

**CHAPTER 25:01**  
**REFUGEES (RECOGNITION AND CONTROL)**  
ARRANGEMENT OF SECTIONS

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Schedule - Definition of the Term "Political Refugee"

Act 8, 1967,  
Act 37, 1967,  
Act 31, 1970,  
Act 82, 1970,  
Act 11, 1981,  
Act 14, 2005.

**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 Act and to make provision incidental thereto or connected therewith.**

*[Date of Commencement: 5th April, 1968]*

**PART I**  
***Preliminary (ss 1-3)***

**1. Short title**

This Act may be cited as the Refugees (Recognition and Control) Act.

**2. Interpretation**

(1) In this Act, unless the context otherwise requires-

"**Committee**" means a Refugee Advisory Committee established under section 3;

"**Convention**" means the United Nations Convention Relating to the Status of Refugees of the 28th July, 1951, as amended from time to time by any international agreement; but does not include any provisions thereof not binding under public international law upon the Republic;

"**immigrant**" means any person in Botswana other than a citizen of Botswana;

"**political refugee**" has the meaning assigned thereto in the Schedule;

"**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 25 of the Immigration Act.

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

### **3. Establishment of Refugee Advisory Committees**

(1) The Minister may, by order published 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 (ss 4-15)**

### **4. Inquiry by Committee**

(1) Unless the Minister otherwise directs, a Committee shall hold an inquiry into the case of any immigrant who on presenting himself to an immigration officer in terms of section 4 of the Immigration Act claims to be a political refugee.

(2) A Committee shall also hold an inquiry into the case of any other immigrant who in the opinion of the Minister is in Botswana in such circumstances as indicate that he may be a political refugee.

(3) After holding an inquiry in terms of this section the Committee shall report thereon to the Minister.

### **5. Powers and procedure of Committee**

(1) For the purpose of conducting an inquiry 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 inquiry 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 Committee, 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 inquiry.

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

Provided that the immigrant who is the subject of the inquiry shall be notified thereof and be given the opportunity of appearing before the Committee and of making representations concerning his case to it.

(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 to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both.

## **6. Restriction on removal of immigrant who may be a refugee**

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

- (a) he shall not be so removed pending a determination by the Minister in accordance with section 8; and
- (b) pending such determination he may be detained by an immigration officer for a period not exceeding 28 days and if he is so detained the provisions of section 14(2) and (3) of the Immigration Act shall apply in relation to him as if he were being detained under subsection (1) of that section.

## **7. Right of detained immigrant to leave Botswana**

Notwithstanding section 6(b), any person detained in pursuance of that section shall, unless liable to detention under some other enactment, 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.

## **8. Recognition of immigrant as political refugee**

(1) When the Minister receives a report of an inquiry held under section 4 he may-

- (a) subject to paragraph (b), if he is of the opinion that the person who has been the subject of the inquiry is a political refugee, declare that he recognizes such person as a political refugee;
- (b) if he is of the opinion that the person who has been the subject of the inquiry 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 re-open the inquiry or to make a further report on the matter.

(2) Where, under 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 Act, be so removed and shall, whether so liable or not, be subject in all respects to the provisions of that Act.

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

## **9. Restriction on removal and control of refugee**

(1) Subject to section 10, a recognized refugee shall not be removed from Botswana under the provisions of the Immigration Act except to a country approved by the Minister, being a country in which, in the opinion of the Minister, the life or freedom of the refugee will not be threatened on account of his race, religion, nationality or membership of a particular social group or political opinion:

Provided that nothing in this subsection shall prevent the removal, under the provisions of any law, of a recognized refugee to any country whatsoever where, in the opinion of the Minister, such removal is desirable on the grounds of national security or of public order or where the recognized refugee has been convicted by a final judgment of any court of a serious crime which, in the opinion of the Minister, indicates that the recognized refugee constitutes a danger to the community.

(2) Notwithstanding subsection (1), a recognized refugee who is liable to be removed from Botswana under the Immigration Act may be detained by an immigration officer pending such removal, and if he is so detained the provisions of section 14(2) and (3) of the Immigration Act 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, namely, that he shall-

- (i) reside at a place or within an area specified by the Minister;
- (ii) not depart from such place or area or only depart therefrom subject to such conditions as may be specified by the Minister;
- (iii) give recognizances for his good behaviour in such form and subject to such conditions as may be specified by the Minister;
- (iv) report to the police or such other authority as may be specified by the Minister in such manner as he may determine;
- (v) 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;
- (vi) comply with 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 to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both.

#### **10. Departure of refugee from Botswana**

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

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

(3) Notwithstanding section 9(1) any recognized refugee who is detained under section 9(2) shall, unless he is liable to detention under some enactment, 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.

#### **11. Review of case of recognized refugee**

(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 Act 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 under 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 re-open the review or to make a further report on 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 inquiry under section 4.

#### **12. Recognizances**

Where under the proviso to section 9(2) a recognized refugee is required to give recognizances and such recognizances include the entering into 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.

**13. Residence of refugee not ordinary residence**

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 unless a Minister in writing otherwise directs be regarded as a period during which he has been ordinarily resident in Botswana.

**14. Regulations**

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; and
- (d) generally for the better carrying out of the provisions of this Act.

**15. Prosecutions of political refugees under Immigration Act to require consent of the Director of Public Prosecutions**

No prosecution for a contravention of the Immigration Act shall be instituted or continued against-

- (a) an immigrant who is summoned to appear before a Committee under section 5(1)(a), pending the decision of the Minister under section 8(1); or
- (b) a recognized refugee,

without the written consent of the Director of Public Prosecutions, and in giving or withholding such consent the Director of Public Prosecutions shall have regard to the provisions of the Convention.

**SCHEDULE**  
**DEFINITION OF THE TERM "POLITICAL REFUGEE"**

*(section 2)*

1. Subject to this Schedule, "political refugee" means a 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 habitual residence is unable or, owing to such fear, is unwilling to return to it.

2. In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.