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This guide outlines the most important provisions of the Refugees Act 1998, including rights afforded to those with refugee status and their dependents, as well as rules and regulations regarding the detention of refugees. If you feel that your rights have been violated in regards to this act, please call PASSOP on 021 762 0322 or visit our office at the address found at the top of this guide.

The 1998 Refugees Act

Chapter 1 - Interpretation, application and administration of act

Section 2: General prohibition of refusal of entry, expulsion, extradition or return to other country in certain circumstance –

- No person may be refused entry into the Republic, expelled, extradited or returned to any other country, if, as a result, such person will be returning to, or remaining in, a country where:
 - They may be subjected to persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group; or
 - Their life, physical safety or freedom would be threatened by external aggression, occupation, foreign domination or other events seriously disturbing or disrupting public order in either part or the whole of that country

Section 3: Refugee Status

- A person qualifies for refugee status if that person;
 - Out of fear of persecution for reasons of race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside of their country of their nationality and is unwilling or unable to give themselves to the protection of that country, or, not having a nationality and being outside the country of their former residence is unable, or unwilling out of fear, to return to it, or;
 - Due to external aggression, occupation, foreign domination or events seriously disrupting public order in either part or the whole of their country of origin or nationality, is compelled to leave their place of residence and seek refuge elsewhere or;
 - Is a dependent of a person described above

Section 4: Exclusion from Refugee Status

- A person does not qualify for refugee status if there is reason to believe that they:
 - Have committed a crime against peace, a war crime or crime against humanity

- Has committed a non-political crime that would be punishable by imprisonment if it was committed in the Republic of South Africa
- Has been guilty of acts contrary to UN or OAU objects and principles
- Is already protected by another country

Section 5: Cessation of Refugee Status

- A person ceases to qualify for refugee status if they:
 - Voluntarily place themselves under the protection of their previous place of residence/country of nationality
 - Reacquire their nationality (having previously lost it)
 - Become a citizen of the RSA or another country and enjoy the protections of it
 - Voluntarily re-establish themselves in the country they left
 - Can no longer refuse to place themselves under the protection of the country they left because circumstances have changed so as to no longer justify refugee status

Chapter 5 – Rights and Obligations of Refugees

Section 27: Protection and General Rights of Refugees

- A refugee is entitled to:
 - A formal written recognition of refugee status
 - **Full constitutional protection of the RSA and the right to remain in the RSA (in accordance with the provisions of this act)**
 - Apply for an immigration permit if, after five years continuous residence in the RSA from the date they were granted asylum, if the standing committee certifies that he or she will remain a refugee indefinitely
 - An identity document, and a South African travel document
 - Seek employment
 - The same basic health services and basic primary education as inhabitants of the Republic

Section 28: Rights of Refugees in Respect of Removal

- A refugee may be removed from the Republic on grounds of national security or public order – such a removal may only be ordered by the Minister of Home Affairs with due regard for relevant rights
 - Any dependent who has not been granted asylum may be included in such an order
- Any refugee ordered to be removed may be detained pending their removal
- Any order made must afford reasonable time to the refugee concerned to obtain approval from any country of their choice for their removal to that country

Section 29: Restriction of Detention

- No person may be detained for longer than is reasonable, and not longer than thirty days; any detention longer than this must be reviewed by a judge of the High Court
- The detention of a child must only be used as a measure of last resort for the shortest appropriate period of time

Section 30: Identity Document to Refugee

- A refugee must be issued with an identity document containing:
 - i. An identity number of the holder
 - ii. The holder's surname, full forenames, gender, date and country of birth
 - iii. The country of which the holder is a citizen (if any)
 - iv. A recent photograph of the holder
 - v. The holder's fingerprints

Section 31: Travel Document to Refugee

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

Section 33: Dependents of a Refugee

- A person qualifying for refugee status must assist their dependents accompanying him to apply, or to apply themselves on behalf of their dependents, for asylum

Section 34: Obligations of Refugees

- A refugee must abide by the laws of the Republic of South Africa

Chapter 6 – Supplementary and General Provisions

Section 36: Withdrawal of Refugee Status

- If a person has been recognised as a refugee erroneously on an application which contains any materially incorrect information, or was recognised due to fraud, forgery or false/misleading representation of a material in relation to the application, or if such a person ceases to qualify for refugee status in terms of Section 5;
 - i. The Standing Committee must inform such a person of its intention to withdraw their classification as a refugee, and the reasons for such a decision
 - ii. Such a person may, within the prescribed period, make a written submission with regard to the removal of their refugee status
- After consideration of all material facts, and with due respect to the rights of Section 33 of the Constitution, the Standing Committee may withdraw refugee status

Section 37: Offences and Penalties

- Any person who:
 - For the purpose of entering, remaining in or facilitating/assisting entrance into/residence in the RSA of themselves or others, commits a fraudulent act or makes false representations by conduct, statement or otherwise or;
 - Fails to comply with, or contravenes the conditions subject to which any permit has been issued to them under the Refugee Act 1998 or;
 - Refuses or fails to comply with a requirement of that act without just cause or;
 - Contravenes or fails to comply with any provision of the act if such contravention or failure is not elsewhere declared an offence

is guilty of an offence and liable on conviction to a fine or to imprisonment for up to 5 years, or to both.

