

# REFUGEE ACT, 2008

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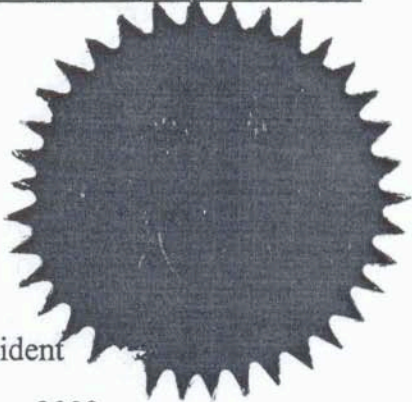
43. Regulations

Refugee Act, 2008



THE GAMBIA  
NO. 15 OF 2008

Assented to by The President  
this 17<sup>th</sup> day of Nov., 2008



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YAHYA A. J. J. JAMMEH  
*President*

**AN ACT** to make better provision for the management of refugee affairs in The Gambia by establishing The Gambia Commission for Refugees and for matters connected therewith.

[ ]

**ENACTED** by the President and the National Assembly.

**PART I – PRELIMINARY**

- Short title      1. This Act may be cited as the Refugee Act, 2008.
- Interpretation    2. In this Act, unless the context otherwise requires-

“authorised officer” means an Immigration Officer employed in a permanent and pensionable service of the Government of The Gambia to perform the functions of an Immigration Officer;

“cessation provisions” means the cessation provisions referred to in paragraph 4 of Article 1 of the Convention and in section 25 of this Act;

“Commission” means The Gambia Commission for Refugees established under section 3 of this Act;

“Commissioner for Refugees” means the Commissioner for Refugees in The Gambia Immigration Department;

“Convention” means the United Nations Convention relating to the Status of Refugees adopted in Geneva on 28<sup>th</sup> July 1951;

“dependant”, in relation to a refugee, means his or her-

(a) child, stepchild, adopted child, ward, niece or nephew, under the age of eighteen years; or

(b) an elderly parent of sixty years and above,

who is in the care and custody of the refugee;

“member” means a member of the Board and includes the Chairperson;

“member of family”, in relation to a refugee, means a spouse or spouses and any dependant of the refugee;



"Secretariat" means the Secretariat of the Commission;

"Secretary of State" means the Secretary of State responsible for the Interior.

## **PART II - ESTABLISHMENT OF THE GAMBIA COMMISSION FOR REFUGEES AND ITS GOVERNING BOARD**

Establishment of  
The Gambia  
Commission for  
Refugees

**3. (1)** There is hereby established a body to be known as The Gambia Commission for Refugees.

(2) The Commission is a body corporate with perpetual succession and a common seal and may-

- (a) sue or be sued in its corporate name;
- (b) enter into contracts and acquire, hold and dispose of property; and
- (c) so far as is possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

(3) The application of the common seal of the Commission shall be authenticated by the signature of the Commissioner for Refugees or, in his or her absence, by such other person as the Board may designate.

(4) A document bearing the imprint of the common seal of the Commission is deemed to be properly sealed, unless the contrary is proved.

Establishment  
and composition  
of the governing  
Board of the  
Commission

4. (1) There is hereby established for the Commission a governing Board which shall, subject to the provisions of this Act, carry out the functions and manage the affairs of the Commission.

(2) The Board consists of the following members-

- (a) a Chairperson;
- (b) the Permanent Secretary of the Department of State for the Interior or his or her representative not below the rank of Deputy Permanent Secretary;
- (c) the Permanent Secretary of the Department of State for Foreign Affairs or his or her representative not below the rank of Deputy Permanent Secretary;
- (d) the Director-General of The Gambia Immigration Department or his or her representative not below the rank of Commissioner;
- (e) the Inspector-General of Police or his or her representative not below the rank of Commissioner of Police;
- (f) the Commissioner for Refugees;
- (g) a representative of The Gambia Red Cross Society; and
- (h) one person to represent the civil society.

(3) A representative of the United Nations High Commissioner for Refugees or his or her representative shall sit on the Board in an observer and advisory capacity without the right to vote.

(4) The Chairperson shall be a person with wide knowledge and experience in security or refugee matters.

(5) The members, other than *ex-officio* members, shall be appointed by the President after consultation with the Public Service Commission.

Tenure of office  
of members

5. (1) The members, other than *ex-officio* members, shall hold office for a term of three years and may be re-appointed.

(2) A person is not qualified to be a member or to continue to be a member if-

(a) he or she is adjudged to be a person of unsound mind;

(b) he or she has been convicted of an offence involving dishonesty or fraud and has not been granted a free pardon; or

(c) in the case of a person who has professional qualifications, he or she is disqualified or suspended otherwise than at his or her request, from practicing his or her profession by the order of a competent authority made in respect of him or her personally.

(3) A member, other than an *ex-officio* member, may resign his or her office by notice in writing addressed to the President.

General  
directions of the  
Board

6. The Board may give to the Commissioner for Refugees general directions as to the management of the property, business and funds of the Commission and other matters relating to the Commission.



Meetings of the  
Board

7. (1) The Board shall meet for the discharge of its business at least once in every three months at such times and places as the Chairperson shall appoint.

(2) The Chairperson shall, at the written request of not less than four members, convene a special meeting of the Commission to transact any extraordinary business on a date specified in the request.

(3) A written notice of a special meeting of the Board shall-

- (a) be sent to each member not later than forty-eight hours before the meeting; and
- (b) specify the business for which the meeting is being convened.

(4) The quorum of the Board at any meeting is four.

(5) The Board shall take decisions by a simple majority of the votes of members present and, where there is an equality of votes, the person presiding shall have a casting vote.

(6) The Chairperson shall preside at every meeting of the Board at which he or she is present, and, in his or her absence, the members present shall appoint one of their number to preside at the meeting.

(7) The minutes of every meeting of the Board shall be recorded by the Secretary, and signed by the Chairperson or the person who presided at the meeting, after confirmation by the members who were present at the meeting.



(8) The Board may at any time invite a person to any of its meetings, but a person so invited is not entitled to vote at any of the meetings of the Board.

(9) The validity of the proceeding of the Commission shall not be affected by-

- (a) a vacancy in its membership;
- (b) a defect in the appointment of any of its members; or
- (c) reason that a person not entitled to do so, took part in the proceedings.

(10) Subject to this section, the Board may regulate its own procedure.

#### Committees

8. (1) The Board may appoint such technical and other committees, comprising members and other persons, as it deems necessary to carry out, on its behalf, such of its functions as it may determine.

(2) A decision of a committee appointed under this section has no effect unless it is confirmed by the Board.

#### Disclosure of interest

9. (1) A member who has an interest in a company or an undertaking with which the Commission or Board proposes to enter into a contract shall-

- (a) disclose to the Board the nature of his or her interest; and
- (b) not participate in any deliberation and voting of the Board in respect of the contract.

(2) The President may remove from the Board a member who contravenes the provisions of subsection (1).

Transaction of business without meeting

**10.** A resolution is a valid resolution of the Commission if-

(a) it is signed or assented to by a simple majority of the members; and

(b) notice of the proposed resolution was given to each member,

notwithstanding that it was not passed at a meeting of the Board.

Protection of members

**11.** No action, suit, prosecution or other proceeding shall be brought or instituted against a member personally in respect of any thing done in good faith in pursuance, execution or intended execution of any of the provisions of this Act.

Allowances to members

**12.** A member and any person co-opted as member of the Board shall be paid such allowances as the Secretary of State may approve.

### **PART III – FUNCTIONS**

Functions of the Commission

**13.** The Commission shall-

(a) be the overall policy coordinator and manager of refugee affairs in The Gambia, including their reception, treatment and the search for appropriate durable solutions;

(b) receive and consider applications for the grant of refugee status;

- (c) ensure the proper implementation of this Act; and
- (d) discharge such other functions and roles as the Secretary of State may assign to it.

#### **PART IV – SECRETARIAT OF THE COMMISSION**

##### Secretariat

**14.** (1) The Secretariat of the Commission is the Refugee and Asylum Seekers Unit of the Immigration Department.

(2) The Commissioner for Refugees shall head the Secretariat and be responsible for the execution and implementation of the policies of the Commission and the transaction of the day-to-day business of the Commission.

(3) The Board may delegate to the Commissioner for Refugees such of its functions as are necessary to enable him or her to transact efficiently the day-to-day business of the Commission, and for that purpose, the Board may, from time to time, issue written instructions.

(4) The Board shall appoint one staff in the Secretariat as the Secretary to the Board who shall-

- (a) keep the books and records and conduct the correspondence of the Board;
- (b) prepare the agenda in consultation with the Chairperson and record the minutes of meetings of the Board; and

- (c) ensure the proper implementation of this Act; and
- (d) discharge such other functions and roles as the Secretary of State may assign to it.

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- (a) keep the books and records and conduct the correspondence of the Board;
- (b) prepare the agenda in consultation with the Chairperson and record the minutes of meetings of the Board; and



- (c) perform such other functions as may be assigned to him or her by the Board.

## **PART V - FINANCIAL PROVISIONS**

Sources of  
finances of the  
Commission

**15.** (1) The sources of finances required to meet the expenses of the Commission under section 16 are-

- (a) moneys appropriated to it, from time to time, by the National Assembly; and
- (b) such other moneys as may accrue to the Commission from any other source.

(2) The finances of the Commission shall be paid into a fund maintained by the Commission for that purpose.

Expenses of the  
Commission

**16.** The following expenses may be defrayed from the moneys received by the Commission in pursuance of section 15-

- (a) the cost of administration of the Commission;
- (b) the reimbursement to Commission members or any committee appointed by the Board for such expenses as may be authorized by the Board, in accordance with the rates approved by the Secretary of State;
- (c) the payments of allowances and other amounts payable to Commission members, employees of the Commission, if any, and experts, professionals or agents appointed by the Commission; and

- (d) meeting such other expenses as may be approved by the Board for the purposes of this Act.

Estimates,  
accounts and  
audit

**17. (1)** The Commission shall, not later than three months before the end of each financial year, prepare and submit to the Secretary of State for approval, estimates of the income and expenditure of the Commission for the ensuing year.

(2) The Commission shall-

- (a) keep proper records and books of accounts of its income and expenditure;
- (b) prepare, in respect of each financial year, a statement of accounts; and
- (c) within three months of the end of each financial year, submit its statement of accounts to the Auditor General for audit.

(3) The audited accounts of the Commission and the Auditor General's report on those accounts shall form part of the Auditor General's overall report to the National Assembly.

Annual report

**18. (1)** The Commission shall, not later than two months after the end of each financial year, submit to the Secretary of State, in respect of the financial year, an annual report on the financial position and performance of the Commission.

(2) The report under subsection (1) shall include-

- (a) a statement on the income, source of income and application of the moneys of the Commission;

- (b) information with regard to the operations and performance of the Commission; and
- (c) such other information as the Secretary of State may require.

(3) The Secretary of State shall, not later than three months after the end of the financial year, cause the report to be laid before the National Assembly.

(4) The Commissioner for Refugees shall also, from time to time, provide the Secretary of State with such information relating to the affairs of the Commission as the Secretary of State may request.

## **PART VI - LEGAL PROCEEDING**

Notice of legal  
action

**19.** No action may be brought against the Commission unless at least one month's written notice of the intention to bring the action has been served on the Commission by the intending plaintiff or his or her agent.

Representation

**20.** In a suit against the Commission, the Commission may be represented in court at any stage of the proceedings by an officer or any other employee in the Secretariat duly authorized in writing by the Commission in that behalf.

Indemnity

**21.** An officer of the Commission or of the Secretariat or any other person acting on the direction of the Commission is not personally liable in respect of any matter or thing done by him or her in good faith for the purposes of this Act.



**PART VII – REFUGEE STATUS**

Definition of a  
refugee

**22. (1)** A refugee is a person who –

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

(i) is outside the country of which he or she is a national, and

(ii) is unable or, owing to such fear is unwilling, to avail himself or herself of the protection of that country;

(b) not having a nationality and being outside the country of his or her former habitual residence owing to such fear as is specified in paragraph (a) of this subsection, is unable or is unwilling to return to that country; or

(c) owing to external aggression, occupation, foreign domination or events seriously affecting public order in either the whole or part of his or her country of origin or nationality, is forced to leave his or her place of habitual residence in order to seek refuge in another place outside of his or her country of origin or nationality.

(2) A person is not considered as lacking the protection of any of the countries of which he or she is a national if, without any valid reason based on well-founded fear of persecution, he or she has not availed himself or herself of the protection of one of those countries.



(3) In the case of a person who has several nationalities, "a country of which he or she is a national" means each of the countries of which he or she is a national.

Persons excluded from the benefit of refugee status

**23. (1)** This Act does not apply to a person who is recognized by The Gambia as having the rights and obligations which are attached to the possession of the nationality of The Gambia.

(2) A person is not eligible for the grant of refugee status under this Act, if there are serious reasons for considering that the person-

- (a) committed a serious non-political crime outside The Gambia prior to his or her entry into The Gambia;
- (b) committed a crime against peace or humanity or a war crime; or
- (c) violated the purposes and principles of the Charter of the African Union or the United Nations.

Cessation of refugee status

**24.** A person ceases to be a refugee under this Act if the person-

- (a) has voluntarily re-availed himself or herself of the protection of the country-
  - (i) of his or her nationality, or
  - (ii) of his or her previous habitual residence, in the case of a refugee without a nationality as specified under section 22 of this Act;

- (b) having lost his or her nationality, he or she has voluntarily re-acquired it;
- (c) has acquired Gambian nationality or the nationality of a third country and enjoys the protection of The Gambia or of that third country;
- (d) has voluntarily re-established himself or herself in the country which he or she left or outside of which he or she remained owing to fear of persecution;
- (e) can no longer, because the circumstances in connection with which he or she was been recognized as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of his or her nationality;
- (f) being a person who has no nationality he or she is, because the circumstances in connection with which he or she was recognized as a refugee have ceased to exist, able to return to the country of his or her former habitual residence;
- (g) he or she has committed a serious non-political crime outside after his or her admission to The Gambia as a refugee, or
- (h) he or she has seriously infringed the purposes and objectives of the Convention.

**25.** Subject to the provisions of section 28 of this Act, and notwithstanding anything to the contrary contained in the Immigration Act, a person claiming to be a refugee shall not be-

- (a) declared to be a prohibited immigrant;
- (b) detained, imprisoned or penalized in any way whatsoever,

by reason only of his or her illegal entry or presence in The Gambia or for purely immigration-related reasons.

Refugees to present themselves to immigration authorities, etc.

**26.** A person claiming to be a refugee shall present himself or herself before the immigration authorities or the Office of the United Nations High Commissioner for Refugees in The Gambia not later than thirty days after-

- (a) his or her arrival in The Gambia; or
- (b) the occurrence of the events giving rise to his or her claim to be a refugee.

Non-expulsion of refugees

**27.** Subject to section 28 of this Act, a person claiming to be a refugee, or a person recognised as a refugee, shall not be forcibly expelled or deported, directly or indirectly, to the territory of a country from where he or she fled or has reason to fear persecution in the circumstances specified under section 22 of this Act.

Expulsion of refugees posing a threat to national security

**28.** (1) A refugee who is lawfully in The Gambia may be expelled on grounds of national security or public order and in accordance with this section.

(2) The expulsion of a refugee shall only be in pursuance of a decision reached in accordance with due process of law.

(3) Except where compelling reasons of national security otherwise require, the refugee shall be allowed to-



- (a) submit evidence to clear himself or herself; and
- (b) appeal to and be represented for the purpose before a competent authority or a person or persons specially designated by the Secretary of State.

(4) Subsection (2) does not preclude the prosecution of a refugee for any serious crime he or she might have committed and constituting the grounds for expulsion.

(5) Where a final decision entailing expulsion is reached, the affected person shall not be expelled until the expiration of thirty days within which he or she is expected, with the assistance of the Office of the United Nations High Commissioner for Refugees, to find a third country willing to admit him or her.

Obligations of refugees and prohibition of subversive activities

**29.** (1) A person seeking refugee status in The Gambia, or a person recognised as a refugee in The Gambia is under an obligation to conform with the laws and regulations in force in The Gambia and with measures taken for the maintenance of public order.

(2) A person seeking refugee status in The Gambia, or a person recognised as a refugee in The Gambia shall abstain from any subversive activities, including through the use of arms, through the press or by radio, or otherwise, directed against The Gambia or any foreign State.

Method of recognition

**30.** A person applying for refugee status shall ordinarily do so as an individual and be recognized on an individual basis.



Recognition on a *prima facie* or group basis

**31. (1)** Where it is considered impractical to comply with the provisions of section 30, the Secretary of State may, by Order published in the *Gazette*, declare a person or persons belonging to a particular class or nationality, on the basis of objective, prevailing circumstances in that person's or those persons' country of origin or nationality, to be a refugee or refugees recognised on a *prima facie* or group basis.

(2) A person acting under this Act or any other law shall not distinguish between categories of refugees founded on the basis of the manner of their recognition, in terms of their refugee status or their treatment, except in the context of section 41 (2) and 42 of this Act.

Derived refugee status

**32. (1)** A member of the family of a person who is recognised as a refugee derives his or her refugee status from that of the person who is so recognised.

(2) In a case where, subsequent to the granting of refugee status, the family is disunited following divorce, separation or death, a member of the family shall continue to be permitted to reside in The Gambia, and may, on application, be recognised as a lawful resident under the Immigration Act.

Cap.16:02

Family re-unification to be facilitated

**33.** Where a person is recognised as a refugee, the Commission shall facilitate the entry into The Gambia of a member of the family of the refugee wishing to join and be re-united with the refugee.

General application of cessation provisions of the Convention

**34. (1)** If the Office of the United Nations High Commissioner for Refugees, in consultation with the Government of The Gambia and other interested States, apply the general cessation provisions of

the Convention in respect of any refugee of a particular class or nationality or of any group of refugees in The Gambia and elsewhere, a person affected by those cessation provisions shall cease to be refugee.

(2) The Commission may exempt a person from the provisions of subsection (1) of this section if it is satisfied that the person continues to have compelling reasons, arising out of the previous persecution, for refusing to-

- (a) avail himself or herself of the protection of the country of his or her nationality;
- (b) return to the country of his or her nationality; or
- (c) return to the country of his or her former habitual residence.

(3) A person seeking an exemption under subsection (2) of this section shall be treated as if he or she is a fresh applicant for refugee status and the application shall be examined, by the Commission, accordingly.

Method of submitting application for refugee status

**35.** An application for the grant of refugee status shall be made either directly to the Commission, or the nearest authorised officer or through the Office of the United Nations High Commissioner for Refugees or the Office of the United Nations Development Programme in The Gambia.

Applications to be forwarded to the Commission

**36.** An application not directly filed with the Commission shall be forwarded to the Commission it within seven days of receipt.

Form of  
application

**37.** The application shall be in such form as may be prescribed by regulations.

Language  
interpretation

**38.** The application form shall ordinarily be completed in the English language, but a refugee who is illiterate or unschooled in the English language may complete the application form in another language of his or her choice or be assisted with free interpretation services to be provided by the Commission.

Procedure for  
hearing  
application

**39.** (1) The Commission may require an applicant to appear before it and shall require an appearance where a negative decision is likely to be taken in relation to the application.

(2) An applicant shall be afforded an opportunity to present his or her case before the Commission.

(3) The decision of the Commission shall be notified to an applicant in writing within thirty days of receipt of his or her application and citing, in the case of an adverse decision, the reason for the decision.

Right of appeal

**40.** (1) Where the grant of refugee status is refused, the applicant has the right to lodge an appeal against the decision of the Commission to the Secretary of State within twenty-one days of the decision being notified to the applicant.

(2) The Secretary of State shall constitute a Committee to hear the appeal.

(3) While awaiting the decision of the Secretary of State, the applicant shall be allowed to remain in The Gambia.



(4) If the final decision of the Secretary of State is still negative, the applicant shall be given not less than thirty days within which to seek, with the assistance of the office of the United Nations Commissioner for Refugees, admission to a third country willing to admit him or her.

Rights of  
persons  
recognised as  
refugees

**41.** (1) A person who is duly recognised as refugee is entitled to-

- (a) be issued a Refugee Identity Card;
- (b) be issued a Convention Travel Document, if the refugee needs to travel;
- (c) engage in wage-earning employment or self-employment;
- (d) freedom to move freely within, and to settle anywhere in, The Gambia; and
- (e) access to social amenities available in The Gambia.

(2) Some or all of the rights specified in subsection (1) of this section may be curtailed in situations where refugees arrive in large numbers, and the curtailment may last until the numbers become manageable.

Designation  
of refugee  
camps

**42.** In cases where refugees arrive in large numbers, the Secretary of State may by an Order published in the *Gazette* designate refugee camps to house the refugees.

**PART VIII – MISCELLANEOUS**

Regulations

**43.** The Secretary of State may make regulations to give proper effect to the provisions of this Act.

PASSED in the National Assembly this Twenty-Third day of October in the year of Our Lord Two Thousand and Eight.



M. A. Sise

*Ag. Clerk of the National Assembly.*

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed in the National Assembly, and found by me to be a true and correct copy of the said Bill.



M. A. Sise

*Ag. Clerk of the National Assembly.*