Refugee Act

Date of entry into force: 0 8 May 1989

1. Short Title

This Act may be cited as Refugee Act.

2. Interpretation

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

"border" includes any point of entry into Malawi, whether by air, land or water;

"competent officer" means any immigration officer, border officer, policy or security officer;

"country of nationality", in relation to a person who has more than one nationality, means each of the countries of which that person is a national;

"family member" means any spouse or spouses, unmarried children under the age of twenty-one and any other dependant relative of the refugee;

"refugee" means a person who -

(a)owing to a 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 unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habituel residence as a result of such events is unable or, owing to such fear, is unwilling to return to that country; or

(b)owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole 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;

"Committee" means the Refugee Committee established under section 3;

"refugee conventions" means -

(a)the Convention relating to the Status of Refugees, done at Geneva on 28 July, 1951;

(b)the Protocol relating to the Status of Refugees of 31 January, 1967; and

(c)the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted at Addis Ababa on 10 September, 1969.

(2)A person who has several nationalities shall not be considered to be lacking the protection of the nationality of the country of which he is a national 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.

3. Establishment of Refugee Committee

(1)There is hereby established a committee to be known as the Refugee Committee consisting of the following members:

(a)the Secretary to the President and Cabinet or his designated representative;

(b)the Attorney-General or his designated representative;

(c)the Chief Immigration Officer of his designated representative;

(d)the Inspector General of Police or his designated representative;

(e)the Secretary for Community Services or his designated representative; and

(f)the Secretary for External Affairs or his designated representative.

(2)The Representative of the United Nations High Commissioner for Refugees in Malawi of his designated representative or, in his absence, a representative of the Resident Representative of the United Nations Development Programme in Malawi shall be invited by the Committee to attend every meeting of the Committee as an observer but shall not have the right to vote.

(3)The Minister may appoint to the Committee, for such period as the Minister may determine, such other persons, not exceeding three in number, as the Minister considers suitably qualified to assist the Committee in its work and deliberations and such persons shall not have the right to vote at any meeting of the Committee.

4. Chairman and Vice-Chairman of the Committee

(1)The Minister shall designate one member of the Committee to be Chairman thereof.

(2)The Committee shall elect a Vice-Chairman from amongst its members, who shall discharge the functions of the Chairman whenever the Chairman is absent or is for any reason unable to discharge the functions of his office.

5. Meetings of the Committee

The Committee shall meet at such times and places as the Chairman shall determine and shall have power to determine its own procedure.

6. Functions of the Committee

(1)The Committee shall receive and hear applications for refugee status and may -

(a)grant refugee status;

(b)deny the grant of refugee status; and

(c)cancel or revoke its decision granting refugee status.

(2)The Committee may, subject to sections 8 and 12, review cases of persons granted refugee status under this Act.

7. Evidence and procedure

(1)In the discharge of its functions the Committee shall be competent to administer oaths in accordance with the Oaths, Affirmations and Declarations Act and shall apply such rules of evidence and procedure as may be prescribed.

(2)Where a decision has been made under section 6 (1) (b), (c) and (2), the Committee shall record its reasons for such decisions and in all cases the Committee shall in writing notify its decision to the applicant.

(3)The Minister may, by notice published in the Gazette, direct that, with respect to any group of foreign nationals specified in the notice, seeking refugee status in Malawi, the Committee shall apply such group determination as may be prescribed.

8. Persons not to be considered as refugees

A person shall not be considered to be a refugee under this Act if the Committee has serious reasons for considering that -

(a)he has committed a crime against peace, a war crime, 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 Malawi prior to his entry; or

(c)he has been guilty of acts contrary to the purposes and principles of the Organization of African Unity;

(d)he has been guilty of acts contrary to the purposes and principles of the United Nations Organization.

9. Obligations of a refugee

Any person granted refugee status under this Act shall be subject to the laws of Malawi, jurisdiction of courts in Malawi and to all measures taken for the maintenance of public order.

10. Prohibition of expulsion on return of refugees

(1)A refugee shall not be expelled or returned to the borders of a country where his life or freedom will be threatened on account of -

(a)his race, religion, nationality or membership of a particular social group or political opinion; or

(b)external aggression, occupation, foreign domination or events seriously disturbing the public order in either part or the whole of that country.

(2)A person claiming to be a refugee shall be permitted to enter and remain in Malawi for such period as the Committee may require to process his application for refugee status.

(3)A person who presents himself to a competent officer at a border and applies for admission into Malawi for the purpose of proceeding to another country where he intends to seek asylum as a refugee shall be permitted entry in Malawi upon such conditions as may be determined by the Committee either generally or specially.

(4)A person who has illegally entered Malawi for the purpose of seeking asylum as a refugee shall present himself to a competent officer within twenty four hours of his entry or within such longer period as the competent officer may consider acceptable in the circumstances and such person shall not be detained, imprisoned, declared prohibited immigrant or otherwise penalized by reason only of his illegal entry or presence in Malawi unless and until the Committee has considered and made a decision on his application for refugee status.

(5)A person who has legally entered Malawi and wishes to remain in Malawi on the ground that he is a refugee shall not be deported from Malawi unless and until he has found a third country of refuge willing to admit him.

(6)The benefit of this section shall not be claimable by a person in respect of whom there are reasonable grounds for regarding him or any aspect of the matter as a danger to the security of Malawi or who, having been convicted of a serious crime, constitutes a real danger to the community of Malawi.

11. Appeals to the Minister

(1)Any person who is dissatisfied with a decision of the Committee in regard to -

(a)his application for refugee status; and

(b)revocation by the Committee of its decision granting to that person refugee status,

may, within fourteen days of the date of the decision of the Committee, or within such longer period as may be accepted by the Minister, appeal to the Minister and the Minister may confirm, set aside or vary the decision.

(2)The decision of the Minister made pursuant to subsection (1) shall be final and shall not be subject to appeal to, or review or question by, any court and the Minister shall not be required to assign any reasons for such decision.

(3)Subject to section 10(5), upon the decision of the Minister confirming the decision of the Committee, the person seeking refugee status concerned may be deported.

12. Cessation of refugee status

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

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

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

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

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

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

(f)being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; or

(g)being a person recognized as a refugee on account of that person having fled from external aggression, occupation, foreign domination or events seriously disturbing public order in either part of the whole of his country of origin, such circumstances or events have ceased to exist

Provided that paragraphs (e) and (f) shall not apply to a person who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of his country of nationality or return to the country of his former habitual residence, respectively.

13. Regulations

The Minister may make regulations for carrying out or giving effect to the provisions of this Act and without prejudice to the generality of the foregoing such regulations may -

(a)prescribe anything required to be prescribed under this Act;

(b)make provision for -

(i)procedure to be followed by competent officers for the purpose of facilitating the entry of refugees and their family members;

(ii)co-operation between governmental and non-governmental organizations respecting the affairs of refugees;

(iii)relief assistance to be accorded to recognized refugees pending the Committee's decision;

(iv)the welfare of refugees and their family members generally;

(v)registration of refugees;

(vi)the travelling or movement of refugees within and outside Malawi.