

MEMORANDUM OF UNDERSTANDING BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
AND THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES
ON THE VOLUNTARY REPATRIATION AND REINTEGRATION
OF SOUTH AFRICAN RETURNEES

The Government of the Republic of South Africa, hereinafter referred to as the Government, and the United Nations High Commissioner for Refugees, hereinafter referred to as the UNHCR:

Bearing in mind

that significant and positive developments have taken place in South Africa since 1990 and that important steps have been taken in the pursuit of reconciliation and the search for a new and just dispensation in South Africa;

that the Government and other concerned parties are committed to creating conditions conducive to the promotion of the voluntary repatriation of South African returnees in complete safety and dignity;

that the Government has previously published its official guidelines to be applied in the processing of requests for

- repatriation as well as formalities, including those pertaining to the provision of indemnity and immunities, to be complied with by candidates for repatriation;

that the Government has already taken a series of measures which in fact constitute a general amnesty having been granted in respect of political offences, excluding only those offences involving serious common law crimes;

that the process of organised, large-scale and peaceful repatriation of returnees has an international humanitarian dimension;

that UNHCR, within the terms of the Statute of its Office, has been entrusted with the responsibility, inter alia, "to facilitate the voluntary repatriation of refugees";

that the Government has invited the UNHCR to establish and maintain a temporary UNHCR Office in South Africa in order to assist in facilitating the process of repatriation and reintegration of South African returnees who elect voluntarily to return home as civilians;

that in keeping with its Statute and Mandate UNHCR shall perform its functions in this respect in a strictly humanitarian, neutral and non-partisan manner;

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that nothing contained in this Memorandum shall derogate from, or in any way affect the right of, any South African to leave or return to his or her country, on his or her own, or with the assistance of any other entity;

that nothing in this Memorandum of Understanding or carried out under its terms, is to be construed as derogating from the sovereignty of the Republic of South Africa;

that nothing contained in this Memorandum of Understanding, or which may be done on the basis thereof, shall be construed as constituting recognition in any way, on the part of UNHCR, of any state of affairs not recognised by the United Nations, or as constituting a derogation from any relevant United Nations' resolutions.

Hereby agree as follows:

1. DEFINITIONS

For the purpose of this Memorandum of Understanding, its Annexures and any other supplementary agreements hereto, the following definitions shall apply:

- (a) UNHCR means the United Nations High Commissioner for Refugees established pursuant to the General Assembly

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Resolution 319(IV) of 3 December 1949.

- (b) High Commissioner means the person, for the time being, appointed by the United Nations General Assembly to serve as the Chief Executive of UNHCR or the officials to whom the High Commissioner has delegated authority to act on her behalf.
- (c) UNHCR Mandate means the international protection and assistance role of the Office vis-a-vis refugees and/or returnees.
- (d) South Africa means Republic of South Africa.
- (e) Government means the Government of the Republic of South Africa as well as all competent local authorities.
- (f) Convention means the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations, on 13 February 1946.
- (g) Returnee means any South African refugee and/or political exile who return(s) voluntarily to South Africa as an unarmed civilian under the terms and arrangements of this Memorandum.
- (h) Memorandum means the Memorandum of Understanding entered

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- into between the Government and the UNHCR on 1991.

- (i) Implementing partner(s) means a governmental, inter-governmental or non-governmental counterpart to which implementation is delegated by the UNHCR through a project agreement.
 - (j) Political offence means any offence, excluding serious common law offences which, in the application of the relevant guidelines, is regarded as a political offence. The guidelines for defining political offences for the purpose of this agreement appear in Annexure B.
2. Any voluntary repatriation operation carried out under the auspices of the UNHCR shall be open and available to all South African returnees, irrespective of their racial, religious, social or political affiliation, who wish to return to their country and shall take place under conditions of complete safety, freedom and dignity and in accordance with the provisions of this Agreement.
3. (a) The Government is willing, in the interest of the process of reconciliation and in order to expedite the rate of repatriation, to grant amnesty to returnees in respect of political offences they may have committed before 12:00 on 8 October 1990 and

which qualify for indemnity in terms of the guidelines published. However, cognisance is taken of the possibility that persons could have left South Africa after 8 October 1990, for political reasons without travel documents. Their position will be considered if and when information regarding such cases is submitted to the Government.

- (b) Accordingly, returnees, unless excluded for reasons of having committed an offence falling outside the ambit of the definition of a political offence, shall after clearance by the Government, peacefully return to South Africa without risk of arrest, detention, imprisonment or legal proceedings, whether civil or criminal, in respect of the political offences referred to in paragraph 3(a) above.
4. The parties hereto shall co-operate on the basis of the following principles and provisions:

- (a) The UNHCR shall, in the exercise of its mandate, enjoy free and unhindered access to the returnees wherever they may be located in South Africa.
- (b) The returnees will enjoy complete freedom of movement in South Africa and, in this context, will

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have the right to return to the areas where they lived immediately prior to leaving South Africa or to a comparable area of their choice.

- (c) The returnees, whether South African nationals or not, shall, subject to the provisions of paragraph 3 above, be subject to the laws of South Africa. It is understood, however, that any persons who, under South African law, may be considered as having lost their South African citizenship shall, upon return, be treated as South African citizens.
- (d) The UNHCR shall, in consultation with the Government, plan, organise and facilitate the implementation of all the phases of the repatriation operation and will, in this connection, seek the necessary funds and mobilise the required human, material and technical resources.
- (e) The UNHCR may, in consultation with the Government, enter into agreements with implementing partner(s) for the implementation of one or more sectors of the repatriation operation.
- (f) It is understood that, once indemnity has been granted, the tempo of repatriation will be determined by the returnees themselves.

- (g) The parties shall, by means of exchanges of Notes, establish the administrative, procedural and other mechanisms necessary for UNHCR to fulfil its mandate and discharge its functions in terms of this Memorandum of Understanding.
- (h) The procedures for readmission, reception and reintegration of returnees shall be in accordance with Annexure A hereto.
- (i) The legal status, privileges and immunities of the UNHCR Office and its personnel in South Africa shall be determined in a separate Agreement between the parties hereto.
5. Annexures A and B to this Memorandum and any supplementary agreements between the parties hereto shall constitute integral parts of this Memorandum of Understanding. Any relevant matter or question that is not provided for in this Memorandum of Understanding shall be resolved and/or agreed upon amicably and through consultation between the parties hereto.
6. This Memorandum of Understanding shall enter into force upon signature by the duly authorised Representatives of the Government and the UNHCR and shall remain in force

for a period of twelve months, provided that this period may be extended or curtailed by agreement between the parties hereto.

7. Any dispute between the Government and the UNHCR arising out of this Memorandum of Understanding shall be resolved through consultations between them.

For the Government of the
Republic of South Africa

For the United Nations
High Commissioner for
Refugees

Name: Albert Lestor Harvey Name:

Signature: A. L. M. Harvey

Place: GKNCVt

Date: 16/8/1991

M. Douglas Stafford

Signature: M. D. Stafford

Place: Geneva, Switzerland

Date: 16/8/1991

ANNEXURE A

Procedures for Readmission, Reception and Reintegration
of South African Returnees who Apply to the UNHCR
for Voluntary Repatriation to the Republic of South Africa

To facilitate the readmission, reception and reintegration into South Africa of the returnees under the terms of the Memorandum of Understanding, the Government and the UNHCR hereby agree on the following procedures, which, by agreement, may be reviewed, revised, or elaborated upon by the parties hereto as required.

I. Pre-departure Arrangements

1. The UNHCR shall interview each applicant seeking to return to South Africa under the terms of the Memorandum of Understanding in order to ensure and certify the strictly voluntary character of the decision to repatriate, and ensure that each such applicant, or in the case of children below the age of 18, their parent(s), next of kin or guardian(s), duly completes the original and 4 copies of the Voluntary Repatriation Application Form (VRAF) (Schedule A).

2. The UNHCR shall inform the potential returnees, in

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appropriate ways, of the conditions governing their return, their reception and integration and particularly the principles stipulated in the Memorandum of Understanding.

3. The VRAF for the purposes of this repatriation operation, shall be completed by the applicants for purposes of being granted indemnity under the provisions of paragraph 3 of the Memorandum of Understanding.
4. The UNHCR will transmit the duly completed and verified VRAF(s), and, within the terms of its mandate, may provide information available to it which may be of assistance in determining whether returnees qualify for indemnity, to the Department of Justice of the Government in Pretoria (or to any other agency and place designated by the Government for that purpose) for clearance.
5. The Government shall ensure that each application is processed as soon as possible and that the UNHCR is notified promptly thereafter.
6. The Government will advise the UNHCR in writing whether a returnee has been granted indemnity. Where indemnity has been refused, the Government may furnish information as to why it has not been granted. The UNHCR shall advise such person accordingly.

7. Before finally refusing an application for indemnity, the Government will take into consideration the recommendation of existing advisory bodies established for that purpose and to which the UNHCR may make representations on behalf of returnees.
8. Travel documents will be issued by South African authorities and delivered to the UNHCR for transmission to those persons cleared for return. The Government may, however, accept a duly authenticated VRAF as a valid travel document for the purposes of the returnees travelling back to South Africa under the terms of this Memorandum of Understanding.
9. The UNHCR, or its implementing partner(s) shall arrange for the returnees to travel to South Africa following the notification of clearance by the Government. The UNHCR, or its implementing partner(s) shall, in consultation with the Government, set the date of travel.
10. Medical clearance of the returnees for travel purposes, in accordance with the requirements of the World Health Organisation, shall be accomplished in the country of departure and a certificate established for inspection by the Government on their arrival in South Africa.

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11. Subject to the provisions of paragraph 4(c) of the Memorandum of Understanding, any dispute arising as to the citizenship or nationality of any returnee shall be resolved upon such person's arrival in South Africa. If he or she is not able to establish his or her claim to South African citizenship or nationality to the satisfaction of the Government, after having had every opportunity to provide all the relevant evidence, he or she shall be dealt with in accordance with the immigration laws of the Republic of South Africa.
12. In this connection, the UNHCR undertakes to arrange the return of any person whom it transported to South Africa under its auspices and who has failed to prove his or her citizenship, or to establish any right to remain in South Africa, to his or her country of nationality or habitual residence.
13. Spouses and children of returnees who are themselves citizens of other countries shall, in order to preserve family unity, be permitted to enter and remain in South Africa on the basis of Temporary Residence Permits. Similarly, surviving non-South African spouses and/or children of South African citizens who may have died while abroad shall, on a humanitarian basis, be permitted to enter and remain in South Africa in order to preserve their family links with that country.

14. Mechanisms for tracing of family members and for family reunification will be established. A Tracing Form (Schedule B) shall be completed at the time of registration by the prospective returnee requesting assistance in tracing family members or family reunification.

II. Reception, Transit and Movement to Final Destination in South Africa

15. The Government shall permit the returnees to import into South Africa free of duty, charges or taxes, their personal property which is not prohibited for importation into South Africa.
16. Persons returning under the UNHCR auspices shall enter South Africa through entry points designated by the Government in consultation with the UNHCR. Reception centres may be provided by the Government or other local entities, free of charge, at agreed places for purposes of temporarily accommodating and assisting the returnees prior to their proceeding to final destinations.
17. The UNHCR may, whenever necessary and in consultation with Government, establish field offices at or near entry

points, reception centres or places of final destination. The Government shall have access to such entry points or reception centres and shall, in consultation with the UNHCR, provide the necessary security, provided that any security arrangements made shall not impinge on the freedom, security and dignity of the returnees.

18. The entry points and reception facilities established in accordance with the preceding paragraphs will be staffed, (as appropriate), by the Government, and the UNHCR or its implementing partner(s) respectively.
19. The period of stay at the reception centres shall be kept to a minimum and, in principle, should not exceed five days.
20. In the case of unaccompanied minors under 18 years of age who return to South Africa under the present arrangements, the Government authorities or implementing partner(s) will notify the parent(s), next of kin or guardian(s) of their return, well in advance of the date of return. Parent(s), next of kin or guardian(s) shall be encouraged to take immediate custody of such minors. The UNHCR staff, or staff of its implementing partner(s) may, in consultation with the Government, speak to the parent(s), next of kin or guardian(s) of such minors in order, inter alia, to assess whether the family may be in

need of humanitarian material assistance.

21. The Government, the UNHCR and implementing partner(s) shall consult on the situation of any returning minor or vulnerable person such as the aged and the sick, whose family fails, or is not in a position to take him or her back, with a view to finding an appropriate place of integration, bearing in mind the best interests of the returnee. The failure or inability to take him or her back by his or her family will not prejudice the readmission of the relevant person into South Africa under the arrangements established in this Memorandum of Understanding.

III. Installation and Reintegration

22. The UNHCR activities to facilitate the installation and reintegration of returnees shall consist of:

(a) the extension of all its statutory responsibilities, within the terms of the Memorandum of Understanding, throughout the process;

(b) transportation to the returnee's final destination;

(c) immediate assistance, which may take the form of a grant of or for food, basic domestic utensils and

temporary shelter for each family, over a period to be agreed, and/or a one-time cash grant to cover essential needs.

Arrangements may also be made to assist individual returnees considered to be destitute.

23. Reintegration assistance will address the needs of individuals upon assessment of their occupation and socio-economic background as well as their place of reintegration and aim at their productive employment.
24. It is agreed that diplomas, certificates or degrees acquired by returnees while abroad may be considered as valid by the competent authorities for the purposes of admission to local institutions or for practising in the professions, subject to existing legislation and regulations in South Africa, without insistence on the principle of reciprocity. To facilitate the integration of any unskilled returnees, notably the youth, into the economy, on-the-job training and apprenticeships may be promoted by the UNHCR and implementing partner(s) in consultation with the appropriate competent authorities.
25. Special measures may be taken by the parties to assure the social security and welfare of returnees considered as vulnerable such as the physically or mentally

handicapped, unaccompanied minors, the seriously sick and elderly persons, orphans and single women without any other support.

26. On the basis of the UNHCR data on the occupational and skills backgrounds of the returnees, the relevant authorities of the Government, the UNHCR, other relevant United Nations agencies, and implementing partner(s) will engage in concrete discussions to identify appropriate assistance projects having due regard for the need for community projects, provided such projects shall in no way accord preferential treatment to the returnees to the detriment of other South Africans having the same needs.
27. The implementation of any such assistance projects shall be carried out after conclusion of project agreements between the UNHCR and its implementing partner(s) and after appropriate consultations with the Government. When feasible, such projects may be linked with on-going bilateral and multilateral programmes being carried out by the Government or any other entities.

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ANNEXURE B

Guidelines for Defining Political Offences

- (i) The motive of the offender, i.e. whether the offence was committed for a political motive (e.g. to further or oppose the aims of a political organization, institution or body) or for a personal motive.
- (ii) The context in which the offence was committed; in particular whether it was committed in the course of or as part of a political uprising or disturbance, or in reaction thereto.
- (iii) The nature of the political objective (e.g. whether to force a change in the policy of or to overthrow or destroy the political opponent).
- (iv) The legal and factual nature of the offence, including gravity.
- (v) The object and/or objective of the offence (e.g. whether it was committed against the political opponent or his property, or directed primarily

against private individuals or property; or was committed on the assumption that a particular cause, governmental or otherwise, was being served).

- (vi) The relationship between the offence and the political objective being pursued, e.g. the directness or proximity of the relationship, or the proportionality between the offence and the objective pursued.
- (vii) The question whether the act was committed in the execution of an order or with the approval of the organization, institution or body concerned.