



## **Guidelines for National Refugee Legislation, with Commentary**

9 December 1980

(The Guidelines, adopted by OAU/UNHCR Working Group on Arusha Follow-up, Second Meeting, Geneva, 4-5 December 1980, were dated 9 December 1980. The Commentary was dated 19 December 1980.)

### **Introduction**

The following draft provisions are intended as guidelines for national refugee legislation to provide for the entry, recognition and status of refugees in order to define their rights and duties.

### **Part I: Definition of “refugee” and “competent authority”**

#### ***Section 1***

1. The term “refugee” and “competent authority”

(a) Any person who, 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 residence, is unable or, owing to such fear, is unwilling to return to it; or,

(b) Any 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; or,

(c) Any person belonging to a group of persons declared by the Government authority responsible for refugee affairs to be refugees.

2. For the purpose of these legislative provisions, the term “competent authority” shall mean any official or group of officials entrusted with the power to recognize a person as a refugee.

#### ***Section 2***

1. A person shall not be considered a refugee for the purposes of these legislative provisions if he is excluded under Article 1(F) of the United Nations Convention

Relating to the Status of Refugees 1951 and Article I, paragraph 5, of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969.

2. A person shall cease to be a refugee under these legislative provisions if he falls under Article 1(c) of the United Nation Convention Relating to the Status of Refugees 1951 and Article I, paragraph 4, of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969.

## **Part II: Determination of refugee status**

### ***Section 3***

1. For the purpose of this section, unless the context otherwise requires, the term “standing refugee body” shall mean any official or group of officials entrusted with the power to examine and to decide upon applications for recognition as a refugee, and the term “standing refugee appeal body” shall mean any official or group of officials with powers to hear and to decide upon appeals against refusal by the standing refugee body to recognise the applicant as a refugee.

2. Application for refugee status shall be filed in the manner prescribed by law. The applicant shall be entitled to appear, with or without counsel, before the standing refugee body to present his case.

3. The views of the Representative of the United Nations High Commissioner for Refugees may be sought by the standing refugee body and taken into account before a decision is reached if there is a doubt or if a negative decision is intended.

4. Where the standing refugee body rejects an application for recognition of refugee status, it shall so notify the applicant and, where appropriate, shall inform him of the grounds for rejection. In such a case, the applicant shall be entitled to appeal to the standing refugee appeal body.

5. The authority to which the applicant first addresses himself shall ensure that the application is forwarded directly and without delay to the standing refugee body.

### ***Section 4***

1. For the purpose of this section, the term “members of the family of the applicant” shall mean the refugee’s spouse or spouses, unmarried children under the age of majority, and any other relative of the refugee who is dependent on him.

2. Where the applicant is recognised as a refugee, the members of his family who accompany or subsequently join him shall be recognised as refugees, unless they possess a nationality other than that of the refugee and enjoy the protection of the country of their nationality.

3. If, subsequent to the recognition of the head of the family as a refugee, his family is broken up as a result of divorce, separation or death, the members of his family who have been accorded refugee status by virtue of paragraph 2 shall continue to be

regarded as refugees, unless there are strong reasons why refugee status should not be retained.

### ***Section 5***

Where members of a group are expressly excluded from a declaration of refugee status made by the government authority in pursuance of Section 1(1)(c), those members shall be given an opportunity to apply for recognition of refugee status in accordance with the provisions of Section 3.

## **Part III: Non-refoulement**

### ***Section 6***

1. For the purpose of these legislative provisions, the term “frontier” shall mean the land-frontier, a part or airport of entry, or the limits of territorial waters.

2. No person shall be rejected at the frontier, returned or expelled, or subjected to any other measures that would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons mentioned in paragraph 1(a) and (b) of Section 1.

## **Part IV: Prohibition of declaration of prohibited immigrant**

### ***Section 7***

1. No person who has illegally entered or is illegally present in the country in which he seeks asylum as a refugee shall be declared a prohibited immigrant, detained, imprisoned or penalized in any other way merely by reason of his illegal entry or presence, pending an examination of his application for refugee status.

2. A person who has illegally entered or is illegally present in the country in which he seeks asylum as a refugee shall present himself to the competent authorities without undue delay.

## **Part V: Entry, residence and sojourn**

### ***Section 8***

1. A person claiming to be a refugee shall be permitted to enter and remain in the country in which he seeks asylum pending a decision on his application. He shall be given appropriate documentation attesting to his lawful presence in the country.

2. Where, as provided for in paragraph 4 of Section 3, an applicant has appealed against a negative decision on his application for recognition as a refugee, the applicant shall be permitted to remain in the country while his appeal is pending.

3. A recognised refugee shall be issued with an identity card attesting to his refugee status.

## *Residence*

### ***Section 9***

1. A person recognised as a refugee shall be issued with an indefinite or a temporary residence permit in accordance with national legislation.
2. A recognised refugee who has maintained residence for an extended period of time and has not yet been granted permanent residence shall be given the opportunity of applying for such status and his application should be given favourable consideration having regard to the circumstances of his particular case.

## *Temporary Sojourn and Transit*

### ***Section 10***

1. Where an application for refugee status has been finally rejected, the person concerned may, for humanitarian reasons, be permitted to remain in the country for a reasonable period of not less than six months, to enable him to seek admission to another country.
2. A person who presents himself at the frontier and applies for admission for the purpose of proceeding to another country in order to seek asylum as a refugee shall be permitted to enter under such conditions as the authorities may determine. Such a person shall be given the necessary facilities to enable him to proceed on his journey.
3. A person who has already entered the country with the intention of proceeding to another country in order to seek asylum as a refugee shall similarly be given the necessary facilities to enable him to proceed on his journey. If such a person has illegally entered or is illegally present in the country, he shall not be penalized for his illegal entry or presence, provided he addresses himself to the authorities without delay.

## **Part VI: Rights and duties**

### ***Section 11***

Persons recognised as refugees shall be entitled to the rights and subject to the duties defined in Articles 2 to 34 of the United Nations Convention Relating to the Status of Refugees 1951 and in Article III to VI of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969, as set out in the Schedule to these legislative provisions.

## **Part VII: Expulsion**

### ***Section 12***

1. A refugee who is lawfully resident in the country shall not be expelled, except on the grounds of national security or public order.

2. The expulsion of such a refugee shall be made only in pursuance of a decision reached in accordance with due process of law.

3. An expulsion order shall not be executed by return to a country to which the return of the refugee is excluded by Section 6.

4. Where an order has been made for the expulsion of a refugee, the authority making the order shall inform the refugee that he may make representations against his expulsion on the grounds that he has not acted against national security or public order, or if the expulsion order requires his return to a specific country, that it is contrary to the provisions of Section 6. Pending a decision on such representations, the execution of the execution of the expulsion order shall be suspended.

## **Part VIII: Miscellaneous**

### ***Section 13***

1. Immigration officials, border police officers, and any other officials or officers as appropriate, shall be issued with instructions with a view to ensuring that persons claiming to be refugees are able to present their application to the competent authority and receive the protection provided for in Sections 6 and 7, pending a decision on their application.

2. The appropriate authority may make any other regulations or orders in conformity with the present legislative provisions to govern and control the entry and residence of refugees.

# Commentary to Guidelines for National Refugee Legislation

19 December 1980

## Introduction

1. There are now estimated to be 5 million African refugees. This figure represents one-half of the world's total refugee population. The plight of African refugees has, for decades now, been the concern of the US General Assembly. Besides pleading for assistance to African refugees, the General Assembly, in many resolutions, has consistently and strongly urged all governments, including African governments, to facilitate the High Commissioner's function of international protection, (1) by acceding to the United Nations Convention Relating to the Status of Refugees 1951 (hereafter referred to as the "UN Refugee Convention"), and the Protocol Relating to the Status of Refugees of 31 January 1967 (hereafter referred to as the "1967 Protocol"),<sup>1</sup> as well as regional instruments,<sup>2</sup> established for the benefit of refugees; (b) by elaborating appropriate procedures at the national level for the effective implementation of the provisions of those international instruments; and (c) by following humanitarian principles in respect to the granting of asylum and ensuring that these principles, particularly the principle of non-refoulement,<sup>3</sup> are scrupulously observed.

2. As a regional problem, the African refugee situation has also been the subject of particular concern to the OAU. As early as 1964 the OAU initiated work on a convention on the problems of refugees in Africa.<sup>4</sup> Since that time it has also adopted numerous resolutions on the subject, calling upon Member States, inter alia, (a) to accede to the UN Refugee Convention and the 1967 Protocol;<sup>5</sup> (b) to provide more facilities for the settlement and resettlement of refugees in their territories by making it easier for them to obtain travelling documents;<sup>6</sup> and (c) to give humanitarian consideration to the cases of refugees who may wish to continue availing themselves of their refugee status and enjoying asylum in their host countries, in accordance with the spirit of the relevant International instruments.<sup>7</sup> In 1969, the African States concluded, under the auspices of the OAU, the Convention Governing the Specific Aspects of Refugee Problems in Africa (hereafter referred to as the "OAU Refugee Convention"). Article VII describes this Convention as the effective regional complement in Africa of the 1951 United Nations Convention on the Status of Refugees".

3. Individually, African States have been receiving refugees. They have also, in substantial numbers, become parties to the UN Refugee Convention and/or its 1967

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<sup>1</sup> Res. 2040 (XX), 7 Dec. 1965; Res. 2594 (XXIV), 16 Dec. 1969; Res. 2650 (XXV), 30 Nov. 1970; Res. 3454 (XXX), 1 Dec. 1975; Res. 31/35, 30 Nov. 1976; Res. 32/67, 8 Dec. 1977.

<sup>2</sup> Res. 32/67, 8 Dec. 1977.

<sup>3</sup> Res. 32/67, 8 Dec. 1977; Res. 33/26, 29 Nov. 1978.

<sup>4</sup> CM/Res. 26 (III), July 1964.

<sup>5</sup> AHG/Res. 26 (II), Oct. 1965; CM/Res. 104 (IX), Sept. 1967; 6/ CM/Res. 149 (XI), Sept. 1968; CM/Res. 814 (XXXV), June 1960.

<sup>6</sup> CM/Res. 489 (XXVII), July 1976.

<sup>7</sup> CM/Res. 489 (XXVII), July 1976.

Protocol. The effective implementation of the Provisions of these Instruments calls for appropriate national application measures. This applies in particular as regards procedures for determining whether or not a person is a refugee and therefore in a subject of various rights and obligations specified in the relevant international refugee instruments.

4. The 1979 Panafrican Arusha Conference on African Refugees represents yet another milestone in the efforts by African States to ensure international protection of, and humanitarian assistance to, African refugees while, at the same time, seeking permanent solutions to their problems. The Recommendations of the Arusha Conference, outlining the strategy for the achievement of those objectives, have been fully endorsed by the OAU Assembly of Heads of State and Government,<sup>8</sup> and supported by the UN General Assembly.<sup>9</sup>

5. With regard to the international Protection of refugees, the Arusha Conference recommended that, with a view to ensuring their “increased effectiveness, the “various principles relating to asylum as defined in the 1969 OAU Refugee Convention and other relevant international instrumental” should be incorporated into the national law of African States. The Conference also recommended that appropriate procedures be established for the individual determination of refugee status, and appealed to African States to apply in such procedures the basic requirements laid down in the Conclusions adopted by the Executive Committee of the High Commissioner’s Programme at its twenty-eighth session in 1977 (hereafter referred to as “the Executive Committee Conclusions on, Determination of Refugee Status”).<sup>10</sup>

6. The purpose of the guidelines is to assist African Governments to implement these Recommendations of the Arusha Conference by formulating possible rules relating to the admission, of asylum-seekers and procedures for determining refugee status under the UN Refugee Convention, the 1967 Protocol and the 1969 OAU Convention on Refugees, which might be incorporated, as appropriate, into the national laws or regulations in accordance with the constitutional requirements of each country.

## **Part I: Definition of “Refugee” and “Competent authority”**

### ***Section I***

#### ***General***

7. One of the principles laid down in Article II, paragraph 3, of the OAU Refugee Convention is that no person claiming to be a refugee is to be rejected at the frontier of the country in which he intends to seek asylum. Since the purpose of the procedures laid down in Section 3 is to determine whether a person is a refugee, it is desirable that the definition of a refugee should be incorporated in the legislation of States. Paragraph (1) of this Section, therefore, sets out the criteria an individual must satisfy before he can be recognised as a refugee.

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<sup>8</sup> CM/Res. 727 (XXXIII), July 1979.

<sup>9</sup> Res. 34/61, 29 Nov. 1979.

<sup>10</sup> For the text of the Conclusions, see Annex I. The Executive Committee comprises 40 States, 10 of which are African States.

*Sub-paragraph 1(a)*

8. The definition of the term ‘refugee’ contained in sub-paragraph 1(a) is based on the traditional criterion of well-founded fear of persecution laid down in Article 1(A)(2) of the UN Refugee Convention, as modified by Article 1, paragraph 2, of the 1967 Protocol, and in Article I, paragraph 1, of the OAU Refugee Convention. No attempt has been made in the draft to define the terms used in these provisions. This has been adequately done in the UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status (September 1979), paragraphs 37 to 110.

*Sub-paragraph 1(b)*

9. The definition of the term “refugee” contained in sub-paragraph 1(a) may not, however, cover various other situations in which persons may reasonably be considered as refugees. In order to take account of these other situations, the OAU Convention lays down in Article V, paragraph 2, an additional and wider definition of the term “refugee” which figures in sub-paragraph 1(b) of this Section, according to which a person is a refugee if he is compelled to leave his country of origin as a result of “external aggression”, “occupation”, “foreign domination”, or “events seriously disturbing public order in either part or the whole of his country of origin or rationality”. As far as the terms used in this definition are concerned, no official OAU interpretation appears to exist, but any person falling within any of these terms would be a refugee in the sense of the OAU Convention.

*Sub-paragraph 1(c)*

10. Sub-paragraph 1(a) lays down the criteria an individual applying for refugee status must meet before he can be so recognised. Subparagraph 1(c), on the other hand, provides for cases where a person may be considered a refugee without the need for an individual determination of his refugee status. This may be so where, in a given situation, the competent authority has declared a group of persons to be refugees. In that case, every individual member of that group is to be regarded as a refugee, unless he is expressly excluded from the general determination. (For further comments on this last-mentioned aspect, see Paragraph 30 below.)

*Paragraph (2)*

11. Different countries have their own constituted body of officials varying in composition and designation, with power to determine refugee status. Paragraph (2) does no more than recognise this variation in State practice.

**Section 2**

*Paragraph (1)*

12. This paragraph describes the circumstances in which a person may be excluded from being recognised as a refugee. A person may be excluded if, prior to his application, he has committed any of the crimes mentioned in both Article 1(F) of the UN Refugee Convention and Article I, paragraph 5, of the OAU Refugee Convention. As the exclusion provisions in the two Refugee Conventions are not identical, they are mentioned cumulatively. This is intended to take account of cases where there may be reasons for not automatically excluding a person from being considered a refugee merely by operation of the exclusion provisions of only one of the two Refugee Conventions.



*Paragraph (2)*

13. It is also recognised that under certain conditions a person who has been granted refugee status may subsequently cease to be a refugee. As described in paragraph (2) of this Section, such a refugee may lose his status if he comes within the terms of Article I(C) of the UN Refugee Convention and Article 1, paragraph 4, of the OAU Refugee Convention. And the cessation provisions, like the exclusion clauses, are not identical, they are, for the same reasons, also mentioned cumulatively.

14. The rationale for the cessation clauses is that refugee status should be considered an exceptional and should cease as so as the person concerned has re-acquired the protection of his country of origin or of some other country, or where there has been a change in the circumstances in his country of origin which led to his becoming a refugee. At the same time, it is important that, once a person's status as a refugee has been determined, it should be maintained until he comes within the terms of one of the cessation provisions. This strict approach towards the termination of refugee status rests on the need to provide refugees with the assurance that their status would not be subject to constant review in the light of temporary changes – not of a fundamental character – in the situation prevailing in their country of origin.

## **Part II: Determination of Refugee Status**

### *Section 3*

15. The determination of refugee status frequently involves consideration of a number of complex issues and is in many cases also linked to the granting of asylum. It is thus important that refugee status should be carefully determined under appropriate procedures which should be established for this purpose.

*Paragraph (1)*

16. The purpose of paragraph (1) is therefore to ensure, as recommended in paragraph (iii) of the Executive Committee Conclusions on the Determination of Refugee Status, that there is clearly identified authority with power to examine applications for refugee status and to make a decision in the first instance. Paragraph (vi) of the Conclusions of the Executive Committee recommends that a rejected applicant should have the possibility of applying for a formal reconsideration or the negative determination to the same or to a different authority. In order to ensure that the position of a rejected applicant is more effectively safeguarded, paragraph (1) would provide him with the possibility of addressing himself to an independent appeal authority.

17. The two bodies are described in the draft as the “standing refugee body” and the “standing refugee appeal body”. The actual designation of the body would, of course, vary according to the practice of each country. As regards the composition of the two bodies, this, again, is a matter for each country to determine. However, it is understood that the persons selected to serve on the bodies should be persons with knowledge of refugee matters and problems.

*Paragraph (2)*

18. Paragraph (2) requires an application for refugee status to be filed in accordance with the law of the country of refuge. It is, of course, assumed that the authorities of the country will permit him to file such an application, in line with paragraphs (ii) and (iv) of the Executive Committee Conclusions on Determination of Refugee Status and will give him the necessary facilities and guidance. The paragraph also provides that he shall be permitted to appear before the competent authority and may be assisted by counsel in presenting his case.

19. The authority to which an applicant is required to report in the first instance varies from country. In some countries, he is required to report to the police; in others, to the authority which examines the application. The words "in the manner prescribed by law" are intended to take account of the various practices of States. In line with the views expressed in paragraph 18 above, the authorities of the country of refuge should instruct the applicant as to the form in which the application is to be made and the official to whom it should be submitted.

20. Paragraph (2) also gives the applicant a right to appear before the "standing refugee body", with or without counsel. This rule is in the interest of both the country of refuge and the refugee. On the one hand, it underlies the necessity of giving the applicant adequate opportunity to present his case fully, and on the other hand, the right of the "standing refugee body" to examine the applicant as to the facts invoked in support of his claim.

*Paragraph (3)*

21. Participation of the Representative of UNHCR in the individual determination of refugee status may be desirable, and would be in line with the recommendation set out in preambular Paragraph (d) of the Executive Committee Conclusions on Determination of Refugee Status. This recommendation calls upon governments to take steps to establish procedures for determining refugee status and to give favourable consideration to UNHCR participation in such procedures in appropriate form.

22. In some African countries, the Representative of UNHCR acts in an advisory capacity; in others, he attends the meetings of the body determining refugee status as an "observer"; and still in some others, he undertakes preliminary screening of the would-be refugee and submits his recommendations to the competent authority. Paragraph (3) provides for the possibility of participation by the Representative of UNHCR in the national procedures for the individual determination of refugee status. In a number of African countries, provisions exist allowing UNHCR Representative participation in the determination of refugee status, though the form of such participation varies according to the regulations of each country.

23. The present wording does not specify the exact form of participation, which would have to be decided by the authorities of each country. The word "may" has been used in order to give Governments flexibility in this matter, although it is hoped that they will make appropriate arrangements for the "standing refugee body" to seek and take into account the views of the Representative of UNHCR.

*Paragraph (4)*

24. The first sentence of paragraph (4) provides that where the competent authority has decided not to recognize the applicant as a refugee, it must inform him of its decision. The reason behind the principle is to enable the applicant to appeal to the “standing refugee appeal body” for a reconsideration of his application.

25. The second sentence of the paragraph provides that, in the event of a negative decision, the applicant should be given the opportunity of appealing to the “standing refugee appeal body” for a reconsideration of his application. He should, therefore, normally be informed of the reasons for the rejection of his application. There may, however, be cases in which it might be undesirable to divulge the grounds for the rejection of the application for security reasons. The words “where appropriate” have therefore been included.

*Paragraph (5)*

26. For obvious humanitarian reasons, and in the interests of the country of refuge, this provision seeks to place an obligation on the officials to whom the applicant first reports to forward his application to the “standing refugee body” without undue delay.

**Section 4**

*Paragraph (1)*

27. The words “any other relative of the applicant who is dependent on him” included in the definition of the term “members of family” require explanation. Naturally, the authorities of the country of asylum would want to be certain that the individual claimed by the applicant to be a member of his family is indeed dependent on him. Given the general acceptance in Africa of the extended family, no hard and fast criteria can be laid down. All that can be said is that a statement by the applicant that the person concerned is in one way or another dependent on him should suffice to bring him within the terms of this provision.

*Paragraph (2)*

28. The principle laid down in paragraph (2) is that the applicant’s refugee status should normally extend to the members of his family. This principle is based mainly on the human rights principle of the “unity of the family”. If a member of the family of the applicant possesses only the same nationality as the head of the family and no other nationality, he should also be granted refugee status. If, however, he possesses the nationality of some other country and enjoys the protection of that country, the granting of refugee status to him in these circumstances would not be justified.

*Paragraph (3)*

29. Under the rule proposed in paragraph (2), the members of the family of a recognised refugee should normally receive refugee status by virtue of the refugee status granted to the head of the family. A problem might, however, arise where the head of the family, subsequently loses his refugee status. The important consideration in such a case should be to ensure the protection of the individual members of the family. This consideration underlies the principle proposed in paragraph (3) that the members of the family of the refugee should, unless there are strong reasons to the contrary, continue to be recognised as refugees.

### ***Section 5***

30. According to Sub-paragraph 1 (C) of Section 1, the competent authority may declare a group of persons to be refugees. This present Section deals with the possibility that the competent authority may have to exclude certain members of the group from the general determination of refugee status. A person so excluded should, of course, be given the chance to appeal against such exclusion to the “standing refugee appeal body”. This is based on the consideration that exclusion from, refugee status under the declaration, unless it was made under Section 2, paragraph 1, is analogous to an initial examination and rejection of an application for refugee status under paragraph 2 of Section 3. This being so, the appeal procedure laid down in Paragraph (4) of that Section should also apply.

## **Part III: Non-Refoulement**

### ***Section 6***

#### ***Paragraph (1)***

31. Some African countries may already have legislation providing that any person found within their territorial waters claiming to be a refugee is to be regarded as a person present at the frontier within the meaning of Article III, paragraph 3, of the OAU Refugee Convention. In order to avoid difficulties in future with countries which do not have such legislation, It would be wise for all States to have provisions in their legislation covering this point. For the purpose of this paragraph, the outer limits of territorial waters of a country are regarded as its frontiers. In ordinary usage, the words “territorial waters” describe parts of the sea. In paragraph (1), however, these words should be construed as including any body of water inside the boundary line through a common lake, river or similar body of water.

#### ***Paragraph (2)***

32. This paragraph gives expression to the principle which also figures in Article I, paragraph 3, of the OAU Refugee Convention, that a person may not be forcibly returned to a country where he has reason to fear persecution. This principle, of course, provides basic protection for the refugee. The paragraph applies irrespective of whether the person concerned finds himself in the country legally or illegally. It also prohibits rejection at the frontier if this should oblige the person concerned to remain in, or to return to, a country where he has reason to fear persecution.

## **Part IV: Prohibition of Declaration of Prohibited Immigrant**

### ***Section 7***

#### ***Paragraph (1)***

33. The circumstances under which a person is compelled to leave his country of origin as a refugee may make it impossible for him to comply with the immigration requirements of the country in which he wishes to seek asylum. Insecurity, fear, or threat of persecution might compel him to flee without a passport or travel document, or if he has such a document, he might, because of those circumstances, not be able to comply with the entry formalities of the country of refuge. There are therefore strong

humanitarian, as well as practical, reasons for treating a refugee who fails to comply with immigration requirements differently from an ordinary alien.

34. In some countries, the entry of an alien without proper documentation is considered in itself to be a sufficient ground for declaring him a prohibited immigrant; in others, certain categories of aliens, e.g., the destitute, the sick, etc., are automatically considered prohibited immigrants. Non-compliance with the immigration requirements or regulations could attract a variety of penalties and the possibility of expulsion or detention. The Arusha Conference, in paragraph 3 of Recommendation 3, rejected categorization of refugees as prohibited immigrants for these reasons and recommended that in view of the special situation in which they find themselves, refugees should not be subjected to national legislative or administrative provisions relating to prohibited immigrants. These considerations underlie the principle laid down in paragraph (1) of the present Section.

*Paragraph (2)*

35. For reasons of security or public order a country will normally require a person who has illegally entered or is illegally present in its territory to report to the authorities. A failure to do so may attract penalties. In view, however, of natural difficulties and the situation surrounding the entry or presence of a refugee, there would seem to be good grounds for not penalising him if he fails to comply with normal requirements regarding lawful entry.

36. In line with Article 31, paragraph 1, of the UN Refugee Convention, paragraph (2) requires such a person to report to the authorities without delay. If he fails to do so, he may be punished in accordance with the provisions of Article 31 of the UN Refugee Convention.

## **Part V: Entry, Residence and Sojourn**

### ***Section 8: Entry***

*Paragraph (1)*

37. Section 6, paragraph 2, provides that a person claiming to be a refugee should not be rejected at the frontier. The provision does not, however, ensure that he is regularly admitted into the territory pending an examination of his request for refugee status. He could be detained at the border police post for an excessive period. In order to ensure that he does not suffer any negative consequences if his presence in the country continues to be regarded as irregular, this paragraph provides that he should be allowed, on the strength of a temporary permit, to proceed to a place where he can be given the necessary assistance and facilities to apply for recognition of his refugee status.

*Paragraph (2)*

38. A person whose appeal against the rejection of his application for refugee status is pending is in a similar position as the person whose initial application for recognition as a refugee is awaiting a decision. An appeal is a continuation of the original procedure. This being so, until a decision is taken on his appeal, the applicant should

be permitted to remain in the country and, where appropriate, be given the necessary documentation attesting to his legal presence there.

*Paragraph (3)*

39. This paragraph provides that a recognised refugee should be issued with an identity card attesting to his status as a refugee. It reflects a practice widely followed by States and is also in line with paragraph (v) of the Executive Committee Conclusions on Determination of Refugee Status. 'The rule is in the interest of both the country of asylum, and the refugee. It would enable the country of asylum to identify, easily a refugee living in its territory. It should also help implementation of refugee assistance projects. Lastly, it would enable the refugee to take advantage of international Instruments and domestic legislation adopted for his benefit. At the same time, it would protect him from the application of certain types of domestic legislation, for example vagrancy laws, which should not be applied to refugees due to their special situation.

***Section 9: Residence***

*Paragraph (1)*

40. The rule proposed in paragraph (1) is that a recognised refugee should be granted a residence permit. This rule is based on the consideration that, although refugee status is by its nature temporary, a refugee would normally have to stay in the country of asylum until such time that he voluntarily returns to his country of origin, or becomes fully integrated in the country of asylum, or resettles elsewhere. For this he requires a residence permit, which may have limited or unlimited duration, depending on the law of the country of asylum.

*Paragraph (2)*

41. A refugee may have lived under a limited permit for an extended period of time in his country of asylum. In such circumstances he should be given an opportunity to apply for a permanent residence permit, if he so desires. The authority concerned should give favourable consideration to such an application, especially where the circumstances of the particular case warrant this.

***Section 10: Temporary Sojourn and Transit***

*Paragraph (1)*

42. Section 3 sets out procedures for the determination of refugee status, including the possibility of an appeal against a negative decision. As explained in paragraph 38 above, an applicant should be permitted to remain in the country while his appeal is pending. There is a problem as regards the status of a person whose application for refugee status has been finally rejected. Whilst the country of refuge would have no obligation to permit him to remain in its territory, there may be humanitarian reasons for giving the person concerned some time to seek admission to another country. This consideration underlies the principle proposed in paragraph (1), that such a person should be given not less than six months to seek admission into another country.

*Paragraph (2)*

43. A person claiming to be a refugee may, for one reason or another, not wish to seek asylum, in the first country at whose frontier he presents himself. It is also possible that his country of destination is a landlocked country, which makes transit through

the first country unavoidable. To refuse him a permit of sojourn in these circumstances would be obliging him to return to his country of origin which he fled for fear of persecution. For this reason, it is provided in paragraph (2) that the first country of entry should permit such a person to sojourn and give him, where necessary, facilities to enable him to proceed on his journey.

*Paragraph (3)*

44. A person wishing to sojourn through one country in order to seek asylum in another country as: a refugee may have already illegally entered, or be illegally present in the first country. Expelling him for his illegal entry or presence would probably expose him to threat or fear of persecution. His arrest or detention would hardly enable him to seek asylum as a refugee in the second country. These considerations underlie the rule proposed in paragraph (3) that such a person should not be penalized but should be given facilities, where necessary, to enable him to proceed on his journey, provided 'What he reports himself to the authorities without delay.

## **Part VI: Rights and Duties**

### ***Section 11***

#### *Duties*

45. A refugee, like every other resident of the country of asylum, has a duty to obey laws and regulations in force there. This obligation finds clear expression in Article 2 of the UN Refugee Convention and Article III, paragraph 1, of the OAU Refugee Convention. In the case of non-compliance, the refugee would be subject to such penalties as are provided by law. This in no way implies additional or other measures not provided by law for the refugee simply because of his status. On the other hand, as indicated in paragraphs 33 to 36 above, there are some laws with which refugees, because of their position, cannot always comply, e.g. entry requirements under immigration or aliens laws.

#### *Rights*

46. As far as the principles governing legal status of the refugee are concerned, they are intended to ensure certain basic human rights, sufficient to enable him to enjoy freedom and dignity, that is, to allow him to become self-supporting and maintain himself and family, and to become part of the society in which he lives, if possible and desirable, through naturalization. These basic human rights, contained in the UN Refugee Convention and the OAU Refugee Convention, are set out in the Schedule to this draft. These minimum standards are generally recognised and should form part of the national refugee legislation of African States.

## **Part VII: Expulsion**

### ***Section 12***

#### *Paragraph (1)*

47. The legislation of most countries of the world provides for the possibility of expulsion of aliens for reasons such as infringement of certain laws, destitution,

sickness, socially deviant behaviour, etc. Unlike an ordinary alien, a refugee does not have a home country to which he can return if he is expelled. Expulsion means the withdrawal of the right of residence in the only country in which he is able to remain on a “permanent” basis, and the loss of the rights established in international instruments for the benefit of recognised refugees. Moreover, expulsion may result in severe hardships for the members of the refugee’s family.

48. A refugee who has been granted the right of lawful residence, therefore, needs the assurance that this right will not be withdrawn, with the result that he again becomes an uprooted person in search of refuge. Paragraph (1) seeks to provide this assurance by incorporating the substance of Article 32, paragraph 1, of the UN Refugee Convention, according to which a lawfully resident refugee may not be expelled, except on the grounds of “national security or public order” and only in pursuance of a decision reached in accordance with “due process of law”.

49. No attempt has been made in this draft to define the words “national security” or “public order”, which may afford a country of asylum grounds to expel a lawfully-resident refugee. However, owing to serious consequences expulsion may have for a refugee, it is generally accepted that these exceptions should be restrictively interpreted or applied, i.e., a refugee should only be expelled as a last resort and as the only practicable means of protecting the legitimate interests of the country of asylum.

#### *Paragraph (2)*

50. This paragraph lays down a procedural guarantee in cases of permitted expulsion. The decision to expel a lawfully resident refugee must, as provided in Article 32, paragraph 2, of the UN Refugee Convention, be a decision reached in accordance with “due process of law”. These words do not, however, necessarily mean a decision by a court of law. The law may provide for an administrative procedure for expelling a refugee, whether on the grounds of national security or public order, and if that procedure is followed, the prescriptions of paragraph (2) are satisfied. The term “due process of law” means in effect only that in no case may a decision to expel a lawfully-resident refugee be reached in any way other than as provided by the law in force in the country of asylum.

#### *Paragraph (3)*

51. This paragraph nets out a further limitation on permitted expulsion of a lawfully-resident refugee. Expulsion under paragraph (1) is also subject to the provisions of Section 6, dealing with non-refoulement. For obvious reasons, a refugee cannot be expelled to a country he fled for reasons mentioned. In Section 1, sub-paragraphs 1(a) and (b). Therefore, it is a defense against an expulsion order to a specific country if the refugee establishes a prima facie case of fear of persecution there.

#### *Paragraph (4)*

52. Other procedural guarantees are laid down in this paragraph to govern expulsion of a lawfully-resident refugee. The authority making the expulsion order is obliged to inform the refugee accordingly and the refugee shall have a right to make representations, with or without the assistance of a counsel, against his expulsion order on the ground that he has not acted against national security or public order, or that he might be persecuted in the specific country to which he is being expelled. This means that the refugee should also be informed of the grounds for ordering his



expulsion. Unless the refugee knows the grounds for his expulsion order, he could hardly make representations in his defense.

53. It would be in line with humanitarian principles as well as justice not to execute an expulsion order while a decision on such representations is pending. This consideration underlies the principle proposed in paragraph (4) that the execution of the expulsion order should be suspended until a decision is reached on the representations.

## **Part VIII: Miscellaneous**

### ***Section 13***

#### ***Paragraph (1)***

54. Full and effective implementation of these legislative provisions would necessarily require subsidiary orders, regulations, or directives. Some of these subsidiary measures may already exist in the national refugee legislation of States, or the specific subsidiary measures required can only be decided by each State in the light of its existing law. There is, however a duty on States to introduce all the necessary subsidiary orders, regulations, or directives. In order to underline the importance of strict application of the principle of non-rejection at the frontier, it is provided in paragraph (1) that the competent authorities should issue to all officers to whom a person seeking asylum as a refugee is likely to present himself in the first instance full and clear instructions spelling out what they should do in each case. Such instruction should include non-rejection at the frontier, assisting the person concerned to file an application for refugee status and to report to the Office of the UNHCR Representative, in line with paragraph (iv) of the Executive Committee Conclusions on Determination of Refugee Status.

#### ***Paragraph (2)***

55. Paragraph (2) proposes that the competent authorities should also make any other orders, regulations, or directives in conformity with the provisions of this draft and of the relevant international instruments to govern the entry and residence of asylum-seekers.