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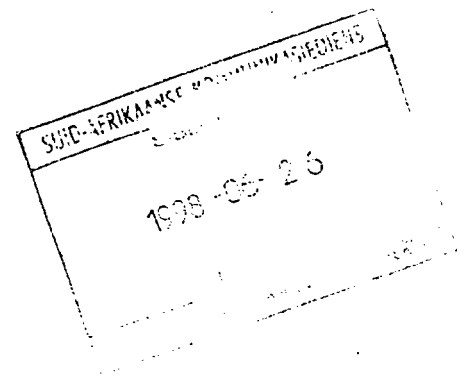
The Draft Refugee White Paper is hereby published by the Department of Home Affairs for general information and comment from interested parties. Comment must reach the Department before 20 July 1998 at the following address:

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Date: 19 June 1998



DRAFT REFUGEE WHITE PAPER

**Presented to the Minister of Home Affairs
The Honorable M G Buthelezi**

18 June 1998

Submitted by

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DRAFT WHITE PAPER

PART 1 INTRODUCTION BY MR A S MOKOENA
Director-General of Home Affairs

The process to date

The formulation of a new policy on refugees within our Democratic Government provides us with a rare and historic opportunity to establish a formal and comprehensive system of refugee protection in South Africa. This system will comprise the policies and principles, which will govern the status, rights and standards of treatment which refugees may claim in South Africa. ,

The Government of South Africa is committed to the granting of asylum to refugees; to provide them protection; and to search for solutions in line with their obligations and responsibilities which it assumed under the International Law, as well as by incorporating a number of basic principles and standards in the Constitution.

Every effort ~~is~~ being made to ensure that the process, of policy formulation is inclusive, transparent and interactive and that as many role players as possible are included in the process.

We take the opportunity to express our most sincere gratitude to the members of the Draft White Paper for Refugee Affairs Task Team, who despite time constraints managed to deliver this Paper ~~timeously~~ to coincide with the Africa Refugee Day. This Task Team comprised of

Mr A F Tredoux	Department of Home Affairs (Chairman)
Dr Barney Pityana / Mr Jody Kolapen	SAHRC
Ms V L A De La Hunt	UCT Legal Aid Clinic
Mr Babini Vantyu	LHR
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Mr M Schoeman	Department of Home Affairs (Secretary),

Their constructive contribution as well as their rime and energy is commendable.

The Draft White Paper for Refugee Affairs

The refugee policy of the Government of South Africa is premised upon two sets of inter-related threshold considerations. On the one hand the policy is constructed so as to reflect but also to enable the fulfillment of the international and constitutional obligations and on the other it touches on a number of other directly and indirectly related state and national interests and priorities. The most important of these priorities concern the migration control objectives, law and order, concerns over gun-running, drug trafficking and racketeering, money laundering and international crime syndicates, and cartels, various other aspects

of national and state security, **social** and economic interests, as well as bilateral, regional and international relations. All these enable us to shape the **policy** in a carefully and properly **balanced** manner towards the Protection of the refugee imperatives.

The main policy positions of the government are to effect in legal and practical terms the following distinctions:

- The **granting** of asylum to refugees and their protection in South African **territory** is a matter **fundamentally** of **securing** human rights protection. The Government will provide asylum and refugee protection to those persons who have lost this in their countries of origin, and **have fled** into, or are forced to remain in South Africa for reasons or circumstances which are recognised in international refugee and human rights law as giving rise to the need for international protection.
- The government does not consider the refugee protection regime to be an alternative way to obtain permanent immigration into South Africa. It does not consider refugee protection to be the door for those who wish to enter South Africa by the expectation for opportunities for a better life or a brighter future. It does not agree that it is appropriate to consider as refugees, persons fleeing their countries of origin solely for reasons of poverty or other social, economic or environmental hardships.

The basic but fundamental philosophy in the government's approach to refugee policy is unambiguous. As far as refugees are concerned, the government recognises that its responsibilities and obligations, and the quality and quantity of the measures which it is called upon to deliver pursuant to these obligations are set out in an essentially mandatory manner in international legal and human rights standards. The government has assumed these obligations both through its accession to the relevant international refugee and human rights instruments and by incorporating a number of basic principles and standards in the Constitution of the country.

The government is entitled to treat and decide upon other aspirations to migrate into, remain or reside in South Africa, on the basis of legal, political or other criteria, which it may establish domestically with wide room for discretion. Given these conceptual and categorical differences, the government's protection regime will be established on the basis that while a close and effective relationship will be maintained between the two, refugee matters on the one hand, and migration matters on the other hand will be governed by different legal and decision making principles and criteria, and under different legislative and institutional arrangements.

PART 2: THE CONCEPT OF REFUGEE STATUS .
...

- 2.1 South Africa has ratified the 1951 UN Convention Relating to the Status of Refugees, the 1967 Protocol and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.
- 2.2 The UN definition should be understood to include any person genuinely at risk of serious human rights violations in his or her country of origin, who both needs and deserves protection. There must be a heightened risk to human rights on account of race, religion, nationality, political opinion, or membership of a particular social group. The latter residual category of civil or political status is interpreted in relation to prevailing norms of non-discrimination including for example, persons at risk on account of gender, sexual orientation, disability, class or caste. It must moreover be determined that the government in the country of origin either cannot or will not effectively counter the risk to fundamental human rights, in consequence of which there is a need for surrogate protection in South Africa.
- 2.3 The OAU definition of refugee status also includes those compelled to leave their country for reasons of external aggression, occupation, foreign domination or events seriously disturbing public order either in part or the whole of the country of origin. This should be interpreted to include those who have come to South Africa because their lives, safety or freedom are threatened by external aggression, occupation, foreign domination, generalised violence, internal conflict, massive violation of human rights, or other circumstances which have seriously disturbed public order either in part or the whole of their country of origin.
- 2.4 Paragraph 2.2 refers to persons who both need and deserve protection. A refugee not deserving of refugee status is someone of whom there are serious reasons for considering that he or she 'has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes' or someone who 'has committed a serious non-political crime outside the country of refuge prior to his [or her] admission into that country as a refugee'. However, considering that the primary principle of refugee

protection is that no one should be returned to a country where he or she would face serious harm these exclusion clauses should be applied restrictively. With regard to crimes committed within South Africa, refugees are subject to the laws of South Africa. A refugee who commits a crime will be prosecuted, and if convicted, sentenced.

- 2.5 Asylum and protection are guaranteed for refugees as long as the need for protection continues. The need for international protection may cease when a refugee voluntarily decides to return home (voluntary repatriation), or when the circumstances in connection with which refugee status was granted have fundamentally and durably changed, and national protection can safely be resumed. In such circumstances, the UNHCR invokes application of the cessation clause in relation to refugees of a particular nationality, following consultation with the host governments. The task team recommends that in cases where refugee status has ceased under these principles, any final settlement be concluded in an essentially humanitarian way. In particular, where certain refugees have developed strong family, social and economic links with South Africa to the point of regarding it as their new home country, the government shall give favorable consideration to any application for naturalisation which may be submitted by such refugees.
- 2.6 It has been argued that South African refugee policy should enable victims of poverty and other social and environmental disasters to be considered as refugees and to be treated accordingly. However, while the task team believes that the government will remain alert to those situations where movements of people on apparent social, economic or social grounds may in reality be rooted in those causes recognised in the refugee definitions, it does not accept that its refugee policy should be cast so widely as to include victims of poverty and other social or economic hardships, environmental disasters, or other factors not directly or secondarily recognised in refugee obligations. Accordingly, the task team does not accept that economic migrants should be able to use the refugee determination process in order to obtain residence, employment, the opportunity to carry out business, or to avoid the consequences of the law concerning illegal migration.

PART 3: PROCEDURES FOR THE DETERMINATION OF REFUGEE STATUS

3.1 **Refugee Determination by an Expert and Independent Body**

3.1.1 **Refugee** status determination should be the domain of an expert authority with a reasonable **assurance** of independence from the government. **Refugee** status determination **ought not to be centred** on considerations of suitability for residence in South **Africa** (the clear expertise of the Department of Home **Affairs**) **nor** on foreign policy considerations (the domain of the Department of Foreign **Affairs**). Instead, the expertise required to engage in refugee status determination demands **familiarity** with the legal and empirical realities of human rights **protection**, and the ability effectively to communicate across **cultural**, linguistic and other divides. It is moreover important that **refugee protection** be insulated from political **interference**.

3.1.2 In light of the above, we recommend the establishment within the Department of Home **Affairs** of a fictional entity, separate and independent from that which has responsibility for **immigration** matters, to administer the system of **refugee** status determination.

3.2 **The Present Determination System**

3.2.1 The viability **and** credibility of the **refugee** status determination system maybe undermined by delays **and** backlogs, which **in** turn encourage the submission of fraudulent **claims** by economic migrants. If this situation is not addressed, there is a risk of breakdown in the overall **refugee** protection structure. The present status determination **system**, which was introduced to give effect to the Memorandum of Understanding entered into between **the** South African government and the United Nations High Commissioner for **Refugees**, is currently operating with a considerable backlog; and it is also widely abused by migrants coming to South **Africa** for **non-refugee** related reasons.

3.2.2 On the other **hand**, the **credibility** of the **refugee** status determination system may also be undermined by a procedure **which** falls short of the principles of natural justice and due process. The current determination procedure does not provide for the oral

hearing of the asylum applicant at the first instance or at the appeal level. In particular, the lack of a direct hearing may have a negative impact on the capacity to recognise genuine asylum seekers and screen out economic migrants, as there is no opportunity to assess the credibility of the claimant, or to fill in gaps or explain apparent inconsistencies in his or her story. In addition, the lack of a direct hearing at any stage of the current determination process poses the question of its constitutionality in terms of the right to just administrative action.

3.2.3 It would therefore be appropriate to restructure the current status determination procedure within the framework of the proposed Refugee Bill. Such restructuring may require the provision of additional resources. However, this would be a worthwhile investment to reconcile the need for due process and just administrative action with the need for an effective procedure that discourages abusive and fraudulent asylum applications and enhances the credibility of the refugee protection system.

3.3 Proposed Determination Procedures

3.3.1 The proposed refugee status determination procedure is based on a three-tier structure consisting of preliminary interviews, initial determinations and determinations on appeal. The preliminary interview should be conducted by a specially trained refugee receiving officer at the Refugee Receiving Office to which the applicant has applied or been referred. The purpose of the preliminary interview is to prepare a complete case file on the applicant.

3.3.2 At the first decision-making level, specially selected and trained refugee status determination officers interview applicants based on the files prepared by the refugee receiving officer. The refugee status determination officers are granted authority to make initial determinations of eligibility for refugee status. Applicants have a right to have an adverse initial determination reviewed by the Refugee Appeal Board, if they submit an application for review outlining the grounds of the appeal. A decision made by the Refugee Appeal Board shall be final in terms of the administrative review undertaken by the Department of Home Affairs. However, judicial review by a court of law shall always be available once all administrative remedies have been exhausted.

The overall time-frame for the status determination procedure should not be longer than six months.

3.3.3 The standard procedure outlined above should be integrated with and complemented by an accelerated procedure for **manifestly** founded and **manifestly unfounded**, abusive and fraudulent claims respectively. Whereas the **preliminary interviews** and “initial determinations are done according to the ordinary procedure, determinations on appeal of the accelerated procedure are made by the Standing **Committee on Refugee Affairs**. The overall time-frame of the accelerated procedure should not be longer than three months.

3.3.4 As well as their review functions, the **Refugee Appeal Board** and the Standing Committee should also be entrusted with the **supervision of refugee status determination officers**, including provision of guidance in terms of fact-finding and credibility assessment, monitoring of consistency in interpretation and application of **refugee law**, establishment of a data base on country of **origin information**, and organisation of training for refugee status determination officers.

PART 4: THE SCOPE OF ASYLUM, REFUGEE RIGHTS AND STANDARDS OF TREATMENT

The government is committed to securing for **refugees** in South Africa full legal protection provided for under international law, which shall include the rights in the Bill of Rights as set out in the Constitution (except for those rights from which non-citizens have been expressly excluded). In particular

- 4.1 South Africa has a duty of **non-refoulement**, which requires that refugees not be returned, directly or indirectly, to countries where they risk persecution.
- 4.2 Refugees shall not be prosecuted on account of their illegal entry into or presence in South Africa, provided that they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

- 4.3 **Refugees** shall not be expelled from South Africa except on-grounds of **national security** or public order. (Such an expulsion should result from of a **decision reached** in accordance with due process of law). Except where compelling reasons of **national security** require otherwise, the **refugee shall be allowed to submit evidence**, and to appeal to and be represented before a competent **authority** (or a person or persons specially designated by the competent authority). The **refugee shall be allowed a** reasonable period within which to seek legal admission into another **country**. The government reserves the right to apply during that period **any** internal measures it may consider necessary.
- 4.4 **Refugees** shall be afforded basic **security rights, including** protection from the **abuse** of state power, such as **wrongful arrest and detention**, and protection against physical attack.
- 4.5 **Refugees** shall be **afforded** basic **human dignity rights** such **as** protection against **discrimination**, the right to **family** unity, freedom of movement and **association**, and **freedom** of religion.
- 4.6 **Refugees** shall be afforded **self-sufficiency rights**, such as **the** right to work and to education.
- 4.7 **Identity Documents**

At present, a **refugee** who has been granted asylum is given permission to stay in South **Africa** in terms of the provisions of the Aliens Control Act, 1991, **usually** in terms of Section **41** or in terms of **an** exemption from the provisions of Section **23(b)**. In the terms of Section 41 and Section 23(b), **refugees** must have **their** permits renewed at intervals. This **system**, whereby **refugees** are considered as prohibited persons allowed to remain in the country on a temporary basis only, does not **conform** with international **refugee** law, requires an enormous amount of unnecessary bureaucratic work on the part of already overstretched institutions, is prone to abuse and **, corruption**, and hampers efforts by **refugees** to become self-sufficient. **The Refugee Bill** therefore makes provision for the issue of **identity** documents for **refugees**. Once status is granted a **refugee** be issued with an identity document with a bar code **similar** to that

issued to South African citizens and permanent residents. This will do away with the need for a refugee to have a temporary permit repeatedly renewed, and will also increase the capacity of the Department of Home Affairs to deal with refugee status determination. Above all, it will facilitate efforts by refugees to become productive, by making it possible for them to enter into employment contracts, register for study, open bank accounts, obtain post office boxes, enter into lease agreements, and so forth. A recognised refugee should also be entitled to a South African travel document.

4.8. Durable Solutions

4.8.1 Voluntary Repatriation

The voluntary repatriation of refugees in safety and dignity is considered to be an integral part of the refugee policy of South Africa. The government believes that voluntary repatriation, once conditions change for the better in the country of origin, is the most durable solution to refugee problems. Accordingly:

4.8.1.1 The government endorses the international principles under which the voluntary repatriation of refugees should be promoted and implemented, namely:

- (a) South Africa shall co-operate with the concerned country[ies] of origin, the UNHCR, and other relevant role-players in taking the measures necessary to bring about conditions which will encourage the refugees concerned to return to their country of origin;
- (b) the decision to repatriate shall be a free and voluntary one;
- (c) no refugee shall be forcibly returned to his or her country of origin against his or her will;
- (d) repatriation shall take place in conditions of safety and dignity;
- (e) refugees shall be provided with all the information necessary to make an informed choice as to whether to return or not;
- (f) measures shall be promoted with the country of origin which guarantee the safety and security of refugees upon return including the granting of amnesties and clemencies and other confidence-building measures;
- (g) repatriation shall normally be organised and implemented in a tripartite framework between the country of asylum, the country of origin, and the UNHCR

(which is mandated to undertake various functions on behalf of the international community, including verifying the voluntary nature of the decision to return, organizing repatriation, and monitoring the welfare Of the refugees and other consequences of return);

(h) refugees shall be provided with the necessary assistance to ensure that they are able to reintegrate effectively upon "return to the country of origin.

4.8.1.2 SoUth Africa shall work closely with the UNHCR and other inter-governmental and non-governmental organisations to promote conditions in the country of origin which will not only encourage voluntary repatriation but also ensure that such repatriation is sustainable and is not immediately reversed. These may include steps towards the healing of ethnic, social, political, religious or regional divisions, restoration of law and order, the development of civil society, and social and economic renewal.

4.8.2 Local Integration

4.8.2.1 The government acknowledges that full protection of refugees requires the attainment of a degree of self-sufficiency and local integration within the host community for the duration of their exile. In fact, it is only by becoming self-sufficient that refugees can lead a productive life, which would make them assets to the host country and facilitate their integration within the local community. Furthermore, allowing refugees to use their skills or develop new ones while in exile will facilitate meaningful reintegration in their countries of origin when they are able to return.

4.8.2.2 Given the high unemployment and limited resources available to nationals, the government lacks concrete means to enable self-sufficiency for refugees. However, it may positively contribute to the attainment of this goal through the creation of an enabling environment. This can be achieved by legislative, regulatory and administrative measures, such as the issuing of identity cards and travel documents, the granting of the right to work and study, the speeding Up of eligibility procedures to guarantee security of status. Public awareness can also be raised in order to sensitise the local population to the plight of refugees, explain the differences between refugees and economic migrants, and emphasise the need for acceptance and understanding.

4.8.3 Naturalisation

While reiterating that voluntary repatriation is the best solution for **refugee** problems, the task team is mindful that there are **refugees** for whom **going home** may not be a viable **solution in** the foreseeable **future**. Therefore, a **refugee**, having been recognised as a **refugee** and granted **asylum**, may, **after** a period of five years, **make** application for naturalisation. **In** making such **an application**, the same **criteria will apply** to **refugees** as to permanent residents.

4.9 The Rights of Refugee Women and Children

The task team is aware of the special needs of vulnerable groups **within the refugee population, including** women and **children**, or **unaccompanied** minors. **Refugee** receiving officers and status determination officers **shall** receive training with regard to the needs of **refugee** women and **children**, and, where possible, service to women shall be by women. Regulations promulgated in the case of mass influx of refugees shall **include** provisions designed to protect women and **children**, such as those relating to the layout and security of reception **centres**. Unaccompanied minors shall be considered as children in need of care, and therefore subject to the Child Care Act of 1983.

PART 5: MASS INFLUX OF REFUGEES

- 5.1 There may be crisis situations in other countries whereby considerable numbers of **refugees** arrive at SoUth Mica's borders, or cross the borders **within** a relatively short period of time. In these situations, the Minister must be empowered to determine **refugee** status on a group basis.
- 5.2 The considerations outlined in Part Four of **this** document **also** underlie the government's policy concerning the standards which will apply to mass influxes of **refugees into South Africa, should** they take **place**. The task team recognises that such situations may necessitate the adoption of special **administrative** measures. The **Minister** should be empowered to make regulations with **regard to** the accommodation

and treatment of **refugees** under these circumstances. Should the Minister deem it necessary to establish reception centres, he or she must consult with the Premier of the province where the **refugees** are situated or are likely to be situated, the **UNHCR**, and the Ministers of relevant government departments.

- 5.3 Also, the pressure of the needs in such crises, together with practical limitations, can make it impossible to meet the standards which should be applied in light of international instruments and protection principles. Nevertheless, acceptable standards of treatment under international **refugee** law, particularly with regard to the security and **dignity** of human life, must be aimed at.

PART 6: RAISING PUBLIC AWARENESS

6.1 **The Involvement of Civil Society in Refugee Affairs**

- 6.1.1 The task team recognises the important role of civil society in providing humanitarian assistance to **asylum** seekers and **refugees**, and in creating an environment that facilitates attainment of self-sufficiency and **local** integration. Such a role is even more crucial in South Africa given the limited resources available. The task team therefore appreciates the **vibrant** network of South African **NGOs**, in particular the enthusiasm and commitment shown by the **Regional Refugee Forums** established at present in **Gauteng**, **Cape Town**, **Durban** and **Port Elizabeth**. Such frameworks for co-operation of service providers have greatly facilitated co-ordination of activities and exchange of **information**, thereby limiting duplication of efforts, waste of resources, and abuse of assistance. While acknowledging the need for relief by **many** destitute **refugees** upon arrival in South Africa, the task team encourages the **Regional Refugee Forums** to focus on practical assistance and solutions to facilitate **self-sufficiency** through **income-generating** activities, vocational training and language classes.

- 6.1.2 The task team is also appreciative of the initiative to establish a National Consortium on **Refugee Affairs**, bringing together representatives of the **Regional Forums**, the **UNHCR** and research institutes, and chaired by the **South African Human Rights Commission**. Acknowledging that the aim of the **Consortium** is to provide input from civil society in the formulation of policies concerning the **protection** and assistance of

refugees in South Africa and the promotion of durable solutions, the government participates in the meetings of the Consortium in an observing and advisory capacity.

6.2 Public Education and Awareness

The task team is aware of growing levels of intolerance against foreigners, as they are seen to be competing for scarce resources. The high level of abuse of the asylum procedure by economic migrants and the lack of understanding of the distinction between economic migrants and refugees, contributes towards intolerance and confrontation, which is not conducive to the intergration of refugees. In order to counter these perceptions of refugees, the task team supports efforts by the UNHCR and NGOS to promote public awareness of the refugee problem through information programmes at grassroots level. The task team believes that an understanding of the causes of refugee movements will lead to the greater acceptance of refugees in host communities, resulting in a greater degree of self-sufficiency. In addition, the task team encourages NGOS and CBOs that offer training in conflict resolution and mediation. Such training may not only help refugees in their new environment, but when they return to their countries of origin. We believe that primary and secondary school curricula should include human rights education in order that a culture of peace, tolerance and understanding maybe fostered among the youth.

PART 7: GENERAL OBSERVATIONS

The task team acknowledges the importance of the principle of international solidarity and burden-sharing which was first expressed in the OAU Convention. However, it is felt that such issues would be better dealt with within the framework of intergovernmental co-operation at regional and international levels.

APPENDIX A

APPENDIX TO DRAFT WHITE PAPER ON REFUGEES

REPUBLIC OF SOUTH AFRICA

DRAFT REFUGEE BILL, 1998

(To be introduced by the Minister of Home Affairs)

[B-98]

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.

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;

“**dependant**” in relation to a refugee, means the spouse, any unmarried dependant 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**” means 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;
-

- Act if -
- (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.

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 -
- (a) unless he or she is a South African citizen; or
 - (b) if he or she has been convicted of any offence 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 maybe 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.

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 dependant 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 dependant, 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 offence 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 offence 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 dependant to be arrested and detained pending the finalisation 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 dependant of the applicant.

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-Governmental organisation on matters it deems appropriate;
 - (d) advise the Minister or Director-General on any matter it deems appropriate, or referred to it by the Minister or Director-General;
 - (e) 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;
 - (9) 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
- (e) 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).

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 naturalisation 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 dependant of a refugee

28. (1) Where a dependant 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 dependant 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 dependant 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 dependant 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 dependant 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 offence,

shall be guilty of an offence 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
- (0) 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 the Premier of any province to which the influx is taking place.

Transitional arrangements

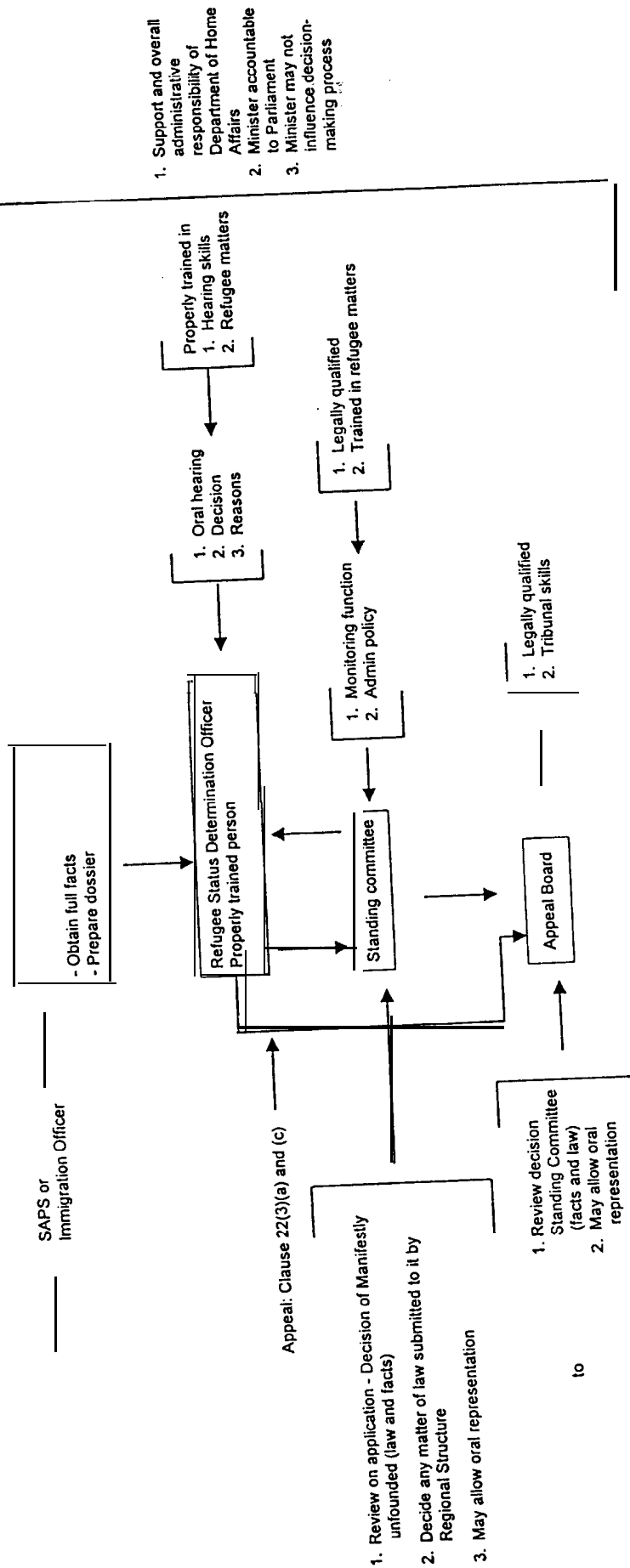
38. Any person who, at the commencement of this Act, is in the process of applying for asylum or is a recognised refugee **shall** be deemed to **have** applied for asylum or recognised as a refugee under the-provisions-of this Act, and the provisions of this Act shall in all respects apply to such applicant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

STRUCTURES

Refugee Affairs Decision-making Process



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