home affairs

Department:
Home Affairs
REPUBLIC OF SOUTH AFRICA

EXPLANATORYMEMORANDUM: WHITE PAPER ON CITIZENSHIP, IMMIGRATION AND REFUGEE PROTECTION: TOWARDS A COMPLETE OVERHAUL OF THE MIGRATION SYSTEM IN SOUTH AFRICA

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0. The Department of Home Affairs ("DHA") embarked on a difficult process of drafting the White Paper on Citizenship, Immigration and Refugee Protection: Towards A Complete Overhaul of the Migration System in South Africa ("White Paper").

1. Cabinet approved the White Paper on Wednesday, 1 November 2023 for public comments. The White Paper has been published in the Government *Gazette* No. 49661 on 10 November 2023. A copy of the *Gazette* is annexed hereto marked **"WP1".**

Introduction

2. Conflicts, armed violence, disasters, pandemics, seeking better business and work opportunities and other factors force people to leave their countries of origin to other countries.

3. The international community responded by establishing the International Organization for Migration ("IOM") and works as an agency of the United Nations ("UN"). Many States are members, including South Africa. Despite the outbreak of COVID-19, more than 82 million people were displaced globally because of economic factors.

4. After the advent of democracy, South Africa witnessed a surge in migrants coming to the country. In South Africa the crisis of migration has unfortunately led to violent clashes between foreign nationals and citizens. Many groups for and against migration are gaining momentum. The DHA bears the constitutional and legislative mandate to ensure that migration is properly regulated and result in economic development, effective borders management, refugee protection, peace and stability.

5. The government's response to challenges posed by unlawful migration must be informed by the principle of Pan- Africanism and current international trends.

6. The Pan-Africanism philosophy, *inter alia*, formed the basis for the establishment of the Organization of African Unity ("OAU") now African Union ("AU") led by Kwame

Nkrumah of Ghana on 25 May 1963, with its aims, *inter alia*, to safeguard the interests of African states and independence of all African states. The role played by Zambia in hosting liberation movements from Mozambique, Zimbabwe, Namibia and South Africa was in furtherance of the principle of Pan – Africanism. The other countries that played a significant in the liberation of South Africa are Tanzania, Angola, Mozambique, Botswana, Cuba and many others.

7. It is upon this basis that over and above, the 1951 United Nations Refugees Convention ("1951 Convention") and the 1967 Protocol relating to the Status of Refugees ("1967 Protocol"), the OAU endorsed its own 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969 ("1969 OAU Convention") in order to deal with the peculiar circumstances of migration and refugees in Africa. This was done in the spirit of Pan – Africanism.

8. The 1969 OAU Convention prohibited refusal of entry, expulsion or extradition of asylum seekers and refugees and also provides for certain exclusions on certain grounds. In fact, the refugee laws in most of the AU countries based on the 1969 OAU Convention are much more stringent than the Refugees Act in South Africa. The principle of Pan-Africanism does not promote illegal entry in the countries that are signatory to the 1969 OAU Convention.

9. There have been consistent loud voices calling for effective policy measures and legislative interventions dealing with migration in South Africa. These voices grew

louder as violent clashes between foreign nationals and citizens rear their ugly heads.This development threatens the security of the State.

Legislation impacting on migration in South Africa

10. South Africa has different pieces of legislation dealing with citizenship, immigration and refugee protection, namely the Citizenship Act[1], Immigration Act[2] and Refugees Act [3] as amended. In fact, the South African Citizenship Act is a relic of the colonial era and a replica of the 1949 Citizenship Act[4] under the Union of South Africa. In practice, these pieces of legislation in other instances, are not in harmony with each other. The implementation becomes cumbersome and difficult, resulting in:

10.1 Asylum seekers, refugees and foreign nationals acquiring permanent residence status, other visas and citizenship prematurely and irregularly.

10.2 Criminal syndicates, including human traffickers have the networks to exploit the refugee and immigration systems to carry out their nefarious activities with impunity.

10.3 The United Nations, International Residual Mechanism for Criminal Tribunal (relating to genocide) complained about granting of refugee status in South Africa

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1 Act 88 of 1995.
2 Act 13 of 2002.
3 Act 130 of 1998.
4 Act 44 of 1949.

to persons who are excluded in terms of 1951 Convention because they committed atrocities in their countries of origin.

10.4 The asylum regime is sometimes conflated with economic migrants, resulting in overburdening the asylum system. New legislation must provide for economic migrants and asylum seekers separately.

10.5 The many visas provided for in the Immigration Act are abused. In some instances, through corrupt activities involving officials of the DHA.

10.7 The enforcement and implementation of the said three pieces of legislation are weak and ineffective and passed during the first ten years of democracy.

Refugee Protection

11. The United Nations adopted the 1951 United Nations Refugees Convention ("1951 Convention") and the 1967 Protocol relating to the Status of Refugees ("1967 Protocol"). Meanwhile the Organization of African Unity ("OAU") [now AU] endorsed its own 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969 ("1969 OAU Convention") in order to deal with the peculiar circumstances of migration and refugees in Africa. This was done in the spirit of Pan – Africanism.

12. The 1969 OAU Convention (like the 1951 Convention) prohibits refusal of entry, expulsion or extradition of asylum seekers and refugees. However, the 1969 OAU Convention makes provision for exclusions on certain grounds, such as security of the State. Most of the AU countries built in the exceptions in their domestic law. These measures enable them to afford refugee protection to deserving cases without compromising peace and stability in their countries. Unlike South Africa. In most African countries, asylum seekers are accommodated in camps and their freedom of movement is severely curtailed while the asylum claims are processed by the authorities. In fact, the refugee laws in most of the AU countries based on the 1969 OAU Convention are much more stringent than the Refugees Act in South Africa. Furthermore, the principle of Pan-Africanism does not promote illegal entry in the countries that are signatory to the 1969 OAU Convention.

Asylum during the apartheid era

13. Asylum seekers and refugees were not recognized in South Africa until 1993. During the apartheid era, South Africa did not accede to any international and regional conventions relating to the status of refugees and asylum seekers.

14. South Africa administered its refugee policy on an *ad hoc* basis, granting refugee status mostly to white nationals from Zimbabwe, Portugal and Mozambique. The

Aliens Control Act[5] governed immigration during the apartheid era. The preference of whites over "*non-whites*" (blacks) became the focus of the immigration policy.

15. The Refugees Act[6] was passed in 1998. In line with the 1951 Convention, the 1967 Protocol and the 1969 OAU Convention, the Refugees Act prohibits refusal of entry, expulsion or extradition of asylum seekers and refugees.

Accession to international agreements

16. In 1996, two years after the first democratic elections, South Africa acceded to various international agreements such as, the 1951 Convention, the 1967 Protocol[7], the 1969 OAU Convention and other international instruments. This was done without the government having developed a clear policy on migration, including refugee protection.

17. Both the 1951 Convention and 1967 Protocol provide for reservations. In terms of article 42 of the 1951 Convention, any State may make reservations to articles of the Convention other than articles 1, 3, 4, 16(1), 33, 36-46 inclusive.

18. Article VII of the 1967 Protocol provides that any State may make reservations in respect of articles IV and 1 other than articles 1, 3, 4, 16(1) and 33.

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5 Aliens Control Act 96 of 1991.
6 Refugees Act 130 of 1998.
7 Ratified on 12 January 1996.

19. Many countries made reservations in respect of both the 1951 Convention[8] and 1967 Protocol[9].

20. South Africa did not make any reservations in respect of the 1951 Convention and 1967 Protocol. These reservations mainly deal with socio-economic rights such as, access to health, education, social welfare, right to work and trade and others. This was a fatal mistake on part of the government.

21. Most countries, particularly in the African continent regarded those provisions in the 1951 Convention relating to socio-economic rights as not binding on them.

22. It is not surprising that South African courts developed jurisprudence regarding asylum and refugees (in the absence of reservations and exceptions) which is unfavourable to the interests of government. The said jurisprudence is referred to in paragraphs 32 -37 of the White Paper.

Policy framework recommendations

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8 Countries that made reservations, include but not limited to Angola, Australia, Botswana, Ethiopia France, Malawi, Namibia, Mozambique, Netherlands, Somalia, Sweden, Uganda, Zambia, Zimbabwe, United Kingdom and Ireland,

9 Countries that made reservations in respect of the 1967 Protocol, include but not limited to Angola, Botswana, Congo, eSwatini, China, Malawi, Netherlands, Portugal, United States of America and United Kingdom and Ireland.

23. The White Paper proposes:

23.1 The Government of the Republic of South Africa must review and/or withdraw from the 1951 Convention and the 1967 Protocol with a view to accede to them with reservations like many other countries.

23.2 The new Refugee Protection and Immigration legislation must provide for reservations and exceptions as contained in the 1951 Convention and the 1969 OAU Convention. Particularly in that South Africa does not have the resources to grant the socio-economic rights envisaged in the 1951 Convention.

23.3 The structures (immigration and refugee protection), including appeal bodies are not occupied by suitably qualified persons to carry out efficiently their statutory duties, resulting in mistakes committed by officials and the delays that are caused in the main by the economic migrants and asylum seekers, who have already been rejected.

23.4 The Refugees Act must be repealed in its entirely as it is outdated and not taking into consideration the emerging international trends and exceptions provided for under International Law.

International Experience and Study

Canada

24. The Immigration and Refugee Protection Act, 2001 (Canada) makes provision for the Immigration and Refugee Board, consisting of the Refugee Protection Division. Refugee Appeal Division, Immigration Division and Immigration Appeal Division or Special Immigration Appeals Commission[10] (as in the United Kingdom).

25. The Canadian equivalent of the Refugee Status Determination Officers ("RSDOs") is the Refugee Protection Division ("RPD"). This is a statutory body charged with the responsibility of taking decisions on asylum applications. In order to avoid backlogs, its members are appointed on full-time basis in terms of the Canadian Public Service Act. In other words, the RPD performs functions that are assigned to the RSDOs in terms of the Refugees Act. The RPD conducts proper hearings with asylum seekers being afforded the right to legal representation. This will obviate the long-winded and tedious appeal process under the current legislative framework, with appeals taking more than 13 years.

26. A party that is aggrieved by the decision of the RPD must appeal to the Refugee Appeal Division with majority members being appointed on full-time basis and 10% of whom must be members of the bar or attorneys for at least a period of five years.

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10 Nationality and Borders Bill, 2021 (United Kingdom).

27. Furthermore, the Canadian legislation clearly makes a distinction between economic immigrants and refugees. The same approach is adopted in the White Paper.

United Kingdom

28. In the United Kingdom[11] ("UK"), adjudicators (equivalent of RSDOs) must be members of the Bar or attorneys for a period of seven years. The strict qualifications requirements in Canada and UK are because asylum matters are by their nature complex and involve international refugee law.

Further Policy framework: Proposals (Refugee Protection)

29. The White Paper proposes:

29.1 The new policy framework and legislative measures must include the establishment of structures such as in Canada. The decision-making powers will be quick and virtual hearing can be introduced at the ports of entry as in Netherlands.

29.2 Consideration will be given and provided for in the new integrated legislation to appoint either serving judges or retired judges or Senior Counsel as chairpersons of the appeal bodies.

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11 Nationality, Immigration and Asylum Act, 2002 (United Kingdom).

29.3 The new structures and highly qualified persons to serve on them will assist in fast-tracking the asylum process. The unacceptable state of affairs in which asylum seekers who do not deserve to be granted refugees status sojourn in the Republic for a long time (up to 13 years) will be avoided. While they await the outcome of the appeal process, they continue to access rights such as, health, housing and others. Thus, competing for scarce resources with South African citizens, permanent residents and genuine refugees..

29.4 The unacceptable situation in which asylum seekers and refugees camped in the Streets in Brooklyn, Pretoria and Central Methodist Church in Cape town should not be allowed to happen. They caused nuisance, disturbing peace and stability and making unrealistic demands. The police had to divert their resources to deal with them. The courts issued orders to remove them[12]. The ringleaders were ultimately deported to their country of origin, Democratic Republic of Congo ("DRC"). The said ringleaders waited for 13 years for the appeal outcome. Upon arrival in the DRC, they did not face any "*persecution*" as they had indicated in their asylum claim in South Africa. On the contrary, one of them (a former militia) announced that he had formed a political party to contest elections in the DRC.

Different treatment of refugees

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12 See **City of Cape Town v Balus and Others** [2020] ZAWCHC 22, paras 18-23; Parliamentary Monitoring Group Verification by DHA: The City of Cape Town v JP Balus, Pay Sukami, Sylvia Nahmana amd Protestors (Case no: 21616/19).

29.5 In instances of unlawful entry into the Republic, an additional requirement must be introduced that they must show good cause for their unlawful entry or presence.

29.6 The Minister should be empowered to declare an asylum claim made by an asylum seeker who has a connection to a first safe country invalid. In other words, the first safe country principle must be strictly applied. This will include a person who may apply to be recognized as a refugee in that State[13].

29.7 This policy framework would discourage asylum seekers who deliberately fail to apply for asylum at the first safe country which is a signatory to the 1951 Convention, the 1967 Protocol and the 1969 OAU Convention. Furthermore, it would deter economic migrants who come to South Africa disguising as asylum seekers.

29.8 The objectives of the refugee policy framework are to ensure that genuine refugees are recognized. Legislative loopholes that allow persons without a legitimate asylum claim will be closed.

Citizenship

Genesis of the 1949 Citizenship Act, Citizenship Act, 1995 and other laws

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13 See section 21(1B) of the Refugees Act, read with Regulation 8 (3).

30. The past citizenship laws in South Africa are controversial.

31. The current citizenship legislation has its roots in the 1949 Citizenship Act[14] ("1949 Act") and other relevant successive laws governing citizenship. The 1949 Act and other relevant laws were not only discriminatory on the basis of race and sex but the "*natives*" (black people) were totally excluded from the South African citizenship regime.

32. The South African Citizenship Act provides for three main forms of citizenship, namely, citizenship by birth, citizenship by descent and citizenship by naturalization. This piece of legislation was rushed through Parliament after the 1994 democratic elections to provide for common citizenship to all. Given the urgency, public participation was minimal.

33. Attempts to close the gaps through amendments such as section 4 (3) of the Citizenship Act proved to be a futile exercise

Policy framework: Proposals (Citizenship)

34. The White Paper makes radical proposals regarding citizenship:

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14 Act 44 of 1949.

34.1 Section 4 (3) of the Citizenship Act requires to be reviewed, together with other sections, including those relating to citizenship by naturalization during the legislative process. Section 4 (3) of the South African Citizenship provides for citizenship by naturalization to persons born in South Africa to foreign parents who have attained the age of 18 years. This includes children whose parents are asylum seekers and refugees. Asylum seekers after exhausting all their remedies may have their asylum claims rejected and be deported to their country of origin. The parents who are refugees may have their refugee status terminated. In both instances, the parents will have a child (who has attained the age of 18 years) remaining a South African citizen. This would pave a way for the parent (deported or refugee status terminated) coming back to South Africa now to join a relative/child who would become a South African citizen.

34.2 The United States of America, Canada, Switzerland and Britain are developed countries with resources that far exceed those of South Africa, have developed strict immigration, citizenship and refugee laws in order to protect the rights of their citizens.

34.3 The Citizenship Act and Births and Deaths Registration Act must be repealed in their entirely and be included in the single legislation dealing with citizenship, immigration and refugee protection. This will remove contradictions and loopholes

in the paths towards citizenship as is now the case with the three pieces of legislation.

34.4 The criteria for granting any form of citizenship must be strictly in accordance with the law.

34.5 A proper register should be kept for all persons granted citizenship by naturalization by the Minister. The register must be tabled every year in Parliament by the Minister.

34.6 New legislation must provide for proper criteria for granting citizenship by naturalization by the Minister. The current criteria contain elements borrowed from the 1949 Citizenship Act. This will avoid citizenship by naturalization being granted to controversial figures and fugitives from justice.

Immigration

35. Before the Immigration Act 13 of 2002 was enacted, the applicable legislation was the Aliens Control Act[15] and the Aliens Control Amendment Act[16].

36. The Aliens Control Act provided for, *inter alia*, for appointment and functions of immigration officers, delegation of powers, exemptions, declaration of prohibited

15 Act 95 of 1991.

16 Act 76 of 1995.

persons, passports and visas, establishment of the Immigrants Selection Board and permits for permanent residence.

Genesis of exemptions

37. Exemptions for various purposes have been in existence since 1913 and were regulated in terms of the Immigration Regulation Act[17]. This Act was amended several times and later replaced by the Admission of Persons to the Republic Act[18]. The power of exemption with widest effect was under the 1937 Aliens Act[19] prior to the said legislation.

38. The purpose of the 1937 Aliens Act was enacted with the purpose of, *inter alia*, to regulate the admission, residential status of those citizens from Commonwealth countries, who previously had unrestricted right of entry into and residence in the country when the then citizens of the Union were still citizens of the Commonwealth.

39. The Aliens Act of 1937 also provided exemptions which were granted in terms of section 7bis and also provided for exclusion from or withdrawal of exemptions. These exclusions and withdrawals could be done individually or per category.

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17 Act 22 of 1913.

18 Act 1 of 1972.

19 Act 59 of 1937.

Continuation of the exemption regime under the Aliens Controls Act 96 of 1991

40. Section 28 provided the continuation of the exemption regime.

Aliens Control Amendment Act 76 of 1995

41. The powers of exemption by the Minister is provided for in section 15 of the Aliens Control Amendment Act with a slight amendment to the effect that the Minister must be satisfied that there are "*special circumstances which justify his or her decision*".

42. Effectively, the then Minister of Home Affairs exercised the powers bestowed upon him or her in terms of section 5(3) and 4(a) of the Aliens Act, 1991.

Continuation of the exemption regime under section 31 of the Immigration Act 13 of 2002

43. Section 31 of the Immigration Act provides for the continuation of the exemption regime.

Exemptions granted in terms of section 31 (2) (b) of the Immigration Act to Zimbabwean, Lesotho and Angolan nationals

44. Since 2009, exemptions were granted to Zimbabwean, Lesotho and Angolan nationals by successive Ministers of Home Affairs. However, in September 2021, the current Minister decided not to extend (withdraw) the exemptions granted to Zimbabwean nationals anymore and extend the validity of the permits to 31 December 2023 in order to give an opportunity to the affected individuals to apply for one or other visas provided for in the Immigration Act.

45. The exemptions afforded the Zimbabwean, Lesotho and Angolan nationals who would otherwise not qualify, an opportunity to work and sojourn in the Republic.

46. The Minister's decision not to extend the exemption regime is subject of a fierce litigation in **Helen Suzman Foundation and Another v Minister of Home Affairs and Others**[20]. Two other parties have since intervened in the proceedings with leave of the court[21].

47. The Minister has applied for leave to appeal the negative judgments of the Full Court. The applications have been dismissed. The Minister has now applied for leave to appeal to Supreme Court of Appeal.

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20 Case number.: 32323/22, Gauteng Division, Pretoria; See also: Marvin Charles "Helen Suzman Foundation in court bid to challenge decision to terminate Zimbabwe Exemption Permit", News24, June 16, 2022; "Government challenged in court over termination of Zim Special Permits", IOL, June 21, 2022.

21 Consortium for Refugees and Migrants in South Africa ("CORMSA") and All Trucks Drivers Forum and Allied South Africa.

Immigration Act ("Act")

Illegal foreigners

48. South Africa is today a great place to live in and many people in the world aspire to live, work or to be citizens of South Africa. In the result, many foreign nationals come to South Africa and stay in the country illegally.

49. No one can account for all undocumented migrants.

50. The DHA has no idea as to how many illegal immigrants are in South Africa. However, Immigration Services deports between 15 000 - 20 000 illegal foreigners every year. This number is on the increase.

51. The establishment of the Border Management Authority ("BMA") should significantly reduce the risk of illegal foreigners entering the country illegally[22].

52. The Immigration Act introduced fundamental changes (albeit controversial) and a host of visas such as, temporary visa, study visa, business visa, critical skills visa, corporate visa, spousal visa[23], retired persons visa, relative visa, intra company visa and permanent residence.

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22 The BMA was established in terms of the Border Management Authority Act 2 0f 2020.

23 This is the most abused visa of them all. Bogus marriages are entered into and the new trend is that Life Partnership Agreements are concluded.

Policy framework: Proposals (Immigration)

53. The White Paper proposes:

53.1 Border control must be coupled with immigration. The United Kingdom Parliament introduced in November 2021, the Nationality and Borders Bill.

53.2 The Border Management Authority Act must be reviewed to align it with Immigration, Citizenship and Refugee Protection new policy framework.

Immigration Board: Proposals

53.3 The policy framework must provide for the establishment of the Advisory Board which comprise representatives of the Departments of Trade, Industry and Competition, Labour and Employment, Tourism, Education, South African Police Service, South African Revenue Service, Education, International Relations & Cooperation, Defence & Military Veterans and Director- General of the DHA[24].

53.4 The Board must also comprise representatives of organized labour, including four individuals on the grounds of expertise in administration, regulatory matters or immigration law, control, adjudication and enforcement, appointed by the Minister.

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24 Paragraph 9.1.10 of the Resolution of the 55th ANC National Conference, held on 16-20 December 2022 and 5 January 2023.

53.5 Given the over-arching services rendered by the DHA that cuts across many departments, the composition of the Immigration Board as proposed is the most appropriate step. Today the country is facing challenging immigration issues which cannot be resolved by the DHA alone. Already groups in support and against migration are being formed. In other areas, violent clashes between citizens and foreign nationals are occurring on daily basis.

Critical Skills List (section 19 (4) of the Immigration Act): August 2022

53.6 The current Minister has published the new Critical Skills List in August 2022. The Critical Skills List is important to attract foreign skills list for the South African economic development.

53.7 Policy and legislative interventions are required to tighten the procedures and strengthening the monitoring capacity by introducing integrated IT systems capable of flagging fraudulent activities in the issuing of visas, identity documents, marriage certificates and passports. This include giving wide statutory powers to the existing Anti- Corruption Unit within the DHA.

53.8 The new policy must provide that members of the Anti- Corruption should be seconded from the South African Police Service ("SAPS"). The rationale being that

members of the SAPS enjoy wide statutory powers, including search and arrest without a warrant.

53.9 The current system in which members of the Anti- Corruption Unit are appointed by the DHA has serious limitation regarding the effective exercise of their statutory powers.

Immigration officers and Inspectorate

53.10 Immigration officers and Inspectorate play an important enforcement role. The DHA deports between 15 000 to 20 000 illegal foreigners every year. This is just a fraction of the illegal foreigners in the country.

53.11 New legislation must be introduced to strengthen the powers of immigration officers and Inspectorate and make continuing training compulsory. The majority of members of the Inspectorate must have legal qualifications and policing experience.

53.12 The recent publication of the National Labour Migration Policy introducing quotas for employment of foreign nationals will go a long way in defusing simmering tensions between South African citizens and foreign nationals.

Immigration Division and Immigration Appeal Division

53.14 New policy framework and legislative intervention is required to establish the Immigration Division whose members are duly qualified to deal with granting of various visas. The current system is unworkable as staff members are overworked. Appeals/ review are dealt with by the DG and Minister. Given the responsibilities that the two have, it is impossible for them to deal with the appeals/reviews.

53.15 Through the establishment of the Immigration Division, the process of issuing visas would be fast-tracked. Speedy issuing of visas forms part of the backbone for economic development. Appeals/reviews of negative decisions of the Immigration Division would be heard and finalized by the Immigration Appeal Division.

53.16 Members new statutory bodies would be highly qualified and equipped to perform their statutory duties.

Immigration Courts

53.17 When the Immigration Act was enacted, provision was made for the establishment of Immigration Courts. However, the Immigration Act was amended in 2004 to remove the establishment of such courts.

53.18 There is merit in considering establishing Immigration Courts. The current legislative arrangement is untenable and leads to long delays in finalizing

immigration matters, including deportations. In many instances, illegal foreigners launch High Court proceedings on urgent basis to halt impending deportations. They later disappear into thin air and fail to pursue the review proceedings.

53.19 Some of these persons end up finding a way into the system either through corrupt activities or other means.

Minister's statutory powers to grant exemptions (special permits)

53.20 The powers of the Minister to grant exemptions such as given to the Zimbabwean and Lesotho nationals must be reviewed during the legislative process. The current economic realities to do not justify retention of the powers initiated during the colonial and apartheid era.

53.21 Single legislation must be introduced dealing with citizenship, immigration and refugee protection.

DR PA MOTSOALEDI, MP

MINISTER OF HOME AFFAIRS

DATE: 21/11/2023

Annexure WP1
(White Paper 1)

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DEPARTMENT OF HOME AFFAIRS

NO. 4061 **10 November 2023**

PUBLICATION OF THE WHITE PAPER ON CITIZENSHIP, IMMIGRATION AND REFUGEE PROTECTION: TOWARDS A COMPLETE OVERHAUL OF THE MIGRATION SYSTEM IN SOUTH AFRICA

The Department of Home Affairs (the "DHA") invites public comments on the White Paper on Citizenship, Immigration and Refugee Protection: Towards a complete overhaul of the Migration System in South Africa.

Written submissions should reach the DHA **on or before 19 January 2024.** Written submissions should be addressed to the Chief Director: Strategy & Institutional Performance and may be forwarded to the DHA in any of the following manners:

(a) delivered by hand to the Department of Home Affairs, 230 Johannes Ramokhoase Street, Hallmark Building, Pretoria, 0001, for **attention** of Mr Sihle Mthiyane;
(b) mailed to the DHA at Private Bag X114, Pretoria, 0001; or
(c) e-mailed to whitepaper@dha.gov.za.

Any enquiries should be directed to **Mr Sihle Mthiyane at (012) 406 4353)/ 073 762 0575 or Ms Rittah Monama at (012) 406 7114/ 063 680 9897.**

DR P.A. MOTSOALEDI, MP
MINISTER OF HOME AFFAIRS
DATE: 10/11/2023

home affairs

Department:
Home Affairs
REPUBLIC OF SOUTH AFRICA

WHITE PAPER ON CITIZENSHIP, IMMIGRATION AND REFUGEE PROTECTION: TOWARDS A COMPLETE OVERHAUL OF THE MIGRATION SYSTEM IN SOUTH AFRICA

PUBLIC CONSULTATION POLICY PAPER

NOVEMBER 2023

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STATEMENT OF THE MINISTER OF HOME AFFAIRS ON THE WHITE PAPER ON CITIZENSHIP, IMMIGRATION AND REFUGEE PROTECTION: TOWARDS A COMPLETE OVERHAUL OF THE MIGRATION SYSTEM IN SOUTH AFRICA

"*The ANC-led government must completely overhaul the Citizenship Act, Refugees Act and Immigration Act to meet the new challenges facing South Africa*"[1].

1. The Department of Home Affairs ("DHA") experienced insurmountable difficulties in the implementation of the three pieces of legislation, namely, the South African Citizenship Act 88 of 1995, the Immigration Act 13 of 2002 and the Refugees Act 130 of 1998.

2. It is now clear that some of the institutional and structural challenges were mainly due to the said three pieces of legislation, which were enacted during the transitional period and are characterized by lack of harmony amongst them. Over the years, certain constructive amendments to the said were enacted, but because of the absence of the overarching policy framework, there are still deficiencies.

3. As a result, officials of the Department of Home Affairs "(DHA") were instructed to work on a new policy framework. It took four years of intense internal discussion and consultations (which included outside local and international experts) to produce the current White Paper on Citizenship, Immigration and

1 Paragraph 9.1.7 of the Resolution of the 55th National Conference of the African National Congress, held on 16-20 December 2022 and 5 January 2023.

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Refugee Protection: Towards a Complete Overhaul of the Migration System in South Africa ("White Paper").

4. The White Paper is in line with international trends in other countries faced with similar challenges of migration.

5. No single day passes without print and electronic media reports about the failures and/or weaknesses of the DHA regarding the migration system. Even the most visible achievements of the DHA are drowned by these endless negative reports. Apart from the said reports, the DHA spent significant amount of time and financial resources defending court challenges which in most instances, the DHA becomes second. There are several instances wherein the DHA has been slapped with court orders of which it has not been aware of the proceedings . This must change as the fiscus cannot afford anymore. Currently, South Africa is faced with huge financial difficulties.

6. The policy and legislative gaps within the DHA have created a fertile ground for violent clashes between foreign nationals and citizens, including emergence of belligerent groups, either siding or against the current migration system. Furthermore, there are organizations and individuals who are beneficiaries of the gaps in the migration system, who have exploited the situation by entering the fray.

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7. The White Paper proposes radical changes and policy framework which will no doubt bring stability, desired results for economic development and effective citizenship, immigration and refugee protection policy measures.

8. In working on the White Paper, an in-depth analysis of the paralysis within the DHA was closely scrutinised. This involved brutal and honest self- criticism of the current policy frameworks. I believe the exercise was indeed not in vain.

9. The DHA would like to make use of this opportunity to invite civil society, government departments, organised labour, individual citizens and all stakeholders to make constructive comments on the White Paper. Such comments can be made in any of the 11 official languages as a way of maximising grassroot participation to enrich the process. This step is indeed unprecedented. The DHA urges each one of you to make a contribution, even a handwritten note on a piece of paper will be duly considered. The purpose of the exercise is to ensure that the policy and legislative measures to emerge come from the people themselves, and not from those who claim to represent the people without any mandate whatsoever.

10. Once the public comments have been duly considered, I intend to introduce complimentary and integrated bill in Parliament without any further delay.

DR PA MOTSOALEDI

MINISTER OF HOME AFFAIRS

DATE: 10/11/2023

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Introduction

1. Conflicts, armed violence, disasters, pandemics, seeking better business and work opportunities and other factors force people to leave their countries of origin to other countries.

2. In response to the international migration an organisation known as Provisional Intergovernmental Committee for Movement of Migrants from Europe ("PICMME") was established in 1951 and on 21 November 2013, its name was changed to International Organisation for Migration ("IOM") and works as an agency of the United Nations ("UN"). Many States are members, including South Africa. Despite the outbreak of COVID-19, more than 82 million people were displaced globally because of economic factors.

Role of the government in dealing with migration and the principle of Pan-Africanism

3. The Department of Home Affairs' ("DHA") response to challenges posed by unlawful migration must be informed by the principle of Pan- Africanism.

4. The Pan-Africanism philosophy, *inter alia*, led to the establishment of the Organisation of African Unity ("OAU") now African Union ("AU") led by Kwame Nkrumah of Ghana on 25 May 1963, with its aims, *inter alia*, to safeguard the interests of African states and independence of all African states.

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5. It is upon this basis that over and above, the 1951 United Nations Refugees Convention ("1951 Convention") and the 1967 Protocol relating to the Status of Refugees ("1967 Protocol"), the OAU endorsed its own OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969 ("1969 OAU Convention") in order to deal with the peculiar circumstances of migration and refugees in Africa. This was done in the spirit of Pan – Africanism.

6. The 1969 OAU Convention prohibited refusal of entry, expulsion or extradition of asylum seekers and refugees and also provides for certain exclusions on certain grounds. In fact, the refugee laws in most of the AU countries based on the 1969 OAU Convention are much more stringent than the Refugees Act in South Africa. In fact, the principle of Pan-Africanism does not promote illegal entry into the countries that are signatory to the 1969 OAU Convention.

7. Migration as an international phenomenon is unavoidable. However, migration should be managed through effective policies and legislative measures. Failure to do so, results in insurmountable difficulties.

8. It has become an international trend to develop a single policy and legislative measures dealing with citizenship, immigration and refugee protection.

Legislation impacting on migration in South Africa

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9. South Africa has different pieces of legislation dealing with citizenship, immigration and refugee protection, namely the Citizenship Act[2], Immigration Act[3] and Refugees Act [4] as amended. In fact, the South African Citizenship Act is a relic of the colonial era and a replica of the 1949 Citizenship Act[5]. In practice, these pieces of legislation in other instances, are in conflict with each other. The implementation becomes cumbersome and difficult, resulting in:

9.1 Asylum seekers, refugees and foreign nationals acquiring permanent residence status and citizenship prematurely, irregularly and inappropriately;

9.2 Criminal syndicates, including human traffickers have the networks to exploit the refugee and permitting systems to carry out their nefarious activities with impunity;

9.3 The United Nations International Residual Mechanism for Criminal Tribunal (relating to genocide) complained about granting of refugee status in South Africa to persons who are excluded in terms of 1951 Convention because they committed atrocities in their countries of origin;

9.4 The asylum regime is sometimes conflated with economic migrants, resulting in overburdening the asylum system and therefore there is an urgent need for legislation to provide for economic migrants and asylum seekers separately;

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2 Act 88 of 1995.
3 Act 13 of 2002.
4 Act 130 of 1998.
5 Act 44 of 1949.

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9,5 The visas provided for in the Immigration Act are abused. In some instances, through corrupt activities involving officials of the Department of Home Affairs ("DHA");

9.6 The enforcement and implementation of the said three pieces of legislation, namely, Citizenship Act, Refugees Act and Immigration Act are weak and ineffective and passed during the transitional period;

9.7 The refugee and immigration structures, including appeal bodies are not occupied by suitably qualified persons to carry out efficiently their statutory duties;

9.8 The appeal process creates a bureaucratic ladder which leads to further delays and backlogs.

Asylum during the apartheid era

10. Asylum seekers and refugees were not recognised in South Africa until 1993. During the apartheid regime, South Africa did not accede to any international and regional conventions relating to the status of refugees and asylum seekers.

11. South Africa administered its refugee policy on an *ad hoc* basis, granting refugee status mostly to white nationals from Zimbabwe, Portugal and

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Mozambique. The Aliens Control Act[6] governed immigration during the apartheid era. The preference of whites over "non-whites" (blacks) became the main focus of the immigration policy[7].

12. The Refugees Act[8] was passed in 1998. In line with the 1951 Convention, the 1967 Protocol and the 1969 OAU, the Refugees Act prohibits refusal of entry, expulsion or extradition of asylum seekers and refugees[9]. The Refugees Act further enjoined South Africa to treat asylum seekers in a humanitarian and dignified manner. South Africa is now bound by international humanitarian law standards and principles[10].

13. The Constitution guarantees and protects human rights of asylum seekers and refugees. The State has an obligation to respect, protect, promote and fulfil the rights in the Bill of Rights[11].

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6 Aliens Control Act 96 of 1991.

7 Kock O "Aspects of South Africa's Refugee Status Determination Process", Thesis, LLM (Multi-disciplinary Human Rights) University of Pretoria, June 2018, page 15.

8 Refugees Act 130 of 1998.

9 Zetter R and Ruaudel H "Refugees' Right to Work and Access to Labor Markets-An Assessment" KNOMAD, September (2016): page 146.

10 Kock O "Aspects of South Africa's Refugee Status Determination Process", Thesis, LLM (Multi-disciplinary Human Rights) University of Pretoria, June 2018: pages 15-16.

11 Section 7(2) of the Constitution of the Republic of South Africa, 1996. Section 7(2) provides that the state must respect, protect, promote and fulfil the rights in the Bill of Rights.

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Accession to international agreements

14. South Africa acceded to various international agreements such as, the 1951 Convention, the 1967 Protocol[12], the 1969 OAU Convention and other international instruments. This was done without the government having developed a clear policy on migration, including refugee protection. The 1951 Convention, the 1967 Convention and 1969 OAU Convention are annexed hereto marked "**A**", "**B**" and "**C**".

15. Both the 1951 Convention and 1967 Protocol provide for reservations. In terms of article 42 of the 1951 Convention, any State may make reservations to articles of the Convention other than articles 1, 3, 4, 16(1), 33, 36-46 inclusive.

16. Article VII of the 1967 Protocol provides that any State may make reservations in respect of articles IV and 1 other than articles 1, 3, 4, 16(1) and 33.

17. Many countries made reservations in respect of both the 1951 Convention[13] and 1967 Protocol[14].

18. Other countries such as India, have not acceded to the 1951 Convention and 1967 Protocol at all.

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12 Ratified on 12 January 1996.

13 Countries that made reservations, include but not limited to Angola, Australia, Botswana, Ethiopia France, Malawi, Namibia, Mozambique, Netherlands, Somalia, Sweden, Uganda, Zambia, Zimbabwe, United Kingdom and Ireland.

14 Countries that made reservations in respect of the 1967 Protocol, include but not limited to Angola, Botswana, Congo, eSwatini, China, Malawi, Netherlands, Portugal, United States of America and United Kingdom and Ireland.

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1951 Convention: Reservations

19. Zimbabwe on attaining independence in 1981 made the following reservations:

"*1. The Government of the Republic of Zimbabwe declares that it is not bound by any of the reservations to the Convention relating to the Status of Refugees, the application of which had been extended by the Government of the United Kingdom to its territory before the attainment of independence.*

The Government of the Republic of Zimbabwe wishes to state with regard to article 17, paragraph 2, that it does not consider itself bound to grant a refugee who fulfils any of the conditions set out in subparagraphs (a) to (c) automatic exemption from the obligation to obtain a work permit. In addition, with regard to article 17 as a whole, the Republic of Zimbabwe does not undertake to grant to refugees' rights of wage-earning employment more favourable than those granted to aliens generally.

The Government of the Republic of Zimbabwe wishes to state that it considers article 22 (1) as being a recommendation only and not an obligation to accord to refugees the same treatment as it accords to nationals with respect to elementary education.

The Government of the Republic of Zimbabwe considers articles 23 and 24 as being recommendations only." (Underling supplied)

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20. Zambia made the following reservations:

"Subject to the following reservations made pursuant to article 42 (1) of the Convention: Article 17 (2)

The Government of the Republic of Zambia wishes to state with regard to article 17, paragraph 2, that Zambia does not consider itself bound to grant to a refugee who fulfils any one of the conditions set out in sub-paragraphs (a) to (c) automatic exemption from the obligation to obtain a work permit.

Further, with regard to article 17 as a whole, Zambia does not wish to undertake to grant to refugees' rights of wage-earning employment more favourable than those granted to aliens generally.

Article 22 (1)

The Government of the Republic of Zambia wishes to state that it considers article 22 (1) to be a recommendation only and not a binding obligation to accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

Article 26

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The Government of the Republic of Zambia wishes to state with regard to article 26 that it reserves the right to designate a place or places of residence for refugees.

Article 28

The Government of the Republic of Zambia wishes to state with regard to article 28 that Zambia considers itself not bound to issue a travel document with a return clause in cases where a country of second asylum has accepted or indicated its willingness to accept a refugee from Zambia" (Underlining supplied)

21. Uganda made the following reservations:

"*(1) In respect of article 7: The Government of the Republic of Uganda understands this provision as not conferring any legal, political or other enforceable right upon refugees who, at any given time, may be in Uganda. On the basis of this understanding the Government of the Republic of Uganda shall accord refugees such facilities and treatment as the Government of the Republic of Uganda shall in her absolute discretion, deem fit having regard to her own security, economic and social needs.*

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(2) *In respect of articles 8 and 9: The Government of the Republic of Uganda declares that the provisions of articles 8 and 9 are recognized by it as recommendations only.*

(3) *In respect of article 13: The Government of the Republic of Uganda reserves to itself the right to abridge this provision without recourse to courts of law or arbitral tribunals, national or international, if the Government of the Republic of Uganda deems such abridgement to be in the public interest.*

(4) *In respect of article 15: The Government of the Republic of Uganda shall in the public interest have the full freedom to withhold any or all rights conferred by this article from any refugees as a class of residents within her territory.*

(5) *In respect of article 16: The Government of the Republic of Uganda understands article 16 paragraphs 2 and 3 thereof as not requiring the Government of the Republic of Uganda to accord to a refugee in need of legal assistance, treatment more favourable than that extended to aliens generally in similar circumstances.*

(6) *In respect of article 17: The obligation specified in article 17 to accord to refugees lawfully staying in the country in the same circumstances shall not be construed as extending to refugees the benefit of preferential treatment granted to nationals of the states who enjoy special privileges*

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on account of existing or future treaties between Uganda and those countries, particularly states of the East African Community and the Organization of African Unity, in accordance with the provisions which govern such charters in this respect.

(7) *In respect of article 25: The Government of the Republic of Uganda understands that this article shall not require the Government of the Republic of Uganda to incur expenses on behalf of the refugees in connection with the granting of such assistance except in so far as such assistance is requested by and the resulting expense is reimbursed to the Government of the Republic of Uganda by the United Nations High Commissioner for Refugees or any other agency of the United Nations which may succeed it.*

(8) *In respect of article 32: Without recourse to legal process the Government of the Republic of Uganda shall, in the public interest, have the unfettered right to expel any refugee in her territory and may at any time apply such internal measures as the Government may deem necessary in the circumstances; so however that, any action taken by the Government of the Republic of Uganda in this regard shall not operate to the prejudice of the provisions of article 33 of this Convention."*

(Underlining supplied)

22. Angola made the following reservations:

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"The Government of the Peoples Republic of Angola also declares that the power of the Convention shall be applicable in Angola provided that they are not contrary to or incompatible with the constitutional and legal provisions in force in the People's Republic of Angola, especially as regards articles 7,13, 18 and 24 of the Convention. Those provisions shall not be construed so as to accord to any category of aliens resident in Angola more extensive rights than are enjoyed by Angolan citizens.

The Government of the Peoples Republic of Angola also considers that the provisions of articles 8 and 9 of the Convention cannot be construed so as to limit its right to adopt in respect of a refugee or group of the refugees such measures as it deems necessary to safeguard national interests and to ensure respect for its sovereignty whenever circumstances so require.

In addition, the Government of the People's Republic of Angola wishes to make the following reservations: Article 17: The Government of the people's Republic of Angola accepts the obligations set forth in article 17, provided that:

(a) Paragraph 1 of this article shall not be interpreted to mean that refugees must enjoy the same privileges as may be accorded to nationals of countries with which the People's Republic of Angola has signed special co-operation agreements:

(b) Paragraph 2 of this article shall be construed as recommendations and not as an obligation.

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(c) *The Government of the People's Republic of Angola reserves the right to prescribe, transfer or circumscribe the place of residence of certain refugees or groups of refugees, and to restrict their freedom of movement, whenever considerations of national or international order make it advisable to do so".*

23. Australia made the following reservations:

"The Convention is ratified:

(a) *Subject to the reservation that the Republic of Australia regards the provisions of article 17, paragraphs 1 and 2 (excepting, however the phrase "who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or . . ."in the latter paragraph) not as a binding obligation, but merely as a recommendation*

The Convention is ratified:

(a) *Subject to the reservation that the Republic of Australia regards the provisions of article 17, paragraphs I and 2 (excepting, however the phrase "who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or . . ."in the*

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latter paragraph) not as a binding obligation, but merely as a recommendation.

(b) Subject to the reservation that the provisions of article 22, paragraph I, shall not be applicable to the establishment and maintenance of private elementary schools, that the "public relief and assistance" referred to in article 23 shall be interpreted solely in the sense of allocations from public welfare funds (Armenversorgung) .and that the documents or certifications" referred to in article 25, paragraphs 2 and 3 shall be construed to mean the identity certificates provided for in the Convention of 30 June 1928 relating to refugees".

24. Ethiopia made the following reservations:

"[Subject to the following reservations made under the terms of Article 42, paragraph 1, of the Convention and Article VII, paragraph I, of the Protocol:

The provisions of articles 8, 9, 17 (2) and22 (I) of the Convention are recognized only as recommendations and not as legally binding obligations]'

25. Mozambique made the following reservations:

"The Government of Mozambique will take these provisions as simple recommendations not binding it to accord to refugees the same treatment as is accorded to Mozambicans with respect to elementary education and

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Government of Mozambique will interpret [these provisions] to the effect that of the effect that it is not required to grant the Government of Mozambique reserves its right to designate place or places for principal residence for refugees or to restrict their freedom of movement whenever considerations of national security make it advisable.

The Government of Mozambique does not consider itself bound to grant to refugees facilities greater than those granted to other categories of aliens in general, with respect to naturalization laws."

26. United Kingdom of Great Britain and Northern Ireland made the following reservations:

"(i) The Government of the United Kingdom of Great Britain and Northern Ireland understand articles 8 and 9 as not preventing them from -taking in time of war or other grave and exceptional circumstances measures in the interests of national security in the case of a refugee on the ground of his nationality. The provisions of article 8 shall not prevent the Government of the United Kingdom of Great Britain and Northern Ireland from exercising any rights over property or interests which they may acquire or have acquired as an Allied or Associated power under a Treaty of Peace or other agreement or arrangement for the restoration of peace which has been or may be completed as a result of the Second World War. Furthermore, the provisions of article 8 shall not affect the

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treatment to be accorded to any property or interests which at the date of entry into force of this Convention for the United Kingdom of Great Britain and Northern Ireland are under the control of the Government of the United Kingdom of Great Britain and Northern Ireland by reason of a state of war which exists or existed between them and any other State.

(ii) *The Government of the United Kingdom of Great Britain and Northern Ireland accept paragraph 2 of article 17 with the substitution of "four years" for "three years" in sub-paragraph (a) and with the omission of sub-paragraph (c).*

(iii) *The Government of the United Kingdom of Great Britain and Northern Ireland, in respect of such of the matters referred to in sub-paragraph (l) of paragraph I of article 24 as fall within the scope of the National Health Service, can only undertake to apply the provisions of that paragraph so far as the law allows; and It can only undertake to apply the provisions of paragraph 2 of that Article so far as the law allows.*

(iv) *The Government of the United Kingdom of Great Britain and Northern Ireland cannot undertake to give effect to the obligations contained in paragraphs I and 2 of article 25 and can only undertake to apply the provisions of paragraph 3 so far as the law allows.*

In connexion with sub-paragraph (b) of paragraph I of article 24 relating to certain matters within the scope of the National Health Service, the

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National Health Service (Amendment) Act, 1949, contains powers for charges to be made to persons not ordinarily resident in Great Britain (which category would include refugees) who receive treatment under the Service. While these powers have not yet been exercised, it is possible that this might have to be done at some future date. In Northern Ireland the health services are restricted to persons ordinarily resident in the country except where regulations are made to extend the Service to others. It is for these reasons that the Government of the United Kingdom while they are prepared in the future, as in the past, to give the most sympathetic consideration to the situation of refugees, find it necessary to make a reservation to sub-paragraph (b) of paragraph I of article 24 of the Convention.

The scheme of Industrial Injuries Insurance in Great Britain does not meet the requirements of paragraph 2 of article 24 of the Convention. Where an insured person has died as the result of an industrial accident or a disease due to the nature of his employment, benefit cannot generally be paid to his dependants who are abroad unless they are in any part of the British Commonwealth, in the Irish Republic or in a country with which the United Kingdom has made a reciprocal agreement concerning the payment of industrial injury benefits. There is an exception to this rule in favour of the dependants of certain seamen who die as a result of industrial accidents happening to them while they are in the service of British ships. In this matter refugees are treated in the same way as citizens of the United Kingdom and Colonies and by

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reason of paragraphs 3 and 4 of article 24 of the Convention, the dependants of refugees will be able to take advantage of reciprocal agreements which provide for the payment of United Kingdom industrial injury benefits in other countries. By reason of paragraphs (3) and (4) of article 24 refugees will enjoy under the scheme of National Insurance and Industrial Injuries Insurance certain rights which are withheld from •British subjects who are not citizens of the United Kingdom and Colonies.

No arrangements exist in the United Kingdom for the administrative assistance for which provision is made in article 25 -nor have any such arrangements been found necessary in the case of refugees. Any need for the documents or certifications mentioned in paragraph 2 of that article would be met by affidavits." (Underlining supplied)

1967 Protocol: Reservations

27. eSwatini made the following reservations:

"*Subject to the following reservations in respect of the application of the Convention relating to the Status of Refugees, done at Geneva on 28 July 1951, under article of the Protocol;*

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(1) The Government of the Kingdom of Swaziland is not in a position to assume obligations as contained in article 22 of the said Convention, and therefore will not consider itself bound by the provisions therein;

(2) Similarly, the Government of the Kingdom of Swaziland is not in a position to assume the obligations of article 34 of the said Convention, and must expressly' reserve the right not to apply the provisions therein.

"The Government of the Kingdom of Swaziland deems it essential to draw attention to the accession as a Member of the United Nations, and not as a Party to the [Convention relating to the Status of Refugees] by reason of succession or otherwise."

28. Netherlands made the following reservations:

"In accordance with article VII of the Protocol, all reservations made by the Kingdom of the Netherlands upon signature and ratification of the Convention relating to the Status of Refugees, which was signed in Geneva on 28 July 1951, are regarded to apply to the obligations resulting from the Protocol."

29. United Kingdom of Great Britain and Northern Ireland made the following reservations:

"(a) In accordance with the provisions of the first sentence of Article VII.4 of the Protocol, the United Kingdom hereby excludes from the application

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of the Protocol the following territories for the international relations of which it is responsible: Jersey, Southern Rhodesia, Swaziland.

(b) In accordance with the provisions of the second sentence of Article V11.4 of the said Protocol, the United Kingdom hereby extends the application of the Protocol to the following territories for the international relations of which it is responsible: St. Lucia, Montserrat,"

30. United States of America made the following reservations:

"With the following reservations in respect of the application, in accordance with article 1 of the Protocol, of the Convention relating to the Status of Refugees, done at New York on 28 July 1951:

The United State of America construes Article 29 of the Convention as applying only to refugees who are resident in the United States and reserves the right to tax refugees who are not residents of the United States in accordance with its general rules relating to non-resident aliens.

The United States of America accepts the obligation of paragraph I (b) of Article 24 of the Convention except Insofar as that paragraph may conflict in certain instances with any provisions of title II (old age: Survivors' and disability Insurance) or title XVITI (hospital and medical insurance for the aged) of the Social Security Act, As to any such provision, the United States will accord to

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refugees lawfully staying in its territory treatment no less favorable than is accorded aliens generally in the same circumstances."

31. South Africa did not make any reservations in respect of the 1951 Convention and 1967 Protocol. This was a serious mistake on the part of government.

32. It is not surprising that South African courts developed jurisprudence regarding asylum and refugee protection (in the absence of exceptions and reservations) thus:

32.1 A foreigner who enters illegally and does not report to the authorities and encountered by immigration officers cannot be arrested and deported if he or she expresses an intention to apply for asylum, he or she must be afforded the opportunity to do so. Delay in indicating the wish to apply for asylum is not a ground for refusing such an application[15]

32.2 Illegal entry into the country is not a bar to application for asylum[16];

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15 **Bula and Others v Minister of Home Affairs and Others** [2011] ZASCA 209; [2012] 2 All SA 1 (SCA); 2012 (4) SA 560 (SCA), para 80. See also **Abdi and Another v Minister of Home Affairs and Others**, [2011] ZASCA 2; 2011 (3) SA 37 (SCA); [2011] 3 All SA 117 (SCA), para 22, **Ersumo v Minister of Home Affairs and Others**, (69/2012) [2012] ZASCA 31, paras 13 and 16.; 2012 (4) SA 581 (SCA); [2012] 3 All SA 119 (SCA) and **Ruta v Minister of Home Affairs** 2019 (3) BCLR 383 (CC), paras 3,4,6,16,18,19,20,27 and 52.

16 **Ruta v Minister of Home Affairs** 2019 (3) BCLR 383 (CC), paras 4 and 50. See also **R v Uxbridge Magistrates Court and Another, Ex parte Adimi [1999] EWHC 765 (Admin)**, [2001] Q.B. 667, 29 July 1999 (England and Wales High Court, Administrative Court, paras 2,18,19,24 and 25.

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32.3 The rights to human dignity, life and equality are enjoyed by the citizens and non-citizens alike – that human dignity has no nationality – it is inherent in all people[17];

32.4 Asylum seekers and refugees acquire the legal entitlements to residence, employment and study in the Republic[18];

32.5 Persons should not be returned to a country where they fear persecution or their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion, that is, enforcement of the principle of *non-refoulement*[19];

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17 **Minister of Home Affairs and Others v Watchenuka and Others** [2004] 1 All SA 21 (SCA), paras 25-28 and 33. The SCA said: *"... human dignity has no nationality. It is inherent in all people-citizens and non-citizens alike-simply because they are human".* **Ruta v Minister of Home Affairs** 2019 (3) BCLR 383 (CC) ,para 12; **S v Makwanyane and Another,** [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1 ,paras 10, 26 and 27; **Gavrić v Refugee Status Determination Officer Cape Town and Others (People Against Suppression Suffering Oppression and Poverty as Amicus Curiae),** [2018] ZACC 38; 2019 (1) SA 21 (CC); 2019 (1) BCLR 1 (CC), paras 20 and 28 and **Khosa and Others v Minister of Social Development and Others, Mahlaule and Another v Minister of Social Development** ; 2004 (6) SA 505 (CC); 2004 (6) BCLR 569 (CC), paras 42, 44 and 70., See also **Dawood and Another v Minister of Home Affairs and Others ; Shalabi and Another v Minister of Home Affairs and Others ; Thomas and Another v Minister of Home Affairs and Others,** [2000] ZACC 8; 2000 (3) SA 936 (CC).

18 **Minister of Home Affairs and Others v Watchenuka and Others** [2004] 1 All SA 21 (SCA), para 32. With regards to the right of asylum seekers to employment, the SCA stated that a prohibition against employment is a material invasion of human dignity that is not justifiable in terms of section 36 of the Constitution. See also **Somali Association of South Africa and Others v Limpopo Department of Economic Development Environment and Tourism and Others** 2015 (1) SA 151 (SCA) paras 5,26,27,40 and 43, **Governing Body of the Juma Musjid Primary School and Others v Essay N.O. and Others,** [2011] ZACC 13; 2011 (8) BCLR 761 (CC) paras 36,38,40,42 and 43, **Larbi-Odam and Others v Member of the Executive Council for Education (North -West Province) and Another** [1997] ZACC 16; 1997 (12) BCLR 1655; 1998 (1) SA 745 paras 31, 38,41 and 43 and **Union of Refugee Women and others v Director, Private Security Industry Regulatory Authority and Others** 2007 (4) BCLR 339(CC), paras 47, 57, 65 and 138.

19 **Ruta v Minister of Home Affairs,** 2019 (3) BCLR 383 (CC), paras 24, 26, 29. See also **M.S.S. v Belgium and Greece,** (Application no. 30696/09) and **Gavrić v Refugee Status Determination Officer Cape Town and Others (People Against Suppression Suffering Oppression and Poverty as Amicus Curiae),** [2018] ZACC 38; 2019 (1) SA 21 (CC); 2019 (1) BCLR 1 (CC) para 27, **Saidi and Others v Minister of Home Affairs and Others** [2018] ZACC 9; 2018 (7) BCLR, 856 (CC); 2018 (4) SA 333 (CC) para 30.

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32.6 Asylum seekers and refugees are entitled to an administrative action that must be lawful, reasonable and procedurally fair[20].

Right to work

32.7 The employment rights of asylum seekers and refugees are also enshrined in the 1951 Convention outlining obligations for host countries to permit asylum seekers and refugees to engage in both wage-earning and self-employment. Many countries that made reservations to 1951 Convention excluded asylum seekers from wage-earning and self-employment and/or impose strict conditions in order to protect the rights of their citizens as provided for in article 17 of the 1951 Convention. As such article 17 does not apply.

32.8 Article 17 of the 1951 Refugee Convention provides:

"*The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees*".

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20 **Gavrić v Refugee Status Determination Officer Cape Town and Others (People Against Suppression Suffering Oppression and Poverty as Amicus Curiae)** [2018] ZACC 38; 2019 (1) SA 21 (CC); 2019 (1) BCLR 1 (CC) para 67.

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Right to education

32.9 The United Nations Convention on the Rights of the Child ("Children Rights Convention")[21] also recognises the right of the child to education[22]. This right extends to everyone, including children of the refugees and asylum seekers.

32.10 Recently the Full Court of the Eastern Cape Division ruled that the right to education extends to undocumented children[23]. Other countries restricted the right to education and/or impose conditions on asylum seekers and refugees through reservations in both the 1951 Convention and 1967 Protocol. Most of the reservations deal with socio-economic rights which most of the countries in the African Continent felt that the rights cannot be extended to asylum seekers and refugees. The reason being that those countries simply do not have resources to do so. South Africa is in no different position.

Principle of *non-refoulement*

33. The 1951 Convention entrenches the right of the refugees and asylum seekers to *non-refoulement*. Article 33 (1) of the 1951 Convention provides for the principle of *non-refoulement*:

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21 South Africa signed the Convention on the Rights of the Child on 29 January 1993 and ratified it on 16 June 1995.

22 Article 24 (2) (e) of the United Nations Convention on the Rights of the Child provides that States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents.

23 **Centre for Child Law, the School Governing Body of Phakamisa High School and Others v The Minister of Education and Others** [2020] 1 ALL SA 711 (ECG), paras 12,69 and 90.

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"No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".

34. The principle of *non-refoulement* is firmly embedded in refugee protection laws in South Africa.

35. In **Ruta**[24], the Constitutional Court ("CC") indicated that the1951 Convention protection extends to both (asylum seekers) *"de facto"* and (refugees) "*de jure*" categories. The recent judgment in **Abore**[25] reaffirmed the principle of *non-refoulement*. All of the said judgments and others were mainly based on article 33 (1) of the 1951 Convention and section 2 of the Refugees Act.

36. The Court recently applied the principle of *non-refoulement* to resolve a stand-off between the DHA and 22 Afghanistan nationals who were refused entry at Beitbridge port of entry in **Faqirzada and Others v Minister of Home Affairs and Others**[26] The case involves 22 Afghanistan nationals, who were issued with tourist visas by the Government of the Republic of Zimbabwe and as such, the immigration officer refused to issue asylum transit visas as contemplated in section 23 of the Immigration Act, read with Regulation 7 (2020). They had

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24 **Ruta v Minister of Home Affairs** 2019 (3) BCLR 383 (CC) ,paras 24 and 26-27.

25 **Abore v Minister of Home Affairs and Another** [2021] ZACC 50, paras 40-45.

26 Unreported judgment of **Faqirzada and Others v Minister of Home Affairs and Others**, Case no: B25/2023, High Court, Gauteng Division, Pretoria.

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informed the immigration officer that they wished to enter the Republic of South Africa in order to apply for asylum as they feared the wrath of the Taliban in Afghanistan. The refusal led to the 22 Afghanistan nationals approaching the court on an extremely urgent basis and obtained an interim order (in the absence of the respondents), which was anticipated by the respondents within 24 hours.

37. The case attracted extensive media coverage and public debate[27]

Refugees Act

38. Section 2 of the Refugees Act provides:

"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-

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27 Mpho Sibanyoni "SA government rejects Afghans for 'baseless asylum applications'", Sowetanlive, February 2023; Unathi Nkanyeni "'Our system is being abused' Clayton Monyela on Afghan asylum-Seekers", Sowetanlive, February 2023; Mpho Sibanyoni "Court rules 22 Afghans can apply for asylum transit visas", Sowetanlive, February 2023; Mpho Sibanyoni "Afghan nationals want to help victims on Cape Flats", Sowetan, March 2, 2023; Nicole Mclain "Court rules in favour of Afghan nationals, says Home Affairs must process asylum applications", News24, February 2023; Department of Home Affairs: "Press Statement on the outcome of the court proceedings involving Afghanistan nationals who were refused entry into the Republic of South Africa at Beitbridge port of entry", issued on March 1, 2023; Sipho Sibanyoni "Afghan asylum seekers to look elsewhere", Sowetan, March 3, 2023 and Molefe Seeletsa "Afghans 'pose risk to SA'", Citizen, March 9, 2023.

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(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 public order in any part or the whole of that country".*

39. The principle of *non-refoulement* was entrenched in the Refugees Act without the applicable international exceptions and reservations to the international agreements. In particular, the prohibition imposed by OAU Convention[28].

40 Even during the debate and adoption of the 1951 Convention, the United Nations was fully conscious of the limitations of the principle of *non-refoulement* in article 33 (2) that countries may wish to adopt. However, when the Refugees Act was enacted in South Africa, article 33 (2) of the Convention was not taken into consideration at all.

28 See article---- of the OAU Convention.

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Other rights and privileges enjoyed by asylum seekers and refugees

41. Asylum seekers and refugees enjoy rights and privileges such as, social grants, basic health care services, record of birth, travel documents and equality before the law.

Controversial provisions of the Refugees Act and Regulations

42. On 1 January 2020 (through publication of Proclamation R.60, Government Gazette 42932, 27 December 2019) three Amendments Act altered the policy framework of the DHA in material respects. These pieces of amendments are:

42.1 Refugees Amendment Act 33 of 2008 ("2008 Refugees Amendment Act") assented to by the President of the Republic of South Africa on 21 November 2008;

42.2 Refugees Amendment Act 12 of 2011 ("2011 Refugees Amendment Act") assented to by the President on 21 August 2011, which came into effect immediately after the commencement of the Refugees Amendment Act 33 of 2008 came into effect; and

42.3 Refugees Amendment Act 11 of 2017 ("2017 Refugees Amendment Act") assented to by the President on 14 December 2017 which came into effect immediately after the commencement of 2008 and 2011 Refugees Amendment Act came into effect.

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43. Some of the amendment provisions of the Refugees Act and new Regulations may not pass constitutional muster. In general, there was public outcry and newspapers articles were written about the negative impact of the amendments and Regulations. The Minister sought legal advice which confirmed that some of the criticisms were justified.

New Refugee Regulations

44. The New Regulations were published on 27 December 2019 and repealed the previous Regulations (published in GNR 36, Government Gazette 21075, 6 April 2000. The Regulations came into effect on 1 January 2020.

45. Some of the Regulations will not pass constitutional scrutiny, such as dealing with verification or authentication and termination of marriage at the time the application for asylum is made.

Policy recommendations

46.1 The Government of the Republic of South Africa must review and/or withdraw from the 1951 Convention and the 1967 Protocol with a view to accede to them with reservations like other countries. The procedure involves depositing the reservations with Secretary-General of the United Nations.

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46.2 The Refugee Protection and Immigration legislation must provide for reservations and exceptions as contained in the 1951 Convention and the 1969 OAU Convention. Particularly in that South Africa does not have the resources to grant the socio-economic rights envisaged in the 1951 Convention.

Cessation of refugee status

47. In countries where the political situation has improved and fear of persecution no longer exists, the DHA should in collaboration with the United Nations High Commissioner for Refugees ("UNHCR") and ambassadors concerned, to repatriate refugees to their countries of origin. Legislative intervention should be developed to deal with issues of voluntary and involuntary repatriation. The termination of refugee status should be done in compliance with the relevant provisions of PAJA and Constitution.

48. Countries such as Botswana has repatriated refugees from Namibia and Zimbabwe back to their countries of origin. This was done in collaboration with the UNHCR. The repatriation process was challenged unsuccessfully up to the appeal court in Botswana. In any event, section 5 (1) of the Refugees Act provides for cessation of refugee status where change of circumstances related to the grounds for recognition had occurred.

49. Similar provisions in the new legislation must be used much more frequently in order to lessen the burden that comes with recognition of refugees.

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50. A disturbing trend has emerged in South Africa in which asylum is regarded as a permanent solution and an easy path to citizenship.

Policy framework: Proposals (Refugee Protection)

51.1. The new policy framework must provide for exceptions as envisaged in the 1969 OAU Convention.

51.2. Given the magnitude of the practical difficulties outlined above, the Refugees Act must be repealed in its entirety and be included in a single legislation dealing with citizenship, immigration and refugee protection[29].

51.3 The new legislation must include the best international practices in dealing with refugee protection.

51.4 There must be suitably qualified persons and structures (including appeal bodies) to deal with refugee protection.

51.5. The refugee reception offices must be located at ports of entry to facilitate immediate assessment of asylum claims[30].

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29 Paragraph 9.1.8 of the Resolution of the 55th ANC National Conference, held on 16-20 December 2022 and 5 January 2023. See also Nomatima Nkosi "ANC proposes complete overhaul of immigration", Soweatan, July 22, 2022; Hajra Omarjee and Luyolo Mkentani "ANC eyes polls as it moves to tighten immigration rules", BusinessDay, July 2022 and Eric Naki "ANC's laxity on migration laws", Citizen, August 1, 2022.

30 Paragraph 9.1.13 of the Resolution of the 55th ANC National Conference, held on 16-20 December

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52. The further policy framework proposals regarding refugee protection will be dealt below with.

Genesis of the 1949 Citizenship Act, Citizenship Act, 1995 and other relevant laws

53. It is apposite to outline the genesis of the 1949 Citizenship Act[31] ("1949 Act") and other relevant successive laws governing citizenship. The 1949 Act and other relevant laws were not only discriminatory on the basis of race and sex but the "*natives*" (black people) were totally excluded from the South African citizenship regime.

54. The beginning of separate South African citizenship under the Union Government came with the Natives' Land Act[32] that set up reserves (later known as "*Bantustans*" or "*homelands*") for Black people. The 1913 Act provided for setting aside existing black reserves as "*scheduled areas*" reserved for black ownership and occupation, and also prohibiting blacks from purchasing land outside them.

55. The 1913 Natives' Land Act was a perfect example of legislation adopted by the Union Government which segregated blacks and limited their rights as full citizens of South Africa. The Land Act of 1913 laid the basis of the "*South*

2022 and 5 January 2023.

31 Act 44 of 1949.

32 Natives' Land Act 27 of 1913.

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African citizenship" that was permeated by racism and male chauvinism. The outcome of the 1913 Act was, as Sol Plaatjie wrote: *"[a]wakening on Friday morning, June 20, 1913, the South African native found himself, not actually a slave, but a pariah in the land of his birth*".

56. In the words of Khampepe J in **Chisuse**[33]:

"*Citizenship in South Africa has, since its inception in the early twentieth century, been a deeply fraught political, social and ideological tool used to define access to membership of the South African polity. The systematic act of stripping millions of black South Africans of their citizenship was one of the most pernicious policies of the apartheid regime, which left many as "foreigners in the land of [their] birth" The advent of the constitutional dispensation established South African citizenship as a constitutional precept based on equality"*

57. From 1948 black people were denied citizenship of South Africa. The 1949 Act was intended to protect the rights of European colonialists. Section 6 of the Act dealt with persons born outside the Union of South Africa as follows:

"(1) A person born outside the Union on or after the date of commencement of this Act shall, subject to the provisions of sub-section (2), be a South African citizen if -

33 **Chisuse and Others v Director-General, Department of Home Affairs and Another** [2020] ZACC 20;2020 (6) SA 14 (CC); 2020 (10) BCLR 1173 (CC), para 1.

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(a) his father was at the time of such person's birth, a South African citizen and he fulfils any one of the following conditions, that is to say, if either –

(i) his father was a South African citizen by birth, registration or naturalization; or

(ii) his father was a South African citizen by descent and was born in South-West Africa; or (iii) his father was, at the time of the birth, in the service of the Government of the Union; or –

(iv) his father was, at the time of the birth, ordinary resident in the Union; and (b) his birth is, within one year thereof or such longer period as the Minister may in the special circumstances of the case approve, registered at a Union consulate or such other place as may be prescribed.

(2) Notwithstanding the provisions of sub-section (1), no person who, after the date of commencement of this Act, is born in any Commonwealth country and whose father is not in the service of the Government of the Union or of a person or association of persons resident or established in the Union, or not ordinarily resident in the Union shall, if under the law of that country he

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becomes a citizen of that country at birth, be a South African citizen". (Underlining supplied).

58. The main purpose of the 1949 Act provided for the citizenship of white colonialists and their children who were born in and outside South Africa.

59. The Restoration and Extension of South African Citizenship Act[34] ("Restoration Act") provided for the granting of South African citizenship to certain citizens of the "*Republics*" of Transkei, Bophuthatswana, Venda and Ciskei ("TBVC states") who were deprived citizenship when the TBVC states attained "*independence*".

Registration of births, marriages and deaths

60. Furthermore, before the establishment of the Union of South Africa, there were laws relating to the registration of births, marriages and deaths but those laws were different in each of the colonies. In fact, registration of births forms part of the long history of the citizenship regime in this country.

61. In 1910, legislative efforts were made to centralise the registration of births and deaths. In terms of Act 38 of 1914, a national statistical office for South Africa was established. Under the 1923 Act, registration was made compulsory for all races in urban areas but was voluntary for blacks in the rural areas.

34 Restoration and Extension of South African Citizenship Act 196 of 1993.

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62. During the apartheid era, the Population Registration Act[35] ("PRA") was enacted. The PRA classified the South Africans into racial groups. The PRA further made a provision for the compilation of a register of the population, primarily for the issuing of identity cards. Anyone whose name was included in the register was assigned with the identity number and a population group.

63. In 1963, the Births, Marriages and Deaths Act[36] was promulgated to make provision for registration of births, marriages and deaths of the South African citizens. Details of births were kept in the "*births register*" while those of deaths were kept in the "*deaths register*".

64. Section 7 of this Act provides that: "*No birth or death shall be registered after the expiry of one year from the date of such birth or death except upon the written authority of the Secretary and the payment of the prescribed fee (if any)*". (Underlining supplied)

65. In 1991, the PRA was repealed by the Population Registration Repeal Act[37] ("PRRA"). The purpose of the PRRA was to abolish the distinction made between persons belonging to different population groups.

66. In 1992, Births and Deaths Registration Act[38] ("BDRA") was enacted. The provisions of the BDRA applies to all South African citizens whether in South

35 Population Registration Act 30 of 1950.
36 Births, Marriages and Deaths Act 81 of 1963.
37 Population Registration Repeal Act 114 of 1991.
38 Births and Deaths Registration Act 51 of 1992.

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Africa or outside South Africa, including persons who are not South Africans but who sojourn permanently or temporarily in South Africa.

Second Reading Debate on the South African Citizenship Bill

67. It is worth noting that during the Second Reading Debate on the South African Citizenship Bill, most political parties represented in Parliament emphasized that claims for citizenship by foreigners should be done under exceptional circumstances[39].

68. Section 28 of the Constitution provides:

"Every child has a right to name and nationality from birth"

69. Some argue that section 28 applies to all children born in South Africa, irrespective of the child's legal status or that of the parent. This stretches the meaning of section 28 too wide. By way of an example, an asylum seeker whose application is rejected and has exhausted all the remedies is liable to be deported. If a child is born in the process, the nationality of that child would be that of a parent(s).

70. In **Centre for Child Law**[40], section 10 of the BRDA was declared unconstitutional as constituting unfair discrimination in terms of section 9 of the

39 Second Reading Debate on the on the Citizenship Bill, Hansard: 4321-4332, Thursday, 14 September 1995.

40 **Centre for Child Law v Director-General: Department of Home Affairs and Others** [2021] ZACC 31.

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Constitution. The Constitutional Court ruled that an unmarried father may give notice of his child's birth under his surname without the consent of the mother.

71. Section 2 (1) (a) and section 2 (1) (b) of the South African Citizenship Act were challenged. It was alleged that section 2 (1) (a) amounts to a wholesale deprivation of citizenship by descent which happened overnight on 31 December 2012. The argument was that the deprivation extends to persons born before 1 January 2013. In the result, section 2 (1) (a) and 2 (1) (b) violate sections 3 and 20 of the Constitution[41]. The Constitutional Court declined to declare the impugned provisions as unconstitutional and confirm the order invalidity by the High Court as it reasoned that the impugned section could be interpreted in a constitutionally compliant manner. It further stated that both parties were wrong in interpreting section 2 (1) (b) as applying prospectively only.

72. Section 3 of the Constitution provides[42]:

"(1) *There is a common South African citizenship. (2) All citizens are- (a) equally entitled to the rights, privileges and benefits of citizenship; and (b) equally subject to the duties and responsibilities of citizenship. (3) National Legislation must provide for the acquisition, loss and restoration of citizenship*".

73. Section 20 of the Constitution provides:

41 **Chisuse and Others v Director- General, Department of Home Affairs and Another** [2020] ZACC 20.

42 Constitution of the Republic of South Africa, 1996.

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"No citizen may be deprived of citizenship".

74. The South African Citizenship Act provides for three main forms of citizenship, namely, citizenship by birth, citizenship by descent and citizenship by naturalisation[43].

75. Section 2 of the Citizenship Act reads:

"2 Citizenship by birth

(1) Any person-

(a) who immediately prior to the date of commencement of the South African Citizenship Amendment Act, 2010, was a South African citizen by birth; or

(b) who is born in or outside the Republic, one of his or her parents, at the time of his or her birth, being a South African citizen, shall be a South African citizen by birth.

(2) Any person born in the Republic and who is not a South African citizen by virtue of the provisions of subsection (1) shall be a South African citizen by birth, if-

43 Section of the Citizenship Act.

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(a) he or she does not have the citizenship or nationality of any other country, or has no right to such citizenship or nationality; and

(b) his or her birth is registered in the Republic in accordance with the Births and Deaths Registration Act, 1992 (Act 51 of 1992).

(3) Any person born in the Republic of parents who have been admitted into the Republic for permanent residence and who is not a South African citizen, qualifies to be a South African citizen by birth, if-

(a) he or she has lived in the Republic from the date of his or her birth to the date of becoming a major; and

(b) his or her birth is registered in the Republic in accordance with the Births and Deaths Registration Act, 1992 (Act 51 of 1992)".

76. Section 3 reads:

"3 Citizenship by descent

Any person who is adopted in terms of the provisions of the Children's Act by a South African citizen and whose birth is registered in accordance with the provisions of the Births and Deaths Registration Act, 1992 (Act 51 of 1992), shall be a South African citizen by descent".

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77. Section 4 reads:

"4 Citizenship by naturalisation

(1) Any person who-

(a) immediately prior to the date of the commencement of the South African Citizenship Amendment Act, 2010, was a South African citizen by naturalisation; or

(b) in terms of this Act is granted a certificate of naturalisation as a South African citizen in terms of section 5, shall be a South African citizen by naturalisation.

(2) Any person referred to in subsection (1) (b) shall, with effect from the date of the issue of the certificate, be a South African citizen by naturalisation.

(3) A child born in the Republic of parents who are not South African citizens or who have not been admitted into the Republic for permanent residence, qualifies to apply for South African citizenship upon becoming a major if-

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(a) *he or she has lived in the Republic from the date of his or her birth to the date of becoming a major; and*

(b) *his or her birth has been registered in accordance with the provisions of the Births and Deaths Registration Act, 1992 (Act 51 of 1992)".* (Underlining supplied)

78. Section 5 reads:

"*5 Certificate of naturalisation*

(1) The Minister may, upon application in the prescribed manner, grant a certificate of naturalisation as a South African citizen to any foreigner who satisfies the Minister that-

(a) *he or she is not a minor; and*

(b) *he or she has been admitted to the Republic for permanent residence therein; and*

(c) *he or she is ordinarily resident in the Republic and that he or she has been so resident for a continuous period of not less than five years immediately preceding the date of his or her application; and*

(d) *he or she is of good character; and*

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(e) *he or she intends to continue to reside in the Republic or to enter or continue in the service of the Government of the Republic or of an international organisation of which the Government of the Republic is a member or of a person or association of persons resident or established in the Republic; and*

(f) *he or she is able to communicate in any one of the official languages of the Republic to the satisfaction of the Minister; and*

(g) *he or she has adequate knowledge of the responsibilities and privileges of South African citizenship; and*

(h) *he or she is a citizen of a country that allows dual citizenship: Provided that in the case where dual citizenship is not allowed by his or her country, such person renounces the citizenship of that country and furnishes the Minister with the prescribed proof of such renunciation.*

(2)(a) *Any period during which an applicant for naturalisation has been employed outside the Republic in the service of the Government of the Republic (otherwise than as a person engaged locally) or on a ship or aircraft or a public means of transport registered or licensed in and operating from the Republic, and any period during which an applicant for naturalisation has been resident outside the Republic with his or her spouse while the latter was so employed, shall, for the purposes of*

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subsection (1), be regarded as a period of residence or ordinary residence in the Republic.

(a) For the purposes of subsection (1) the Minister may, in his or her discretion, regard as a period of residence or ordinary residence in the Republic any period during which an applicant for naturalisation has been employed outside the Republic on a ship, aircraft or public means of transport operating from the Republic, and any period during which an applicant for naturalisation has been resident outside the Republic with his or her spouse while the latter was so employed, notwithstanding the fact that such ship, aircraft or public means of transport was not registered or licensed in the Republic.

(3) Any period during which an applicant for naturalisation-

(a) is or was confined in a prison or other place of detention in the Republic after being convicted; or

(b) has sojourned in the Republic, either conditionally, temporarily or in contravention of any law in force in the Republic, shall for the purposes of subsection (1), not be regarded as a period of residence or ordinary residence in the Republic.

(4)(a) The Minister may, notwithstanding the provisions of subsection

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(1), upon application in the prescribed form for a certificate of naturalisation in respect of a minor who is permanently and lawfully resident in the Republic, grant to that minor a certificate of naturalisation as a South African citizen.

(b) An application in terms of paragraph (a) must be made by the responsible parent or the legal guardian of the minor concerned.

(5) The Minister may, notwithstanding the provisions of subsection (1), upon application in the prescribed manner, grant a certificate of naturalisation as a South African citizen to a foreigner who satisfies the Minister that he or she is the spouse or surviving spouse of a South African citizen and that he or she has been-

(a) admitted to the Republic for permanent residence;

(b) ordinarily resident in the Republic for a prescribed period; and (c) married to such citizen during the period contemplated in paragraph (b).

(6) A certificate of naturalisation shall not be issued to any person over the age of 18 years before that person has made the declaration of allegiance set forth in Schedule 1.

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(7) *The Minister may in respect of any person who has applied for a certificate of naturalisation make such enquiries as the Minister may deem fit, and require such person to appear personally before him or her or a person designated by him or her.*

(8) *If the Minister has refused an application for a certificate of naturalisation by or on behalf of any person, the Minister shall not be obliged to reconsider such application at any time, but shall not consider another application for a certificate of naturalisation by or on behalf of such person until the expiration of a period of at least one year from the date upon which the person in question was advised of the Minister's decision: Provided that the Minister shall at any time reconsider an application if he or she receives any new information regarding the applicant which may influence his or her original decision.*

(9)(a) *Notwithstanding anything to the contrary contained in subsection (1) (c), the Minister may under exceptional circumstances grant a certificate of naturalisation as South African citizen to an applicant who does not comply with the requirements of subsection (1) (c) relating to residence or ordinary residence in the Republic.*

(b) *The Minister shall within 14 days after the commencement of the sittings of Parliament in each year table in Parliament the names of any persons to whom certificates of naturalisation were granted under paragraph (a) in the immediately preceding year, including*

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the reasons for the granting of any such certificate". (Underlining supplied)

79. Section 4 (3) of the Citizenship Act was introduced through the 2010 amendment.

80. This amendment was introduced without any policy framework[44]. The Constitutional Court declined to hear the appeal against the SCA judgment by the Minister as it was lodged way out of the timeframes provided for in the Constitutional Court Rules. Section 4 (3) of the Citizenship Act requires to be reviewed, together with other sections, including those relating to citizenship by naturalisation during the legislative process.

Policy framework: Proposals (Citizenship)

81.1. The harsh reality is that there are simply insufficient resources available to cater for all the various persons who might enter South African borders requiring citizenship in order to access benefits, rights and privileges that go with it. The United States, Canada, Switzerland and Britain are developed countries with resources that far exceed those of South Africa, have developed strict immigration, citizenship and refugee laws in order to protect the rights of their citizens.

44 **Minister of Home Affairs v Ali** [2018] ZASCA 169.

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81.2. The Citizenship Act and Births and Deaths Registration Act must be repealed in their entirely and be included in the single legislation dealing with citizenship, immigration and refugee protection. This will remove contradictions in the paths towards citizenship as is the case with three pieces of legislation.

Granting of Citizenship

81.3. Most countries guard jealously the security of states, safety of its citizens and their territorial integrity. Other countries do not grant citizenship to expatriates, opting to grant permanent residence rights by virtue of investment and buying property.

81.4. The criteria for granting citizenship must be tightened.

81.5 The current system in South Africa opens the door for foreign nationals and refugees to obtain citizenship at some stage. In terms of section 27 (c) of the Refugees Ac, one must have a continuous residence in order to qualify for permanent residence. This requires legislative intervention by way of harmonising the laws governing citizenship, immigration and refugee protection.

Citizenship by naturalisation

81.6 The current National Population Register ("NPR") data is not perfect. However, there are approximately 150 997 individuals, who were granted citizenship by

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naturalisation. The NPR should contain different categories of persons such as, South African citizens and foreign nationals.

81.7 A proper register should be kept for all persons granted citizenship by naturalisation by the Minister. The register must be tabled every year in Parliament by the Minister.

81.8 The requirements of granting citizenship by naturalisation must be made more stringent.

Immigration

82. Before the Immigration Act 13 of 2002 was enacted, the applicable legislation was the Aliens Control Act[45] and the Aliens Control Amendment Act[46].

83. The Aliens Control Act provided for, *inter alia*, for appointment and functions of immigration officers, delegation of powers, exemptions, declaration of prohibited persons, passports and visas, establishment of the Immigrants Selection Board and permits for permanent residence.

45 Act 95 of 1991.
46 Act 76 of 1995.

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Genesis of exemptions

84. It is apposite to trace the genesis of the exemptions which dates back to the colonial era.

85. Exemptions for various purposes have been in existence since 1913 and were regulated in terms of the Immigration Regulation Act[47]. This Act was amended several times and later replaced by the Admission of Persons to the Republic Act[48]. The power of exemption with widest effect was under the 1937 Aliens Act[49] prior to the said legislation.

86. The purpose of the 1937 Aliens Act was enacted with the purpose of, *inter alia*, to regulate the admission, residential status of those citizens from Commonwealth countries, who previously had unrestricted right of entry into and residence in the country when the then Union was still a member of the Commonwealth.

87. The Aliens Act of 1937 also provided exemptions which were granted in terms of section 7bis and also provided for exclusion from or withdrawal of exemptions. These exclusions and withdrawals could be done individually or per category. By way of an example, on 21 August 1962, the Minister exempted the following category of persons in terms of section 7bis (1) of the Aliens Act of 1937:

47 Act 22 of 1913.
48 Act 1 of 1972.
49 Act 59 of 1937.

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87.1 All former Union nationals of South African citizens who were born in South Africa or South West Africa after 1 February 1937; and

87.2 All former Union nationals or South African citizens who previously obtained citizenship by naturalization/domicile and who did not obtain a legal domicile in South Africa before 1 February 1937 or have not entered the country legally before that date with a view to take up permanent residence.

Portuguese refugees

87.3 Section 7bis (1) exemption power was used to exempt Portuguese refugees individually or per family unit from Mozambique in 1974 and Angola in 1975, who wanted to settle in South Africa but who did not possess the standard of education required by the Immigrants Selection Board.

Continuation of the exemption regime under the Aliens Controls Act 96 of 1991

87.4 Section 28 reads as follows:

"*(1) If the Minister is satisfied that any alien who desires to enter the Republic, as a distinguished visitor who has no intention to reside permanently in the Republic, he may permit the said alien, his wife, a dependent child of his and any alien who is in his employ and a member*

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of his household to enter the Republic without holding any temporary residence permit under this Act.

(2) Notwithstanding the provisions of this Act, the Minister may exempt any person or category of persons from all or any of the provisions of this Chapter, and for a specified or unspecified period and either unconditionally or subject to such conditions as the Minister may impose, and may do so also with retrospective effect.

(3) The Minister may exclude from any exemption granted to a category of persons under subsection (2) any person belonging to that category.

(4) The Minister may withdraw any exemption granted under subsection (2) to any category of persons or to any person, and, in the case of a person, whether he was exempted as an individual or as a member of a category of persons.

(5) The Minister may issue to any person whose exemption is withdrawn under subsection (4), a temporary residence permit referred to in section 26 to sojourn in the Republic or any particular part of the Republic."

(Underlining supplied)

87.5. The certificate of exemption was issued without any condition.

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87.6. In terms of section 28, persons who are acceptable as immigrants but did not comply with the standard of education or trade competency set as a norm by the Immigrants Selection Board can be exempted unconditionally for specified or unspecified period from the provisions of section 23(a) of the Aliens Control Act, 1937. This group included illiterate persons.

87.6. It is clear from the provisions of section 28(2) that the Minister could exempt a category of persons from all or any provisions of this Chapter for a specified or unspecified period either conditionally or subject to such conditions as the Minister may impose.

87.7 It is also clear from the provisions of section 28(4) that the Minister could withdraw any exemption granted to any category of persons. A person whose exemption has been withdrawn, could be granted a temporary residence permit to sojourn in the Republic.

Aliens Control Amendment Act 76 of 1995

87.8 The power of exemption by the Minister is provided for in section 15 of the Aliens Control Amendment Act with a slight amendment to the effect that the Minister must be satisfied that there are "*special circumstances which justify his or her decision*".

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Return of exiles

87.9 In 1990, after the unbanning of the liberation movements such as, the African National Congress ("ANC"), Pan Africanist Congress ("PAC"), the South African Communist Party ("SACP"), Black Consciousness Movement ("BCM") and others, a way had to be found by the DHA to facilitate the return of exiles to the Republic.

87.10 This was done by way of issuing extraordinary travel certificates. This was in response to a media speculation published on 17 October 1990 that the ANC may be forced to hold its consultative conference outside South Africa. Subsequently in 1997, the DHA withdrew the extraordinary travel certificates to the exiles on the basis that those who failed to apply would have to prove exceptional circumstances to justify their failure to make use of the opportunity granted to them to return to the Republic.

87.11 In 1996, a Media Statement was issued by the erstwhile Minister of Home Affairs in which he invited citizens of Southern African Development Community ("SADC"), who qualified and met certain conditions may apply for exemption to be granted permanent residence.

87.12 Effectively, the then Minister of Home Affairs exercised the powers bestowed upon him in terms of section 5(3) and 4(a) of the Aliens Act, 1991.

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Continuation of the exemption regime under section 31 of the Immigration Act 13 of 2002

87.13. Section 31 reads as follows:

"*(1) The following persons or categories of persons are not illegal foreigners:*

(a) A member of a military force of a foreigner state which has been granted consent by the Government of the Republic to enter the Republic, while such consent subsists: and

(b) the officers and crew of a public conveyance of a foreign state, while such conveyance is in the port of entry.

(2) Upon application, the Minster may under terms and conditions determined by him or her) –

(a) allow a distinguished visitor and certain members of his or her immediate family and members of his or her immediate family and members in his or her employ or of his or her household to be admitted to and sojourn in the Republic, provided that such foreigners do not intend to reside in the Republic permanently;

(b) grant a foreigner or a category of foreigners the rights of permanent residence for a specified or unspecified period when

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special circumstances exist which would justify such a decision: provided that the Minister may-

(i) exclude one or more identified foreigners from such categories: and

(ii) for good cause, withdraw such rights from a foreigner or a category of foreigner;

(c) for good cause, waive any prescribed requirement or form: and

(d) for good cause, withdraw and exemption granted by him or her in terms of this section.

(3)(a) The provisions of section 10 and 25 shall not apply to a foreigner – who prior to 1 February 1937 lawfully entered the Republic for the purpose of permanent residence therein;

(b) Who by virtue of the Diplomatic Immunities and Privileges Act, 2001(Act No. 37 of 2001), enjoys any immunities and privileges in the Republic; or

(c) to whom a written authority or permission to enter the Republic has been issued in terms of section 1 or 3 of the Immigration Quota Act, 1930 (Act No. 8 of 1930), and who entered the Republic within the period stated in

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that authority or visa within that period as lawfully extended." (Underlining supplied)

87.14 It is clear from the current provisions of the Immigration Act and prior legislation since 1937 that the Minister always had discretionary powers to grant exemptions. The only addition to the current provisions is that the withdrawal of the exemption has to pass the "*good cause*" test.

Exemptions granted in terms of section 31 (2) (b) of the Immigration Act to Zimbabwean, Lesotho and Angolan nationals

87.15. Since 2009, exemptions were granted to Zimbabwean, Lesotho and Angolan nationals by successive Ministers of Home Affairs. However, in September 2021, the current Minister decided not to extend the exemptions granted to Zimbabwean nationals anymore and extend the validity of the permits to 31 December 2023 in order to give an opportunity to the affected individuals to apply for one or other visas provided for in the Immigration Act.

87.16. The exemptions afforded the Zimbabwean, Lesotho and Angolan nationals who would otherwise not qualify, an opportunity to work and sojourn in the Republic.

87.17. The Minister's decision not to extend the exemption regime is subject of a fierce litigation in **Helen Suzman Foundation and Another v Minister of Home**

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Affairs and Others[50]. Two other parties have since intervened in the proceedings with leave of the court[51].

87.18 The consolidated matters were heard by the Full Court on 11-14 April 2023. Negative judgments were delivered on 28 June 2023. The Minister has already filed applications for leave to appeal against both judgments, which were dismissed. The Minister will apply for leave to appeal to the SCA.

Study by the University of Johannesburg ("UJ")

87.19 It appears that researchers at UJ conducted a study on the impact of the decision of the Minister to withdraw the exemptions granted to the Zimbabwean nationals[52]. Some of the conclusions are startling[53]. First, no Zimbabwean national has been forced to go back home rather they were granted an opportunity to apply for other visas. Second, the majority of the affected Zimbabwean nationals have no skills hence they are applying for waivers (requirement of labour certificate) in large numbers. Third, applying for other visas is correct route to acquiring permanent residence. Fourth, even with the

50 Case number.: 32323/22, Gauteng Division, Pretoria; See also: Marvin Charles "Helen Suzman Foundation in court bid to challenge decision to terminate Zimbabwe Exemption Permit", News24, June 16, 2022; "Government challenged in court over termination of Zim Special Permits", IOL, June 21, 2022.

51 Consortium for Refugees and Migrants in South Africa ("CORMSA") and All Trucks Drivers Forum and Allied South Africa.

52 Citizen "Zim permits anxiety", 8 August 2023.

53 "Neither a beggar nor Thief": How Home Affairs has failed permit holders and what we stand to lose from cancellation of the ZEP, Centre for Sociological Research and Practice University of Johannesburg

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existence of the exemption regime (ZEP), 4 805 Zimbabwean nationals were still deported as illegal foreigners in the period between April 2021- March 2022.

87.20 Despite a slow start[54], Zimbabwean nationals are now applying for waivers and other visas in great numbers. This is so, because the Minister has approved thousands of waiver applications. This step enables the affected individuals to apply for one or other visas provided for in the Immigration Act. The Minister received numerous representations from the affected Zimbabwean nationals distancing themselves from the litigation referred to above.

Immigration Act ("Act")

Illegal foreigners

88. South Africa is today a great place to live in and many people in the world aspire to live, work or to be citizens of South Africa. In the result, many foreign nationals come to South Africa and stay in the country illegally.

89. No one can account for all undocumented migrants. Over the years, Africa Check has come across many claims of 5 million migrants, 6 million and even 13 million migrants.

54 Linda Ensor "Few Zimbabweans in visa line", Business day, December 14, 2022.

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90. The DHA has no idea as to how many illegal immigrants are in South Africa. However, Immigration Services deports between 15 000 - 20 000 illegal foreigners every year. This number is on the increase.

91. The establishment of the Border Management Authority ("BMA") should significantly reduce the risk of illegal foreigners entering the country illegally[55].

92. The Immigration Act introduced fundamental changes (albeit controversial) and a host of visas such as, temporary visa, study visa, business visa, critical skills visa, corporate visa, spousal visa[56], retired persons visa, relative visa, intra company visa and permanent residence.

Policy framework: Proposals (Immigration)

93.1. The new preamble to the new chapter of the integrated Bill must include, *inter alia*:

"In providing for the regulation of admission of foreigners to, their residence in, and their departure from the Republic and for matters connected therewith, the Immigration Act aims at setting in place a new system of immigration control which ensures that –

55 The BMA was established in terms of the Border Management Authority Act 2 Of 2020.

56 This is the most abused visa of them all. Bogus marriages are entered into and the new trend is that Life Partnership Agreements are concluded (section 11 (6) of the Immigration Act).

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(a) *temporary and permanent residence permits are issued as expeditiously as possible and on the basis of simplified procedures and objective, predictable and reasonable requirements and criteria, without consuming excessive administrative capacity;*

(b) *security considerations are fully satisfied and the State retains control on the immigration of foreigners to the Republic;*

(c) *interdepartmental coordination constantly enriches the functions of immigration control and that a constant flow of public inputs is present in further stages of policy formulation, including regulation making;*

(d) *the needs and aspirations of the age of globalization are respected and the provisions and the spirit of the General Agreement on Trade in Services is complied with;*

(e) *border monitoring is strengthened through the BMA to ensure that the borders of the Republic do not remain porous and illegal immigration through them may be effectively detected, reduced and deterred;*

(f) *ports of entry are efficiently administered and managed;*

(g) *immigration laws are efficiently and effectively enforced, deploying to this end significant administrative capacity of the Department of Home Affairs, thereby reducing the pull factors of illegal immigration;*

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(h) the South African economy may have access at all times to the full measure of needed contributions by foreigners;

(i) the contribution of foreigners in the South African labour market does not adversely impact on existing labour standards and the rights and expectations of South African workers". (Underlining suppled)

93.2 In essence the proposal is to couple border control with immigration. The United Kingdom introduced in November 2021, the Nationality and Borders Bill.

93.3 The Border Management Authority Act must be reviewed to align it with Citizenship, Immigration and Refugee Protection new policy framework.

Immigration Board: Proposals

93.4 The policy framework must provide for the establishment of the Advisory Board which comprise representatives of the Departments of Trade, Industry and Competition, Labour and Employment, Tourism, South African Police Service, South African Revenue Service, Education, International Relations & Cooperation, Defence & Military Veterans and Director- General of the DHA[57].

93.5 The Board must also comprise representatives of organised labour, including four individuals on the grounds of expertise in administration, regulatory matters

57 Paragraph 9.1.10 of the Resolution of the 55th ANC National Conference, held on 16-20 December 2022 and 5 January 2023.

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or immigration law, control, adjudication and enforcement, appointed by the Minister.

93.5 Given the over-arching services rendered by the DHA that cuts across many departments, the composition of the Immigration Board as proposed is the most appropriate step. Today the country is facing challenging immigration issues which cannot be resolved by the DHA alone. Already groups in support and against migration are being formed. In other areas, violent clashes between citizens and foreign nationals are occurring on daily basis[58].

Critical Skills List (section 19 (4) of the Immigration Act): August 2022

94. The current Minister has published the new Critical Skills List in August 2022. The list has been trimmed down in respect of occupations/ professions.

95. The list was compiled in consultation with all the relevant stakeholders, including NEDLAC.

96. There has been fierce criticisms of the list, as published. Various newspaper articles were written mainly by the beneficiaries of the 2014 Critical Skills List which was never updated since then. Normally, the Critical Skills List ought to be updated every four years due to the ever-changing skills shortage in South

58 Penwell Dlamini and Thulani Mbele: *"Zim man says he was saved by speaking Sepedi"*, Sowetan, Friday (8 April 2022), page 2; Isaac Mahlangu *"Migrants in Diepsloot ask to be repatriated"* Sowetan, (8 April 2022), page 2 and Lizeka Tendwa *"Anarchy reigns as Dudula grows"* Mail and Guardian, (8-13 April 2022), page 3.

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Africa. By way of an example, medical doctors were removed from the current Critical Skills List, because at the moment, there is no shortage of South African medical doctors at the undergraduate level.

97. The exclusion of certain professions/qualifications will not impact negatively on the economy as there are other visas such as, business visa (section 15), relative's visa (section 18), work (visa section 19), corporate visa (section 21) and intra-company visa in terms of section 19(5) of the Immigration Act, which foreign nationals may apply for.

Abuse of the visa and permanent residence system

98. The visa and permanent residence system is being abused, at times in collusion with officials of the DHA. Fraudulent permanent residence permits have been issued in the past. The DHA is taking steps to withdraw the permanent residence permits unlawfully and irregularly granted to many persons. The DHA uncovered many fraudulent permanent residence permits. Furthermore, a task team appointed by the Minister uncovered shocking abuse of the visa, permanent residence and citizenship system, including issuing of fraudulent passports and identity documents.

99. Policy and legislative interventions are required to tighten the procedures and strengthening the monitoring capacity by introducing integrated IT systems capable of flagging fraudulent activities in the issuing of visas, identity documents, marriage certificates and passports. This include giving wide

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statutory powers to the existing Anti- Corruption Unit and Security Services within the DHA.

100. The new policy must provide that members of the Anti- Corruption should be seconded from the South African Police Service ("SAPS"). The rationale being that members of the SAPS enjoy wide statutory powers, including search and arrest without a warrant.

101. The current system in which members of the Anti- Corruption Unit and Security Services are appointed by the DHA has serious limitation regarding the exercise of their statutory powers.

Immigration officers and Inspectorate

102. Immigration officers and Inspectorate play an important enforcement role. The DHA deports between 15 000 to 20 000 illegal foreigners every year. This is just a fraction of the illegal foreigners in the country.

103. The sheer number of illegal foreigners in the country makes it impossible to detect all of them.

104. New legislation must be introduced to strengthen the powers of immigration officers and Inspectorate and make continuing training compulsory. The majority of members of the Inspectorate must have legal qualifications and policing experience.

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105. The recent publication of the National Labour Migration Policy introducing quotas for employment of foreign nationals will go a long way in defusing simmering tensions between South African citizens and foreign nationals.

106. The DHA through its Inspectorate must develop a well- coordinated strategy of tracking down illegal foreigners[59].

Immigration Courts

107. In terms of section 166 (e) of the Constitution, the courts include any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either a High Court of South Africa or the Magistrates' Courts.

108. When the Immigration Act was enacted, provision was made for the establishment of Immigration Courts. However, the Immigration Act was amended in 2004 to remove the establishment of such courts.

109. There is merit in considering establishing Immigration Courts[60]. This will assist in dealing with review of the decisions of the DG, Minister, established bodies, including appeals much more speedily. The current legislative arrangement is untenable and leads to long delays in finalising immigration matters, including

59 Paragraph 9.1.15 of the Resolution of the 55th ANC National Conference, held on 16-20 December 2022 and 5 January 2023.

60 Ibid, paragraph 9.1.13

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deportations. In many instances, illegal foreigners launch High Court proceedings on urgent basis to halt impending deportations. They later disappear into thin air and fail to pursue the review proceedings.

110. Some of these persons end up finding a way into the system either through corrupt activities or other means.

111. The Directorate: Litigation has no IT system of tracking all the pending cases. Only few culprits are discovered by chance by the immigration officers at roadblocks or raids conducted by them. This state of affairs must change.

Immigration Division and Immigration Appeal Division

112. New policy framework and legislative intervention is required to establish the Immigration Division whose members are duly qualified to deal with granting of various visas. The current system is unworkable as staff members are overworked. Appeals/ review are dealt with by the DG and Minister. Given the responsibilities that the two have, it is impossible for them to deal with the appeals/reviews. When taking decisions, they are required to fully comply with the legislation, PAJA, Constitution and various court judgments. When the decisions are challenged in court, such decisions are more often than not set aside.

113. Given the current challenges, there is merit in stablishing an independent body to deal with appeals/reviews, such as, Immigration and Refugee Board:

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Immigration Division, Refugee Protection Division and Immigration Appeal Division.

International comparative studies: towards a single citizenship, immigration and refugee protection: policy framework: Proposals

114. Research conducted reveals that structures such as, SCRA and RAA or RSDOs do not appear in the international instruments relating to status of refugees.

Canada

115. The Immigration and Refugee Protection Act, 2001 (Canada) makes provision for the Immigration and Refugee Board, consisting of the Refugee Protection Division. Refugee Appeal Division, Immigration Division and Immigration Appeal Division or Special Immigration Appeals Commission[61] (as in the United Kingdom)

116. The Canadian equivalent of the RSDOs is the Refugee Protection Division ("RPD"). This is a statutory body charged with the responsibility of taking decisions on asylum applications. In order to avoid backlogs, its members are appointed on full-time basis in terms of the Canadian Public Service Act. In other words, the RPD performs functions that are assigned to the RSDOs in

61 Nationality and Borders Bill, 2021 (United Kingdom).

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terms of the Refugees Act. The RPD conducts proper hearings with asylum seekers being afforded the right to legal representation. This will obviate the long-winded and tedious appeal process under the current legislative framework.

117. A party that is aggrieved by the decision of the RPD must appeal to the Refugee Appeal Division with majority members being appointed on full-time basis and 10% of whom must be members of the bar or attorney for at least a period of five years.

118. In Canada, the correct approach was adopted of dealing with immigration and refugee/asylum in one single legislation, that is, the Immigration and Refugee Protection Act, 2001.

119. Furthermore, the Canadian legislation clearly makes a distinction between economic immigrants and refugees.

United Kingdom

120. In the United Kingdom[62] ("UK"), adjudicators (equivalent of RSDOs) must be members of the Bar or attorneys for a period of seven years. The strict qualifications requirements in Canada and UK are because asylum matters are by their nature complex and involve international refugee law.

62 Nationality, Immigration and Asylum Act, 2002 (United Kingdom).

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121. In 2006, the UK adopted a new policy framework and dealt with Nationality (Citizenship), Immigration and Asylum in one single legislation.

Further Policy framework: Proposals (Refugee Protection)

122.1 The new policy framework and legislative measures must include the establishment of structures such as in Canada. The decision making powers will be quick and virtual hearing can be introduced at the ports of entry as in Netherlands.

122.2 Consideration must be given to appoint either serving judges or retired judges or Senior Counsel as chairpersons of the appeal bodies.

122.3 The difficulty with the current legislative provisions is that once the RSDOs take wrong decisions, there is nothing that an appeal body can do to salvage the situation. The majority of the decisions of the RSDOs, SCRA and RAA are set aside in court at a huge cost to the DHA. The reason being that the bar has been set far too low for the appointment of persons serving on these bodies. The same applies to qualifications for appointment as RSDOs. The recent amendment to the Refugees Act makes provision for the RSDOs to have legal qualifications. Given the complexity of the international refugee law, that is grossly inadequate. Many of the appointees have never practiced law.

122.4 It is interesting to note that when the Refugees Bill was debated by the Portfolio Committee on Home Affairs, the DHA had proposed an amendment to the

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effect that the RSDOs should not take any decision but make a recommendation to SCRA which would take decisions on the applications for asylum[63].

122.5 The proposed amendment was more or less similar to the legislative provisions in Canada. It is not clear as to why this noble idea was jettisoned when the Refugees Act was enacted.

Different treatment of refugees

122.6. In instances of unlawful entry into the Republic, an additional requirement must be introduced that they must show good cause for their unlawful entry or presence.

122.7 The Minister should be empowered to declare an asylum claim made by an asylum seeker who has a connection to a first safe country invalid. In other words, the first safe country principle must be strictly applied. This will include a person who may apply to be recognised as a refugee in that State.

122.8 This policy framework would discourage asylum seekers who deliberately fail to apply for asylum at the safe country which is a signatory to the 1951 Convention, the 1967 Protocol and the 1969 OAU Convention. Furthermore, it would deter economic migrants who come to South Africa disguising as asylum

63 Minutes of the Portfolio Committee on Home Affairs dated 27 October 1998.

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seekers. If the first safe country principle is applied, the difficulties encountered in the case of 22 Afghanistan nationals would be a thing of the past.

Conclusion

123. There is an urgent need to completely overhaul the three pieces of legislation to meet the new challenges facing South Africa and introduce single legislation dealing with citizenship, immigration and refugee protection.

124. The decision-making process in respect of refugees and immigration should be reviewed, including, bodies and officials clothed with the powers to take decisions in respect of refugee protection and immigration.

125. The current migration system is weak and unworkable, resulting in backlogs which will take years to complete. It is also being abused and exploited by criminal syndicates.

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7. 1967 Protocol Relating to the Status of Refugees

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1. "**A**": 1951 United Nations Convention Relating to the Status of Refugees

2. **"B":**1967 Protocol Relating to the Status of Refugees

3. "**C**":1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa

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This White Paper will replace the White Paper on International Migration 2017 and all associated directives issued by the Minister and/or Director- General.

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"ANNEXURES" A & B

CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES

60 YEARS

UNHCR
The UN Refugee Agency

Text of the 1951 Convention
Relating to the Status of Refugees

Text of the 1967 Protocol
Relating to the Status of Refugees

Resolution 2198 (XXI) adopted by the
United Nations General Assembly

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with an
Introductory Note
by the Office of the
United Nations High Commissioner for Refugees

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INTRODUCTORY NOTE

by the Office of the
United Nations High Commissioner for Refugees
(UNHCR)

Grounded in Article 14 of the Universal Declaration of human rights 1948, which recognizes the right of persons to seek asylum from persecution in other countries, the United Nations Convention relating to the Status of Refugees, adopted in 1951, is the centrepiece of international refugee protection today.[1] The Convention entered into force on 22 April 1954, and it has been subject to only one amendment in the form of a 1967 Protocol, which removed the geographic and temporal limits of the 1951 Convention.[2] The 1951 Convention, as a post-Second World War instrument, was originally limited in scope to persons fleeing events occurring before 1 January 1951 and within Europe. The 1967 Protocol removed these limitations and thus gave the Convention universal coverage. It has since been supplemented by refugee and subsidiary protection regimes in several regions,[3] as well as via the progressive development of international human rights law.

(1) United Nations General Assembly resolution 429(V) of 14 December 1950, available at http://www.unhcr.org/refworld/docid/3b00f08a27.html

(2) The Convention enabled States to make a declaration when becoming party, according to which the words "events occurring before 1 January 1951" are understood to mean "events occurring in Europe" prior to that date. This geographical limitation has been maintained by a very limited number of States, and with the adoption of the 1967 Protocol, has lost much of its significance. The Protocol of 1967 is attached to United Nations General Assembly resolution 2198 (XXI) of 16 December 1967, available at http://www.unhcr.org/refworld/docid/3b00f1cc50.html.

(3) See, for example, the Organization of African Unity (now African Union) Convention governing the Specific Aspects of Refugee Problems in Africa 1969, adopted in Addis Adaba, 10 September 1969; the European Union Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Official Journal L 304 , 30/09/2004 P. 0012 – 0023. The Cartagena Declaration on Refugees, adopted at a colloquium held at Cartagena, Colombia, 19-22 November 1984, while non-binding, also sets out regional standards for refugees in Central America, Mexico and Panama.

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The 1951 Convention consolidates previous international instruments relating to refugees and provides the most comprehensive codification of the rights of refugees at the international level. In contrast to earlier international refugee instruments, which applied to specific groups of refugees, the 1951 Convention endorses a single definition of the term "refugee" in Article 1. The emphasis of this definition is on the protection of persons from political or other forms of persecution. A refugee, according to the Convention, is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.

The Convention is both a status and rights-based instrument and is underpinned by a number of fundamental principles, most notably non-discrimination, non-penalization and *non-refoulement*. Convention provisions, for example, are to be applied without discrimination as to race, religion or country of origin. Developments in international human rights law also reinforce the principle that the Convention be applied without discrimination as to sex, age, disability, sexuality, or other prohibited grounds of discrimination. The Convention further stipulates that, subject to specific exceptions, refugees should not be penalized for their illegal entry or stay. This recognizes that the seeking of asylum can require refugees to breach immigration rules. Prohibited penalties might include being charged with immigration or criminal offences relating to the seeking of asylum, or being arbitrarily detained purely on the basis of seeking asylum. Importantly, the Convention contains various safeguards against the expulsion of refugees. The principle of *non-refoulement* is so fundamental that no reservations or derogations may be made to it. It provides that no one shall expel or return ("*refouler*") a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom.

Finally, the Convention lays down basic minimum standards for the treatment of refugees, without prejudice to States granting more favourable treatment. Such rights include access to the courts, to primary education, to work, and the provision for documentation, including a refugee travel document in passport form. Most States parties to the Convention issue this document, which has become as widely accepted as the former "Nansen passport", an identity document for refugees devised by the first Commissioner for Refugees, Fridtjof Nansen, in 1922.

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The Convention does not however apply to all persons who might otherwise satisfy the definition of a refugee in Article 1. In particular, the Convention does not apply to those for whom there are serious reasons for considering that they have committed war crimes or crimes against humanity, serious non-political crimes, or are guilty of acts contrary to the purposes and principles of the United Nations. The Convention also does not apply to those refugees who benefit from the protection or assistance of a United Nations agency other than UNHCR, such as refugees from Palestine who fall under the auspices of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Nor does the Convention apply to those refugees who have a status equivalent to nationals in their country of asylum.

Apart from expanding the definition of a refugee, the Protocol obliges States to comply with the substantive provisions of the 1951 Convention to all persons covered by the refugee definition in Article 1, without any limitation of date. Although related to the Convention in this way, the Protocol is an independent instrument, accession to which is not limited to States parties to the Convention.

Under the Convention and Protocol, there is a particular role for UNHCR. States undertake to cooperate with UNHCR in the exercise of its functions, which are set out in its Statute of 1950 along with a range of other General Assembly resolutions, and, in particular, to facilitate this specific duty of supervising the application of these instruments. By its Statute, UNHCR is tasked with, among others, promoting international instruments for the protection of refugees, and supervising their application.

The fundamental importance and enduring relevance of the Convention and the Protocol is widely recognized. In 2001, States parties issued a Declaration reaffirming their commitment to the 1951 Convention and the 1967 Protocol, and they recognized in particular that the core principle of *non-refoulement* is embedded in customary international law.[4] Moroever, the General Assembly has frequently called upon States to become parties to these instruments.

(4) Declaration of States parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, Ministerial Meeting of States Parties, Geneva, Switzerland, 12-13 December 2001, UN Doc. HCR/MMSP/2001/09, 16 January 2002. The Declaration was welcomed by the UN General Assembly in resolution A/RES/57/187, para. 4, adopted on 18 December 2001.

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Accession has also been recommended by various regional organizations, such as the Council of Europe, the African Union, and the Organization of American States. As UNHCR prepares to commemorate, in 2011, the 60th anniversary of the 1951 Convention, it is hoped that more States will accede to these instruments. Today, there are 147 States Parties to one or both of these instruments.

In view of the increasing recognition of the fundamental significance of the Convention and the Protocol for the protection of refugees and for the establishment of minimum standards for their treatment, it is important that their provisions be known as widely as possible, both by refugees and by all those concerned with refugee problems.

Additional information on the Convention and the Protocol, including accession details, may be obtained from UNHCR, or directly from the UNHCR website at www.unhcr.org.

Geneva, December 2010

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FINAL ACT

of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons

I. The General Assembly of the United Nations, by Resolution 429 (V) of 14 December 1950, decided to convene in Geneva a Conference of Plenipotentiaries to complete the drafting of, and to sign, a Convention relating to the Status of Refugees and a Protocol relating to the Status of Stateless Persons.

The Conference met at the European Office of the United Nations in Geneva from 2 to 25 July 1951.

The Governments of the following twenty-six States were represented by delegates who all submitted satisfactory credentials or other communications of appointment authorizing them to participate in the Conference:

Australia
Austria
Belgium
Brazil
Canada
Colombia
Denmark
Egypt
France
Germany, Federal Republic of
Greece
Holy See
Iraq
Israel
Italy
Luxembourg
Monaco
Netherlands
Norway
Sweden
Switzerland (the Swiss delegation also represented Liechtenstein)
Turkey
United Kingdom of Great Britain and Northern Ireland
United States of America
Venezuela
Yugoslavia

The Governments of the following two States were represented by observers:

Cuba
Iran

Pursuant to the request of the General Assembly, the United Nations High Commissioner for Refugees participated, without the right to vote, in the deliberations of the Conference.

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The International Labour Organisation and the International Refugee Organization were represented at the Conference without the right to vote.

The Conference invited a representative of the Council of Europe to be represented at the Conference without the right to vote.

Representatives of the following Non-Governmental Organizations in consultative relationship with the Economic and Social Council were also present as observers:

CATEGORY A

International Confederation of Free Trade Unions
International Federation of Christian Trade Unions
Inter-Parliamentary Union

CATEGORY B

Agudas Israel World Organization
Caritas Internationalis
Catholic International Union for Social Service
Commission of the Churches on International Affairs
Consultative Council of Jewish Organizations
Co-ordinating Board of Jewish Organizations
Friends' World Committee for Consultation
International Association of Penal Law
International Bureau for the Unification of Penal Law
International Committee of the Red Cross
International Council of Women
International Federation of Friends of Young Women
International League for the Rights of Man
International Social Service
International Union for Child Welfare
International Union of Catholic Women's Leagues
Pax Romana
Women's International League for Peace and Freedom
World Jewish Congress
World Union for Progressive Judaism
World Young Women's Christian Association

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REGISTER

International Relief Committee for Intellectual Workers
League of Red Cross Societies
Standing Conference of Voluntary Agencies
World Association of Girl Guides and Girl Scouts
World University Service

Representatives of Non-Governmental Organizations which have been granted consultative status by the Economic and Social Council as well as those entered by the Secretary-General on the Register referred to in Resolution 288 B (X) of the Economic and Social Council, paragraph 17, had under the rules of procedure adopted by the Conference the right to submit written or oral statements to the Conference.

The Conference elected Mr. Knud Larsen, of Denmark, as President, and Mr. A. Herment, of Belgium, and Mr. Talat Miras, of Turkey, as Vice-Presidents.

At its second meeting, the Conference, acting on a proposal of the representative of Egypt, unanimously decided to address an invitation to the Holy See to designate a plenipotentiary representative to participate in its work. A representative of the Holy See took his place at the Conference on 10 July 1951.

The Conference adopted as its agenda the Provisional Agenda drawn up by the Secretary-General (A/CONF.2/2/Rev.1). It also adopted the Provisional Rules of Procedure drawn up by the Secretary-General, with the addition of a provision which authorized a representative of the Council of Europe to be present at the Conference without the right to vote and to submit proposals (A/CONF.2/3/Rev.1).

In accordance with the Rules of Procedure of the Conference, the President and Vice-Presidents examined the credentials of representatives and on 17 July 1951 reported to the Conference the results of such examination, the Conference adopting the report.

The Conference used as the basis of its discussions the draft Convention relating to the Status of Refugees and the draft Protocol relating to the Status of Stateless Persons prepared by the *ad hoc* Committee on Refugees and Stateless Persons at its second session held in Geneva from 14 to 25 August 1950, with the exception of the preamble and Article 1 (Definition of the term

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"refugee") of the draft Convention. The text of the preamble before the Conference was that which was adopted by the Economic and Social Council on 11 August 1950 in Resolution 319 B II (XI). The text of Article 1 before the Conference was that recommended by the General Assembly on 14 December 1950 and contained in the Annex to Resolution 429 (V). The latter was a modification of the text as it had been adopted by the Economic and Social Council in Resolution 319 B II (XI).

The Conference adopted the Convention relating to the Status of Refugees in two readings. Prior to its second reading it established a Style Committee composed of the President and the representatives of Belgium, France, Israel, Italy, the United Kingdom of Great Britain and Northern Ireland and the United States of America, together with the High Commissioner for Refugees, which elected as its Chairman Mr. G. Warren, of the United States of America. The Style Committee re-drafted the text which had been adopted by the Conference on first reading, particularly from the point of view of language and of concordance between the English and French texts.

The Convention was adopted on 25 July by 24 votes to none with no abstentions and opened for signature at the European Office of the United Nations from 28 July to 31 August 1951. It will be re-opened for signature at the permanent headquarters of the United Nations in New York from 17 September 1951 to 31 December 1952.

The English and French texts of the Convention, which are equally authentic, are appended to this Final Act.

II. The Conference decided, by 17 votes to 3 with 3 abstentions, that the titles of the chapters and of the articles of the Convention are included for practical purposes and do not constitute an element of interpretation.

III. With respect to the draft Protocol relating to the Status of Stateless Persons, the Conference adopted the following resolution:

> The Conference,
> **HAVING CONSIDERED** the draft Protocol relating to the Status of Stateless Persons,
> **CONSIDERING** that the subject still requires more detailed study,
> **DECIDES** not to take a decision on the subject at the present Conference and

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refers the draft Protocol back to the appropriate organs of the United Nations for further study.

IV. The Conference adopted unanimously the following recommendations:

A

(Facilitation of refugee travels)[1]

THE CONFERENCE,

CONSIDERING that the issue and recognition of travel documents is necessary to facilitate the movement of refugees, and in particular their resettlement,

URGES Governments which are parties to the Inter-Governmental Agreement on Refugee Travel Documents signed in London on 15 October 1946, or which recognize travel documents issued in accordance with the Agreement, to continue to issue or to recognize such travel documents, and to extend the issue of such documents to refugees as defined in Article 1 of the Convention relating to the Status of Refugees or to recognize the travel documents so issued to such persons, until they shall have undertaken obligations under Article 28 of the said Convention.

B

(Principle of unity of the family)[1]

THE CONFERENCE,

CONSIDERING that the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee, and that such unity is constantly threatened, and

NOTING with satisfaction that, according to the official commentary of the *ad hoc* Committee on Statelessness and Related Problems (E/1618, p. 40), the rights granted to a refugee are extended to members of his family,

RECOMMENDS Governments to take the necessary measures for the protection of the refugee's family especially with a view to:

(1) Headline added.

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(1) Ensuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country,

(2) The protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption.

C

(Welfare services)[1]

THE CONFERENCE,

CONSIDERING that, in the moral, legal and material spheres, refugees need the help of suitable welfare services, especially that of appropriate non-governmental organizations,

RECOMMENDS Governments and inter-governmental bodies to facilitate, encourage and sustain the efforts of properly qualified organizations.

D

(International co-operation in the field of asylum and resettlement)[1]

THE CONFERENCE,

CONSIDERING that many persons still leave their country of origin for reasons of persecution and are entitled to special protection on account of their position,

RECOMMENDS that Governments continue to receive refugees in their territories and that they act in concert in a true spirit of international co-operation in order that these refugees may find asylum and the possibility of resettlement.

E

(Extension of treatment provided by the Convention)[1]

THE CONFERENCE,

EXPRESSES the hope that the Convention relating to the Status of Refugees will have value as an example exceeding its contractual scope and that

(1) Headline added.

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all nations will be guided by it in granting so far as possible to persons in their territory as refugees and who would not be covered by the terms of the Convention, the treatment for which it provides.

IN WITNESS WHEREOF the President, Vice-Presidents and the Executive Secretary of the Conference have signed this Final Act.

DONE at Geneva this twenty-eighth day of July one thousand nine hundred and fifty-one in a single copy in the English and French languages, each text being equally authentic. Translations of this Final Act into Chinese, Russian and Spanish will be prepared by the Secretary-General of the United Nations, who will, on request, send copies thereof to each of the Governments invited to attend the Conference.

The President of the Conference:	Knud Larsen
The Vice-Presidents of the Conference:	A. Herment, Talat Miras
The Executive Secretary of the Conference:	John P. Humphrey

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CONVENTION

Relating to the Status of Refugees

Preamble

THE HIGH CONTRACTING PARTIES,

CONSIDERING that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

CONSIDERING that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

CONSIDERING that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and protection accorded by such instruments by means of a new agreement,

CONSIDERING that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation,

EXPRESSING the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

NOTING that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,

HAVE AGREED as follows:

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CHAPTER I: General Provisions

Article 1

DEFINITION OF THE TERM "REFUGEE"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;
Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons 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 former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.
In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B.(1) For the purposes of this Convention, the words "events occurring

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before 1 January 1951" in article 1, section A, shall be understood to mean either:

(a) "events occurring in Europe before 1 January 1951"; or

(b) "events occurring in Europe or elsewhere before 1 January 1951", and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily re-acquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;
Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because of the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

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Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he 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;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2

GENERAL OBLIGATIONS

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

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Article 3

NON-DISCRIMINATION

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4

RELIGION

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.

Article 5

RIGHTS GRANTED APART FROM THIS CONVENTION

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

Article 6

THE TERM "IN THE SAME CIRCUMSTANCES"

For the purposes of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 7

EXEMPTION FROM RECIPROCITY

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

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3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8

EXEMPTION FROM EXCEPTIONAL MEASURES

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

Article 9

PROVISIONAL MEASURES

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10

CONTINUITY OF RESIDENCE

1. Where a refugee has been forcibly displaced during the Second World

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War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11

REFUGEE SEAMEN

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

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CHAPTER II: Juridical Status

Article 12

PERSONAL STATUS

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

Article 13

MOVABLE AND IMMOVABLE PROPERTY

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14

ARTISTIC RIGHTS AND INDUSTRIAL PROPERTY

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic, and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that

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country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15

RIGHT OF ASSOCIATION

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16

ACCESS TO COURTS

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

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CHAPTER III: Gainful Employment

Article 17

WAGE-EARNING EMPLOYMENT

1. The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

(a) He has completed three years' residence in the country;

(b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse;

(c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18

SELF-EMPLOYMENT

The Contracting States shall accord to a refugee lawfully in their territory

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treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19

LIBERAL PROFESSIONS

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practicing a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

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CHAPTER IV: Welfare

Article 20

RATIONING

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21

HOUSING

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22

PUBLIC EDUCATION

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23

PUBLIC RELIEF

The Contracting States shall accord to refugees lawfully staying in their ter-

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ritory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24

LABOUR LEGISLATION AND SOCIAL SECURITY

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of

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agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

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CHAPTER V: Administrative Measures

Article 25

ADMINISTRATIVE ASSISTANCE

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

Article 26

FREEDOM OF MOVEMENT

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

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Article 27

IDENTITY PAPERS

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28

TRAVEL DOCUMENTS

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 29

FISCAL CHARGES

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30

TRANSFER OF ASSETS

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory,

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to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31

REFUGEES UNLAWFULLY IN THE COUNTRY OF REFUGEE

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32

EXPULSION

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period

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within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33

PROHIBITION OF EXPULSION OR RETURN ("REFOULEMENT")

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Article 34

NATURALIZATION

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

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CHAPTER VI: Executory and Transitory Provisions

Article 35

CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE UNITED NATIONS

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:

(a) The condition of refugees,

(b) The implementation of this Convention, and;

(c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 36

INFORMATION ON NATIONAL LEGISLATION

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 37

RELATION TO PREVIOUS CONVENTIONS

Without prejudice to article 28, paragraph 2, of this Convention, this

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Convention replaces, as between parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

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CHAPTER VII: Final Clauses

Article 38

SETTLEMENT OF DISPUTES

Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39

SIGNATURE, RATIFICATION AND ACCESSION

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

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Article 40

TERRITORIAL APPLICATION CLAUSE

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 41

FEDERAL CLAUSE

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of states, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of

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the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 42

RESERVATIONS

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16(1), 33, 36-46 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 43

ENTRY INTO FORCE

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument or ratification or accession.

Article 44

DENUNCIATION

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under article 40

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may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 45

REVISION

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 46

NOTIFICATIONS BY THE SECRETARY-GENERAL OF THE UNITED NATIONS

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 39:

(a) Of declarations and notifications in accordance with section B of article 1;

(b) Of signatures, ratifications and accessions in accordance with article 39;

(c) Of declarations and notifications in accordance with article 40;

(d) Of reservations and withdrawals in accordance with article 42;

(e) Of the date on which this Convention will come into force in accordance with article 43;

(f) Of denunciations and notifications in accordance with article 44;

(g) Of requests for revision in accordance with article 45.

IN FAITH WHEREOF the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments,

DONE at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are

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equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

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SCHEDULE

Paragraph 1

1. The travel document referred to in article 28 of this Convention shall be similar to the specimen annexed hereto.

2. The document shall be made out in at least two languages, one of which shall be English or French.

Paragraph 2

Subject to the regulations obtaining in the country of issue, children may be included in the travel document of a parent or, in exceptional circumstances, of another adult refugee.

Paragraph 3

The fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.

Paragraph 4

Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.

Paragraph 5

The document shall have a validity of either one or two years, at the discretion of the issuing authority.

Paragraph 6

1. The renewal or extension of the validity of the document is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said

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authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.

2. Diplomatic or consular authorities, specially authorized for the purpose, shall be empowered to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.

3. The Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to refugees no longer lawfully resident in their territory who are unable to obtain a travel document from the country of their lawful residence.

Paragraph 7

The Contracting States shall recognize the validity of the documents issued in accordance with the provisions of article 28 of this Convention.

Paragraph 8

The competent authorities of the country to which the refugee desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder.

Paragraph 9

1. The Contracting States undertake to issue transit visas to refugees who have obtained visas for a territory of final destination.

2. The issue of such visas may be refused on grounds which would justify refusal of a visa to any alien.

Paragraph 10

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

Paragraph 11

When a refugee has lawfully taken up residence in the territory of another

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Contracting State, the responsibility for the issue of a new document, under the terms and conditions of article 28, shall be that of the competent authority of that territory, to which the refugee shall be entitled to apply.

Paragraph 12

The authority issuing a new document shall withdraw the old document and shall return it to the country of issue if it is stated in the document that it should be so returned; otherwise it shall withdraw and cancel the document.

Paragraph 13

1. Each Contracting State undertakes that the holder of a travel document issued by it in accordance with article 28 of this Convention shall be readmitted to its territory at any time during the period of its validity.

2. Subject to the provisions of the preceding sub-paragraph, a Contracting State may require the holder of the document to comply with such formalities as may be prescribed in regard to exit from or return to its territory.

3. The Contracting States reserve the right, in exceptional cases, or in cases where the refugee's stay is authorized for a specific period, when issuing the document, to limit the period during which the refugee may return to a period of not less than three months.

Paragraph 14

Subject only to the terms of paragraph 13, the provisions of this Schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the Contracting States.

Paragraph 15

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

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Paragraph 16

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not confer on these authorities a right of protection.

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ANNEX

Specimen Travel Document

The document will be in booklet form (approximately 15 x 10 centimetres).

It is recommended that it be so printed that any erasure or alteration by chemical or other means can be readily detected, and that the words "Convention of 28 July 1951" be printed in continuous repetition on each page, in the language of the issuing country.

(Cover of booklet)
TRAVEL DOCUMENT
(Convention of 28 July 1951)

No......

(1)
TRAVEL DOCUMENT
(Convention of 28 July 1951)

This document expires on .....
unless its validity is extended or renewed.
Name .....
Forename(s) .....
Accompanied by ..... child (children).

1. This document is issued solely with a view to providing the holder with a travel document which can serve in lieu of a national passport. It is without prejudice to and in no way affects the holder's nationality.

2. The holder is authorized to return to .....
[state here the country whose authorities are issuing the document] on or before .....

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unless some later date is hereafter specified. [The period during which the holder is allowed to return must not be less than three months.]

3. Should the holder take up residence in a country other than that which issued the present document, he must, if he wishes to travel again, apply to the competent authorities of his country of residence for a new document. [The old travel document shall be withdrawn by the authority issuing the new document and returned to the authority which issued it.][1]

(This document contains.....pages, exclusive of cover.)

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(2)

Place and date of birth .....
Occupation .....
Present residence .....
*Maiden name and forename(s) of wife .....
.....
*Name and forename(s) of husband .....
.....

Description

Height.....
Hair.....
Colour of eyes .....
Nose .....
Shape of face.....
Complexion.....
Special peculiarities.....

Children accompanying holder

Name	Forename(s)	Place and date of birth	Sex
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

*Strike out whichever does not apply

(This document contains.....pages, exclusive of cover.)

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(1) The sentence in brackets to be inserted by Governments which so desire.

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(3)

Photograph of holder and stamp of issuing authority
Finger-prints of holder (if required)

Signature of holder .....

(This document contains .....pages, exclusive of cover.)

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(4)

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.....
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2. Document or documents on the basis of which the present document is issued:.....
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Issued at .....
Date.....

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Done at..... Date.....
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PROTOCOL RELATING TO THE STATUS OF REFUGEES

THE STATES PARTIES TO THE PRESENT PROTOCOL,

CONSIDERING that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

CONSIDERING that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

CONSIDERING that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

HAVE AGREED as follows:

Article I

GENERAL PROVISION

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and ..." "and the words"... "a result of such events", in article 1 A (2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 B (1) (a) of the

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Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol.

Article II

CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE UNITED NATIONS

1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.

2. In order to enable the Office of the High Commissioner, or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning:

(a) The condition of refugees;

(b) The implementation of the present Protocol;

(c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article III

INFORMATION ON NATIONAL LEGISLATION

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

Article IV

SETTLEMENT OF DISPUTES

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

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Article V

ACCESSION

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article VI

FEDERAL CLAUSE

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;

(b) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

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Article VII

RESERVATIONS AND DECLARATIONS

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16 (1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.

2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.

3. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

4. Declarations made under article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

Article VIII

ENTRY INTO FORCE

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

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Article IX

DENUNCIATION

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

Article X

NOTIFICATIONS BY THE SECRETARY-GENERAL OF THE UNITED NATIONS

The Secretary-General of the United Nations shall inform the States referred to in article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

Article XI

DEPOSIT IN THE ARCHIVES OF THE SECRETARIAT OF THE UNITED NATIONS

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in article V above.

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GENERAL ASSEMBLY RESOLUTION 2198 (XXI)

Protocol relating to the Status of Refugees

THE GENERAL ASSEMBLY,

CONSIDERING that the Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951[1], covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

CONSIDERING that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

CONSIDERING that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention, irrespective of the dateline of 1 January 1951,

TAKING NOTE of the recommendation of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees[2] that the draft Protocol relating to the Status of Refugees should be submitted to the General Assembly after consideration by the Economic and Social Council, in order that the Secretary-General might be authorized to open the Protocol for accession by Governments within the shortest possible time,

(1) United Nations, *Treaty Series*, vol. 189 (1954), No. 2545.

(2) See A/6311/Rev.1/Add.1, part two, para. 38.

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CONSIDERING that the Economic and Social Council, in its resolution 1186 (XLI) of 18 November 1966, took note with approval of the draft Protocol contained in the addendum to the report of the United Nations High Commissioner for Refugees and concerning measures to extend the personal scope of the Convention[3] and transmitted the addendum to the General Assembly,

1. **TAKES NOTE** of the Protocol relating to the Status of Refugees, the text of which[3] is contained in the addendum to the report of the United Nations High Commissioner for Refugees;

2. **REQUESTS** the Secretary-General to transmit the text of the Protocol to the States mentioned in article V thereof, with a view to enabling them to accede to the Protocol[4].

1495th plenary meeting, 16 December 1966

(3) Ibid., part one, para. 2.

(4) The Protocol was signed by the President of the General Assembly and by the Secretary-General on 31 January 1967.

UNHCR / COM&PI / C.1•CONV&PRO / ENG / DECEMBER 2010

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The UN Refugee Agency

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"ANNEXURE" C

OAU
CONVENTION
GOVERNING THE SPECIFIC ASPECTS OF REFUGEE PROBLEMS IN AFRICA

LA CONVENTION DE L'OUA
RÉGISSANT LES ASPECTS PROPRES AUX PROBLÈMES DES RÉFUGIÉS EN AFRIQUE

UNHCR
The UN Refugee Agency

OAU
CONVENTION

GOVERNING
THE SPECIFIC ASPECTS OF REFUGEE PROBLEMS
IN AFRICA

ADOPTED BY
the Assembly of Heads of State and Government
at its Sixth Ordinary Session

ADDIS-ABABA, 10 SEPTEMBER 1969

ENTRY INTO FORCE
20 JUNE 1974
IN ACCORDANCE WITH ARTICLE XI

TEXT
UNITED NATIONS, TREATY SERIES No. 14691

PREAMBLE

We, the Heads of State and Government, assembled in the city of Addis Ababa, from 6 to 10 September 1969,

NOTING with concern the constantly increasing number of refugees in Africa and desirous of finding ways and means of alleviating their misery and suffering as well as providing them with a better life and future,

RECOGNIZING the need for an essentially humanitarian approach towards solving the problems of refugees,

AWARE, however, that refugee problems are a source of friction among many Member States, and desirous of eliminating the source of such discord,

ANXIOUS TO MAKE a distinction between a refugee who seeks a peaceful and normal life and a person fleeing his country for the sole purpose of fomenting subversion from outside,

DETERMINED that the activities of such subversive elements should be discouraged, in accordance with the Declaration on the Problem of Subversion and Resolution on the Problem of Refugees adopted at Accra in 1965,

BEARING IN MIND that the Charter of the United Nations and the Universal Declaration of Human Rights have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

RECALLING Resolution 2312 (XXII) of 14 December 1967 of the United Nations General Assembly, relating to the Declaration on Territorial Asylum,

CONVINCED that all the problems of our continent must be solved in the spirit of the Charter of the Organization of African Unity and in the African context,

RECOGNIZING that the United Nations Convention of 28 July 1951, as modified by the Protocol of 31 January 1967, constitutes the basic and universal instrument

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relating to the status of refugees and reflects the deep concern of States for refugees and their desire to establish common standards for their treatment,

RECALLING Resolution 26 and 104 of the OAU Assemblies of Heads of State and Government, calling upon Member States of the Organization who had not already done so to accede to the United Nations Convention of 1951 and to the Protocol of 1967 relating to the Status of Refugees, and meanwhile to apply their provisions to refugees in Africa,

CONVINCED that the efficiency of the measures recommended by the present Convention to solve the problem of refugees in Africa necessitates close and continuous collaboration between the Organization of African Unity and the Office of the United Nations High Commissioner for Refugees,

HAVE AGREED as follows:

Article 1

DEFINITION OF THE TERM "REFUGEE"

1. For the purposes of this Convention, the term "refugee" shall mean every person who, owing to a well-founded fear of being persecuted for reasons 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 former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

2. The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

3. In the case of a person who has several nationalities, the term "a country of which he is a national" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of which he is a national if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

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4. This Convention shall cease to apply to any refugee if:

(a) he has voluntarily re-availed himself of the protection of the country of his nationality, or

(b) having lost his nationality, he has voluntarily re-acquired it, or

(c) he has acquired a new nationality, and enjoys the protection of the country of his new nationality, or

(d) he has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution, or

(e) he can no longer, because the circumstances in connection with which he was recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality, or

(f) he has committed a serious non-political crime outside his country of refuge after his admission to that country as a refugee, or

(g) he has seriously infringed the purposes and objectives of this Convention.

5. The provisions of this Convention shall not apply to any person with respect to whom the country of asylum has serious reasons for considering that:

(a) he 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;

(b) he committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the Organization of African Unity;

(d) he has been guilty of acts contrary to the purposes and principles of the United Nations.

6. For the purposes of this Convention, the Contracting State of Asylum shall determine whether an applicant is a refugee.

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Article II

ASYLUM

1. Member States of the OAU shall use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.

2. The grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State.

3. No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2.

4. Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum.

5. Where a refugee has not received the right to reside in any country of asylum, he may be granted temporary residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his resettlement in accordance with the preceding paragraph.

6. For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.

Article III

PROHIBITION OF SUBVERSIVE ACTIVITIES

1. Every refugee has duties to the country in which he finds himself, which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any Member State of the OAU.

2. Signatory States undertake to prohibit refugees residing in their respective territories from attacking any State Member of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio.

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Article IV

NON-DISCRIMINATION

Member States undertake to apply the provisions of this Convention to all refugees without discrimination as to race, religion, nationality, membership of a particular social group or political opinions.

Article V

VOLUNTARY REPATRIATION

1. The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.

2. The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.

3. The country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations.

4. Refugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations. Whenever necessary, an appeal shall be made through national information media and through the Administrative Secretary-General of the OAU, inviting refugees to return home and giving assurance that the new circumstances prevailing in their country of origin will enable them to return without risk and to take up a normal and peaceful life without fear of being disturbed or punished, and that the text of such appeal should be given to refugees and clearly explained to them by their country of asylum.

5. Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organizations to facilitate their return.

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Article VI

TRAVEL DOCUMENTS

1. Subject to Article III, Member States shall issue to refugees lawfully staying in their territories travel documents in accordance with the United Nations Convention relating to the Status of Refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require. Member States may issue such a travel document to any other refugee in their territory.

2. Where an African country of second asylum accepts a refugee from a country of first asylum, the country of first asylum may be dispensed from issuing a document with a return clause.

3. Travel documents issued to refugees under previous international agreements by States Parties thereto shall be recognized and treated by Member States in the same way as if they had been issued to refugees pursuant to this Article.

Article VII

CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE ORGANIZATION OF AFRICAN UNITY

In order to enable the Administrative Secretary-General of the Organization of African Unity to make reports to the competent organs of the Organization of African Unity, Member States undertake to provide the Secretariat in the appropriate form with information and statistical data requested concerning:

(a) the condition of refugees;

(b) the implementation of this Convention, and

(c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

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Article VIII

CO-OPERATION WITH THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

1. Member States shall co-operate with the Office of the United Nations High Commissioner for Refugees.

2. The present Convention shall be the effective regional complement in Africa of the 1951 United Nations Convention on the Status of Refugees.

Article IX

SETTLEMENT OF DISPUTES

Any dispute between States signatories to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the Commission for Mediation, Conciliation and Arbitration of the Organization of African Unity, at the request of any one of the Parties to the dispute.

Article X

SIGNATURE AND RATIFICATION

1. This Convention is open for signature and accession by all Member States of the Organization of African Unity and shall be ratified by signatory States in accordance with their respective constitutional processes. The instruments of ratification shall be deposited with the Administrative Secretary-General of the Organization of African Unity.

2. The original instrument, done if possible in African languages, and in English and French, all texts being equally authentic, shall be deposited with the Administrative Secretary-General of the Organization of African Unity.

3. Any independent African State, Member of the Organization of African Unity, may at any time notify the Administrative Secretary-General of the Organization of African Unity of its accession to this Convention.

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Article XI

ENTRY INTO FORCE

This Convention shall come into force upon deposit of instruments of ratification by one-third of the Member States of the Organization of African Unity.

Article XII

AMENDMENT

This Convention may be amended or revised if any Member State makes a written request to the Administrative Secretary-General to that effect, provided however that the proposed amendment shall not be submitted to the Assembly of Heads of State and Government for consideration until all Member States have been dully notified of it and a period of one year has elapsed. Such an amendment shall not be effective unless approved by at least two-thirds of the Member States Parties to the present Convention.

Article XIII

DENUNCIATION

1. Any Member State Party to this Convention may denounce its provisions by a written notification to the Administrative Secretary-General.

2. At the end of one year from the date of such notification, if not withdrawn, the Convention shall cease to apply with respect to the denouncing State.

Article XIV

Upon entry into force of this Convention, the Administrative Secretary-General of the OAU shall register it with the Secretary-General of the United Nations, in accordance with Article 102 of the Charter of the United Nations.

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Article XV

NOTIFICATIONS BY THE ADMINISTRATIVE SECRETARY-GENERAL OF THE ORGANIZATION OF AFRICAN UNITY

The Administrative Secretary-General of the Organization of African Unity shall inform all Members of the Organization:

(a) of signatures, ratifications and accessions in accordance with Article X;

(b) of entry into force, in accordance with Article XI;

(c) of requests for amendments submitted under the terms of Article XII;

(d) of denunciations, in accordance with Article XIII.

IN WITNESS WHEREOF we, the Heads of African State and Government, have signed this Convention.

1. Algeria
2. Botswana
3. Burundi
4. Cameroon
5. Central African Republic
6. Chad
7. Congo (Brazzaville)
8. Congo (Kinshasa)
9. Dahomey
10. Equatorial Guinea
11. Ethiopia
12. Gabon
13. Gambia
14. Ghana
15. Guinea
16. Ivory Coast
17. Kenya
18. Lesotho
19. Liberia
20. Libya
21. Madagascar
22. Malawi
23. Mali
24. Mauritania
25. Mauritius
26. Morocco
27. Niger
28. Nigeria
29. Rwanda
30. Senegal
31. Sierra Leone
32. Somalia
33. Sudan
34. Swaziland
35. Togo
36. Tunisia
37. Uganda
38. United Arab Republic
39. United Republic of Tanzania
40. Upper Volta
41. Zambia

DONE in the City of Addis Ababa this 10th day of September 1969.

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