

Country/entity	South Africa
Region	Africa (excl MENA)
Agreement name	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
Date	16 Aug 1991
Agreement status	Multiparty signed/agreed
Interim arrangement	Yes
Agreement/conflict level	Intrastate/intrastate conflict Post Apartheid South Africa and Namibian Independence (1990 - 1994) South Africa – internal. The roots of the modern South African conflict are found in the British and Dutch colonization of Southern Africa, which resulted in the introduction of a white minority who soon held power in the region. The South African state emerged following a hard-fought pact between the British government and the white Afrikaner minority. ‘Apartheid’ – the Afrikaans word for separateness – became official government policy after 1948. Resistance to this system was widespread and took diverse forms. In 1912, the African National Congress (ANC) was formed to push for reforms in the country. After the 1960 Sharpeville massacre several organisations around the ANC took up arms and began to fight the Apartheid government using violent means. During the 1980s, President P.W. Botha introduced a reform policy that enabled the post-1990 peace agreements, which paved the way for the end of the apartheid system. South Africa- Namibia. One set of agreements relates to the independence of Namibia which followed from the end of apartheid. Close Post Apartheid South Africa and Namibian Independence (1990 - 1994)
Stage	Pre-negotiation/process
Conflict nature	Government
Peace process	South Africa peace process
Parties	For the Government of the Republic of South Africa, Albert Leslie Manley; For the United Nations High Commissioner for Refugees, M. Douglas Stafford;
Third parties	-
Description	Agreement between the Government of South Africa and UNHCR to cooperate in the repatriation and reintegration of refugees. It outlines basic principles then contains two 'Annexures' on procedure and defining those eligible for indemnity due to the political nature of their offences.

Agreement document	ZA_910816_Memorandum of Understanding on Repatriation and Reintegration.pdf (opens in new tab) Download PDF
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Groups

Children/youth

Groups→Children/youth→Substantive

Page 10, 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, 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).

Page 13, 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, I. Pre-departure Arrangements

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.

Page 15, 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, II. Reception, Transit and Movement to Final Destination in South Africa

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.

Page 16, 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, II. Reception, Transit and Movement to Final Destination in South Africa

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 of 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.

Page 17, 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, III. Installation and Reintegration

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.

Disabled persons	Groups→Disabled persons→Substantive Page 17-18, 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, III. Installation and Reintegration ... 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.
Elderly/age	Groups→Elderly/age→Substantive Page 16, 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, II. Reception, Transit and Movement to Final Destination in South Africa ... 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 of 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. Page 17-18, 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, III. Installation and Reintegration ... 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.
Migrant workers	No specific mention.
Racial/ethnic/ national group	Groups→Racial/ethnic/national group→Anti-discrimination Page 5, 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.
Religious groups	Groups→Religious groups→Anti-discrimination Page 5, 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.

Indigenous people No specific mention.

Other groups No specific mention.

Refugees/displaced persons

Groups→Refugees/displaced persons→Rhetorical

[Summary: The agreement in its entirety deals with the repatriation and reintegration of refugees]

Page 1, PREAMBLE

... 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;

Page 1, PREAMBLE

Bearing in mind

... 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;

Page 2, PREAMBLE

Bearing in mind

... that the process of organized, 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;

Page 4, 1. DEFINITIONS

(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.

Page 5,

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.

Groups→Refugees/displaced persons→Substantive

Page 5,

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.

Page 6,

3. (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.

Social class No specific mention.

Gender

Women, girls and gender	Page 17, 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 III. Installation and Reintegration 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.
Men and boys	No specific mention.

LGBTI

No specific mention.

Family

Page 10, 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

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).

Page 13, 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

I. Pre-departure Arrangements

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.

Page 14, 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

I. Pre-departure Arrangements

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.

Page 15, 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

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

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.

Page 16, 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

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

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 of 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.

State definition

Nature of state (general) Page 3, PREAMBLE
Bearing in mind
... 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;

State configuration No specific mention.

Self determination No specific mention.

Referendum No specific mention.

State symbols No specific mention.

Independence/secession No specific mention.

Accession/unification No specific mention.

Border delimitation No specific mention.

Cross-border provision No specific mention.

Governance

Political institutions (new or reformed) No specific mention.

Elections No specific mention.

Electoral commission No specific mention.

Political parties reform No specific mention.

Bearing in mind

... 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;

(i) Implementing partner(s) means a governmental, intergovernmental or non-governmental counterpart to which implementation is delegated by the UNHCR through a project agreement.

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.

4. The parties hereto shall co-operate on the basis of the following principles and provisions:

(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.

I. Pre-departure Arrangements

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.

III. Installation and Reintegration

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.

**Traditional/
religious leaders** No specific mention.

**Public
administration** No specific mention.

Constitution No specific mention.

Power sharing

**Political power
sharing** No specific mention.

**Territorial power
sharing** No specific mention.

**Economic power
sharing** No specific mention.

**Military power
sharing** No specific mention.

Human rights and equality

**Human rights/RoL
general** Page 7, Article 4
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.

Bill of rights/similar No specific mention.

**Treaty
incorporation** No specific mention.

Civil and political rights

Human rights and equality→Civil and political rights→Freedom of movement

Page 3, PREAMBLE

Bearing in mind

... 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;

Page 6,

4. The parties hereto shall co-operate on the basis of the following principles and provisions:

(b) The returnees will enjoy complete freedom of movement in South Africa and, in this context, will 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.

Human rights and equality→Civil and political rights→Other

Page 7, Article 4

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.

Page 13, Annexure A PROCEDURES FOR READMISSION, RECEPTION AND REINTEGRATION OF SOUTH AFRICAN RETURNEES WHO APPLY TO THE UNHCR FOR VOLUNTARY REPATRIATION TO SOUTH AFRICA

I. Pre-departure arrangements

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 who it has transported to South Africa under its auspices and who has failed to provide his or her citizenship, or to establish any right to remain in South Africa, to his or her country of nationality or habitual residence.

Socio-economic rights

Human rights and equality→Socio-economic rights→Property

Page 14, Annexure A PROCEDURES FOR READMISSION, RECEPTION AND REINTEGRATION OF SOUTH AFRICAN RETURNEES WHO APPLY TO THE UNHCR FOR VOLUNTARY REPATRIATION TO SOUTH AFRICA

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.

Human rights and equality→Socio-economic rights→Work

Page 17, Annexure A PROCEDURES FOR READMISSION, RECEPTION AND REINTEGRATION OF SOUTH AFRICAN RETURNEES WHO APPLY TO THE UNHCR FOR VOLUNTARY REPATRIATION TO SOUTH AFRICA

III. Installation and reintegration

23. Reintegration assistance will address the needs of individuals upon assessment of their 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 partners, in consultation with the appropriate competent authorities.

Human rights and equality→Socio-economic rights→Education

Page 17, Annexure A PROCEDURES FOR READMISSION, RECEPTION AND REINTEGRATION OF SOUTH AFRICAN RETURNEES WHO APPLY TO THE UNHCR FOR VOLUNTARY REPATRIATION TO SOUTH AFRICA

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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 partners, in consultation with the appropriate competent authorities.

Human rights and equality→Socio-economic rights→Adequate standard of living

Page 16, Annexure A PROCEDURES FOR READMISSION, RECEPTION AND REINTEGRATION OF SOUTH AFRICAN RETURNEES WHO APPLY TO THE UNHCR FOR VOLUNTARY REPATRIATION TO SOUTH AFRICA

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 returnees' 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.

Human rights and equality→Socio-economic rights→Social security

Page 17, Annexure A PROCEDURES FOR READMISSION, RECEPTION AND REINTEGRATION

Rights related issues

Citizenship

Rights related issues→Citizenship→Citizen delimitation

Page 7,

4. The parties hereto shall co-operate on the basis of the following principles and provisions:

(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.

Page 13, 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

I. Pre-departure Arrangements

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.

Democracy

No specific mention.

Detention procedures

No specific mention.

Media and communication

No specific mention.

Mobility/access	Page 3, PREAMBLE Bearing in mind ... 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;
	Page 6, 4. The parties hereto shall co-operate on the basis of the following principles and provisions: (a) The UNHC shall, in the exercise of its mandate, enjoy free and unhindered access to the returnees wherever they may be located in South Africa.
	Page 14, 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 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.
Protection measures	No specific mention.
Other	No specific mention.

Rights institutions

NHRI	No specific mention.
Regional or international human rights institutions	No specific mention.

Justice sector reform

Criminal justice and emergency law Justice sector reform→Criminal justice and emergency law→Reform to specific laws Page 5, 1. DEFINITIONS

(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 offenses for the purpose of this agreement appear in Annexure B.

Page 7,

4. The parties hereto shall co-operate on the basis of the following principles and provisions:

(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.

Page 19, 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).

Page 19, Annexure B, Guidelines for Defining Political Offences

... (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.

State of emergency provisions No specific mention.

Judiciary and courts No specific mention.

Prisons and detention No specific mention.

Traditional Laws No specific mention.

Socio-economic reconstruction

Development or socio-economic reconstruction Socio-economic reconstruction→Development or socio-economic reconstruction→Humanitarian assistance
Page 7,
4. The parties hereto shall co-operate on the basis of the following principles and provisions:
(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.

National economic plan No specific mention.

Natural resources No specific mention.

International funds No specific mention.

Business No specific mention.

Taxation No specific mention.

Banks No specific mention.

Land, property and environment

Land reform/rights No specific mention.

Pastoralist/nomadism rights No specific mention.

Cultural heritage No specific mention.

Environment No specific mention.

Water or riparian rights or access No specific mention.

Security sector

Security Guarantees	Page 14, 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 II. Reception, Transit and Movement to Final Destination in South Africa 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.
Ceasefire	No specific mention.
Police	No specific mention.
Armed forces	No specific mention.
DDR	No specific mention.
Intelligence services	No specific mention.
Parastatal/rebel and opposition group forces	No specific mention.
Withdrawal of foreign forces	No specific mention.
Corruption	No specific mention.
Crime/organised crime	No specific mention.
Drugs	No specific mention.
Terrorism	No specific mention.

Transitional justice

Transitional justice general No specific mention.

Amnesty/pardon Transitional justice→Amnesty/pardon→Amnesty/pardon proper
Page 2, PREAMBLE
Bearing in mind
... 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.

Page 5,
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.

Page 6,
3. (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.

[Summary: Annexure B, pages 19-20, provides criteria for defining political offences, for the purpose of providing indemnity for such offences]

Courts No specific mention.

Mechanism No specific mention.

Prisoner release No specific mention.

Vetting No specific mention.

Victims No specific mention.

Missing persons No specific mention.

Reparations

Transitional justice→Reparations→Material reparations

Page 11, 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

I. Pre-departure Arrangements

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.

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.

Page 12, 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

I. Pre-departure Arrangements

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.

Reconciliation

Page 1, PREAMBLE,

Bearing in mind

... that significant 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

Page 5,

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.

Implementation

UN signatory

[UNHCR is a to the agreement, the agreement in its entirety gives authority to the UNHCR and associated bodies to operate in South Africa and assist with the return and reintegration of refugees]

Other international signatory No specific mention.

Referendum for agreement	No specific mention.
International mission/force/similar	Page 2, Bearing in mind ... The 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; Page 7, 4. The parties hereto shall co-operate on the basis of the following principles and provisions: (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. Page 8, 4. The parties hereto shall co-operate on the basis of the following principles and provisions: 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. Page 16, 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 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.
Enforcement mechanism	No specific mention.

Related cases No specific mention.

Source UNHCR website [www.refworld.org]
