

## **DRAFT REFUGEE BILL, 1998**

(To be introduced by the Minister of Home Affairs)

### **BILL**

**To provide for procedures for the handling of applications for asylum; the recognition of refugee status in the Republic of South Africa; the rights and obligations flowing from such status; to give effect to relevant refugee conventions; and for matters connected therewith.**

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BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:

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# CHAPTER 1

## Interpretation and Administration of Act

### Definitions

1. In this Act, unless the context otherwise indicates

**"Aliens Control Act, 1991,"** means the Aliens Control Act, 1991 (Act No. 96 of 1991);

**"Asylum seeker"** means a person who is seeking recognition as a refugee in the Republic;

**"asylum seeker permit"** means a permit issued in terms of section 17;

**"Appeal Board"** means the Refugee Appeal Board established in terms of section 6;

**"child"** means any person under the age of 18 years;

**"Department"** means the Department of Home Affairs;

**"dependent"** in relation to a refugee, means the spouse, any unmarried dependent child or any destitute, aged or infirmed member of the family of the refugee;

**"Director-General"** means the Director-General: Home Affairs;

**"Minister"** means the Minister of Home Affairs;

**"prescribed"** means prescribe by regulation;

**"refugee"** means any person who is a refugee in terms of section 2;

**"Refugee Receiving Office"** means a Refugee Receiving Centre established in terms of section 5(1 );

**"Refugee Receiving Officer"** means a Refugee Receiving Officer in terms of section 5(2);

**"Refugee Status Determination Officer"** means a Refugee Status Determination Officer appointed in

terms of section 5(2);

**"regulation"** means any regulation made under this Act;

**"Republic"** means the Republic of South Africa;

**"social group"** includes persons of a particular gender, sexual orientation, disability, class or caste;

**"Standing Committee"** the Standing Committee for Refugee Affairs established in terms of section 6;

**"this Act"** includes the regulations made thereunder; and

**"UNHCR"** means the United Nations High Commissioner for Refugees

### **Meaning of refugee for the purposes of this Act**

2. (1) Subject to the provisions of this section. a person shall be recognised as a refugee for the purposes of this Act if -

- a. owing to well founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his or her former habitual residence is unable or owing to such fear, is unwilling to return to it;
- b. owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either 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 in another place outside his or her country of origin or nationality; or
- c. he or she is a member of a group or category of persons declared to be refugees in terms of subsection (2).

(2) Subject to the provisions of subsection (3), the Minister may, if he or she considers that any group or category of persons are refugees as defined in paragraph (a) or (b) of subsection (1), declare such group or category of persons to be refugees either unconditionally or subject to such conditions as the Minister may impose: Provided that such a group shall until the contrary is proved be refugees in accordance with subparagraphs (a) and (b).

(3) The Minister may revoke any declaration made in terms of subsection (2) by notice in the Gazette.

(4) A person shall be excluded from recognition of refugee status if -

- a. he or she has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instrument drawn up to make provision in respect of such crimes;
- b. he or she has committed a serious non-political crime outside the Republic prior to his or her admission to the Republic as a refugee; or
- c. he or she has been guilty of acts contrary to the purposes and principles of the United Nations or the Organisation for African Unity.

(5) A person shall cease to be recognised as a refugee for the purposes of this Act if

- a. he or she voluntarily re-avails himself or herself of the protection of the country of his or her nationality;
- b. having lost his or her nationality, he or she by some voluntarily and formal act re-acquires it;
- c. he or she becomes a citizen of the Republic or acquires the nationality of some other country and enjoys the protection of the country of his or her new nationality;
- d. he or she voluntarily re-establishes himself or herself in the country which he or she left;
- e. he or she can no longer continue to refuse to avail himself or herself of the protection of the country of his or her nationality because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist;
- f. he or she is ordered to be removed from the Republic in terms of section 30; or
- g. he or she has committed a non-political crime outside the Republic after his or her admission into the Republic.

### **Administration of Act**

3. (1) This Act shall be administered with due regard to

- i. the Convention Relating to the Status of Refugees (UN, 1951);
- ii. the Protocol Relating to the Status of Refugees (UN, 1967);
- iii. the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU, 1969); and
- iv. the Universal Declaration of Human Rights (UN, 1948).

(2) The Director-General shall be responsible for the administration of this Act, and shall in addition to the specific powers, functions and duties conferred or imposed upon him or her by this Act, take such steps as deemed reasonable and necessary to ensure that the objectives of the Act are achieved.

### **Delegations**

4. (1) The Director-General may

- a. delegate any power granted to him or her under this Act, except the power referred to in section 3(2) or this section, to an officer in the Department, and grant authority that a duty assigned to him or her in terms of this Act may be performed by such officer.

(2) A power so delegated and a duty so authorised shall be exercised or performed, subject to the directions of the Director-General, who may at any time withdraw such delegation or authority.

(3) A delegation under subsection (1)(a) does not prevent the Director-General from exercising the power in question himself or herself.

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## **CHAPTER 2**

### **Establishment of Refugee Receiving Offices; Standing Committee for Refugee Affairs and Refugee Appeal Board Refugee Receiving Office**

5 (1) The Director-General may establish as many Refugee Receiving Offices in the Republic as he or she after consultation with the Standing Committee deems necessary for the proper and effective exercising and performance of the functions and duties imposed or conferred upon such committees under this Act.

(2) Each Refugee Receiving Office shall consist of at least one Refugee Receiving Officer and one Refugee Status Determination Officer who shall be appointed

- a. for the term of office as determined by the Director-General; and
- b. according to their qualifications, experience and knowledge of refugee matters which must render them suitable and capable to perform properly the functions and duties of their office.

### **Standing Committee and Refugee Appeal Board**

6. (1) There is hereby established

- a. a Standing Committee for Refugee Affairs; and
- b. a Refugee Appeal Board,

which shall perform the functions, exercise the powers and carry out the duties, assigned to, conferred on or imposed upon it in terms of this Act.

(2) The Standing Committee and Appeal Board shall function without any bias and shall be independent.

(3) The seat of the Standing Committee and the Appeal Board shall be determined by the Minister.

### **Constitution of Standing Committee for Refugee Affairs**

7. (1) The Standing Committee for Refugee Affairs shall consist of

- a. a chairperson; and
- b. any number of members which the Minister may determine having regard to the likely volume of work to be performed by the committee, appointed by the Minister.

(2) The chairperson shall be legally qualified.

### **Constitution of Refugee Appeal Board**

8. (1) The Refugee Appeal Board shall consist of

- a. a chairperson; and
- b. at least two members, appointed by the Minister.

(2) The chairperson shall be legally qualified and shall have at least five years experience in the legal field.

### **Suitability of persons to become members of the Standing Committee and Refugee Appeal Board**

9. (1) Persons shall be appointed as members of the Standing Committee and the Refugee Appeal Board with due regard to their experience, qualifications and expertise, as well as their capability to properly perform the functions and duties of their office.

(2) No person shall qualify for appointment as a member of the Standing Committee or the Appeal Board

1. unless he or she is a South African citizen; or
- b. if he or she has been convicted of any offense for which he or she was sentenced to imprisonment without the option of a fine.

### **Meetings of Standing Committee and Refugee Appeal Board**

10. (1) Meetings of the Standing Committee and the Refugee Appeal Board shall respectively be convened by their chairpersons.

(2) The majority of members of the Standing Committee or the Refugee Appeal Board shall constitute a quorum.

(3) Decisions of the two bodies shall be taken by a majority of votes, and in the case of an equality of votes, the chairperson shall have a casting vote.

### **Periods of office of members of Standing Committee and Refugee Appeal Board**

11. (1) A member of the Standing Committee or the Refugee Appeal Board shall be appointed for five years.

(2) Any member shall upon expiry of his or her term of office be eligible for reappointment.

(3) Any such member may resign by tendering a written notice of resignation to the Minister.

### **Removal from office**

12. Any member of the Standing Committee or Refugee Appeal Board may be removed from office by the Minister on account of misconduct or inability to perform properly the functions and duties of his or her office..

#### **Filling of vacancies**

13. The Minister may appoint at any time a suitable person in a vacancy which occurred under the circumstances contemplated in section 11(3) or 12, or where a member has died, for the remainder of the term of office of the member in respect of whom the vacancy occurred.

#### **Remuneration**

14. The members of the Standing Committee and the Refugee Appeal Board shall receive such remuneration, allowances and other benefits as determined by the Minister in consultation with the Minister of Finance.

#### **Administrative staff of Standing Committee and Refugee Appeal Board**

15. The administrative work connected with the performance of the functions, the exercise of powers and the carrying out of duties of the Standing Committee and the Refugee Appeal Board, shall be performed by staff of the Department, designated by the Director-General for that purpose.

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### **CHAPTER 3**

#### **Application for asylum**

##### **Application for Asylum**

16. (a) Any person who wishes to enter the Republic or who is within the Republic, whether he or she has entered the Republic legally or illegally, who intends to apply for asylum must in accordance with the prescribed procedures apply in person to the Refugee Receiving Office.

(b) Any immigration officer or public officer to whom a person who intends to apply for asylum has reported must hand over that person to a Refugee Receiving Officer.

(c) Notwithstanding the provision of any law to the contrary, no proceedings shall be instituted or continued against any person or any member of his or her family in respect of his or her unlawful entry into or presence within the Republic if

- i. such person applies in terms of subsection (1) for recognition of refugee status, until a decision has been made on the application and, where applicable, such person has had an opportunity to exhaust his or her right of appeal in terms of section 23; or
- ii. such person has been recognised as a refugee.

##### **Asylum seeker permit**

17. (1) The refugee receiving officer must, pending the outcome of an application in terms of section 16(a) issue to the applicant and to any dependent of the applicant who has accompanied him or her, if any, an asylum seeker permit on the prescribed form to temporarily sojourn in the Republic subject to such conditions endorsed by him or her in the permit.

(2) Upon the issuing of a permit in terms of subsection (1) any permit issued to the applicant and to his or her dependent, if any, in terms of the Aliens Control Act, 1991, shall become null and void, and must forthwith be returned to the Director-General for cancellation.

(3) A refugee receiving officer may from time to time extend the period for which a permit has been

issued under subsection (1), or amend the conditions subject to which a permit has been so issued, and as from the date of such amendment the permit shall be deemed to have been issued for such extended time or subject to such amended conditions.

(4) A permit issued to any person under subsection (1) shall lapse if he or she departs from the Republic without the consent of the Minister.

(5) The Minister may at any time withdraw an asylum seeker permit issued under this section if

- a. the applicant contravenes any conditions endorsed on that permit;
- b. his or her application has been found to be manifestly unfounded, abusive or fraudulent;
- c. the application for refugee status or asylum has been rejected; or
- d. he or she has been convicted of an offense which renders him or her liable for removal from the Republic under the provisions of section 30.

(6) Anyone who fails to return a permit in accordance with subsection (2), or to comply with any condition set out in a permit issued under this section, shall be guilty of an offense and liable on conviction to a fine or to imprisonment for a period not exceeding five years, or to both such fine or imprisonment.

### **Detention of asylum seeker**

18. If the Minister has withdrawn an asylum seeker permit in terms of section 17(5), he or she may, subject to the provisions of section 31, cause the applicant and any dependent to be arrested and detained pending the finalization of any application in this regard, in the manner and place determined by him or her with due regard to human dignity.

### **Fingerprints**

19. (1) Every person who applies for refugee status in terms of section 16(a) shall have his or her fingerprints taken in the prescribed manner.

(2) Subsection (1) shall also apply to any dependent of the applicant.

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## **CHAPTER 4**

### **Granting or Rejecting of Refugee Status and Reviews and Appeals**

#### **Powers, functions and duties of Refugee Status Determination Officers with regard to application for asylum**

20. (1 ) Upon receipt of an application for asylum in terms of section 16(a) 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 receiving officer;
- b. where necessary, may consult with and invite a UNHCR representative to furnish his or her opinion or to furnish information on specified matters; and
- c. provide the UNHCR representative with such information as requested.

(2) When considering such application the determination officer must

- a. hear oral evidence;
- b. allow legal representation;
- c. ensure that the applicant fully understands the procedures, his or her rights and responsibilities and the evidence presented.

(3) The Refugee Status Determination Officer may at the conclusion of the hearing -



- a. recognize refugee status and grant asylum;
- b. reject the application as manifestly unfounded, abusive or fraudulent;
- c. reject the application as unfounded;
- d. refer the application or any question of law to the Standing Committee.

(4) Upon making a decision in terms of subsection (3)

- a. written reasons must be furnished to the applicant within 5 working days after the date of the decision;
- b. the record of proceedings and a copy of the reasons referred to in subparagraph (a) shall be submitted to the Standing Committee within 10 working days after the date of the decision.

### **Powers, functions and duties of Standing Committee**

21. The Standing Committee -

- a. shall, subject to the provisions of this Act, formulate and implement policy and procedures for the determination of refugee status and granting of asylum;
- b. may oversee, regulate and supervise the work of the refugee receiving and determination officers;
- c. may liaise with representatives of the UNHCR or any non
- d. Governmental organization on matters it deems appropriate;
- e. advise the Minister or Director-General on any matter it deems appropriate, or referred to it by the Minister or Director-General;
- f. shall on application review decisions by the Refugee Status Determination officers of manifestly unfounded matters;
- g. shall decide any matter of law referred to it by a Refugee Status Determination officer;
- h. shall monitor the decisions of the Refugee Status Determination Officer; and
- i. shall determine under what conditions asylum seeker permit may be issued.

### **Matters which may be referred to Standing Committee for review**

22. (1) The following matters may in the prescribed manner be referred to the Standing Committee:

- a. any decision taken by a Refugee Status Determination Officer in terms of section 20(3)(b); or
- b. any matter referred to such committee in terms of section 20(3)(d).

(2) Before reaching a decision, the Standing Committee

- a. may invite the UNHCR representative to make oral or written representations;
- b. may request the attendance of any person who, in its opinion, is in a position to provide the committee with information relevant to the matter being dealt with;
- c. may on its own accord, make such further enquiry and investigation into the matter being dealt with as it may deem appropriate;
- d. may request the applicant to appear before the Committee and to provide such other information as it may deem necessary; and shall allow legal representation upon the request of the applicant.

(3) The Standing Committee may

- a. set aside a decision made in terms of section 20(3)(b) and make such other decision in terms of section 20(3)(a) or (c) as it deems fit; or
- b. decide on the question of law referred to it under section 20(3) and inform the Refugee Status Determination Officer concerned of its decision in the prescribed manner and time.

### **Matters which may be referred to the Refugee Appeal Board**

23. The following matters may in the prescribed manner and time be referred to the Appeal Board:

- a. Any decision taken by the Refugee Status Determination Officer in terms of section 20(3)(a) or



- (c); or
- b. Any matter which the Minister or the Standing Committee deems appropriate for determination by the Appeal Board.

#### **Procedures to be followed by Refugee Appeal Board**

24.(1) Before reaching a decision in an appeal, the Appeal Board

- a. may invite the UNHCR representative to make oral or written representations;
- b. may refer the matter back to the Standing Committee for further inquiry and investigation;
- c. may request the attendance of any person who, in its opinion, is in a position to provide the board with information relevant to the matter being dealt with;
- d. may on its own accord make such further inquiry and investigation into the matter being dealt as it may deem appropriate;
- e. may request the applicant to appear before the Board and to provide any such other information as it may deem necessary;
- f. shall allow legal representation upon the request of the applicant.

(2) The Refugee Appeal Board may

- a. set aside, amend or substitute any decision taken by a Refugee Status Determination Officer in terms of section 20(3)(a) to (c), inclusive or a Standing Committee in terms of section 23(a); or
- b. advise the Minister or the Standing Committee in the prescribed manner and time on any matter referred to it in terms of section 23(c).
- c.

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## **CHAPTER 5**

### **Rights and Obligations of Refugees**

#### **Non-return of refugees and members of their families**

25. Notwithstanding the provisions of any other law to the contrary, no person shall be refused entry into the Republic, expelled, extradited or returned from South Africa 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 or remain in a country where:

- a. he or she may be subjected to persecution on account of his or her race, religion, nationality, membership of a particular social group or political opinion; 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.

#### **Rights of refugees**

26. A refugee shall -

- a. enjoy full legal protection, which shall include the rights set out in Chapter 2 of the Constitution except for those rights where non-citizens have been expressly excluded;
- b. be entitled to apply for naturalization in terms of the South African Citizenship Act, 1995, after 5 years from the date on which he or she was recognised as a refugee;
- c. be entitled to a formal written recognition of refugee status;
- d. be entitled to an identity document referred to in section 32; and
- e. be entitled to a South African travel document as referred to in section 34.

#### **Unaccompanied child**

27. (1) Any child which is suspected to be a person referred to in section 2, and who is found under

circumstances which clearly indicate that he or she is a child in need of care as contemplated in the Child Care Act, 1983 (Act No. 71 of 1983), he or she shall forthwith be brought before the Children's Court for the district in which he or she was found.

(2) The Children's Court may order that a child referred to in subsection (1) be assisted in applying for asylum in terms of this Act.

### **Right of residence in Republic by a dependent of a refugee**

28. (1) Where a dependent of a recognised refugee is within the Republic in accordance with a asylum seekers permit or residential permit issued to him or her in terms of this Act and ceases to be a dependent by reason of his or her marriage, his or her attaining the age of 18 years or the cessation of his or her dependence upon 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 Act.

(2) Upon the death of a recognised refugee or upon his or her divorce, every person who, immediately before such death or divorce was within the Republic in terms of this Act as a dependent of such recognised refugee, may be permitted to continue to remain within the Republic in accordance with the provisions of this Act.

(3) Nothing contained in this Act shall prevent a dependent of a recognised refugee or a person who has, in terms of subsection (1) or (2), been permitted to continue to remain in the Republic, from applying for recognition as a refugee and for asylum in accordance with the provisions of this Act.

### **Obligations of refugees**

29. A refugee must abide by the laws of the Republic.

## **CHAPTER 6**

### **Supplementary and general provisions**

#### **Removal of refugees from the Republic**

30. (1) No refugee shall be removed from the Republic save on grounds of national security or public order.

(2) A removal under subsection (1) shall only be ordered by the Minister with due regard to the provisions of section 33 of the Constitution.

(3) If an order is made under this section for the removal from the Republic of a refugee, any dependent of such refugee who has been granted asylum, may be included in such an order and removed from the Republic: Provided that such dependent shall be provided reasonable opportunity to apply for asylum under this Act.

(4) Any refugee ordered to be removed in terms of this section may, subject to section 32, be detained pending his or her removal from the Republic.

#### **Restriction of detention**

31. No person shall be detained in terms of section 18 or pending his or her removal in terms of section 30 for a longer period than is reasonable and justifiable: Provided that any detention exceeding 30 days shall be reviewed immediately, by a judge of the High Court of the provision division in whose area of jurisdiction the person is detained, designated by the Judge President of that division for the purpose: and provided further that such detention shall be reviewed in this manner after the expiry of every subsequent period of 30 days.

**Identity document to refugees granted asylum**

32. (1 ) A refugee granted asylum shall be issued with an identity document which must contain the following particulars of the bearer thereof:

- a. an identity number compiled in the prescribed manner;
- b. his or her surname, full forenames, gender, date of birth and the place or country where he or she was born;
- c. the country of which he or she is a citizen;
- d. a recent photograph of himself or herself; and
- e. the prescribed fingerprints or prints.

(2) An identity document referred to in subsection (1) shall be similar to an identity document issued under the Identification Act, 1997 (Act 68 of 1997).

**Travel document to refugee granted asylum**

33. A refugee granted asylum may apply for a travel document in the prescribed manner.

**Reception of, and accommodation for refugees in the event of mass influx**

34. (1) The Minister may, after consultation with the UNHCR representative and in consultation with the Premier of the province concerned, designate areas, centres or places for the reception and accommodation of refugees or any specific category or group of refugees who entered the Republic on a large scale: Provided that a centre or place of accommodation shall only be designated after consultation with the Minister of Correctional Services, the Minister of Safety and Security and the Minister of Defence.

(2) The Minister may appoint any person as a manager of an area, centre or place as designated under subsection (1).

(3) The Minister may at any time withdraw the designation of an area, centre or place as contemplated in subsection (1).

**Withdrawal of Refugee Status**

35 (1) If a person has been erroneously recognised as a refugee on an application which contains any materially incorrect or false information, or was so recognised due to fraud, forgery, false or misleading representation of a material or substantial nature in relation to the application -

- a. the Standing Committee shall inform such person of its intention of withdrawing his or her classification as refugee and the reasons therefor;
- b. such person shall have the right to submit in writing within the prescribed period a submission with regard thereto; and
- c. after consideration of all material facts, the Standing Committee may withdraw such classification and such person may be dealt with as a prohibited person under the relevant provisions of the Aliens Control Act, 1991.

(2) The provisions of section 18 shall apply on a similar basis, with the necessary adjustments, in respect of a decision taken in terms of subsection (1)(c).

**Offences and penalties**

36. Any person who -

- a. for the purpose of entering or remaining in the Republic, or of facilitating or assisting the entering into or residence in the Republic of himself or herself or any other person, whether in contravention of this Act or not, commits any fraudulent act or makes any false representation by conduct, statement or otherwise;

- b. fails to comply with or to observe or contravenes the conditions subject to which or the purpose for which any permit has been issued to him or her under this Act;
- c. without just cause refuses or fails to comply with a requirement made under 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 offense,

shall be guilty of an offense and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

## **Regulations**

37 (1) The Minister may make regulations relating to

- a. a large scale influx of refugees into the Republic;
- b. the manner and period in which a matter must be referred to the Standing Committee;
- c. the manner and period in which a matter could be referred to the Appeal Board for review;
- d. the forms to be used under certain circumstances and the permit to be issued pending the outcome of an application for refugee status;
- e. any other matter which is deemed necessary or expedient to prescribe in order that the objects of the Act may be achieved; and
- f. the provision of interpreters at all levels of the determination process.

(2) A regulation in terms of subsection (1)(a) shall only be made in consultation with any province to which the influx is taking place.

## **Transitional arrangements**

38. Any person who, at the commencement of this Act, is in the process of applying for asylum or is a recognised refugee shall be deemed to have applied for asylum or recognised as such under the provisions of this Act, and the provisions of this Act shall in all respects apply to such applicant or his or her application or such refugee, as the case may be.

## **Short title and commencement**

39. This Act shall be called the Refugees Act, 1998, and shall come into operation on a date set by the President by proclamation.