "must" be reported to the Refugee Reception Office within a month of the birth when so many asylum seekers scarcely speak a word of English. This period should rather be dealt with in regulations to the Act with allowance made therein both for exceptions and for what is to happen if the birth is not reported.</p> <p>(2) Propose "Any refugee already processed whose child is born in</p>	<p>LHR</p> <p>UNHCR</p> <p>UCT Law Clinic</p> <p>LHR</p> <p>LHR</p> <p>LRC</p> <p>LSSA,</p> <p>Treatment</p>

<p>14. <b>21B(3)</b> 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 prescribed form to be permitted to continue to remain within the Republic in accordance with the provisions of this Act.</p>		<p>the Republic must within a reasonable time period of the birth of his or her child, register such a child as a dependent at the nearest / any Refugee Reception Office (RRO). Any refugee who is in the process of being processed whose child is born in the Republic can include his or her child in that process at the Refugee Reception Office (RRO) that is processing the application.</p> <p>21B(3): What is the practical implication of this section on the children of divorced refugees, in that it may not be in the best interests of the child to be removed from the parent who was the principal applicant? Also, the obligation that a divorced refugee must re-apply for refugee status does not include a timeframe i.e. within a reasonable period of time.</p> <p>(3) Include "Where a dependant of an <b>asylum seeker</b> or 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 <b>asylum seeker</b> or recognised refugee, as the case may be, he or she may apply in the prescribed form to be permitted to continue to remain within the Republic <b>as an asylum seeker or refugee</b> in accordance with the provisions of this Act."</p>	<p>Action Campaign (TAC)</p> <p>UCT Law Clinic</p> <p>LHR</p>
<p><b>14. Inserting 21B</b></p> <p>(4) Where a spouse 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 the spouse as a result of divorce or death of the recognised refugee, as the case may be, he or she may be permitted to continue to remain within the Republic in accordance with the provisions of this</p>	<p><b>36. (1)</b> If a person has been recognised as a refugee erroneously on an application which contains any materially incorrect or false information, or was so recognised due to fraud, forgery, a false or misleading representation of a material or substantial nature in relation to the application or if such person ceases to qualify for refugee status in terms of section 5-</p>	<p>Clarify that the permission to remain is with the same status as was previously held...add ""as a refugee or asylum seeker" be added after the words "within the republic"</p> <p>(4) Reference to good faith spousal relationship is problematic and as it violates the provisions of sections 10, and 14 of the Constitution of the Republic of South Africa, 1996 in terms of privacy. The proviso to section 21B offends the Constitution and should be deleted.(Is, however, the same as requirements of the Immigration Act to acquire permanent residence through marriage)</p>	<p>LHR, LSSA</p> <p>UNHCR</p>

<p>Act: Provided that, in the case of divorce, the Director-General is satisfied that a good faith spousal relationship existed between the recognised refugee and such spouse for a period of at least two years after having been granted asylum.</p> <p>(5) Nothing contained in this Act prevents a dependant who has, in terms of subsection (3), been permitted to continue to remain in the Republic from applying for recognition as a refugee in accordance with the provisions of this Act.”.</p>		<p>(5) There is a potential conflict with subsection (3) in cases where a person has been granted refugee status under the Act.</p> <p>(5) "Nothing contained in this Act prevents a dependant who has <b>not</b>, in terms of subsections (3) or (4), been permitted to continue to remain in the Republic from applying for recognition as a refugee in accordance with the provision of this Act.”</p> <p><i>This subsection should be worded in the negative to cover cases where a person has not been allowed to remain as a refugee under subsections (3) or (4). The inclusion of subsection (4) will prevent situations where a spouse must remain in an abusive relationship in order to maintain status</i></p> <p>Add 21B(6) "Notwithstanding any provisions contained in this section, the withdrawal of refugee status must be in accordance with section 36 of this Act."</p>	<p>UNHCR</p> <p>LHR</p> <p>LHR</p>
<p>15. Section 22 of the principal Act is hereby amended by—</p> <p>(a) the substitution for subsections (1), (2), (3) and (4) of the following subsections, respectively:</p> <p>“(1) The <b>[Refugee Reception Officer]</b> Refugee Status Determination Officer must, pending the outcome of an application in terms of section 21(1), <b>[issue to]</b> refer the applicant to the officers contemplated in section 8(3) to be issued with an asylum seeker permit in the prescribed form allowing the applicant to sojourn in the Republic temporarily, subject to any conditions[, ] determined and endorsed by the <b>[Standing Committee]</b> Director-General, which are not in conflict with the Constitution or international law <b>[and are endorsed by the Refugee</b></p>	<p>22 (1) The Refugee Reception Officer must, pending the outcome of an application in terms of section 21(l), issue to the applicant an asylum seeker permit in the prescribed form allowing the applicant to sojourn in the Republic temporarily, subject to any conditions, determined by the Standing Committee, which are not in conflict with the Constitution or international law and are endorsed by the Refugee Reception Officer on the permit.</p>	<p>(1) The RSDO role as a queue manager detracts such a person from performing the functions of determining refugee status. The RSDO should concentrate on deciding applications and not referring asylum seekers to appointed officers.</p> <p>(1) "The Refugee Status Determination Officer must, pending the outcome of an application in terms of Section 21(1), refer the applicant to the officers contemplated in section 8(3) <del>to be issued with who must issue</del> an asylum seeker permit in the prescribed form allowing the applicant to sojourn in the Republic temporarily, subject to any conditions determined and endorsed by the Director-General, which are not in conflict with the Constitution or international law, <b>explain such conditions to the applicant and record this on the prescribed form.</b>" <i>Since Refugee Reception Officers have been abolished, it is imperative that officers contemplated in section 8(3) undertake the duties outlined in</i></p>	<p>UNHCR</p> <p>LHR</p>