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Refugee Act 1983

1. Short title and commencement

This Act may be cited as the Refugee Act, 1983, and shall come into operation on a date to be appointed by the Minister by notice in the Gazette.

2. Interpretation

In this Act, unless the context otherwise requires,

"ammunition" mean ammunition for firearm as hereinafter defined and includes grenades, bombs and other like missiles, whether capable of use with such a firearm or not, and prohibited ammunition;

"authorized officer" means an immigration officer or a police officer, or any other person appointed by the Minister to perform the functions of an authorized officer under this Act;

"Board" means the Refugee Advisory Board established under section 6;

"Committee", means the Interministerial Committee for the Determination of refugee status established under section 5;

"firearm" means any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged, or any prohibited weapon whether it is such a lethal weapon as aforesaid or not, any component part of any such lethal or prohibited weapon, and any accessory to any such weapon designated or adapted to diminish the noise or flash caused by firing the weapon, and includes an air gun, air rifle or air pistol;

"frontier" means the land-frontier, airport of entry or any other point of entry into Lesotho;

"member of family" in relation to a refugee means a spouse or spouses of the refugee, unmarried child under the age of twenty-one years or any other relative who is dependent on the refugee;

"Minister" means the Minister responsible for Interior and Chieftainship Affairs;

"Refugee" means any person falling within the terms of Section 3(1); and

"Unit" means the Refugee Co-ordination Unit established under Section 10.

3. Definition of Refugee

(1) Subject to Sub-section (2), a refugee is any person who,

(a) owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion;

(i) 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

(ii) not having a nationality and being outside the country of his former residence, is unable or owing to such fear, is unwilling to return to it; or

(b) owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either the whole or part of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality; or

(c) belongs to a class of persons declared by the Minister to be refugees for reasons set out in paragraph (a) or (b).

(2) A person shall not be considered to be a refugee under this Act, if,

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside Lesotho prior to his admission to Lesotho as a refugee; or

(c) he has violated the purposes and principles of the charter of the Organisation of African Unity and the United Nations Charter.

4. Cessation provisions

A person shall cease to be a refugee under this Act if,

(a) he has voluntarily re-availed himself of the protection of the country of his nationality;

(b) having lost his nationality, he has voluntarily re-acquired it;

(c) he has acquired Lesotho nationality or the nationality of some other country and enjoys the protection of the country of his new nationality;

(d) he has voluntarily re-established himself in the country which he left or outside of which he remained owing to fear of persecution; or

(e) he can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.

5. Establishment and composition of Committee

(1) There is established a Committee to be known as the Interministerial Committee for the Determination of Refugee Status.

(2)The Committee shall consist of,

(a)the Permanent Secretary of the Ministry responsible for the Interior or in his absence the Director of the Department of Immigration, who shall be chairman of the Committee;

(b)the Commissioner for Refugees;

(c)a Legal Officer responsible for refugee matters, (hereinafter referred to as the "Legal Officer") who shall be Secretary of the Committee;

(d)the Permanent Secretary of the Ministry responsible for Foreign Affairs or his representative;

(e)the Commissioner of Police or his representative;

(f)the Principal Chief of the area where the refugee resides immediately after entering Lesotho; and

(g)a representative of the office of the United Nations High Commissioner for Refugees in Lesotho who shall participate in the deliberations of the Committee as an observer.

(3)The functions of the Committee shall primarily be,

(a)to process and consider applications for refugee status and to register persons who have been recognised as refugees under this Act; and

(b)to advise the Minister on general issues relating to the determination of refugee status and other policy matters concerning refugees.

6. Refugee Advisory Board

(1)The Minister may, from time to time, by notice in the Gazette, appoint a Refugee Advisory Board on such terms and conditions as he deems fit.

(2)The Board shall be composed of:

(a)a senior legal practitioner, who is not an employee of the Government, as chairman of the Board;

(b)one member of the Committee;

(c)one member of the Unit; and

(d)a Representative of the Office of the United Nations High Commissioner for Refugees in Lesotho, who shall participate in the deliberations of the Board as an adviser.

(3)The function of the Board shall be to consider such matters as the Minister may, from time to time, refer to it and to make recommendations thereon to the Minister.

7. Procedure for applications, recognition etc.

(1)A person who has lawfully entered or is lawfully present in Lesotho and who wishes to remain in the country on the grounds that he is a refugee within the meaning of Section 3 (1) (a) or (b) shall, as soon as practicable, make an application in the prescribed form to the nearest authorised officer for recognition of this status.

(2)The authorised officer to whom the applicant applies shall forward such application to the Committee.

(3)The Committee shall invite the applicant to appear before it, consider the application and make recommendations thereon to the Minister.

(4)Every person who is recognised as a refugee shall be duly informed and be issued with an identity card attesting to his status and a resident permit.

(5)If there is doubt as to whether the applicant should be recognised as a refugee or if a negative recommendation is intended, the committee shall seek and take into account the views of the Representative of the United Nations High Commissioner for Refugees before a recommendation is made to the Minister.

(6)If the Minister decides not to recognize the applicant as a refugee, he shall officially notify the applicant of his decision and reasons for so deciding.

(7)The applicant shall have the right to re-apply to the Minister to reconsider his application and the Minister may, in his discretion on recommendation by the Committee, refer the matter to the Board.

(8)The Board shall consider the application for refugee status and make recommendations on the same to the Minister for a final decision: Provided that while awaiting the recommendation of the Board to the Minister, the applicant shall be allowed to remain in the country.

(9)The Minister shall not be bound by a recommendation of the Committee or, as the case may be, of the Board.

(10)If, after the reconsideration of the applicant's case, the Minister decides to reject the recommendation of the Committee, or, as the case may be, the Board, the applicant shall have a right to seek an appropriate relief from the High Court of the Kingdom of Lesotho regarding his application and if the application is finally rejected, the applicant shall be given reasonable time to seek legal admission into another country.

(11)Where the Minister, in exercise of his powers under section 3(1) (c) expressly rejects the application of any member of a group, such member may apply as an individual in accordance with the provisions of subsections (1) to (8) inclusive for recognition of his refugee status.

8. Family members

(1)Where a person is recognised as a refugee, the Minister shall facilitate entry into Lesotho of any member of the refugee's family, wishing to join the refugee.

(2)Where, subsequent to the granting of refugee status to a head of a family, the family is disunited as a result of divorce, separation, or death, members of such family shall continue to reside in Lesotho and may, on application, be recognised as lawful residents in Lesotho under the Aliens Control Act, or under the Citizenship Act or under this Act.

(3)A member of the family referred to under sub-section (2) may apply for refugee status in accordance with this Act.

(4)Sub-section (3) shall not apply to a Lesotho national.

9. Illegal entry or presence

(1)Subject to Section 7, and notwithstanding anything contained in the Aliens Control Act, 1966, a person claiming to be a refugee within the meaning of section 3(1), who has illegally entered or is illegally present in Lesotho shall not,

(a)be declared a prohibited immigrant;

(b) be detained; or

(c) be imprisoned or penalised in any other way,

only by reason of his illegal entry or presence pending the determination of his application for recognition as a refugee under Section 7.

(2) A person to whom sub-section (1) applies shall report to the nearest immigration officer or other authorised officer within fourteen days from the date of his entry and may apply for recognition as a refugee: Provided that where a person is illegally present in the country by reason of expiry of his visa, he shall not be denied the opportunity to apply for recognition of his refugee status merely on the grounds of his illegal presence.

(3) Where a person to whom this section applies,

(a) fails to report to the nearest authorised officer in accordance with sub-section (2); and

(b) is subsequently recognized as a refugee,

his presence in Lesotho shall be lawful, unless there are grounds to warrant his expulsion pursuant to Section 12.

(4) Where an application made under sub-section (2) is rejected, the applicant shall be granted reasonable time in which to seek legal admission to another country.

10. Refugee Co-ordination Unit

(1) The Minister may appoint a body to be known as the Refugee Co-ordination Unit.

(2) The Unit shall consist of,

(a) the Commissioner for Refugees;

(b) the Legal Officer;

(c) a Project Planning Officer, and

(d) Secretarial staff.

(3) The functions of the Unit shall be,

(a) to administer and co-ordinate matters relating to refugees in the Kingdom of Lesotho; and

(b) to perform such other duties as may be assigned by the Minister.

(4) The Unit may, in consultation with the Office of the United Nations High Commissioner for Refugees in Lesotho, determine its own procedure.

11. Non-refoulement

A person shall not be rejected at any Lesotho frontier or be expelled or otherwise compelled to return or to remain in a country -

(a) which he seeks to leave or which he has left or outside of which he finds himself for any of the reasons referred to under section 3(1) (a) or (b); or

(b) where he may be tried or punished for offences of a political character;

12. Expulsion

(1)The Minister may, in the interest of national security or public order, issue an order for the expulsion of a refugee: Provided that no refugee shall be expelled to any country to which, in accordance with section 11 the refugee may not be returned.

(2)Where the Minister has issued an order under sub-agreement (1), he shall inform the refugee of his decision and reasons therefor in writing.

(3)A refugee affected by an order issued under subsection (1) may make an application to the Minister in writing against the expulsion order.

(4)The Minister shall, on the advice of the Board, reconsider the application and determine whether to enforce or revoke the expulsion order.

(5)The expulsion order shall be suspended pending the decision of the Minister.

(6)Where the application against an expulsion order is rejected the refugee shall, unless national security or public order otherwise require and having due regard to all the circumstances of the cases, be permitted to remain in Lesotho until such time as his application for legal admission into a country other than Lesotho is successful.

13. Rights and duties

(1)Subject to this Act, a person claiming to be a refugee or who has been recognized as a refugee shall be subject to the laws and regulations in force in Lesotho.

(2)Notwithstanding sub-section (1), a refugee shall enjoy the rights and be subject to the duties defined in the 1951 Convention and 1967 Protocol relating to the Status of Refugees and the 1969 OAU Convention governing the specific aspects of refugee problems in Africa.

14. Naturalization

(1)The Minister may, in consultation with the Committee, if application thereof is made to him by a refugee who satisfies him that he is qualified under the Schedule for naturalization, grant such a refugee a certificate of naturalization.

(2)There shall be charged minimal fees in respect of naturalization under sub-section(1).

(3)A refugee to whom a certificate is granted under such sub-section (1) shall become a citizen of Lesotho by naturalization from the date of the grant of the certificate.

15. Arms and Ammunition

(1)A refugee who brings any firearm or ammunition into Lesotho shall immediately surrender such firearm or ammunition to an authorized officer.

(2)Any refugee who contravenes this section is guilty of an offence and liable on conviction to a fine not exceeding 400 Maloti or to imprisonment for a term not exceeding 12 months or to both.

(3)The provision of this section shall be in addition to and not in derogation of or in substitution for, the provisions of the International Security (Arms and Ammunition) Act 1966.

16. Offences relating to false information

Any refugee or person claiming to be refugee who,

- (a)makes or causes to be made any false return, statement or representation to an authorised officer or other person lawfully exercising his functions under this Act;
- (b)refuses to produce to any such officer or person any document, or to furnish him with any information, which the said officer may reasonably require for the purposes of this Act;
- (c)otherwise obstructs any person in the exercise of his functions under this Act; or
- (d)without lawful authority, alters any certificate or document issued or made under this Act, or has in his possession for such use, any forged, altered or irregular certificate, identity, card, visa, or other travel document,

commits an offence and is liable on conviction to a fine not exceeding 200 Maloti or to imprisonment for a term not exceeding 6 months or to both.

17. Regulations

The Minister may make regulations

- (a)concerning entry and residence of refugees in Lesotho;
- (b)prescribing the procedure to be followed by the authorised officer for the purpose of facilitating entry into Lesotho by persons who wish to apply for refugee status;
- (c)prescribing the procedure to be followed by the Committee in processing applications for refugee status and in registering persons who are recognized as refugees;
- (d)prescribing the application form for refugee status;
- (e)prescribing the fees to be paid by refugees in respect of naturalization; and
- (f)generally for the better carrying into effect of the purposes of this Act.

18. Application of Fugitive offenders Act

A person who would normally fall within the purview of the Fugitive Offenders Acts, 1967, but who falls under the definition of a refugee within the meaning of section 3(1), shall nevertheless be subject to this Act.

SCHEDULE - Section 14(1) - Qualifications for Naturalization

1.Subject to paragraph 2 of the Schedule, the qualifications for naturalization of a refugee who applies are that:

- (a)he has resided in Lesotho throughout the period of twelve months immediately preceding the period of the application;
- (b)immediately preceding that said period of twelve months he has resided in Lesotho for periods amounting in the aggregate to not less than five years;
- (c)he has an adequate knowledge of Sesotho or English;
- (d)he is of good character;

(e)he would be a suitable citizen of Lesotho; and

(f)he intends, if naturalized, to continue to reside permanently in Lesotho.

2. The Minister may, in the special circumstances of any particular case, allow periods of residence earlier than 5 years before the date of application to be taken into account in computing the aggregate referred to in paragraph 1(b) of this Schedule.
