

<p>Reception Officer on the permit].</p> <p>(2) Upon the issue of a permit in terms of subsection (1), any permit issued to the applicant in terms of the [Aliens Control Act, 1991,] Immigration Act becomes null and void, and must [forthwith] be returned to the Director-General for cancellation.</p> <p>(3) [A Refugee Reception Officer] The officers contemplated in section 8(3) may from time to time extend the period for which a permit has been issued in terms of subsection (1)[, or amend the conditions subject to which a permit has been so issued].</p> <p>(4) The permit referred to in subsection (1) must contain [a recent photograph and the fingerprints or other prints] the prescribed biometrics of the holder thereof [as prescribed].”;</p>	<p>(2) Upon the issue of a permit in terms of subsection(1), any permit issued to the applicant in terms of the Aliens Control Act, 1991, becomes null and void, and must forthwith be returned to the Director-General for cancellation.</p> <p>(3) A Refugee Reception Officer may from time to time extend the period for which a permit has been issued in terms of subsection (1), or amend the conditions subject to which a permit has been so issued.</p> <p>(6) The Minister may at any time withdraw an asylum seeker permit if- (a) the applicant contravenes any conditions endorsed on that permit; or</p>	<p><i>Regulation 4(1).</i></p> <p>(2) This obligation should be stated as a condition on the Asylum Seeker Permit. To explain the return the permit may be too onerous if it is not made clear to the applicant up front. Why is forthwith omitted? The Asylum Permits should only be granted if Asylum Transit Permits (Immigration Act s. 23) are handed in.</p> <p>(3) A specific time period within which to extend should be stated. Power to amend the conditions gives too much discretion to the RSDO.</p> <p>(3) "The officers contemplated in section 8(3) may must from time to time, pending the finalisation of the asylum claim, extend the period for which a permit has been issued in terms of Subsection (1)." RSDO's should no longer amend conditions other than time. This will ensure uniformity. If not stated in the Act however the periods for which extensions can be given must be stipulated and standardized in the Refugee Regulations</p> <p>(3) Provide for the period within which a refugee claim must be determined by the RSDO. Provide for specific duration of renewal of asylum permits, a period of six months is a reasonable time even if turnaround times improve.</p> <p>(6) "The Minister may at any time withdraw an asylum seeker permit upon notification as prescribed, if-</p> <p>(6)(a) "the applicant contravenes any conditions endorsed on that permit and does not receive condonation as prescribed. <i>Regulation 3(4) conditions of the asylum seeker permit, the Department may provide condonation upon request if the applicant can establish just cause</i></p> <p>(b) the application for asylum has been found to be manifestly unfounded, abusive or fraudulent and the applicant has exhausted all appeal mechanisms.</p> <p>(c) the application for asylum has been rejected and the applicant has exhausted all appeal mechanisms. <i>Both of above to be in line with PAJA</i></p>	<p>UCT Law Clinic</p> <p>Research Unit</p> <p>UCT law Clinic</p> <p>LHR</p> <p>LHR</p> <p>UNHCR</p> <p>LHR</p>
--	---	--	--

	<p>(7) Any person who fails to return a permit in accordance with subsection (2), or to comply with any condition set out in a permit issued in terms of this section, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.</p>	<p>(7) Delete subsection 22(7) as it is stated in the new section 37</p>	<p>UNHCR, LHR</p>
<p>16. Section 24 of the principal Act is hereby amended by— (a) the deletion of subsection (1); (b) the substitution for subsections (2), (3) and (4) of the following subsections, respectively:</p> <p>“(2) When considering an application for asylum, the Refugee Status Determination Officer—(a) must have due regard for the rights set out in section 33 of the Constitution, and in particular, ensure that the applicant fully understands the procedures, his or her rights and responsibilities and the evidence presented; and</p> <p>(b) may consult with or invite a UNHCR representative to furnish information on specified matters.</p> <p>(3) The Refugee Status Determination Officer must at the conclusion of the hearing— (a) grant asylum; [or] (b) reject the application as [manifestly unfounded,] abusive or fraudulent; or (c) reject the application as unfounded; or</p> <p>(d) refer any question of law to the Standing Committee].</p> <p>(4) If an application is rejected in terms</p>	<p>24. (1) Upon receipt of an application for asylum the Refugee Status Determination Officer- (a) in order to make a decision, may request any information or clarification he or she deems necessary from an applicant or Refugee Reception Officer; (b) where necessary, may consult with and invite a UNHCR representative to furnish information on specified matters; and (c) may, with the permission of the asylum seeker, provide the UNHCR representative with such information as may be requested.</p> <p>(2) When considering an application the Refugee Status Determination Officer must have due regard for the rights set out in section 33 of the Constitution, and in particular, ensure that the applicant fully understands the procedures, his or her rights and responsibilities and the evidence presented.</p> <p>(3) The Refugee Status Determination Officer must at the conclusion of the hearing- (a) grant asylum; or (b) reject the application as manifestly unfounded, abusive or fraudulent; or (c) reject the application as unfounded; or (d) refer any question of law to the Standing Committee.</p>	<p>(2)(a) refer to PAJA instead of or in addition to Section 33 of the Constitution in conformity with the decision of the Constitutional Court in <i>Minister of Health and another NO v. New Clicks SA (Pty) Ltd. and others</i> (2006) (2) (SA 311) (CC)?</p> <p>(2)(a) Changes not meaningful unless the Department provides better training for Refugee Status Determination Officers and properly trained independent interpreters.</p> <p>Insert 24(2)(c) On request by the applicant, may postpone the hearing to a further date for the applicant to give effect to the provisions in subsections (a) and (b) above, including access to legal representation, interpretation, and provision of supporting information”</p> <p>(3)(d) The removal of the ability of the RSDO to refer a question of law to a higher authority may be unfavourable to the status determination procedure....refer to appeals authority?</p>	<p>UCT law clinic</p> <p>LRC</p> <p>LHR</p> <p>UCT law Clinic</p>

<p>of subsection (3)(b) or (c), the Refugee Status Determination Officer must—(a) furnish the applicant with written reasons [must be furnished to the applicant] within five working days after the date of the rejection [or referral]; (b) [the record of proceedings and a copy of the reasons referred to in paragraph (a) must be submitted to the Standing Committee within 10 working days after the date of the rejection or referral] inform the applicant of his or her right to appeal in terms of section 26.”; and (c) by the addition of the following subsections:</p> <p>“(5)An asylum seeker whose application for asylum has been rejected in terms of subsection(3)(b) or (c) must be dealt with in terms of the Immigration Act, unless he or she lodges an appeal in terms of section 24A(1).</p> <p>(6) An application must be deemed to be abandoned if the asylum seeker has not renewed his or her asylum seeker permit within 90 days after it has expired: Provided that the asylum seeker advances valid reasons for the non-renewal of the asylum seeker permit.”.</p>	<p>(4) If an application is rejected in terms of subsection(3)(b)-(c), written reasons must be furnished to the applicant within five working days after the date of the rejection or referral; (b) the record of proceedings and a copy of the reasons referred to in paragraph(a) must be submitted to the Standing Committee within 10 working days after the date of the rejection or referral.</p>	<p>(4) Where must the written reasons be furnished? What if no address is available? If it is to be at refugee offices, will this not add to the already long queues and backlogs?</p> <p>(4)(b) The proposed substitution of Section 24(4)(b) with “inform the applicant of his or her right to appeal in terms of section 26” is confusing as section 26 is repealed in terms of Clause 17 of the Amendment Bill.</p> <p>(6) definition of abandoned?” This condition needs to be clearly stated on the asylum seeker permit. What are the implications of an abandoned application - is the applicant precluded from re-applying? What if the applicant is in detention and cannot physically attend at the Department for an extension? Add “ ... valid reasons for the non-renewal of the asylum seeker permit as prescribed” <i>clarifying regulations who the reasons must be submitted to, in what form, and who will be responsible for making a decision on the validity of the reasons.</i></p>	<p>LHR</p> <p>LRC</p> <p>UCT law clinic, LRC</p> <p>LHR, LRC</p>
--	---	---	--

<p>Decision regarding application for asylum</p> <p>16. Section 24 of the principal Act is hereby amended by—(a) the deletion of subsection (1); (b) the substitution for subsections (2), (3) and (4) of the following subsections, respectively:</p> <p>“(2) When considering an application for asylum, the Refugee Status Determination Officer— (a) must have due regard for the rights set out in section 33 of the Constitution, and in particular, ensure that the applicant fully understands the procedures, his or her rights and responsibilities and the evidence presented; and (b) may consult with or invite a UNHCR representative to furnish information on specified matters.</p> <p>(3) The Refugee Status Determination Officer must at the conclusion of the hearing— (a) grant asylum; [or] (b) reject the application as [manifestly unfounded,] abusive or fraudulent; or (c) reject the application as unfounded; or (d) refer any question of law to the Standing Committee].</p> <p>(4) If an application is rejected in terms of subsection (3)(b) or (c), the Refugee Status Determination Officer must— (a) furnish the applicant with written reasons [must be furnished to the applicant] within five working days after the date of the rejection [or referral]; (b) [the record of proceedings and a copy of the reasons referred to in paragraph (a) must be submitted to the Standing Committee within 10 working days after the date of the rejection or</p>	<p>Decision regarding application for asylum</p> <p>24. (1) Upon receipt of an application for asylum the Refugee Status Determination Officer- (a) in order to make a decision, may request any information or clarification he or she deems necessary from an applicant or Refugee Reception Officer; (b) where necessary, may consult with and invite a UNHCR representative to furnish information on specified matters; and (c) may, with the permission of the asylum seeker, provide the UNHCR representative with such information as may be requested.</p> <p>(2) When considering an application the Refugee Status Determination Officer must have due regard for the rights set out in section 33 of the Constitution, and in particular, ensure that the applicant fully understands the procedures, his or her rights and responsibilities and the evidence presented.</p> <p>(3) The Refugee Status Determination Officer must at the conclusion of the hearing- (a) grant asylum; or (b) reject the application as manifestly unfounded, abusive or fraudulent; or (c) reject the application as unfounded; or (d) refer any question of law to the Standing Committee.</p> <p>(4) If an application is rejected in terms of subsection (3)(b)- (a) written reasons must be furnished to the applicant within five working days after the date of the rejection or referral; (b) the record of proceedings and a copy of the reasons referred to in paragraph (a) must be submitted to the Standing Committee within 10 working days after the date of the rejection or referral.</p>	<p>(3) Why are records of rejections not required to be sent to the Refugee Appeals Authority? Will only records requested by the RAA be sent?</p> <p>(3) A definition of "hearing" is needed in line with the Refugee regulations. At a very least, the definition of a hearing should include the opportunity to present oral, documentary and other types of evidence.</p> <p>(Hearing is defined in the regulations under (1) definitions as: "means an informal, non-adversarial interview with a Refugee Determination Officer."</p> <p>(4) No provision to enable or oblige the Refugees Appeals Authority to determine abusive claims without a delay. Dealing with abusive or fraudulent claims should be given a priority. Provide for accelerated manner to deal with abusive and fraudulent claims.</p>	<p>Research Unit</p> <p>LHR</p> <p>LHR</p> <p>UNHCR</p>
---	--	--	---

<p>referral] inform the applicant of his or her right to appeal in terms of section 26.”; and (c) by the addition of the following subsections:</p> <p>(5)An asylum seeker whose application for asylum has been rejected in terms of subsection (3)(b) or (c) must be dealt with in terms of the Immigration Act, unless he or she lodges an appeal in terms of section 24A(1).</p> <p>(6) An application must be deemed to be abandoned if the asylum seeker has not renewed his or her asylum seeker permit within 90 days after it has expired: Provided that the asylum seeker advances valid reasons for the non-renewal of the asylum seeker permit.”.</p>		<p>(5) How is the handover of unsuccessful applicants to immigration officers to be handled?</p>	<p>Research Unit LVC RHC RHC RHC</p>
<p>18. Sections 25 and 26 of the principal Act are hereby repealed.</p>	<p>Reviews and Appeals 25. Review by Standing Committee 26. Appeals to Appeal Board</p>	<p>Cancellation of the automatic review would seem to be a retrogressive step. Although efficiency is clearly a concern here removing the Standing committee and Appeals Board decrease the opportunities for asylum seekers to have their circumstances considered. Suggest that instead relevant authorities should be appropriately capacitated to perform their functions in an efficient way.</p>	<p>LRC RHC</p>
<p>19. The following section is hereby inserted in the principal Act after section 24: “Appeals to Refugee Appeals Authority”</p> <p>(5) The Refugee Appeals Authority must refer a matter back to the Refugee Status Determination Officer to deal with such asylum seeker in terms of the Immigration Act, if new information which is material to the application is presented during the appeal.”.</p>	<p>New Insertion</p>	<p>(5)The reference here to the Immigration Act must be an error as that is a non-sequitur; moreover the RSDO has no jurisdiction in terms of the Immigration Act. The word “Immigration Act” be replaced by “Refugees Act”</p>	<p>LSSA RHC RHC</p>

<p>21. The following section is hereby substituted for section 27 of the principal Act:</p> <p>"Protection and general rights of refugees</p> <p>27. A refugee is entitled to—</p> <p>(a) a formal written recognition of refugee status in the prescribed form;</p> <p>(b) full legal protection, which includes the rights set out in Chapter 2 of the Constitution of the Republic of South Africa, 1996, (except those rights that apply only to citizens);</p> <p>(c) permanent residence in terms of section 27(d) of the Immigration Act after five years of continuous residence in the Republic from the date on which he or she was granted asylum, if the Director-General, after considering all the relevant factors and within a reasonable period of time, certifies that he or she would remain a refugee indefinitely;</p> <p>(d) an identity document referred to in section 30;</p> <p>(e) a travel document if he or she applies in the prescribed manner; and</p> <p>(f) seek employment."</p>	<p>Protection and general rights of refugees</p> <p>27. A refugee-</p> <p>(a) is entitled to a formal written recognition of refugee status in the prescribed form;</p> <p>(b) enjoys full legal protection, which includes the rights set out in Chapter 2 of the Constitution <i>and the right to remain in the Republic in accordance with the provisions of this Act</i>;</p> <p>(c) is entitled to apply for an immigration permit in terms of the Aliens Control Act, 199 1, after five years' continuous residence in the Republic from the date on which he or she was granted asylum, if the Standing Committee certifies that he or she will remain a refugee indefinitely;</p> <p>(d) is entitled to an identity document referred to in section 30;</p> <p>(e) is entitled to a South African travel document on application as contemplated in section 31;</p> <p>(f) is entitled to seek employment; and</p> <p>(g) is entitled to the same basic health services and basic primary education which the inhabitants of the Republic receive from time to time.</p>	<p>(b) It is unclear why it is proposed that the "right to remain" that is in the current section 27(b) be removed.</p> <p>(c) What are the implications of a negative decision by the RAA i.e. that the applicant is no longer a refugee? To whom would an appeal of this decision be lodged? See below for discussion under s.36 of the Act and Section 29 of the Bill: Withdrawal of Refugee Status.</p> <p>(c) revise to read..."...after considering all the relevant factors and within a reasonable period of time, certifies that he or she would remain a refugee". Indefinitely. <i>Difficult to quantify the meaning of the word 'indefinitely'. Certification should be granted if after a period of five years of continuous residence in the Republic from the date on which he or she was granted asylum, the refugee is still, or remains, a refugee.</i></p> <p>(f) Propose: "seek and take up employment, undertake self-employment and to study." <i>Employers and learning institutions which assume that refugees are not allowed to work and study.</i></p> <p>(g) Replace the word "inhabitants" with the word "nationals" in order to align this provision to Article 22 of the UN Convention.</p> <p>The right to primary education and access to public health should be retained in the new section 27. In other words the former section 27 (g) should be restored. The right to study should also be included. The express removal of the right to health also suggests that what remains is less than what SA citizens get. Since legislative history is relevant in statutory interpretation the removal of a clause that</p>	<p>LRC</p> <p>UCT law clinic</p> <p>LHR</p> <p>LHR, LSSA</p> <p>UCT Law clinic, LHR</p> <p>UNHCR, LRC, TAC</p>
--	---	--	--

		expressly guarantees something strongly suggests that that something is no longer guaranteed especially given the already wide spread denial of health services to refugees and asylum seekers. Propose including legislation that explicitly deals with acces to services in 1. Public health facilities 2. Detention centres and/or other places of safety; and 3. Places where refugees and asylum seekers 'queue' for immigration documentation.	
22.The following section is hereby inserted in the principal Act after section 27: "Protection and general rights of asylum seekers 27A. An asylum seeker is entitled to— (a) a formal written recognition as an asylum seeker in the prescribed form pending finalisation of his or her application for asylum; (b) the right to remain in the Republic pending the finalisation of his or her application for asylum; (c) the right not to be unlawfully arrested or detained; and (d) the rights contained in the Constitution of the Republic of South Africa, 1996, in so far as those rights apply to an asylum seeker."	27A. New insertion specifying the rights of Asylum seekers in contrast to Refugees in 27 above.	Asylum Seekers should enjoy rights like refugees under subsections (b) and (g) of Section 27. Or Add new section 27A (e) "seek and take up employment, undertake self-employment and to study." According to the decision of <i>Watchenuka v. Minister of Home Affairs</i> (2002) 27(f) above should also be included in this section on rights of asylum seekers. (b) Need to have definitive duration for the asylum seeker permit in order to curb abuse and allow asylum seekers to lead more or less a normal life and reduce the administrative work of constantly renewing the permits. This recommendation has also been made under section 22 above. (c) & (d) simply restate the provisions of the Bill of Rights or the law as it stands and therefore appear to be unnecessary. (d) Remove the words: "in so far as those rights apply to an asylum seeker"	UCT Law Clinic, LHR, LSSA LHR UNHCR LRC TAC
23. Section 28 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:	28. (1) Subject to section 2, a refugee may be removed from the Republic on grounds of national security or public order. (2) A removal under subsection (1) may only be ordered by the Minister with due regard for the rights set out in section 33 of	Revise (1) "Subject to Section 2.....on grounds of national security and public order". <i>Regulations must outline who defines grounds of national security and the procedure to be followed to do so and procedures for removal of refugees without withdrawal of status, in line with PAJA.</i> Add New section 28(2) "A decision by the Minister to remove a	LHR LHR

<p>"(3) If an order is made under this section for the removal from the Republic of a refugee, any spouse or dependant of such refugee who has not been granted asylum, may be included in such an order and removed from the Republic, if such spouse or dependant has been afforded a reasonable opportunity to apply for asylum but has failed to do so or if his or her application for asylum has been rejected."</p>	<p>the Constitution and the rights of the refugee in terms of international law.</p> <p>(3) If an order is made under this section for the removal from the Republic of a refugee, any dependant of such refugee who has not been granted asylum, may be included in such an order and removed from the Republic if such dependant has been afforded a reasonable opportunity to apply for asylum but has failed to do so or if his or her application for asylum has been rejected.</p> <p>(4) Any refugee ordered to be removed under this section may be detained pending his or her removal from the Republic.</p>	<p>refugee in terms of Section 28(2) may be appealed to the Refugee Appeals Authority and reviewed by a High Court."</p> <p>(3) "If an order is made....or if his or her application for asylum has been rejected and he or she has been afforded the opportunity to exhaust all available appeal and review mechanisms" <i>The removal of a spouse or dependant has serious consequences and therefore must be afforded the opportunity to exhaust all available appeal.</i></p> <p>(4) Any refugee ordered.....from the Republic, subject to Section 29 of this Act". <i>The deprivation of a person's liberty must be limited and aligned to Section 29.</i></p>	<p>LHR</p> <p>LHR</p>
<p>Restriction of detention</p> <p>24. The following section is hereby substituted for section 29 of the principal Act: 29. (1) No person may be detained in terms of this Act for a longer period than is reasonable and justifiable and any detention exceeding 30 days must be reviewed immediately by [a judge of the High Court of the provincial division] a court in whose area of jurisdiction the person is detained [, designated by the Judge President of that division for that purpose] and such detention must be reviewed in this manner immediately after the expiry of every subsequent period of 30 days.</p>	<p>Restriction of detention</p> <p>29. (1) No person may be detained in terms of this Act for a longer period than is reasonable and justifiable and any detention exceeding 30 days must be reviewed immediately by a judge of the High Court of the provincial division in whose area of jurisdiction the person is detained, designated by the Judge President of that division for that purpose and such detention must be reviewed in this manner immediately after the expiry of every subsequent period of 30 days.</p>	<p>(1) Replace section as follows: "No person may be detained in terms of this Act for longer than 30 calendar days without a hearing before a judge of the Magistrates Court in whose area of jurisdiction the person is detained. Such detention must be reviewed in this manner immediately after the expiry of every subsequent period of 30 days".</p> <p>(1): It is preferable that a review of detention should be undertaken by the High Courts. This policy decision, should, therefore, be very carefully considered in the light of the very patchy and sometimes significantly worrying conduct of some magistrates.</p> <p>(1) No indication as to what the terms "immediately" or "immediately after" mean. When is the review application to be heard by a magistrate - within a day or two of the 30 days expiring, or would a week - or more suffice? What sanctions apply if this is not done in time?. This is vague for what is a critical oversight mechanism.</p> <p>Who shall bear the onus of establishing legality or illegality, if any one, and what exactly is to be reviewed? The Bill should provide that these applications are to be heard in open court unless good reasons exist for the application to be heard in chambers; and that</p>	<p>LHR</p> <p>LRC</p> <p>LSSA</p> <p>LSSA</p>

<p>(2) The detention of a child must be used only as a measure of last resort and for the shortest [appropriate] possible period of time, taking into consideration the principle of family unity and the best interest of the child.”.</p>	<p>(2) The detention of a child must be used only as a measure of last resort and for the shortest appropriate period of time.</p>	<p>the detainee is invited to make written and/or oral representations; receives the Department's representations, and be allowed a reasonable opportunity to consult an attorney and make his or her own representations; this process can take days. In terms of the Immigration Act, 10 days is set aside for the preliminary processes. If the court reserves judgment on the matter and takes weeks to decide the issue, at what point in time does the continued detention after any given 30-day period become unlawful if the court has not yet ruled on the matter?</p> <p>(2) The detention of a child must be in line with the conditions as contemplated in Section 28(1)(g) of the South African Constitution, taking into consideration the principle of family unity and the best interests of the child.</p>	<p>LHR</p>
<p>25 The following section is hereby substituted for section 30 of the principal Act:</p> <p>“Identity document to refugee</p> <p>30. A refugee must be issued with an identity document containing the prescribed particulars.”.</p>	<p>Identity document to refugee</p> <p>30. (1) A refugee must be issued with an identity document which must contain- (a) an identity number of the holder compiled in the prescribed manner; (b) the holder's surname, full forenames, gender, date of birth and the place or country where he or she was born; (c) the country of which the holder is a citizen, if any; (d) a recent photograph of the holder; and (e) the holder's fingerprints or other prints, taken and displayed in the prescribed manner.</p> <p>(2) An identity document referred to in subsection (1) must be in the prescribed form.</p>	<p>No time is specified, what is the necessity of duplicating refugee status permits and refugee identity documents. Can the two documents not be consolidated?</p> <p>The validity of documents issued to refugees be of the period of not less than three years and preferably of five years. This will remove a lot of current bureaucratic work related to renewals of documents every after two years. This will also enable refugees to have travel documents of longer duration.</p> <p>The documents issued to refugees should be aligned with other documents legally issued to foreigners in the country (in terms of colour etc).</p> <p>(30) A refugee must be issued with an identity document “issued in terms of the Identification Act, 1997(Act No. 68 of 1997)¹ containing the prescribed particulars. no reason to provide recognised refugees with unrecognisable documents that foster discrimination. Identification Act will also have to be amended to apply to refugees.</p> <p>(30) Given the present delays in complying with requests for refugee</p>	<p>Research Unit</p> <p>UNHCR</p> <p>LHR</p> <p>LRC</p>

¹ Refugees Bill (as introduced in the National Assembly), B135-98, Section 30 (2), 20.

		ID documents, implementation of this provision in a meaningful way will require considerable additional resources.	
<p>27 The following section is hereby substituted for section 34 of the principal Act:</p> <p>"Obligations of refugees</p> <p>34. (1) A refugee must— (a) abide by the laws of the Republic; and (b) inform the Refugee Reception Office of his or her residential address and of any changes to that address.</p> <p>(2) The address contemplated in subsection (1) is, for the purposes of this Act, deemed to be the address to which the service of processes or correspondence may be made.".</p>	<p>Obligations of refugees</p> <p>34. A refugee must abide by the laws of the Republic.</p>	<p>(1) 'Inform any the Refugee Reception Office of his or her residential address and of any changes to that address so provided, as prescribed.' <i>lack of clarity on how, when and to whom should inform a Refugee Reception Office.</i></p> <p><i>Specify who within the Refugee Reception Office will be responsible for adding this information to a refugee's file and the time period within which this information will be updated on a file upon its receipt.</i></p> <p>(1)(b) What is to be done for the many refugees who have no such fixed address of correspondence?</p> <p>Include the words "Upon request of the RSDO," in the beginning of the respective sub-sections.</p>	<p>LHR</p> <p>UCT Law Clinic</p>
<p>28 The following section is hereby inserted in the principal Act after section 34:</p> <p>"Obligations of asylum seekers</p> <p>34A. (1) An asylum seeker must— (a) abide by the laws of the Republic; (b) renew his or her permit in person as required at any Refugee Reception Office in the Republic; and (c) inform the Refugee Reception Office of his or her residential address and of any changes to that address so provided.</p> <p>(2) The address contemplated in subsection (1) is, for the purposes of this Act, deemed to be the address to which the service of processes or correspondence may be made.".</p>	<p>34A. New insertion specifying the obligations of Asylum seekers in contrast Refugees in 34 above</p>	<p>(1)(b) What happens if an Asylum Seeker is detained and unable to attend in person and his/her permit is not renewed for a period of over 90 days?</p> <p>34 & 34A. Obligation on the Department to inform refugees and asylum seekers of these requirements should be spelt out and special provision should be made in regulations to ensure that notification of a change of address is made is unproblematic as possible.</p>	<p>UCT Law Clinic</p> <p>LRC</p>

<p>29 The following section is hereby substituted for section 36 of the principal Act:</p> <p>"Withdrawal of refugee status</p> <p>36. (1) Subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and after consideration of all the relevant facts, the Director-General may withdraw a person's refugee status if such person—</p> <p>(a) has been recognised as a refugee due to fraud, forgery or false or misleading information of a material or substantial nature in relation to the application; (b) has been recognised as a refugee due to an error, omission or oversight committed by the Refugee Status Determination Officer in good faith; or (c) ceases to qualify for refugee status in terms of section 5.</p> <p>(2) A person whose refugee status is withdrawn in terms of subsection (1) must be dealt with in terms of the Immigration Act, unless he or she lodges an appeal in terms of subsection (3).</p> <p>(3) A person whose refugee status is withdrawn in terms of subsection (1) may lodge an appeal to the Minister within a period of 30 days from the date of receipt of the decision."</p>	<p>Withdrawal of refugee status</p> <p>36(1) 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-- (a) the Standing Committee must inform such person of its intention of withdrawing his or her classification as refugee and the reasons therefore; and (b) such person may, within the prescribed period, make a written submission with regard thereto.</p> <p>(2) After consideration of all material facts and with due regard for the rights set out in section 33 of the Constitution, the Standing Committee may withdraw such recognition and such person may be dealt with as a prohibited person under the Aliens Control Act, 1991.</p> <p>(3) Any refugee whose recognition as such is withdrawn in terms of subsection (1) may be arrested and detained pending being dealt with in terms of the Aliens Control Act, 1991.</p>	<p>(1) When this section is read in conjunction with Section 27(c) of the Act (specifically withdrawal of refugee status because circumstances no longer justify continued recognition), it proves to be problematic because the determination of whether or not the applicant is still a refugee is taken by the Refugee Appeals Authority. It does not follow, therefore, that as per Section 36(4), an appeal in such a situation may be lodged to the Refugee Appeals Authority itself.</p> <p>(1) Replacement of the determination by the standing committee with a determination by the Director-General (even with a right of appeal) gives rise to concerns of raised in 22(1) above of the independence and no-bias in such appeals.</p> <p>(2) Replace with "Where a refugee fails in their appeal against the withdrawal of refugee status the Director General must allow such person a period of 60 days to either leave the country or regularise his or her status in the country in terms of the Immigration Act.</p>	<p>UCT law Clinic</p> <p>LHR</p>
<p>Offences and penalties</p> <p>30. Section 37 of the principal Act is hereby amended by the deletion of the word "or" at the end of paragraph (c) and the addition of the following paragraphs:</p>	<p>Offences and penalties</p> <p>37. (c) without just cause refuses or fails to comply with a requirement of this Act; or (d) contravenes or fails to comply with any provision of this Act, if such contravention or failure is not elsewhere declared an-</p>	<p>The term "illegal foreigner" should be defined for the purposes of this Act. The Immigration Act definition of "illegal foreigner" does not extend to the undocumented asylum seeker, in light of Section 21(4) of the Act and Article 31 of the UN Convention.</p> <p>(d) remove this section in its entirety, as the section is vague and unintelligible.</p>	<p>UCT Law Clinic</p> <p>LHR</p>

<p>(e) intentionally assists a person to receive public services to which such person is not entitled; or</p>	<p>offence, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.</p> <p>Immigration Act S.49 (4) Anyone who intentionally facilitates an illegal foreigner to receive public services to which such illegal foreigner is not entitled shall be guilty of an offence and liable on conviction to a fine.</p>	<p>(d) The penalty for this same offence under Section 49(4) of the Immigration Act 13 of 2002 is less than the penalty for the offence in the proposed amendment. Should be the same.</p> <p>Propose "for a period not exceeding three months"</p> <p>(d) Offences created differ in seriousness and thus should attract different sentences. A revision of this section is necessary in order to provide for appropriate sentence for an offence based on the gravity of the crime.</p>	<p>UCT Law Clinic</p> <p>UNHCR</p>
<p>(f) provides false, inaccurate, unauthorised documentation or benefit to a person, or otherwise assists such person to disguise his or her identity or status, or accepts undue financial or other considerations to perform an act or to exercise his or her discretion in terms of this Act,".</p>	<p>(f) divide into 37(f) provides false, inaccurate, unauthorised documentation or benefit to a person, or otherwise assists such person to disguise his or her identity or status, or</p> <p>37(g) accepts undue financial or other considerations to perform an act or to exercise his or her discretion in terms of the Act.</p> <p>New proposed section 37(2) "A conviction in terms of subsection (1) must neither suspend the asylum application nor affect the status of the asylum seeker or refugee." See section 22 (6) which is relevant here on withdrawal – this section is not intended for the withdrawal of refugee status.</p>	<p>(f) divide into 37(f) provides false, inaccurate, unauthorised documentation or benefit to a person, or otherwise assists such person to disguise his or her identity or status, or</p> <p>37(g) accepts undue financial or other considerations to perform an act or to exercise his or her discretion in terms of the Act.</p> <p>New proposed section 37(2) "A conviction in terms of subsection (1) must neither suspend the asylum application nor affect the status of the asylum seeker or refugee." See section 22 (6) which is relevant here on withdrawal – this section is not intended for the withdrawal of refugee status.</p>	<p>LHR</p> <p>LHR</p>
<p>Repeal of sections 39 and 40 of Act 130 of 1998</p> <p>32. Section 39 and 40 of the principal Act are hereby repealed.</p>	<p>Training of staff</p> <p>39. The Director-General must, in consultation with the Standing Committee, take such steps as to ensure the appropriate training of any person- (a) to whom powers are delegated in terms of this Act; or (b) who is appointed in any capacity in terms of this Act.</p>	<p>This Section should not be repealed if the issue of training is removed from Section 8 of the Act (Section 10 of the Bill.), as ongoing training is vital for RSDO's.</p>	<p>UCT Law Clinic</p>
<p>Transitional provisions and savings</p> <p>33. (3) The Minister must appoint one of the members contemplated in subsection</p>	<p>New Insertion</p>	<p>There is a potential problem if any members of the Standing Committee or the Refugee Appeal Board who are not legally qualified are deemed to be members of the newly established</p>	<p>UCT Law Clinic</p>

(2) as chairperson of the Refugee Appeals Authority.

Refugee Appeals Authority once the Amendment Act takes effect. This is because all members of the Refugee Appeals Authority must be legally qualified (in terms of Section 8(B)(4) of the Bill).

Comments on the Explanatory Memorandum (Legal Resource Centre)

The "main objective" of the Amendment Act is to not to substitute definitions (para 1.1). The changes are not merely definitional, and in fact primarily relate to two substantive changes:

(1) The decrease in judicial oversight over the process; and

(2) The increase in control by the Director-General and his or her appointees. (this is particularly disturbing in the light of the Ruyobeza case where the Court was at pains to promote the independence of the Standing Committee)

For an Act to be amended so as to bring it into line with "departmental and governmental policies" (para 1.2), rather than the other way around does not appear to be the appropriate way to deal with issues.

It is surprising, and indeed incorrect, to suggest that there are no constitutional implications (para 3). Issues around healthcare and access to social services are of particular relevance.

The memorandum itself suggests that the new institutional arrangements will have financial and capacity implications (para 4). This is particularly concerning in the light of the outcome of various recent instances of litigation (e.g. the *Tafira* case), in which it was found that asylum and refugee system is already unmanageably overburdened. Simply replacing non-functioning institutions with new ones is no guarantee that the structural problems will disappear.

