

Namibia

Namibia Refugees (Recognition and Control) Act, 1999

Act 2 of 1999

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Republic of Namibia
Annotated Statutes

Namibia Refugees (Recognition and Control) Act, 1999

Act 2 of 1999

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ACT

To make provision for the recognition and control of refugees in Namibia; to give effect to certain provisions of the United Nations Convention Relating to the Status of Refugees of 28 July 1951, the Protocol Relating to the Status of Refugees of 31 January 1967 and the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

1. Definitions

In this Act, unless the context otherwise indicates -

“**Appeal Board**” means the Namibia Refugees Appeal Board established by section 28(1);

“**authorized officer**” means any person -

- (a) who is an authorized officer in terms of subsection (1) of section 29; or
- (b) who is appointed as an authorized officer under subsection (2) of that section; “**Commissioner**” means the Commissioner for Refugees appointed in terms of section 6;

“**Committee**” means the Namibia Refugees Committee established by section 7(1);

“**Conventions**” means the UN Convention on Refugees, 1951, as amended by the Protocol on Refugees, 1967, and the OAU Convention on Refugees, 1969;

“**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;

“**Immigration Control Act**” means the Immigration Control Act, 1993 (Act [No. 7 of 1993](#));

“immigration officer” means an immigration officer appointed under section 3(1)(b) of the Immigration Control Act;

“member of the family”, in relation to any refugee (whether recognized or not), means -

- (a) any spouse of such refugee; or
- (b) any unmarried child of such refugee under the age of 18 years; or
- (c) any person who is related to such refugee by affinity or consanguinity and who is dependent upon such refugee;

“Minister” means the Minister of Home Affairs;

“OAU Convention on Refugees, 1969” means the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969;

“prescribed” means prescribed by regulation made under section 31, and “prescribe” shall have a corresponding meaning;

“protected person” means -

- (a) a member of the family of a recognized refugee; or
- (b) a person who is permitted in terms of section 17(3) or (4) to continue to remain in Namibia;

“Protocol on Refugees, 1967” means the Protocol Relating to the Status of Refugees of 31 January 1967;

“Public Service Commission” means the Public Service Commission established in terms of Article 112(1) of the Namibian Constitution;

“reception area” means any area declared a reception area under section 19(1);

“recognized refugee” means a person who has been granted refugee status in terms of section 13(4)(a);

“refugee” means any person who is a refugee in terms of section 3;

“refugee settlement” means a refugee settlement established under section 19(2);

“spouse”, in relation to a refugee, includes a party to a customary union;

“staff member”, except for the purposes of section 7(2)(d), means a staff member as defined in section 1(1) of the Public Service Act, 1995 (Act [No. 13 of 1995](#));

“this Act” includes the regulations made under section 31;

“UN Convention on Refugees, 1951” means the United Nations Convention Relating to the Status of Refugees of 28 July 1951.

2. Application of Conventions

- (1) Subject to the provisions of this Act, the provisions of the Conventions which are set out in the Schedule to this Act shall be observed and shall have the force and effect of law in Namibia.
- (2) In the application of the Conventions in terms of subsection (1), a reference in the Conventions to -
 - (a) a Contracting State, shall be construed as a reference to Namibia; and
 - (b) Contracting States, shall be construed as including Namibia.

3. Meaning of “refugee”

For the purposes of this Act, a person shall be a refugee if -

- (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, he or she is outside the country of his

or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or

- (b) not having a nationality and being outside the country of his or her former habitual residence, he or she is unable or, owing to a well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group or political opinion, is unwilling to return to it; or
- (c) owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his or her country of origin or nationality, he or she is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin or nationality.

4. Restrictions on grant of refugee status

- (1) Notwithstanding the provisions of section 3, a person shall not be granted refugee status in terms of this Act, if such person -
 - (a) has more than one nationality and is able to avail himself or herself of the protection of one of the countries of which he or she is a national and has no valid reason, based on well-founded fear of being persecuted for any of the reasons mentioned in paragraph (a) of section 3 or on any of the reasons mentioned in paragraph (c) of that section, for not availing himself or herself of the protection of that country; or
 - (b) has, before his or her admission to Namibia as a refugee, committed -
 - (i) a crime against peace or a war crime or a crime against humanity; or
 - (ii) a serious non-political crime; or
 - (iii) acts contrary to the purposes and principles of the United Nations Organization or the Organization of African Unity; or
 - (c) belongs to a category of persons declared by the Minister by notice in the Gazette to be persons who are not entitled to refugee status in terms of this Act.
- (2) The Minister may by notice in the Gazette revoke or amend a declaration contemplated in paragraph (c) of subsection (1).
- (3) In this section -

“crime against peace or war crime or crime against humanity” includes the conduct of a war of aggression or a war in violation of an international treaty, or mistreatment or torture of civilians or prisoners of war, or enslavement or murder of civilians, or political, racial or religious persecutions;

“non-political offence” means an offence other than a political offence;

“political offence” means an offence which is committed in the course of some political disturbance and in furtherance of its objects;

“serious non-political crime” means any non-political offence which, if committed in Namibia, would be punishable with a sentence of imprisonment or other form of deprivation of liberty for a period of five years or more.

5. Loss of refugee status

A recognized refugee shall lose his or her refugee status for the purposes of this Act, if he or she -

- (a) voluntarily returns to the country of which he or she was a national or to the country where he or she was habitually resident; or

- (b) has voluntarily reavailed himself or herself of the protection of the country of his or her nationality; or

[The word “re-availed” is misspelt in the Government Gazette, as reproduced above.]

- (c) acquires a new nationality and enjoys the protection of the country of his or her new nationality; or
- (d) can no longer, because the circumstances in connection with which he or she has been granted refugee status have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of his or her nationality.

6. Commissioner for Refugees

The Minister shall, on the recommendation of the Public Service Commission and subject to the laws governing the Public Service, appoint a staff member to be the Commissioner for Refugees, whose functions are -

- (a) on the recommendation of the Committee, to grant or to refuse to grant refugee status to persons who have applied in terms of this Act for such status;
- (b) to ensure the provision of adequate facilities and services for the reception and care of refugees in Namibia; and
- (c) to exercise any other powers and perform any other duties conferred or imposed upon the Commissioner by or under this Act.

7. Establishment and constitution of Committee

- (1) There is hereby established a committee to be known as the Namibia Refugees Committee.
- (2) The Committee established by subsection (1) shall consist of seven members appointed by the Minister, of whom -
 - (a) one shall be a staff member of the Ministry of Home Affairs, who shall be the chairperson;
 - (b) one shall be a staff member of the Ministry of Foreign Affairs, designated by the Minister of Foreign Affairs;
 - (c) one shall be a staff member of the Office of the Attorney-General, designated by the Attorney-General;
 - (d) one shall be a staff member, as defined in section 1 of the Namibia Central Intelligence Service Act, 1997 (Act [No. 10 of 1997](#)), of the Namibia Central Intelligence Service, designated by the Director-General of that Service;
 - (e) two shall be persons, not being in the employment of the State, who in the opinion of the Minister have wide experience of humanitarian work; and
 - (f) one shall be the representative in Namibia of the United Nations High Commissioner for Refugees, who shall hold observer status with no voting right and act only in an advisory capacity.
- (3) The members of the Committee shall at their first meeting and thereafter as occasion arises, elect from among their number a deputy chairperson of the Committee, who shall be a member other than a member referred to in paragraph (f) of subsection (2).
- (4) When the chairperson of the Committee is absent or unable to perform his or her functions as chairperson of the Committee, the deputy chairperson shall act as chairperson, and shall while so acting have all the powers and perform all the duties and functions of the chairperson.
- (5) The chairperson of the Committee may, with the approval of the Committee, invite any person who in his or her opinion possesses the necessary expertise in any matter which is under consideration

by the Committee to take part in such discussions at a meeting of the Committee as in the opinion of the chairperson relate to the expertise of such person, but such person may not cast a vote in respect of any matter which is being put to the vote.

8. Remuneration and conditions and tenure of office of members

- (1) A member of the Committee who is appointed in terms of section 7(2)(e), not being in the full-time employment of the State, shall be paid such remuneration and allowances as the Minister in consultation with the Minister of Finance may from time to time determine and shall, subject to the provisions of this Act, hold office upon such conditions as the Minister may determine generally.
- (2) Subject to the provisions of subsection (3), a member of the Committee -
 - (a) who is in the employment of the State shall hold office for such period as the Minister may determine;
 - (b) who is appointed in terms of section 7(2)(e) shall hold office for a period of three years, and any such member whose period for which he or she was appointed has expired, shall be eligible for reappointment.
- (3) A member of the Committee shall vacate his or her office, if he or she -
 - (a) in the case of a member appointed in terms of -
 - (i) paragraph (a), (b), (c) or (d) of subsection (2) of section 7, ceases to be a staff member referred to in that paragraph (a), (b), (c) or (d), whichever may be applicable;
 - (ii) paragraph (e) of subsection (2) of section 7, by notice in writing addressed and delivered to the Minister, resigns as such member;
 - (iii) paragraph (f) of subsection (2) of section 7, ceases to be a representative referred to in that paragraph;
 - (b) is removed from office under subsection (4) by the Minister.
- (4) The Minister may at any time, after having afforded a member of the Committee an opportunity to be heard, remove such a member from office, if the Minister is satisfied that he or she -
 - (a) is for whatever reason incapable of efficiently performing his or her functions as such a member;
 - (b) has conducted himself or herself in a manner that is unbecoming to such a member or is prejudicial to the interest of the Committee;
 - (c) has failed to comply with any provision of this Act:

Provided that a member of the Committee who is appointed in terms of section 7(2)(f) may not be so removed from office by the Minister.

9. Meetings and decisions of Committee

- (1) Meetings of the Committee shall be held at such times and places as the chairperson may from time to time determine.
- (2) The chairperson of the Committee or, in his or her absence, the deputy chairperson shall preside at the meetings of the Committee at which he or she is present.
- (3) If both the chairperson of the Committee and the deputy chairperson are absent from, or for whatever reason are unable to preside at, any meeting of the Committee, the members present thereat may elect one of their number, not being a member referred to in section 7(2)(f), to preside at such meeting, and the member so presiding shall have all the powers and perform all the duties and functions of the chairperson.

- (4) The majority of the members of the Committee shall constitute a quorum for any meeting of the Committee.
- (5) The decision of a majority of the members of the Committee present at any meeting of the Committee shall constitute a decision of the Committee, and, in the event of an equality of votes in regard to any matter, the chairperson or other member presiding at the meeting of the Committee shall have a casting vote in addition to his or her deliberative vote.
- (6) No decision or act of the Committee or act performed by authority of the Committee shall be invalid by reason only -
 - (a) of the existence of a vacancy on the Committee; or
 - (b) of the fact that a person who was not entitled to sit as member of the Committee sat as such a member at the time when the decision was taken or the act was performed or authorized, if the decision was taken or the act was performed or authorized by the requisite majority of the members who were present at the time and entitled to sit as members.
- (7) The Committee shall cause proper record to be kept of the proceedings at its meetings, and the Minister may at any time request that such record be submitted to him or her by the Committee for inspection.
- (8) The Committee may, with the approval of the Minister, make rules not inconsistent with the provisions of this Act relating to the holding of and procedure at meetings of the Committee.

10. Powers, duties and functions of Committee

The powers, duties and functions of the Committee are -

- (a) to receive and consider every application for granting of refugee status referred to it by the Commissioner in terms of section 13(2)(c);
- (b) to carry out such investigation or to conduct such inquiry into any matter relating to an application which is under consideration in terms of paragraph (a) as it may deem necessary;
- (c) to make in respect of every person who has applied in terms of this Act for refugee status recommendations to the Commissioner as to the granting or not of such status to such person;
- (d) to register, in the prescribed manner, every recognized refugee and protected person; and
- (e) in addition to the powers and duties entrusted to it by or under this Act, to perform such other functions entrusted from time to time to it by the Minister or the Commissioner.

11. Subcommittees of Committee

- (1) The Committee may, with the approval of the Minister, appoint one or more subcommittees to perform, subject to the directions and control of the Committee, such functions as may from time to time be assigned to any such subcommittee by the Committee.
- (2) A subcommittee appointed under subsection (1) shall be constituted in the prescribed manner.
- (3) The Committee may, subject to such conditions as it may determine, delegate any power or assign any duty conferred or imposed upon it by or under this Act to a subcommittee appointed under subsection (1), but the Committee shall not thereby be divested or relieved of the power or duty so delegated or assigned.
- (4) A decision by a subcommittee in the exercise of a power delegated to it under subsection (3), shall be subject to the approval of the Committee, and the Committee may at any time vary or set aside any such decision.
- (5) The provisions of section 7(5) shall apply mutatis mutandis in respect of a subcommittee of the Committee.

- (6) The Minister may prescribe rules relating to the holding of and procedure at meetings of any subcommittee of the Committee.

12. Administrative work

- (1) All administrative work incidental to the performance of the functions of the Committee and its subcommittees shall be performed by staff members of the Ministry of Home Affairs designated for that purpose by the Permanent Secretary: Home Affairs.
- (2) Notwithstanding the provisions of subsection (1), one or more staff members of any ministry other than the Ministry of Home Affairs or of any office or agency may be designated by the permanent secretary concerned or any other competent authority to assist the Committee in the performance of its functions.

13. Application for refugee status

- (1) Notwithstanding the provisions of the Immigration Control Act, any person other than a Namibian citizen who is in Namibia, whether such person has entered Namibia lawfully or unlawfully, and who wishes to remain in Namibia as a refugee in terms of this Act shall, within 30 days from the date on which he or she so entered Namibia, apply in writing to an authorized officer for the granting to him or her of refugee status.
- (2) An authorized officer to whom an application is made in terms of subsection (1) shall -
 - (a) if the applicant is not capable of writing or does not understand English, reduce the application into written form;
 - (b) if he or she is not an immigration officer, within 7 days from the date on which the application was made to him or her, notify an immigration officer in writing that the applicant is in Namibia and has applied for refugee status;
 - (c) within the period mentioned in paragraph (b), transmit the application, together with such other documents (including written representations) as the applicant desires to submit in support of the application, to the Commissioner, who shall without undue delay, refer it to the Committee.
- (3) The Committee shall, within 30 days from the date of receipt of an application referred to it in terms of subsection (2)(c) or within such longer period as the Commissioner may determine, consider every application so referred to it and -
 - (a) may, either within such period of 30 days or, if that period has been extended by the Commissioner, within the extended period, carry out such investigation or conduct such inquiry into any matter relating to an application under consideration as it may deem necessary;
 - (b) shall thereupon in respect of every application make recommendations to the Commissioner as to the granting or not of refugee status to the applicant concerned.
- (4) Subject to the provisions of section 4, the Commissioner shall, on the recommendation of the Committee -
 - (a) either grant refugee status to the applicant concerned, if the Commissioner is satisfied that he or she is a refugee and qualifies for refugee status in terms of this Act; or
 - (b) refuse to grant refugee status to the applicant concerned, if the Commissioner is not so satisfied.
- (5) The Commissioner shall in writing notify the applicant concerned of his or her decision contemplated in subsection (4) and, in the event of refugee status being refused to such applicant, furnish him or her with reasons in writing for the refusal.

14. Residence in Namibia pending grant of refugee status or after refusal of such status

- (1) Notwithstanding anything to the contrary in any other law contained, any person who has applied in terms of section 13(1) for refugee status, and every member of the family of such person, shall have the right to remain in Namibia -
 - (a) until such person has been granted refugee status in terms of this Act; or
 - (b) where such person's application for refugee status has been unsuccessful, until he or she has had an opportunity to appeal in terms of section 27 against the decision of the Commissioner; or
 - (c) where such person has noted an appeal in terms of section 27 and the appeal so noted has been dismissed, until he or she has been allowed a reasonable time, but not exceeding 90 days, and, if he or she is in detention, has in addition been afforded reasonable facilities, to seek admission to a country of his or her choice.
- (2) The Minister may at any time, whether before or after the expiry of the period of 90 days referred to in subsection (1)(c), upon a written application being made to him or her by the person concerned, extend that period of 90 days, if the Minister is satisfied that there is a reasonable likelihood of such person being admitted to a country of his or her choice within the extended period.

15. Cessation of proceedings in respect of unlawful entry by refugees

Notwithstanding the provisions of the Immigration Control Act, but subject to the provisions of sections 23, 24 and 25, no proceedings shall be instituted or continued against any person, or any member of the family of such person, in respect of his or her unlawful entry into or unlawful presence in Namibia, if such person -

- (a) has applied in terms of section 13(1) for refugee status, but only until a decision has been given on the application or, where such person has noted an appeal in terms of section 27 against such decision, until such person has had an opportunity to exhaust his or her right of appeal; or
- (b) has been granted refugee status in terms of this Act.

16. Residence in Namibia of recognized refugees

Every person who has been granted refugee status in terms of section 13(4)(a) shall, subject to the provisions of this Act -

- (a) be issued with an identity card in the prescribed form; and
- (b) be permitted to remain in Namibia as a recognized refugee in accordance with the provisions of this Act.

17. Family of recognized refugees

- (1) Members of the family of a recognized refugee shall be permitted to enter Namibia and, subject to the provisions of this section, to remain in Namibia.
- (2) A member of the family of a recognized refugee who has entered Namibia shall, subject to the provisions of this Act -
 - (a) be issued with an identity card in the prescribed form; and
 - (b) be permitted to remain in Namibia as a protected person in accordance with the provisions of this Act for as long as the recognized refugee concerned is permitted so to remain.
- (3) A member of the family of a recognized refugee who is in Namibia and who ceases to be a member of such family by reason of his or her marriage, his or her attaining the age of 18 years or the

cessation of his or her dependence upon the recognized refugee, as the case may be, shall be permitted to continue to remain in Namibia in accordance with the provisions of this Act.

- (4) Upon the death of a recognized refugee or upon his or her divorce or judicial separation from any spouse, every person who, immediately before such death, divorce or judicial separation, was in Namibia as a member of the family of such recognized refugee shall be permitted to continue to remain in Namibia in accordance with the provisions of this Act.
- (5) A member of the family of a recognized refugee or a person who has been permitted in terms of subsection (3) or (4) to continue to remain in Namibia may, notwithstanding the provisions of subsection (1) of section 13, at any time apply in writing to an authorized officer for the granting to him or her of refugee status in terms of that section.
- (6) The provisions of section 13(2), (3), (4) and (5) shall apply mutatis mutandis in respect of an application contemplated in subsection (5).

18. Rights and duties of recognized refugees and protected persons

Subject to the provisions of this Act, every recognized refugee and every protected person in Namibia -

- (a) shall be entitled to the rights conferred, and be subject to the duties imposed, by -
 - (i) the provisions of the UN Convention on Refugees, 1951, which are set out in Part I of the Schedule to this Act; and
 - (ii) the provisions of the OAU Convention on Refugees, 1969, which are set out in Part II of the Schedule to this Act,

as if the references therein to refugees were references to recognized refugees and protected persons; and

- (b) shall be subject to the law of Namibia.

19. Reception areas and refugee settlements

- (1) Notwithstanding the provisions of Article 26 of the UN Convention on Refugees, 1951, the Minister may by notice in the Gazette declare any part of Namibia to be an area (in this Act referred to as a reception area) for the reception or residence of -
 - (a) recognized refugees and protected persons; and
 - (b) persons who have applied in terms of this Act for refugee status; and
 - (c) members of the families of persons referred to in paragraph (b),or any categories thereof, as may be specified in that notice.

- (2) The Minister may by notice in the Gazette establish in any reception area a refugee settlement for refugees or any category of refugees.
refugee settlement for refugees or any category of refugees.

[The words “refugee settlement for refugees or any category of refugees” are accidentally repeated in the Government Gazette.]

- (3) The Minister may designate an authorized officer to be in charge of any reception area or refugee settlement.

20. Requirement to reside in reception area or refugee settlement

- (1) Notwithstanding anything to the contrary in this Act or any other law contained, the Minister may by order in writing, served in the prescribed manner, require -
 - (a) a recognized refugee or protected person; or
 - (b) a person who has applied in terms of this Act for refugee status; or
 - (c) a member of the family of a person referred to in paragraph (b),to reside, subject to such conditions as the Minister may determine, in a reception area or a refugee settlement specified in that order.
- (2) An authorized officer in charge of a reception area or refugee settlement may issue a permit in writing to any person who is required pursuant to an order made under subsection (1) to reside in the reception area or refugee settlement under his or her control authorizing such person to reside in any other reception area or refugee settlement specified in that permit.
- (3) The provisions of subsections (1) and (2), in so far as they provide for a limitation on the fundamental right to move freely throughout Namibia and to reside and settle in any part of Namibia contemplated in paragraphs (g) and (h), respectively, of Sub-Article (1) of Article 21 of the Namibian Constitution, are enacted upon the authority conferred by Sub-Article (2) of the said Article.

21. Offences in connection with reception areas and refugee settlements

Any person who, having been duly served with an order under section 20(1) -

- (a) fails to comply with any provision of such order; or
- (b) without the prior written permission of the authorized officer or any other person in charge of the reception area or refugee settlement in which such first-mentioned person is required to reside, leaves or attempts to leave such reception area or refugee settlement,

shall be guilty of an offence and on conviction be liable to imprisonment for a period not exceeding 90 days.

22. Prohibition of access to reception areas and refugee settlements

Any person (other than a person who is required in terms of section 20 to reside in a reception area or a refugee settlement) who, without the prior written permission of the Minister or the Commissioner or the authorized officer in charge of a reception area or refugee settlement, enters or is on or in any reception area or refugee settlement shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

23. Withdrawal of refugee status

- (1) If the Commissioner is of the opinion that there are reasonable grounds to believe that a person who has been granted refugee status -
 - (a) should not have been granted refugee status; or
 - (b) has ceased to be a refugee for the purposes of this Act; or
 - (c) has become a member of a category of persons declared in terms of paragraph (c) of subsection (1) of section 4 to be persons who are not entitled to refugee status,the Commissioner shall refer the matter to the Committee for consideration.

- (2) The Committee shall consider every matter referred to it by the Commissioner in terms of subsection (1) and -
 - (a) may carry out such investigation or conduct such inquiry into such matter as it may deem necessary; and
 - (b) shall by written notice, served in the prescribed manner, notify the person whose refugee status is under reconsideration that his or her status as such is to be reconsidered and call upon such person to make, subject to the provisions of subsection (3), oral or written representations with regard to such matter to the Committee within 14 days from the date of service of that notice; and
 - (c) shall thereupon in respect of every such matter make recommendations to the Commissioner.
- (3) Where a person whose refugee status is being reconsidered elects to make oral representations to the Committee, he or she shall have the right -
 - (a) to be personally present at the inquiry, to be assisted or represented by a legal practitioner or any other person of his or her choice and to give or submit oral or documentary evidence; and
 - (b) to have an interpreter assigned to him or her by the Committee, if the inquiry is conducted in a language that such person does not understand.
- (4) After having considered the recommendations made by the Committee in terms of paragraph (c) of subsection (2), the Commissioner may in respect of any person whose refugee status has been reconsidered in terms of the preceding subsections, withdraw or confirm such person's refugee status.
- (5) The Commissioner shall in writing notify a person whose refugee status has been reconsidered of his or her decision contemplated in subsection (4) and, in the event of such person's refugee status being withdrawn, furnish him or her with reasons in writing for the withdrawal.
- (6) Where a person's refugee status has been withdrawn by the Commissioner under subsection (4), such person shall cease to be a recognized refugee, and any other person who became a protected person as a result of being a member of the family of such first-mentioned person shall cease to be a protected person, with effect from -
 - (a) seven days after the Commissioner notified such first-mentioned person in terms of subsection (5) of the withdrawal of his or her refugee status; or
 - (b) where such first-mentioned person has noted an appeal in terms of section 27 and the appeal so noted has been dismissed, the date on which such firstmentioned person receives notification in writing from the Appeal Board of the dismissal.
- (7) Notwithstanding the provisions of subsection (1) of section 13 and subsection (6) of this section, a protected person who became such as a result of being a member of the family of a person who has ceased in terms of the last-mentioned subsection to be a recognized refugee, may at any time apply in writing to an authorized officer for the granting to him or her of refugee status in terms of the first-mentioned section.
- (8) The provisions of section 13(2), (3), (4) and (5) shall apply mutatis mutandis in respect of an application contemplated in subsection (7).

24. Detention or expulsion of recognized refugees and protected persons

- (1) Subject to the provisions of section 26 and the following subsections of this section, the Minister may, if he or she is reasonably of the opinion that it is in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, request the Commissioner

- in writing to order the detention or the expulsion from Namibia of any recognized refugee or protected person.
- (2) Before making an order contemplated in subsection (1), the Commissioner shall refer the request of the Minister to the Committee for consideration.
- (3) The Committee shall consider every request referred to it by the Commissioner in terms of subsection (2) and -
- (a) may carry out such investigation or conduct such inquiry with regard to such request as it may deem necessary; and
 - (b) shall by written notice, served in the prescribed manner, notify the recognized refugee or protected person whose detention or expulsion is being considered that the Minister has requested his or her detention or his or her expulsion from Namibia to a country specified in that notice and -
 - (i) furnish him or her with reasons in writing for the intended detention or expulsion; and
 - (ii) call upon him or her to make, subject to the provisions of subsection (4), oral or written representations with regard to his or her intended detention or expulsion to the Committee within 7 days from the date of service of that notice; and
 - (c) shall thereupon in respect of every such request make recommendations to the Commissioner.
- (4) Where a recognized refugee or protected person whose detention or expulsion is being considered elects to make oral representations to the Committee, he or she shall have the right -
- (a) to be personally present at the inquiry, to be assisted or represented by a legal practitioner or any other person of his or her choice and to give or submit oral or documentary evidence; and
 - (b) to have an interpreter assigned to him or her by the Committee, if the inquiry is conducted in a language that he or she does not understand.
- (5) After having considered the recommendations made by the Committee in terms of paragraph (c) of subsection (3), the Commissioner may in respect of any recognized refugee or protected person whose detention or expulsion from Namibia has been requested in terms of subsection (1), order or refuse to order such detention or expulsion.
- (6) The Commissioner shall, subject to the provisions of subsection (7), in writing notify the Minister and the recognized refugee or protected person concerned of his or her decision contemplated in subsection (5).
- (7) Where the Commissioner has ordered the detention or the expulsion from Namibia of a recognized refugee or protected person under subsection (5), he or she shall -
- (a) in the prescribed form and manner, cause any such order to be served on the recognized refugee or protected person concerned subject to the provisions of subsection (8); and
 - (b) furnish the recognized refugee or protected person concerned with reasons in writing for his or her decision.
- (8) The provisions of section 27 shall apply mutatis mutandis to a recognized refugee or protected person who is aggrieved by a decision taken by the Commissioner under subsection (5) to order his or her detention or his or her expulsion from Namibia, except that the appeal shall be lodged with the Appeal Board within 7 days from the date on which the order for his or her detention or his or her expulsion from Namibia was served on him or her in terms of paragraph (a) of subsection (7).
- (9) The Minister may, upon a written application being made to him or her by a recognized refugee or protected person whose expulsion from Namibia has been ordered under subsection (5), delay the

execution of such order for a reasonable time, but not exceeding 90 days, to enable such recognized refugee or protected person to seek admission to a country other than the country to which he or she is to be expelled, if the Minister is satisfied that there is a reasonable likelihood of such recognized refugee or protected person being admitted to such other country.

25. Detention of recognized refugees and protected persons pending expulsion

- (1) An authorized officer may arrest and detain any recognized refugee or protected person whose expulsion has been ordered under section 24(5) pending the completion of arrangements for his or her expulsion from Namibia.
- (2) A recognized refugee or protected person who is detained under subsection (1) shall, if he or she so requests the Commissioner in writing, be allowed a reasonable time, but not exceeding 90 days, and in addition be afforded reasonable facilities, to seek admission to a country other than the country to which he or she is to be expelled.
- (3) The Minister may at any time, whether before or after the expiry of the period of 90 days referred to in subsection (2), upon a written application being made to him or her by the recognized refugee or protected person concerned, extend that period of 90 days, if the Minister is satisfied that there is a reasonable likelihood of such recognized refugee or protected person being admitted, within the extended period, to a country other than the country to which he or she is to be expelled.

26. Prohibition of return of refugees

- (1) Notwithstanding anything to the contrary in any other law contained, no person -
 - (a) who is a refugee; or
 - (b) who is a member of the family of a refugee,shall, subject to the provisions of subsection (2), be refused entry into Namibia or, whether such person has entered Namibia lawfully or unlawfully or is lawfully or unlawfully present in Namibia, be expelled or extradited from Namibia to any other country, or be subjected to any similar measure, if, as a result of such refusal, expulsion, extradition or other measure, such person is compelled to return to or remain in a country where -
 - (i) he or she may be subjected to persecution on account of his or her race, religion, nationality, membership of a particular social group or political opinion; or
 - (ii) his or her life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disrupting public order in either part or the whole of that country.
- (2) The provisions of subsection (1) shall not apply to any person referred to in section 4(1) or to a person who is removed from Namibia under section 49(1) of the Immigration Control Act for reasons of the security of the State.

27. Right of Appeal

- (1) Any person who is aggrieved by a decision taken by the Commissioner under any provision of this Act may, subject to the provisions of section 24(8) and subsection (2) of this section, appeal to the Appeal Board against such decision within 14 days -
 - (a) from the date of receipt of the Commissioner's notice in writing of such decision; or
 - (b) if such notice does not contain the Commissioner's reasons for such decision, from the date on which the Commissioner furnished him or her with a written statement of the reasons for such decision.

- (2) An appeal in terms of subsection (1) shall be lodged with the Appeal Board in the form of a written statement and -
 - (a) shall contain the complete grounds of appeal; and
 - (b) may be accompanied by such documents as the appellant desires to submit in support of the appeal.

28. Appeal Board

- (1) There is hereby established a board to be known as the Namibia Refugees Appeal Board for the hearing of appeals noted under section 27.
- (2) The Appeal Board shall consist of three members appointed by the Minister after consultation with the Minister of Justice, who shall -
 - (a) be legal practitioners; and
 - (b) be persons who in the opinion of the Minister possess the necessary knowledge of law to make a substantial contribution towards the functions of the Appeal Board.
- (3) The Minister shall designate one of the members appointed in terms of subsection (2) as presiding officer of the Appeal Board (hereinafter in this section referred to as the presiding officer).
- (4) A member of the Appeal Board -
 - (a) shall hold office for such period as the Minister may determine and shall be eligible for reappointment upon the expiry of his or her term of office;
 - (b) may at any time, after having been afforded an opportunity to be heard, be removed from office by the Minister, if the Minister is of the opinion that there are sufficient reasons for doing so.
- (5) A person appointed as a member of the Appeal Board in terms of subsection (2) who is not in the full-time employment of the State shall be paid such remuneration and allowances as the Minister in consultation with the Minister of Finance may from time to time determine.
- (6) Meetings of the Appeal Board shall be held at such times and places as the presiding officer may direct.
- (7) The presiding officer may at any time, and shall when requested in writing to do so by the Commissioner, convene a special meeting of the Appeal Board to be held at such time and place as the presiding officer may direct.
- (8) For the purposes of a hearing in terms of subsection (9), the presiding officer shall by notice in writing, served in the prescribed manner, summon the appellant to appear before the Appeal Board at the time and place specified in that notice, to be examined or to produce any document in his or her possession or custody or under his or her control which the presiding officer reasonably believes to have a bearing on the subject matter of the appeal, and thereupon the appellant shall have the right -
 - (a) to be personally present at the hearing, to be assisted or represented by a legal practitioner or any other person of his or her choice and to give or submit oral or documentary evidence; and
 - (b) to have an interpreter assigned to him or her by the Commissioner, if the hearing is conducted in a language that the appellant does not understand.
- (9) The Appeal Board hearing an appeal in terms of this section -
 - (a) shall, subject to the provisions of subsection (8), deal with the appeal with due regard to -
 - (i) the circumstances which were considered in taking the decision appealed against;

- (ii) the grounds of appeal;
 - (iii) the oral or documentary evidence given or submitted by any person at the request or with the permission of the Appeal Board; and
 - (iv) any other information at the disposal of the Appeal Board;
- (b) may confirm, vary or set aside the decision to which the appeal relates.
- (10) After hearing an appeal in terms of subsection (9), but before giving a decision on the appeal contemplated in paragraph (b) of that subsection, the Appeal Board may -
 - (a) refer the matter back to the Committee for further investigation or inquiry;
 - (b) of its own accord carry out such investigation or conduct such inquiry into the matter as it may deem necessary.
- (11) The Appeal Board shall in writing notify the appellant of its decision.
- (12) The Appeal Board shall keep proper record of its proceedings.
- (13) The decision of a majority of the members of the Appeal Board shall be the decision of such Board.
- (14) The Appeal Board shall determine its own rules of procedure not inconsistent with the provisions of this Act.

29. Authorized officers

- (1) Every member of the Namibian Police Force appointed under section 4(1) of the Police Act, 1990 (Act [No. 19 of 1990](#)), every immigration officer and the representative in Namibia of the United Nations High Commissioner for Refugees shall be an authorized officer for the purposes of this Act.
- (2) The Minister may by notice in the Gazette appoint any staff member or member of the services, or any category of staff members or members of the services, to be authorized officers for the purposes of this Act: Provided that the Minister may not so appoint -
 - (a) a staff member of any ministry other than the Ministry of Home Affairs or of any office or agency, or any category of such staff members, except with the approval of the Minister or other authority responsible for the ministry or the office or agency in which such staff member or category of staff members are employed; or
 - (b) a member of the Namibian Defence Force referred to in paragraph (a) of subsection (7), or any category of such members, except with the approval of the Chief of the Defence Force; or
 - (c) a member of the Prison Service referred to in paragraph (b) of subsection (7), or any category of such members, except with the approval of the Commissioner of Prisons.
- (3) In performing his or her functions in terms of this Act, an authorized officer may -
 - (a) subject to the provisions of subsections (4) and (5), search any person, premises or property;
 - (b) take the fingerprints, palmprints or photograph of any recognized refugee or protected person or any person who claims to be a refugee in terms of this Act or any member of the family of such last-mentioned person;
 - (c) question any recognized refugee or protected person or any person who claims to be a refugee in terms of this Act or any member of the family of such last-mentioned person.
- (4) Subject to the provisions of subsection (6), no search of a person, premises or property shall be made under paragraph (a) of subsection (3) unless the search is authorized by a search warrant issued by a magistrate or judge upon information on oath that there are reasonable grounds for believing that the search is necessary to prevent, investigate or detect -
 - (a) a contravention of any provision of this Act; or

- (b) a fraudulent misstatement or concealment by any recognized refugee or protected person or any person who claims to be a refugee in terms of this Act or any member of the family of such last-mentioned person of any fact relevant to his or her identity or status.
- (5) Whenever it is desired to search the body of a woman under paragraph (a) of subsection (3), such search shall only be made by a medical practitioner or a woman who is an authorized officer and shall be conducted with strict regard to decency and, if there is no woman available who is an authorized officer, the search may be made by any other woman specially authorized thereto by an authorized officer.
- (6) The provisions of subsection (4) shall not be construed so as to prohibit the making of a search without a search warrant in circumstances contemplated in Article 13(2)(b) of the Namibian Constitution.
- (7) In this section "member of the services" means any member of -
 - (a) the Namibian Defence Force established in terms of section 5 of the Defence Act, 1957 (Act [No. 44 of 1957](#)); or

[The Defence Act 44 of 1957 has been replaced by the Defence Act 1 of 2002. Section 2 of Act 1 of 2002 provides that the Namibian Defence Force established by section 5 of Act 44 of 1957 continues to exist notwithstanding the repeal of that Act by Act 1 of 2002.]
 - (b) the Prison Service established under section 2(1) of the Prisons Act, 1959 (Act [No. 8 of 1959](#)).

[The Prisons Act 8 of 1959 was replaced by the Prisons Act 17 of 1998 before this Act was passed. Act 17 of 1998 has been replaced by the Correctional Service Act 9 of 2012. Section 2 of Act 9 of 2012 transformed the Prison Service into the Namibian Correctional Service.]
- (8) The provisions of subsections (3) and (4), in so far as they provide for a limitation on the fundamental right to privacy contemplated in Article 13 of the Namibian Constitution by authorizing interference with such privacy, are enacted upon the authority conferred by the said Article.

30. Offences in connection with authorized officers

Any person who -

- (a) obstructs, hinders, opposes, resists or interferes with an authorized officer in the performance of his or her duties or the exercise of his or her powers under this Act or without just cause refuses or fails to comply with a requirement by an authorized officer under this Act; or
- (b) compels an authorized officer to perform or neglect an act in connection with the performance of his or her duties or the exercise of his or her powers under this Act, or because an authorized officer has performed or neglected such act, threatens or suggests violence or force against that authorized officer or any of his or her next of kin or dependants, or threatens to damage or suggest damage to the property of that authorized officer or any of his or her next of kin or dependants; or
- (c) pretends to be an authorized officer,

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

31. Regulations

- (1) The Minister may make regulations not inconsistent with the provisions of this Act -
 - (a) assigning to the Committee functions relating to the reception, treatment and welfare of refugees;
 - (b) relating to the constitution of subcommittees of the Committee and the assignment to those subcommittees of functions to be performed by any such subcommittee, subject to the

- directions and control of the Commissioner or the Committee, in relation to the reception, treatment and welfare of refugees;
- (c) prescribing the procedure at meetings of any subcommittee of the Committee, including the quorum for such meetings and its decisions thereat and the participation at such meetings of the representative in Namibia of the United Nations High Commissioner for Refugees;
 - (d) prescribing the procedure to be observed in the granting of refugee status and the form and manner in which applications for refugee status are to be made;
 - (e) relating to the noting and hearing of appeals in terms of this Act;
 - (f) relating to the issue of identification documents to persons who have applied in terms of this Act for refugee status and to members of the families of such persons;
 - (g) subject to the provisions of the UN Convention on Refugees, 1951, prescribing the form and the issue of identification and travel documents to recognized refugees and protected persons;
 - (h) relating to the control and regulation of persons who are required to reside in reception areas or refugee settlements;
 - (i) prescribing the form of any order or notice required to be served on any person in terms of this Act and the manner in which such order or notice is to be served;
 - (j) prescribing the facilities to be afforded to persons who are detained in terms of this Act and who are seeking admission to other countries;
 - (k) requiring employers, when considering applications for employment made by persons who are not Namibian citizens, to give preference to applicants who are recognized refugees or protected persons;
 - (l) providing for the manner in which effect shall be given to Article 35 of the UN Convention on Refugees, 1951, and Article II of the Protocol on Refugees, 1967;
 - (m) relating to any matter which is required or permitted to be prescribed in terms of this Act; and
 - (n) relating to, generally, any matter in respect of which the Minister considers it necessary or expedient to make regulations in order to achieve the object of this Act.
- (2) A regulation made under subsection (1) may prescribe a penalty, not exceeding a fine of N\$2 000 or imprisonment for a period of six months or not exceeding both such fine and such imprisonment, for any contravention of or failure to comply with any provision thereof.

32. Saving

In the event of a conflict between a provision of this Act and a provision of the Immigration Control Act, the provision of this Act shall prevail.

33. Short title and commencement

This Act shall be called the Namibia Refugees (Recognition and Control) Act, 1999, and shall come into operation on a date to be fixed by the Minister by notice in the Gazette.

Schedule

PROVISIONS OF CONVENTIONS APPLICABLE TO RECOGNIZED REFUGEES AND PROTECTED PERSONS HAVING THE FORCE AND EFFECT OF LAW IN NAMIBIA

(Section 18)

Part I – UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES OF 28 JULY 1951

(Section 18(a)(i))

[Note that this is a list of selected provisions from the Convention.
Therefore, the Articles are not consecutively numbered.]

[The chapter numbers and headings from the Convention have been
omitted, and the Article headings and paragraphs are formatted differently
in the Government Gazette than they are in the Convention itself.]

[The Convention uses only male pronouns (eg “he”, “himself”), whereas the Schedule replaces
these throughout with paired pronouns indicating both sexes (eg “he or she”, “himself or herself”).]

Article 2 – General obligations

Every refugee has duties to the country in which he or she finds himself or herself, which require in particular that he or she conforms to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3 – Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4 – Religion

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

Article 7 – Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.
2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.
3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.
4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.
5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in Articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8 – Exemption from exceptional measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this Article, shall, in appropriate cases, grant exemptions in favour of such refugees.

[The word “Article” is not capitalised in the Convention.]

Article 9 – Provisional measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his or her case in the interest of national security.

[The word “interest” is plural in the Convention: “in the interests of national security”.]

Article 10 – Continuity of residence

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.
2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11 – Refugee seamen

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

Article 12 – Personal status

1. The personal status of a refugee shall be governed by the law of the country of his or her domicile or, if he or she has no domicile, by the law of the country of his or her residence.
2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he or she not become a refugee.

Article 13 – Movable and immovable property

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14 – Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he or she has his or her habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he or she shall be accorded the same protection as is accorded in that territory to nationals of the country in which he or she has his or her habitual residence.

Article 15 – Right of association

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16 – Access to courts

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he or she has his or her habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.
3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he or she has his or her habitual residence the treatment granted to a national of the country of his or her habitual residence.

Article 17 – Wage-earning employment

1. The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.
2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:
 - (a) He or she has completed three years' residence in the country.
 - (b) He or she has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he or she has abandoned his or her spouse.
 - (c) He or she has one or more children possessing the nationality of the country of residence.
3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18 – Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his or her own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19 – Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.
2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

Article 20 – Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21 – Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22 – Public education

[Sub-paragraph 1 of Article 22 is not included in this list.]

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 25 – Administrative assistance

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he or she cannot have recourse, the Contracting States in whose territory he or she is residing shall arrange that such assistance be afforded to him or her by their own authorities or by an international authority.
2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.
3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.
4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.
5. The provisions of this Article shall be without prejudice to Articles 27 and 28.

Article 26 – Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

Article 27 – Identity papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28 – Travel documents

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

[There is a comma after the second appearance of the word “territory” in the Convention: “The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require,...”.]

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this Article.

[The word “Article” is not capitalised in the Convention.]

Article 29 – Fiscal charges

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.
2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30 – Transfer of assets

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.
2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 34 – Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

SCHEDULE TO CONVENTION

Travel Document

[The Convention labels this part only as “SCHEDULE”, without any additional words.]

Paragraph 1

1. The travel document referred to in Article 28 of this Convention shall be similar to the specimen annexed hereto.
2. The documents shall be made out in at least two languages, one of which shall be English or French.

Paragraph 2

Subject to the regulations obtaining in the country of issue, children may be included in the travel document of a parent or, in exceptional circumstances, of another adult refugee.

Paragraph 3

The fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.

Paragraph 4

Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.

Paragraph 5

The document shall have a validity of either one or two years, at the discretion of the issuing authority.

Paragraph 6

1. The renewal or extension of the validity of the document is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.
2. Diplomatic or consular authorities, specially authorized for the purpose, shall be empowered to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.
3. The Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to refugees no longer lawfully resident in their territory who are unable to obtain a travel document from the country of their lawful residence.

Paragraph 7

The Contracting States shall recognize the validity of the documents issued in accordance with the provisions of Article 28 of this Convention.

[The word “Article” is not capitalised in the Convention.]

Paragraph 8

The competent authorities of the country to which the refugee desires to proceed shall, if they are prepared to admit him or her and if a visa is required, affix a visa on the document of which he or she is the holder.

Paragraph 9

1. The Contracting States undertake to issue transit visas to refugees who have obtained visas for a territory of final destination.
2. The issue of such visas may be refused on grounds which would justify refusal of a visa to any alien.

Paragraph 10

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

Paragraph 11

When a refugee has lawfully taken up residence in the territory of another Contracting State, the responsibility for the issue of a new document, under the terms and conditions of Article 28, shall be that of the competent authority of that territory, to which the refugee shall be entitled to apply.

Paragraph 12

The authority issuing a new document shall withdraw the old document and shall return it to the country of issue, if it is stated in the document that it should be so returned; otherwise it shall withdraw and cancel the document.

Paragraph 13

1. Each Contracting State undertakes that the holder of a travel document issued by it in accordance with Article 28 of this Convention shall be re-admitted to its territory at any time during the period of its validity.

[The Convention spells “re-admitted” as “readmitted”.]

2. Subject to the provisions of the preceding subparagraph, a Contracting State may require the holder of the document to comply with such formalities as may be prescribed in regard to exit from or return to its territory.

[The Convention spells “subparagraph” as “sub-paragraph”.]

3. The Contracting States reserve the right, in exceptional cases, or in cases where the refugee’s stay is authorized for a specific period, when issuing the document, to limit the period during which the refugee may return to a period of not less than three months.

Paragraph 14

Subject only to the terms of paragraph 13, the provisions of this Schedule in no way may affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the Contracting States.

Paragraph 15

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

Paragraph 16

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not confer on these authorities a right of protection.

ANNEX TO SCHEDULE TO CONVENTION

Specimen Travel Document

[The Convention labels this part only as “SCHEDULE”, without any additional words. The formatting of some items in this Annex is different in the Convention – particularly in the form below. We have reproduced the formatting as given in the Government Gazette.]

The document will be in booklet form (approximately 15 x 10 centimetres).

[The word “from” should be “form”; it is correct in the Convention.]

It is recommended that it be so printed that any erasure or alteration by chemical or other means can be readily detected, and that the words “Convention of 28 July 1951” be printed in continuous repetition on each page, in the language of the issuing country.

[The Convention places a horizontal line above the words “(Cover of booklet)”, mirroring the one below “(Convention of 28 July 1951)”.]

(Cover of booklet)

TRAVEL DOCUMENT

(Convention of 28 July 1951)

No.:

(1)

TRAVEL DOCUMENT

(Convention of 28 July 1951)

This document expires on

unless its validity is extended or renewed.

Name

Forename(s)

Accompanied by child (children)

1. This document is issued solely with a view to providing the holder with a travel document which can serve in lieu of a national passport. It is without prejudice to and in no way affects the holder's nationality.

2. The holder is authorized to return to [state here the country whose authorities are issuing the document] on or before unless some later date is hereafter specified.

[The period during which the holder is allowed to return must not be less than three months.]

3. Should the holder take up residence in a country other than that which issued the present document, he or she must, if he or she wishes to travel again, apply to the competent authorities of his or her country of residence for

a new document. [The old travel document shall be withdrawn by the authority issuing the new document and returned to the authority which issued it.]¹

(This document contains pages, exclusive of cover.)

1 The sentence in brackets to be inserted by Governments which so desire.

(2)

Place and date of birth

Occupation

Present residence

*Maiden name and forename(s) of wife

*Name and forename(s) of husband

Description

Height

Hair

Colour of eyes

Nose

Shape of face

Complexion

Special peculiarities

Children accompanying holder

Name	Forename(s)	Place and date of birth	Sex
.....
.....
.....

.....
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* Strike out whichever does not apply.

(This document contains pages, exclusive of cover.)

(3)

Photograph of holder and stamp of issuing authority

Fingerprints of holder (if required)

["Fingerprints" is spelt "finger-prints" in the Convention.]

Signature of holder

(This document contains pages, exclusive of cover.)

(4)

1. This document is valid for the following countries:

.....

2.

Document or documents on the basis of which the present document is issued:

.....

.....

Issued at

Date

Signature and stamp

of authority issuing

the document:

Fee paid:

(This document contains pages, exclusive of cover.)

(5)

Extension or renewal of validity

Fee paid: From:

To:

Done at Date:

Signature and stamp

of authority extending

or renewing the validity

of the document

Part II – ORGANIZATION OF AFRICAN UNITY CONVENTION GOVERNING THE SPECIFIC ASPECTS OF REFUGEE PROBLEMS IN AFRICA OF 10 SEPTEMBER 1969

(Section 18(a)(ii))

[The title of the Convention in the Convention itself is “OAU Convention governing the specific aspects of refugee problems in Africa. Concluded at Addis Ababa on 10 September 1969”.]

[Note that this is a list of selected provisions from the Convention.
Therefore, the Articles are not consecutively numbered.]

[The headings are formatted differently in the Government Gazette than in the Convention itself.]

[The Convention uses only male pronouns (eg “he”, “his”), whereas the Schedule replaces these throughout with paired pronouns indicating both sexes (eg “he or she”, “his or her”).]

Article III – Prohibition of Subversive Activities

1. Every refugee has duties to the country in which he or she finds himself or herself, which require in particular that he or she conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He or she shall also abstain from any subversive activities against any Member State of the OAU.
2. Signatory States undertake to prohibit refugees residing in their respective territories from attacking any State Member of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio.

[In the Convention, the word “and” which introduces the last phrase in sub-paragraph 2 is mistakenly written as “any”. It is corrected to read “and” in the Government Gazette.]

Article V – Voluntary Repatriation

1. The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his or her will.
2. The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.
3. The country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations.
4. Refugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations. Whenever necessary, an appeal shall be made through national information media and through the Administrative Secretary-General of the OAU, inviting refugees to return home and giving assurance that the new circumstances prevailing in their country of origin will enable them to return without risk and to take up a normal and peaceful life without fear of being disturbed or punished, and that the text of such appeal should be given to refugees and clearly explained to them by their country of asylum.
5. Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organizations, to facilitate their return.

[The word “organizations” is capitalised in the Convention.]