

REPUBLIC OF SOUTH AFRICA

REFUGEES BILL

(As introduced in the National Assembly)

(MINISTER OF HOME AFFAIRS)

[B 135—98]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP VLUGTELINGE

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN BINNELANDSE SAKE)

[W 135—98]

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BILL

To give effect within the Republic of South Africa to the relevant international legal instruments, principles and standards relating to refugees; to provide for the reception into South Africa of asylum seekers; to regulate applications for and recognition of refugee status; to provide for the rights and obligations flowing from such status; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Republic of South Africa has acceded to the 1951 Convention Relating to Status of Refugees, the 1967 Protocol Relating to the Status of Refugees and the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa as well as other human rights instruments, and has in so doing, assumed certain obligations to receive and treat in its territory refugees in accordance with the standards and principles established in international law,

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

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CHAPTER 1

INTERPRETATION, APPLICATION AND ADMINISTRATION OF ACT

Definitions

1. In this Act, unless the context shows that another meaning is intended—
 - (i) “abusive application for asylum” means an application for asylum made—
 - (a) with the purpose of defeating or evading criminal or civil proceedings or the consequences thereof; or
 - (b) after the refusal of one or more prior applications without any substantial change having occurred in the applicant’s personal circumstances or in the situation in his or her country of origin; (xiv) 45
 - (ii) “Aliens Control Act, 1991,” means the Aliens Control Act, 1991 (Act No. 96 of 1991); (xxiv)

- (iii) "Appeal Board" means the Refugee Appeal Board, established by section 12;
(ii)
- (iv) "asylum" means refugee status recognised in terms of this Act; (iii)
- (v) "asylum seeker" means a person who is seeking recognition as a refugee in the Republic; (iv) 5
- (vi) "asylum seeker permit" means a permit contemplated in section 22; (v)
- (vii) "child" means any person under the age of 18 years; (x)
- (viii) "Department" means the Department of Home Affairs; (vii)
- (ix) "dependant", in relation to an asylum seeker or a refugee, includes the spouse, any unmarried dependent child or any destitute, aged or infirm member of the family of such asylum seeker or refugee; (i) 10
- (x) "Director-General" means the Director-General of the Department; (viii)
- (xi) "fraudulent application for asylum" means an application for asylum based on facts, information, documents or representations which the applicant knows to be false and which facts, information, documents or representations are intended to materially affect the outcome of the application; (vi) 15
- (xii) "manifestly unfounded application" means an application for asylum made on grounds other than those on which such an application may be made under this Act; (xi)
- (xiii) "Minister" means the Minister of Home Affairs; (xiii) 20
- (xiv) "prescribed" means prescribed by regulation; (xxiii)
- (xv) "refugee" means any person who has been granted asylum in terms of this Act; (xviii)
- (xvi) "Refugee Reception Office" means a Refugee Reception Office established under section 8(1); (xx) 25
- (xvii) "Refugee Reception Officer" means a Refugee Reception Officer referred to in section 8(2); (xix)
- (xviii) "Refugee Status Determination Officer" means a Refugee Status Determination Officer referred to in section 8(2); (xxi)
- (xix) "regulation" means any regulation made under this Act; (xvi) 30
- (xx) "rules" means the rules made by the Appeal Board under section 14(2); (xv)
- (xxi) "social group" includes, among others, a group of persons of particular gender, sexual orientation, disability, class or caste; (xii)
- (xxii) "Standing Committee" means the Standing Committee for Refugee Affairs, established by section 9; (xvii) 35
- (xxiii) "this Act" includes the regulations; (ix)
- (xxiv) "UNHCR" means the United Nations High Commissioner for Refugees. (xxii)

General prohibition of refusal of entry, expulsion, extradition or return to other country in certain circumstances 40

2. Notwithstanding any provision of this Act or any other law to the contrary, no person may be refused entry into the Republic, expelled, extradited or returned to any other country or be subject to any similar measure, if as a result of such refusal, expulsion, extradition, return or other measure, such person is compelled to return to or remain in a country where— 45

- (a) he or she may be subjected to persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group; or
- (b) his or her life, physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or other events seriously disturbing or disrupting public order in either part or the whole of that country. 50

Refugee status

3. Subject to Chapter 3, a person qualifies for refugee status for the purposes of this Act if that person—

- (a) owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or 55 60

- (b) owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere; or
- (c) is a dependant of a person contemplated in paragraph (a) or (b). 5

Exclusion from refugee status

4. (1) A person does not qualify for refugee status for the purposes of this Act if there is reason to believe that he or she—
- (a) has committed a crime against peace, a war crime or a crime against humanity, as defined in any international legal instrument dealing with any such crimes; 10
 - or
 - (b) has committed a crime which is not of a political nature and which, if committed in the Republic, would be punishable by imprisonment; or
 - (c) has been guilty of acts contrary to the objects and principles of the United Nations Organisation or the Organisation of African Unity; or 15
 - (d) enjoys the protection of any other country in which he or she has taken residence.
- (2) For the purposes of subsection (1)(c), no exercise of a human right recognised under international law may be regarded as being contrary to the objects and principles of the United Nations Organisation or the Organisation of African Unity. 20

Cessation of refugee status

5. (1) A person ceases to qualify for refugee status for the purposes of this Act if—
- (a) he or she voluntarily reavails himself or herself of the protection of the country of his or her nationality; or
 - (b) having lost his or her nationality, he or she by some voluntary and formal act reacquires it; or 25
 - (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; or
 - (d) he or she voluntarily re-establishes himself or herself in the country which he or she left; or 30
 - (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 and no other circumstances have arisen which justify his or her continued recognition as a refugee. 35
- (2) Subsection (1)(e) does not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality.
- (3) The refugee status of a person who ceases to qualify for it in terms of subsection (1) may be withdrawn in terms of section 36. 40

Application and administration of Act

6. (1) This Act must be applied with due regard to—
- (a) the Convention Relating to the Status of Refugees (UN, 1951);
 - (b) the Protocol Relating to the Status of Refugees (UN, 1967); 45
 - (c) the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU, 1969);
 - (d) the Universal Declaration of Human Rights (UN, 1948); and
 - (e) any other relevant convention or international agreement to which the Republic is or becomes a party. 50
- (2) The Minister is responsible for the administration of this Act.

Delegation of powers and duties

7. (1) The Minister may delegate any power granted to, or duty imposed upon, him or her in terms of this Act, except the duty referred to in section 6(2), to an officer in the Department. 55

(2) A power or duty so delegated must be exercised or performed in accordance with the directions of the Minister, who may at any time withdraw such delegation.

(3) A delegation under subsection (1) does not prevent the Minister from exercising the power or performing the duty in question himself or herself.

CHAPTER 2

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REFUGEE RECEPTION OFFICES, STANDING COMMITTEE FOR REFUGEE AFFAIRS AND REFUGEE APPEAL BOARD

Refugee Reception Office

8. (1) The Minister may establish as many Refugee Reception Offices in the Republic as he or she, after consultation with the Standing Committee, regards as necessary for the purposes of this Act. 10

(2) Each Refugee Reception Office must consist of at least one Refugee Reception Officer and one Refugee Status Determination Officer who must—

- (a) be officers of the Department, designated by the Director-General for a term of office determined by the Director-General; and 15
- (b) have such qualifications, experience and knowledge of refugee matters as makes them capable of performing their functions.

(3) The Director-General must, with the approval of the Standing Committee, ensure that each officer appointed under this section receives the additional training necessary to enable such officer to perform his or her functions properly. 20

Standing Committee for Refugee Affairs

9. (1) There is hereby established a Standing Committee for Refugee Affairs.

(2) The Standing Committee must function without any bias and must be independent.

(3) The headquarters of the Standing Committee must be determined by the Minister. 25

Composition of Standing Committee

10. (1) The Standing Committee must consist of—

- (a) a chairperson; and
- (b) such number of other members as the Minister may determine, having regard to the likely volume of work to be performed by the Committee. 30

(2) The chairperson and other members of the Standing Committee must be appointed by the Minister with due regard to their experience, qualifications and expertise, as well as their ability to perform the functions of their office properly.

(3) A person may not be appointed as a member of the Standing Committee if he or she— 35

- (a) is not a South African citizen;
- (b) has been sentenced to imprisonment without the option of a fine during the preceding four years.

Powers and duties of Standing Committee

11. The Standing Committee— 40

- (a) may formulate and implement procedures for the granting of asylum;
- (b) may regulate and supervise the work of the Refugee Reception Offices;
- (c) may liaise with representatives of the UNHCR or any nongovernmental organisation;
- (d) must advise the Minister or Director-General on any matter referred to it by the Minister or Director-General; 45
- (e) must review decisions by Refugee Status Determination Officers in respect of manifestly unfounded applications;
- (f) must decide any matter of law referred to it by a Refugee Status Determination Officer; 50

- (g) must monitor the decisions of the Refugee Status Determination Officers; and
- (h) must determine the conditions relating to study or work in the Republic under which an asylum seeker permit may be issued.

Establishment of Refugee Appeal Board

- 12.** (1) There is hereby established a Refugee Appeal Board. 5
 (2) The headquarters of the Appeal Board must be determined by the Minister.

Composition of Appeal Board

- 13.** (1) The Appeal Board must consist of a chairperson and at least two other members, appointed by the Minister—
 (a) in accordance with the basic values and principles contemplated in section 195 of the Constitution; and 10
 (b) with due regard to a person's suitability to serve as a member by virtue of his or her experience, qualifications and expertise and his or her capability to perform the functions of the Appeal Board properly.
 (2) One of the members of the Appeal Board must be legally qualified. 15
 (3) The provisions of section 10(3), adjusted as may be necessary contextually, apply with regard to the appointment of members of the Appeal Board.

Powers and duties of Appeal Board

- 14.** (1) The Appeal Board must—
 (a) hear and determine any question of law referred to it in terms of this Act; 20
 (b) hear and determine any appeal lodged in terms of this Act;
 (c) advise the Minister or Standing Committee regarding any matter which the Minister or Standing Committee refers to the Appeal Board.
 (2) The Appeal Board may determine its own practice and make its own rules.
 (3) Rules made under subsection (2) must be published in the *Gazette*. 25

Meetings of Standing Committee and Appeal Board

- 15.** In the case of both the Standing Committee and the Appeal Board—
 (a) meetings must be convened by the chairperson;
 (b) the majority of members constitutes a quorum;
 (c) decisions must be taken by a majority of votes, and in the case of an equality 30 of votes, the chairperson has a casting vote.

Periods of office of members of Standing Committee and Appeal Board

- 16.** In the case of both the Standing Committee and the Appeal Board—
 (a) a member is appointed for five years;
 (b) any member is eligible for reappointment upon expiry of his or her term of 35 office;
 (c) any member may resign by tendering a written notice of resignation to the Minister.

Removal from office of member of Standing Committee or Appeal Board

- 17.** (1) Any member of the Standing Committee or Appeal Board may be removed 40 from office by the Minister on account of misconduct or inability to perform the functions of his or her office properly.
 (2) The Minister may only act in terms of subsection (1) if the member concerned and the relevant chairperson have been given an opportunity to make representations or comments on the matter and the Minister has taken any such representations and 45 comments into consideration.

Filling of vacancies in Standing Committee or Appeal Board

18. The Minister may appoint a suitable person in a vacancy arising from the death, resignation or removal from office of a member of the Standing Committee or Appeal Board, for the remainder of the term of office of the member in respect of whom the vacancy has occurred.

5

Remuneration of members of Standing Committee and Appeal Board

19. The members of the Standing Committee and the Appeal Board must receive such remuneration, allowances and other benefits as may be determined by the Minister with the approval of the Minister of Finance.

Administrative staff of Standing Committee and Appeal Board

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20. The administrative work connected with the performance of the functions of the Standing Committee and the Appeal Board, must be performed by officers of the Department, designated by the Director-General for that purpose.

CHAPTER 3

APPLICATION FOR ASYLUM

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Application for asylum

21. (1) An application for asylum must be made in person in accordance with the prescribed procedures to a Refugee Reception Officer at any Refugee Reception Office.

(2) The Refugee Reception Officer concerned—

- (a) must accept the application form from the applicant; 20
- (b) must see to it that the application form is properly completed, and, where necessary, must assist the applicant in this regard;
- (c) may conduct such enquiry as he or she deems necessary in order to verify the information furnished in the application; and
- (d) must submit any application received by him or her, together with any information relating to the applicant which he or she may have obtained, to a Refugee Status Determination Officer, to deal with it in terms of section 24. 25

(3) When making an application for asylum, every applicant must have his or her fingerprints or other prints taken in the prescribed manner and every applicant who is 16 years old or older must furnish two recent photographs of himself or herself of such dimensions as may be prescribed. 30

(4) Notwithstanding any law to the contrary, no proceedings may be instituted or continued against any person in respect of his or her unlawful entry into or presence within the Republic if—

- (a) such person has applied for asylum in terms of subsection (1), until a decision has been made on the application and, where applicable, such person has had an opportunity to exhaust his or her rights of review or appeal in terms of Chapter 4; or 35
- (b) such person has been granted asylum.

Asylum seeker permit

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22. (1) The Refugee Reception Officer must, pending the outcome of an application in terms of section 21(1), issue to the applicant an asylum seeker permit in the prescribed form allowing the applicant to sojourn in the Republic temporarily, subject to any conditions, determined by the Standing Committee, which are not in conflict with the Constitution or international law and are endorsed by the Refugee Reception Officer on the permit. 45

(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.

(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. 50

(4) The permit referred to in subsection (1) must contain a recent photograph and the fingerprints or other prints of the holder thereof as prescribed.

(5) A permit issued to any person in terms of subsection (1) lapses if the holder departs from the Republic without the consent of the Minister.

(6) The Minister may at any time withdraw an asylum seeker permit if— 5

- (a) the applicant contravenes any conditions endorsed on that permit; or
- (b) the application for asylum has been found to be manifestly unfounded, abusive or fraudulent; or
- (c) the application for asylum has been rejected; or
- (d) the applicant is or becomes ineligible for asylum in terms of section 4 or 5. 10

(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.

Detention of asylum seeker 15

23. If the Minister has withdrawn an asylum seeker permit in terms of section 22(6), he or she may, subject to section 29, cause the holder to be arrested and detained pending the finalisation of the application for asylum, in the manner and place determined by him or her with due regard to human dignity.

Decision regarding application for asylum 20

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. 25

(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, must— 30

- (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. 35

(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 the application or any question of law to the Standing Committee. 40

(4) If an application is rejected in terms of subsection (3)(b) or referred to the Standing Committee in terms of subsection (3)(d)—

- (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. 45

CHAPTER 4

REVIEWS AND APPEALS

Review by Standing Committee 50

25. (1) The Standing Committee must review any decision taken by a Refugee Status Determination Officer in terms of section 24(3)(b) and any matter referred to it in terms of section 24(3)(d).

(2) Before reaching a decision, the Standing Committee may—

- (a) invite the UNHCR representative to make oral or written representations;
 - (b) request the attendance of any person who is in a position to provide it with information relevant to the matter being dealt with;
 - (c) on its own accord make such further enquiry and investigation into the matter being dealt with as it may deem appropriate; and 5
 - (d) request the applicant to appear before it and to provide such other information as it may deem necessary.
- (3) The Standing Committee may—
- (a) confirm or set aside a decision made in terms of section 24(3)(b);
 - (b) decide on a question of law referred to it in terms of section 24(3)(d); and 10
 - (c) grant asylum or reject as unfounded an application referred to it in terms of section 24(3)(d).
- (4) The Standing Committee must inform the Refugee Status Determination Officer concerned of its decision in the prescribed manner and within the prescribed time.

Appeals to Appeal Board

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- 26.** (1) Any asylum seeker may lodge an appeal with the Appeal Board in the manner and within the period provided for in the rules if—
- (a) the Refugee Status Determination Officer has rejected the application in terms of section 24(3)(c); or
 - (b) the Standing Committee has rejected the application in terms of section 25(3)(c). 20
- (2) The Minister may lodge an appeal with the Appeal Board against a decision to grant asylum made by a Refugee Status Determination Officer in terms of section 24(3)(a) or the Standing Committee in terms of section 25(3)(c), in the manner and within the period provided for in the rules. 25
- (3) The Appeal Board may after hearing an appeal confirm, set aside or substitute any decision taken by a Refugee Status Determination Officer in terms of section 24(3)(a) or (c), or a Standing Committee in terms of section 25(3)(c).
- (4) Before reaching a decision, the Appeal Board may—
- (a) invite the UNHCR representative to make oral or written representations; 30
 - (b) refer the matter back to the Standing Committee for further inquiry and investigation;
 - (c) request the attendance of any person who, in its opinion, is in a position to provide the Appeal Board with relevant information;
 - (d) of its own accord make further inquiry or investigation; 35
 - (e) request the applicant to appear before it and to provide any such other information as it may deem necessary.
- (5) The Appeal Board must allow legal representation upon the request of the applicant.

CHAPTER 5

40

RIGHTS AND OBLIGATIONS OF REFUGEES

Protection and general rights of refugees

- 27.** A refugee—
- (a) is entitled to a formal written recognition of refugee status in the prescribed form; 45
 - (b) enjoys full legal protection, which includes the rights set out in Chapter 2 of the Constitution and the right to remain in the Republic in accordance with the provisions of this Act;
 - (c) is entitled to apply for an immigration permit in terms of the Aliens Control Act, 1991, 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 stateless indefinitely; 50
 - (d) is entitled to an identity document referred to in section 30;
 - (e) is entitled to a South African travel document on application as contemplated in section 31; 55

- (f) is entitled to seek employment; and
- (g) is entitled to the same basic health services and basic primary education which the inhabitants of the Republic receive from time to time.

Rights of refugees in respect of removal from Republic

28. (1) Subject to section 2, a refugee may be removed from the Republic on grounds of national security or where he or she is, in the public interest, declared by the Minister as an undesirable inhabitant of the Republic. 5

(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 the Constitution and the rights of the refugee in terms of international law. 10

(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. 15

(4) Any refugee ordered to be removed under this section may be detained pending his or her removal from the Republic.

(5) Any order made under this section must afford reasonable time to the refugee concerned to obtain approval from any country of his or her own choice, for his or her removal to that country. 20

Restriction of detention

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. 25

(2) The detention of a child must be used only as a measure of last resort and for the shortest appropriate period of time.

Identity document to refugee 30

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; 35
- (d) a recent photograph of the holder; and
- (e) the holder's fingerprints or other prints, taken and displayed in the prescribed manner.

(2) An identity document referred to in subsection (1) must be similar in appearance to an identity card as defined in the Identification Act, 1997 (Act No. 68 of 1997). 40

Travel document to refugee

31. A refugee may apply for a travel document in the prescribed manner.

Unaccompanied child and mentally disabled person

32. (1) Any child who appears to qualify for refugee status in terms of section 3, 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. 74 of 1983), must forthwith be brought before the Children's Court for the district in which he or she was found. 45

(2) The Children's Court may order that a child contemplated in subsection (1) be assisted in applying for asylum in terms of this Act. 50

(3) Any mentally disabled person who appears to qualify for refugee status in terms of section 3 must be assisted in applying for asylum in terms of this Act.

Dependants of refugee

33. A person who qualifies for refugee status in terms of section 3(a) or (b) and who would like one or more of his or her dependants who have accompanied him or her to the Republic to receive asylum must, when applying for asylum, also assist every such dependant to apply for asylum in terms of this Act or apply on behalf of any such dependant who is not able to apply by himself or herself. 5

Obligations of refugees

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

CHAPTER 6

SUPPLEMENTARY AND GENERAL PROVISIONS

10

Reception and accommodation of asylum seekers in event of mass influx

35. (1) The Minister may, if he or she considers that any group or category of persons qualify for refugee status as is contemplated in section 3, by notice in the *Gazette*, declare such group or category of persons to be refugees either unconditionally or subject to such conditions as the Minister may impose in conformity with the Constitution and international law and may revoke any such declaration by notice in the *Gazette*. 15

(2) The Minister may, after consultation with the UNHCR representative and the Premier of the province concerned, designate areas, centres or places for the temporary reception and accommodation of asylum seekers or refugees or any specific category or group of asylum seekers or refugees who entered the Republic on a large scale, pending the regularisation of their status in the Republic. 20

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

(4) The Minister may at any time withdraw the designation of an area, centre or place contemplated in subsection (2). 25

Withdrawal of refugee status

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— 30

- (a) the Standing Committee must inform such person of its intention of withdrawing his or her classification as refugee and the reasons therefor; and
- (b) such person may, within the prescribed period, make a written submission with regard thereto. 35

(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. 40

(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.

Offences and penalties

37. Any person who— 45

- (a) for the purpose of entering, or remaining in, the Republic or of facilitating or assisting the entry into or residence in the Republic of himself or herself or any other person, commits any fraudulent act or makes any false representation by conduct, statement or otherwise; or
- (b) fails to comply with or contravenes the conditions subject to which any permit has been issued to him or her under this Act; or 50

- (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 offence,
- is guilty of an offence and on conviction must be regarded as a prohibited person in terms of the Aliens Control Act, 1991, and must be dealt with in terms of that Act. 5

Regulations

- 38.** (1) The Minister may make regulations relating to—
- (a) a large-scale influx of asylum seekers into the Republic;
 - (b) the manner in which and period within which a matter must be referred to the Standing Committee; 10
 - (c) the forms to be used under certain circumstances and the permit to be issued pending the outcome of an application for asylum;
 - (d) the manner and the period in which applications for asylum which are manifestly unfounded, fraudulent or abusive, must be dealt with;
 - (e) the conditions of sojourn in the Republic of an asylum seeker, while his or her application is under consideration; 15
 - (f) the provision of interpreters at all levels of the determination process; and
 - (g) any other matter which is necessary or expedient to prescribe in order that the objects of this Act may be achieved.
- (2) A regulation under subsection (1)(a) may only be made in consultation with the Premier of any province into which the influx takes place. 20

Training of staff

- 39.** The Director-General must, in consultation with the Standing Committee, take such steps as to ensure the proper training of any person—
- (a) to whom powers are delegated in terms of this Act; or 25
 - (b) who is appointed in any capacity in terms of this Act.

Transitional arrangements

- 40.** Any person who, immediately before the commencement of this Act, was in the process of applying for asylum or was a recognised refugee must be regarded as having applied for asylum or as having been recognised as a refugee in terms of this Act, and the provisions of this Act apply in all respects to such applicant and his or her application and such refugee, as the case may be. 30

Short title and commencement

- 41.** This is the Refugees Act, 1998, which comes into operation on a date determined by the President by proclamation in the *Gazette*. 35

MEMORANDUM ON THE OBJECTS OF THE REFUGEES BILL, 1998

1. Introduction

A task team was appointed by the Minister of Home Affairs to formulate a refugee policy for South Africa.

On 20 June 1998 the task team published a draft White Paper and Refugees Bill in the Government *Gazette* for general information and comment. Submissions were received from the following institutions:

- Amnesty International Cape Town;
- Cape Town Refugee Forum;
- Careers Research and Information Centre;
- Catholic Welfare and Development;
- Centre for Applied Legal Studies, [Wits];
- Centre for Southern African Studies, University of the Western Cape;
- Department of Home Affairs: Permanent Residence Section, District Office, Pretoria;
- Department of Home Affairs: Subdirector: Refugee Affairs;
- Human Rights Watch;
- Law Society of the Transvaal;
- Lawyers for Human Rights;
- Legal Resources Centre, Cape Town;
- South African Human Rights Commission;
- Southern African Migration Project;
- United Nations High Commissioner for Refugees: Regional Office.

The submissions have, to a greater or lesser extent, been included in the Bill.

2. Objects of Bill

The objects of the Bill are to introduce a substantive refugee regime for the Republic that is rights and solution orientated.

It is proposed in the Bill that the Act must be administered with due regard to—

- the Convention Relating to the Status of Refugees (UN, 1951);
- the Protocol Relating to the Status of Refugees (UN, 1967);
- the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU, 1969);
- the Universal Declaration of Human Rights (UN, 1948);
- any other relevant convention to which the Republic has become or becomes a party.

The following structures are being proposed in the Bill:

- Refugee Reception Officer;
- Refugee Status Determination Officer;
- Standing Committee for Refugee Affairs; and
- Refugee Appeal Board.

The refugee status determination procedure is proposed in Chapter 3 of the Bill. The proposals are briefly as follows:

A preliminary interview with the asylum seeker must be conducted by a specially trained Refugee Reception Officer with a view to preparing a complete case file on the applicant for consideration by the Refugee Status Determination Officer.

The Refugee Status Determination Officers are granted authority to make initial determinations of eligibility for refugee status. Applicants have a right to appeal against adverse initial determinations. A decision made by the Refugee Appeal Board is the final administrative step. Judicial review by a court of law is, however, always available once all administrative remedies have been exhausted. The overall timeframe for the status determination procedure should not be longer than six months.

The procedure outlined in the previous paragraph is complemented by a proposed 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

from the accelerated procedure are made by the Standing Committee for Refugee Affairs. The overall timeframe for the accelerated procedure should not be longer than three months.

Pending determination of an application for asylum, an asylum seeker is issued with an asylum seeker permit which will allow him or her to remain in South Africa legally. As is current practice, this permit will allow the holder in certain circumstances to work or study in the Republic.

The effectiveness of the proposed determination process will depend to a large extent on the provision of proper training for Refugee Reception Officers and more importantly, Refugee Status Determination Officers.

It is furthermore proposed that the Standing Committee for Refugee Affairs should also be entrusted with the monitoring 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 and the establishment of a database on country of origin information.

The proposed rights and obligations of a refugee are set out in Chapter 5.

3. Parliamentary procedure

The Department of Home Affairs is of the view that the procedure set out in section 75 of the Constitution should be followed in respect of this Bill.

