

THE REFUGEES (RECOGNITION AND CONTROL) ACT, 1967

No. 8



of 1967

AN ACT TO MAKE PROVISION FOR THE RECOGNITION AND CONTROL OF CERTAIN POLITICAL REFUGEES; TO PREVENT IN CERTAIN CIRCUMSTANCES THEIR REMOVAL FROM BOTSWANA UNDER THE IMMIGRATION (CONSOLIDATION) LAW, 1966; AND TO MAKE PROVISION INCIDENTAL THERETO OR CONNECTED THEREWITH.

Date of Assent: 21.4.67.

Date of Commencement: 21.4.67.

ENACTED by the Parliament of Botswana.

**PART I
PRELIMINARY**

Short Title and Commencement.

1. This Act may be cited as the Refugees (Recognition and Control) Act, 1967, and shall come into operation on a date to be appointed by the Minister by notice in the *Gazette*.

Interpretation.

2. (1) In this Act, unless the context otherwise requires —

“Committee” means a Refugee Advisory Committee established under section 3;

“immigrant” means any person in Botswana other than —

- (a) a citizen of Botswana; or
- (b) an established resident;

“Immigration Law” means the Immigration (Consolidation) Law, 1966 (No. 19 of 1966);

“political refugee” means an immigrant who has suffered or is likely to suffer political persecution in the country from which he has entered Botswana;

“recognized refugee” means an immigrant whom the Minister has declared in terms of section 8 (1) that he recognizes as a political refugee;

“removed from Botswana” does not include deportation in terms of section 24 of the Immigration Law.

(2) Subject to the provisions of subsection (1), and unless the context otherwise requires, any word or expression defined in the Immigration Law shall bear the same meaning in this Act as in the Immigration Law.

Establishment of Refugee Advisory Committees.

3. (1) The Minister may, by notice in the *Gazette*, establish one or more Refugee Advisory Committees to carry out the functions conferred on such Committees by or under this Act.

(2) A Committee shall consist of a Chairman and not less than two, nor more than four, other members.

PART II

REFUGEES

Enquiry by Committee.

4. A Committee may on its own motion and shall at the request of the Minister hold an enquiry into the case of any immigrant who claims to be a political refugee, or who is in Botswana in such circumstances as in the opinion of an immigration officer or the Minister indicate that he may be a political refugee, and shall report thereon to the Minister.

Powers and Procedure of Committee.

5. (1) For the purpose of conducting an enquiry in terms of section 4, a Committee shall have power —

- (a) by notice under the hand of its Secretary or Chairman, to summon before it any person in respect of whom the enquiry is to be held;

- (b) by notice under the hand of its Secretary or Chairman, to summon before it any person who may be able to give information which will assist the Board, or call upon him to submit such information in writing ;
- (c) to examine any person appearing before it on oath or otherwise ;
- (d) to call upon any person to furnish the Committee with such information as it considers will assist it in the exercise of its functions whether in the form of a statutory declaration, in writing, orally or otherwise and to produce to the Committee any documents which are in his possession or under his control and which the Committee considers may be relevant to the enquiry.

(2) The proceedings of a Committee shall be in private and shall be conducted in such manner as the Committee may determine.

(3) Any person who —

- (a) refuses or fails without sufficient reason to appear before a Committee at the time and place specified in a notice given under subsection (1) (a) or (b) ;
- (b) gives false evidence or information to a Committee or who attempts to mislead the Committee ;
- (c) fails to comply with a notice given under subsection (1) (d) ;

shall be guilty of an offence and liable on conviction to a fine not exceeding R500 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Restriction on Removal of Immigrant Who May be a Refugee.

6. Where an immigrant who is liable to be removed from Botswana under the provisions of the Immigration Law is summoned to appear before a Committee under the provisions of section 5 (1) (a) —

- (a) he shall not be so removed pending a determination by the Minister in accordance with the provisions of section 8 ; and
- (b) pending such determination he may be detained by an immigration officer for a period not exceeding 28 days ; if he is so detained the provisions of section 15 (2) and (3) of the Immigration Law shall apply in relation to him as if he were being detained under subsection (1) of that section.

Right of Detained Immigrant to Leave Botswana.

7. Notwithstanding the provisions of section 6 (b), any person detained in pursuance of that provision shall, unless liable to detention under some other lawful authority, be allowed to depart from Botswana for the purpose of entering some other country if he satisfies an immigration officer that it is lawful for him to enter such other country without his possessing a right of re-entry to Botswana and that he possesses the means and in fact intends to enter that country.

Recognition of Immigrant as Political Refugee.

8. (1) When the Minister receives the report of an enquiry held in terms of section 4 he may —

- (a) subject to the provisions of paragraph (b), if he is of the opinion that the person who has been the subject of the enquiry is a political refugee, declare that he recognises such person as a political refugee ; or
- (b) if he is of the opinion that the person who has been the subject of the enquiry is not a political refugee or if he considers that there is no or insufficient reason to treat him as a political refugee declare that he does not recognize such person as a political refugee ; or
- (c) direct the Committee to reopen the enquiry or to make further report in the matter.

(2) Where, in terms of subsection (1), the Minister declares that he does not recognize a person as a political refugee such person shall, if liable to be removed from Botswana under the Immigration Law, be so removed and shall, whether so liable or not, be subject in all respects to the provisions of that law.

(3) Save where this Act otherwise provides, a person who is recognized as a political refugee shall be subject to the provisions of the Immigration Law in all respects as if the declaration of recognition had not been made.

Restriction on Removal and Control of Refugee.

9. (1) Subject to the provisions of section 10, a recognized refugee shall not be removed from Botswana under the provisions of the Immigration Law except to a country approved by the Minister, being a country in which, in the opinion of the Minister, the refugee will not be subject to political persecution.

(2) Notwithstanding the provisions of subsection (1), a recognized refugee who is liable to be removed from Botswana under the provisions of the Immigration Law may be detained by an immigration officer pending such removal, and if he is so detained the provisions of section 15 (2) and (3) of the Immigration Law shall apply in relation to him as if he were being detained under subsection (1) of that section :

Provided that where in the opinion of the Minister, delay is likely to occur before such removal may be effected the Minister may, in his sole and absolute discretion, direct that the refugee shall not be detained under this subsection but shall while he remains in Botswana be subject to all or any of the following conditions —

- (a) that the refugee shall reside at a place or within an area specified by the Minister ;
- (b) that the refugee shall not depart from such place or area or only depart therefrom subject to such conditions as may be specified by the Minister ;

- (c) that the refugee shall give recognizances for his good behaviour in such form and subject to such conditions as may be specified by the Minister ;
- (d) that the refugee shall report to the police or such other authority as may be specified by the Minister in such manner as he may determine ;
- (e) that the refugee shall not take an active part in the politics of Botswana or of any other country in Africa or not take part in such activities, being activities of a political nature, as may be specified by the Minister ;
- (f) such ancillary or additional conditions as may appear to the Minister to be necessary or desirable in the circumstances of the case.

(3) The Minister may at any time withdraw or modify a direction under the proviso to subsection (2).

(4) Any recognized refugee who having been released from detention in terms of the proviso to subsection (2) fails to comply with any condition of such release shall be guilty of an offence and liable on conviction to a fine not exceeding R500 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Departure of Refugee from Botswana.

10. (1) A recognized refugee who is not detained under section 9 (2) or other lawful authority may leave Botswana at any time.

(2) A recognized refugee shall on his departure from Botswana cease to be a recognized refugee.

(3) Notwithstanding the provisions of section 9 (1) any recognized refugee who is detained under section 9 (2) shall, unless he is liable to detention under some other lawful authority, be allowed to depart from Botswana for the purpose of entering some country other than a country approved by the Minister in terms of section 9 (1) if he certifies in writing that he wishes to enter that other country and satisfies an immigration officer that it is lawful for him to enter that country without his possessing a right of re-entry to Botswana and that he possesses the means to do so.

Review of Case of Recognized Refugee.

11. (1) Not more than six months after the recognition of a refugee under section 8, and thereafter at intervals of not more than six months, the case of that refugee shall be reviewed by a Committee, who shall advise the Minister —

- (a) whether to exercise any of his powers under this Act or the Immigration Law in relation to that refugee ;
- (b) as to the moral and economic welfare of that refugee ; and what steps should be taken to secure the same.

(2) On receiving the report of a review held in terms of subsection (1) the Minister may —

- (a) if he considers that there is no or insufficient reason to continue treating the refugee as a political refugee declare that he no longer recognizes him as a political refugee ;
- (b) direct the Committee to reopen the review or to make further report in the matter ;
- (c) take such alternative or additional steps open to him under this Act or otherwise in relation to the refugee as may appear to him most proper.

(3) The provisions of section 5 shall have effect for the purposes of a review under subsection (1) as they have for the purposes of an enquiry under section 4.

Recognizances.

12. Where under the provisions of the proviso to section 9 (2) a recognized refugee is required to give recognizances and such recognizances include the entering into of a bond for an amount of money to be forfeited if the conditions of the bond are broken, the Chief Immigration Officer may, upon breach of any condition of the bond, make application to a court of competent jurisdiction which may give judgment against the refugee or his sureties in accordance with the conditions of the bond.

Residence of Refugee Not Ordinary Residence.

13. For the purposes of any other written law, other than a taxation law, any period during which an immigrant has resided in Botswana as a recognized refugee shall not be regarded as a period during which he has been ordinarily resident in Botswana.

Regulations.

14. The Minister may make regulations —

- (a) providing for the custody of the property of any political refugee who is detained ;
- (b) prescribing the form of any notice which may be given under this Act ;
- (c) prescribing the allowances payable to members of a Committee and the fees payable to persons giving evidence before it ;
- (d) generally for the better carrying out of the provisions of this Act.

Passed by the National Assembly this day, the 20th March, 1967.

G.T. MATENGE,
Clerk of the National Assembly.