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THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FIFTH SESSION – 2017

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY

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REPORT ON THE CONSIDERATION OF THE REFUGEES BILL, 2016

DIRECTORATE OF COMMITTEE SERVICES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

FEBRUARY, 2017

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## **1.0 PREFACE**

### **1.1 Mandate of the Committee**

The Departmental Committee on Administration and National Security is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference:-

- (i) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- (ii) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- (iii) to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- (iv) to study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- (v) to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister; and
- (vi) study and review all legislation referred to it.

### **1.2 Committee mandate**

The Committee is mandated to consider the following subjects:-

- i. National security;
- ii. Police services;
- iii. Public Administration;
- iv. Public Service;
- v. Prisons;
- vi. Immigration;
- vii. Management of natural disasters

### **1.3 Oversight**

In executing its mandate, the Committee oversees the following Government Departments and agencies, namely:-

- i. The Presidency;
- ii. The State Department of Interior;
- iii. The State Department for Coordination of National Government;
- iv. The Public Service Commission;
- v. The National Police Service Commission;
- vi. The Independent Police Oversight Authority

#### 1.4 Members of the Committee

**Chairperson** The Hon. Asman Kamama, MGH, OGW, MP

**Vice Chairperson** The Hon. Alois M. Lentoimaga, MP

The Hon. Joseph Lekuton, MP

The Hon. Alice Wahome, MP

The Hon. Zakayo K. Cheruiyot, MP

The Hon. Timothy W. Wetangula, MP

The Hon. Patrick Ole Ntutu, MP

The Hon. Ali Isaack Shaaban, MP

The Hon. Samuel Moroto, MP

The Hon. (Dr.) Humphrey Njuguna, MP

The Hon. Francis K. Mwangangi, MP

The Hon. Rashid J. Bedzimba, MP

The Hon. David Gikaria, MP

The Hon. Mohamed Shidiye, MP

The Hon. Jane Machira, MP

The Hon. Ibrahim Abdi Saney, MP

The Hon. Joseph O. Ndiege, MP

The Hon. Charles Nyamai, MP

The Hon. Wanjiku Muhia, MP

The Hon. (Dr.) Makali Mulu

The Hon. Akuja Protus Ewesit, MP

The Hon. Joseph M. Kahangara, MP

The Hon. Fatuma Ibrahim Ali, MP

The Hon. Grace Kiptui, MP

The Hon. George Theuri, MP

The Hon. James Bett, MP

The Hon. Benard Shinali, MP

The Hon. Peter Kaluma, MP

The Hon. James Opiyo Wandayi, MP

**Committee Secretariat**

**Clerk Assistant I**

Mr. Leonard Machira

**Clerk Assistant II**

Ms. Rose M. Wanjohi

**Clerk Assistant III**

Ms. Hellen Lokwang

**Legal Counsel II**

Ms. Christine Odhiambo

**Research Officer III**

Ms. Fiona Musili

**Fiscal Analyst III**

Mr. Edison Odhiambo

## 2.0 INTRODUCTION

The principal objective of the Refugees Bill, 2016 is to provide for the recognition and protection of refugees. The Bill also seeks to give effect to the Convention Relating to the Status of Refugees, the Protocol Relating to the Status of Refugees and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. The Bill therefore seeks to repeal the Refugees Act, 2006 and establish a legal framework that reflects Kenya's international obligations.

**Part I** contains clauses 1-5 which deal with the preliminary provisions. This Part contains the short title of the Bill and the interpretation of various terms as used in the Bill.

**Part II** of the Bill deals with the administrative provisions and contains Clauses 6-12.

This Part establishes the following institutions—

- 1) The Kenya Refugee Repatriation and Resettlement Commission;
- 2) The Secretariat for Refugee Affairs; and
- 3) The Refugee Status Appeal Board.

This Part also sets out the composition of the Commission as well as its functions, which are policy formulation, upholding of the rights of refugees and the declaration of refugee status. The Secretariat for Refugee Affairs provides the administrative functions to the Commission.

**Part III** of the Bill provides for the application for refugee status. It provides that an application for the grant of refugee status shall be made in the prescribed form to the Secretariat for Refugee Affairs and forwarded to the Commissioner. The Commissioner shall, within sixty days of the application, make a decision to grant or not to grant the application and such decision shall be notified to the applicant in writing.

This Part also provides for the establishment of the National Eligibility Committee whose main function shall be to investigate and summon applicants or other persons in matters relating to refugee status. Under this Part, any person aggrieved by the decision of the Eligibility Committee may appeal to the Appeal Board against such decision, and may make a further appeal to the High Court. The Part provides for the circumstances in which the Commissioner may cancel a refugee status, which is on grounds of misrepresentation of facts or where a person should not have been recognized as a refugee.

**Part IV** of the Bill provides for the reception of refugees and contains Clauses 28-31. The Commissioner shall designate reception officers who shall receive and process all applications for refugee status. This Part provides that any refugee who enters into Kenya with arms and ammunition shall be required to surrender the same to an authorized officer.

**Part V** of the Bill provides for the rights and duties of refugees and asylum seekers in Kenya.

**Part VI** of the Bill provides for the control of designated areas, and contains Clauses 45-49. Under this Part, the Cabinet Secretary shall by notice in the Gazette declare designated areas which shall be used for the reception, transit or settlement of refugees. The Cabinet Secretary may also require refugees to move from one designated area to another, and a refugee who fails to comply with such orders of the Cabinet Secretary commits an offence. This Part also gives the Cabinet Secretary Powers to make rules for the control of designated areas.

**Part VII** of the Bill provides for the integration, repatriation and resettlement of refugees, and contains Clauses 50-56. This Part provides that the Commissioner shall ensure the integration of refugees with host communities for purposes of peaceful co-existence.

**Part VIII** of the Bill provides for international and regional co-operation. It provides that refugees shall be entitled to the assistance of other organizations. The government shall assist the Office of the United Nations High Commissioner for Refugees in its duty of monitoring compliance with the provisions of the UN and OAU Conventions. The government shall also provide the office of the Commissioner with any information relating to refugees.

**Part IX** provides for miscellaneous provisions. It creates an offence for an asylum seeker who fails to obey lawful orders, and creates a general penalty for any offence for which no penalty is provided in the Bill. The Part provides that a refugee or asylum seeker may be arrested and prosecuted if he threatens the peace and good order of the country, or if he commits an offence punishable by law. This Part also provides that the Commissioner shall keep and maintain a register of all persons granted refugee status in Kenya. Under this Part, an asylum seeker who fails to register himself or herself under this Act commits an offence. The Commissioner shall also provide legal aid to refugees. This Part repeals the Refugees Act, Cap. 173 and provides for the modalities of transition from the old Act to the new Act.

**Part X** of the Bill provides for the provisions on delegated powers. This Part gives the Cabinet Secretary the power to make regulations on various issues that would result in the better carrying out of the provisions of this Act.



### 3.0 SUBMISSION

The Committee through the office of the Clerk of the National Assembly placed an advert in the print media on Thursday 28<sup>th</sup> July, 2016 inviting the public to make submissions on the Bill. The Committee also held public hearings on Tuesday 9<sup>th</sup> August 2016. The Committee received written and oral submission from the Ministry of Interior and Coordination of National Government, the National Treasury, Amnesty International, Kenya Human Rights Commission and the Danish Refugee Council (representing the International Rescue Committee, Refugee Consortium of Kenya and Heshima Kenya).

#### 3.1 Submission from the Ministry of Interior and Coordination of National Government

During a public hearing held on Tuesday 9<sup>th</sup> August, 2016 the Committee received oral Submissions from the Refugees Secretariat, Ministry of Interior and Coordination of National Government. The Committee also received a written submission from the Ministry of Interior and Coordination of National Government on 10<sup>th</sup> August, 2016 signed by the Principal Secretary, State Department of Interior and border management objected the enactment of the Bill for the following reasons. That:-

1. **The Bill provides for expensive processes:** The Bill seeks to make hosting of refugees a permanent venture for the government by proposing to create a Trust Fund as provided for in Clause 55 of the Bill. The envisaged Trust Fund will be a body corporate with powers to sue and be sued and it can acquire property ,making it expensive to manage as it is likely to occasion more government expenditure. According to the Ministry, hosting of refugees should be a temporary situation. Clauses 6 and 7 also provide for the establishment of a Commission and by nature commissions are expensive to maintain. Further, Clause 13 (4) and Clause 20 (6) require the government to pay for legal services for refugees. The expenses should be catered for by the UNHRC and not the government.
2. **The Bill proposes to domicile management of refugee affairs in two ministries:** Clauses 6 and 7 provides for the Cabinet Secretaries for Foreign Affairs and Ministry of Interior & Coordination of National Government to be Chairperson and Vice Chairperson of the Kenya Refugee Repatriation and Resettlement Commission, respectively. Placing the management of refugee affairs in two ministries may create confusion.
3. **Limitation of the role of the government in decision making:** The Bill seems to limit the role of the government in decision making on refugee matters by making provisions that expand the role of non-state actors at every levels of decision making including administrative decisions that directly or indirectly impact on state security as follows:-
  - Clauses 6 and 7 provides for non- state actors to be members of the Kenya Refugee Repatriation and Resettlement Commission
  - Clause 11 provides for non -state actors to be members of the Refugee Appeals Board

- Clause 13 provides for the UN to be involved in the application for refugee status
  - Clause 15 makes provision for a non-state actor to be a member of the National Eligibility Committee
  - Clause 54 gives a leeway for the UNHCR to participate in the resettlement of refugees in Kenya
4. **Lack of policy guidelines:** The Ministry stated that the Bill purports to address certain matters that need clear government policy guidelines which have not been finalized. Therefore there is no pressing need to enact the Bill before the government finalizes the formulation of guidelines on the management of refugees that can be used to lay a framework for legislation.
  5. **Preference of refugees' interests over citizens' interests:** The Ministry also argued that Bill is likely to advance the interests of refugees and asylum seekers at the expense of Kenyans and host community interests. The first responsibility of the government is to protect its citizens inasmuch as it has the obligation of protecting the refugees.
  6. **Conflict with other statutes:** Clause 22 of the Bill which states that "A person who applies and is granted refugee status in Kenya and is a national of a Member State of the East African Community shall enjoy all the rights and privileges conferred on the "Community nationals" as set out in the Treaty and Protocols for the establishment of the East African Community conflicts with the provisions of the EAC treaty on the status of East Africans.
  7. Other issues of concern raised by the Ministry included:-
    - i. The Government was in the process of repatriating refugees to Somalia and any change in the legal framework will scuttle the process;
    - ii. Gaps in the current Refugee Act, 2006 would be identified and addressed by way of amendments;
    - iii. The Bill proposes to entrench the 1951 Convention which does not reflect emerging security challenges such as terrorism. Kenya has also proposed amendments to the 1951 Convention and hence cannot be seen to be entrenching the same while it is pending review;
    - iv. The Bill proposes the employment of refugees and to allow them to run businesses and access land for cultivation and pasture. The proposals require well thought out government policy in view of the fact that there is a high level of unemployment in the country and opening the job market to refugees will worsen the situation. Allowing the refugees to engage in cultivation and to rear livestock will create conflict with the host community.
    - v. The structures proposed in the Bill to manage refugee affairs exclude relevant government agencies and some of the institutions mandated to manage refugees are not directly involved in refugee affairs.
    - vi. The Bill unduly gives the United Nations High Commission for Refugees prominence and supervisory powers over the government whereas the UNHRC should play a supplementary role in refugee management.

### **3.2 Submission from the Principal Secretary, National Treasury**

The Principal Secretary, National Treasury in a written submission to the Committee stated that the provisions of the Bill are not substantially different from what is provided for in the existing Refugees Act, Cap 173 which the Bill seeks to repeal and therefore the National Treasury does not support the enactment of the Bill. The National Treasury made the following specific comments on the Bill:-

- i. The Bill seeks to repeal the Refugees Act, Cap 173. This is not procedural considering that the repeal of any law should be exercised in accordance with Article 119 of the Constitution which provides that “119(1) every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal and legislation”. 119(2) “ Parliament shall make provision for the procedure for the exercise of the right”;
- ii. The Secretariat for Refugees established by the provisions of clause 9 of the Bill will perform the same functions as the Department of Refugees established under section 6 and 7 of the Refugees Act , Cap 173;
- iii. Clause 11 of the Bill provides for the establishment of an Appeal Board whose function is to hear and determine appeals against any decision of the Secretariat on refugee status. This is catered for under section 9 of the Refugees Act.
- iv. Clause 13(4) of the Bill provides for payment of legal fees or expenses by the Secretariat in cases where applicants for refugee status are accompanied by a legal practitioner. This shall occasion additional expenditure of public funds;
- v. The Bill seeks to establish the Refugee’s Trust Fund under clause 55 (1) that shall be managed by an Accounting Officer under the supervision of the Trustees. Sub – Clause 55 (3) (b) will be in direct conflict with the relevant provisions under the Unclaimed Financial Assets Act, Anti – Corruption and Economic Crimes Act Cap 65 and Proceeds of Crime and Anti- Money Laundering Act, Cap 59 B.

### **3.3 Submission by the Kenya National Commission on Human Rights**

The Kenya National Commission on Human Rights in a written submission received by the Committee stated as follows-

#### **1. The power of the Minister transferred to the Commission**

The Commission observed that under the Bill the responsibility of declaring persons as refugees and the revocation of the declaration of refugee status has been transferred from the Minister to the Commission.

## **2. Administrative institutions and the right to a fair administrative action**

The Commission noted that the Bill introduces three administrative institutions which are not provided for under the current Refugee Act Cap 173 namely; the Kenya Refugee Repatriation and Resettlement Commission, the Secretariat for Refugee Affairs and the Refugee Status Appeal Board. The Kenya National Commission on Human Rights welcomed its inclusion in the Kenya Refugee Repatriation and Resettlement Commission as well as that of the United Nations High Commission for Refugees. However the Commission proposed that the two organizations should be voting members as they were well positioned to give expert opinion on refugee matters.

## **3. Non-refoulement of refugees**

The Commission noted that the principle of non-refoulement prohibits States from returning a refugee or an asylum seeker to territories that pose a risk to their lives and freedom on account of race, religion, nationality, political opinion and membership to a society. The Commission further observed that whereas it is true that there exists exception to the principle of non-refoulement on account of national security, the only permissible exception to the principle should be when the threat posed by the refugee outweighs the threat to their lives. Therefore the exception provided for in clause 33 of the Bill was adequate

## **Recommendations**

The Commission recommended that:-

- i. The Commissioner of Refugees Affairs should not be the prosecutor, witness and judge when determining applications for refugee status;
- ii. The Cabinet Secretary should not be granted powers to unilaterally cancel refugee status without involving other parties to guarantee checks and balances and prevent arbitrariness;
- iii. Refoulement should be effected only under an international law threshold and after due process has been followed;
- iv. The Kenya National Commission on Human Rights and the United Nations High Commission for Refugees should be assigned full membership status and voting rights in the Kenya Refugee Repatriation and Resettlement Commission.

### 3.4 Specific amendments proposed by stakeholders

The stakeholders proposed specific amendments to the Bill as per the matrix here below:-

**MATRIX OF THE VIEWS SUBMITTED BY THE STAKEHOLDERS IN THE PUBLIC HEARING ON THE REFUGEES BILL, 2016 HELD BY THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY ON 9<sup>TH</sup> AUGUST, 2016**

CLAUSE	STAKEHOLDER	PROPOSAL	JUSTIFICATION
Long title	UNHCR	Amend to read- “An Act of Parliament to make provision for the recognition, protection and management of refugees and for connected purposes”	The current definition is too wordy.
	Ministry of Interior		
	Danish Refugee Council (DRC)	Reference to the UN Convention should be Specific to, ‘ <i>The 1951 United Nations Convention Relating to the status of refugees</i> ’.	
Clause 2	UNHCR	Delete the definition of “authorized officer”. Adopt a less restrictive definition of “refugee officer” Eligibility Committee is irrelevant.	The definition is restrictive and conflicts with the Kenyan Government appointment policies for public service. The functions of the Committee in the Bill will result in a lengthy and more complicated process in the application for refugee status
	Ministry of Interior	<ul style="list-style-type: none"> <li>- Define ‘asylum seeker’ as follows- <i>Means a person seeking refugee status in accordance with the provisions of the Act.</i></li> <li>- Replace ‘Commissioner’ with ‘Director’ since there is a new structure.</li> <li>- Define ‘Durable Solutions’ as follows-</li> </ul>	

		<i>Under the Kenyan context, it should be defined and limited to the two solutions that apply in Kenya i.e. voluntary repatriation and resettlement to a third party country.</i>	
<b>Clause 3</b>	<b>UNHCR</b>	<p>(1) Use international set grounds of persecution to define “refugee”. Include the definition in the UN Convention and the OAU protocol.</p> <p>(2) Rephrase to read- <i>If the Commission considers that any class of persons are prima facie refugees as defined in subsection (1), the Commission may declare such class of persons to be prima facie refugees and may at any time amend or revoke such declaration.</i></p> <p>(3) Amend to read- <i>If the Commission under subsection (2) expressly excludes or exempts any person from a declaration that a class of persons to which that person is a member are refugees, such exclusion or exemption shall not preclude the person concerned from individually applying under subsection i(c) for recognition of their status as a refugee.</i></p> <p>(4) Break down Clause 3(4) into two parts, i.e. exclusion and disqualification from refugee status.</p>	
	<b>DRC</b>	Replace “Cabinet Secretary” with “Commission”	
<b>Clause 4</b>	<b>DRC</b>	<p>Amend to read-</p> <p>The provisions of this Act shall not apply to any person with respect to whom there are serious reasons for considering that-</p>	

		<ul style="list-style-type: none"> <li>(a) She /he has committed a crime against peace, a war crime or a crime against humanity as defined in the International Crimes Act;</li> <li>(b) She/he has committed a serious non-political crime outside Kenya prior to her/his admission to Kenya as a refugee;</li> <li>(c) She/he has been guilty of acts contrary to the purposes and principles of the UN and AU.</li> </ul>	
	<p><b>Ministry of Interior</b></p>	<p>Review to read-</p> <p>A person shall be excluded from being considered for refugee status if there exists serious reason to believe that-</p> <ul style="list-style-type: none"> <li>(a) She /he has committed a crime against peace, a war crime or a crime against humanity as defined in the International Crimes Act;</li> <li>(b) She/he has committed a serious non-political crime outside Kenya prior to her/his admission to Kenya as a refugee;</li> <li>(c) She/he has been guilty of acts contrary to the purposes and principles of the UN and AU.</li> <li>(d) She/he has sought asylum in another country.</li> </ul> <p>A person shall be disqualified from being a refugee if-</p> <ul style="list-style-type: none"> <li>(a) Having more than one nationality, he/she has not availed himself/herself for protection of one of the countries which he/she is a national and has no valid fear based on well-founded fear of persecution.</li> <li>(b) He/she has been granted refugee status in another country prior to entry in Kenya and can be re-admitted to that</li> </ul>	

		<p>country and benefit currently and in the future in that country from effective protection.</p> <p>(c) He/she is recognized by competent authorities of the country he/she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country, can be re-admitted into that country in the same condition and has no valid reasons based on a well-founded fear of persecution to have left that country.</p>	
<b>Clause 6</b>	<b>UNHCR</b>	(a) Establish an inter-ministerial institution, chaired at the highest level by the Cabinet Secretary or Principal Secretary from the pertinent Ministry, comprising all the government ministries responsible for refugee affairs.	
	<b>Amnesty International</b>	Consider having representation from Civil Society and Humanitarian organization.	
	<b>KNCHR</b>	Amend Clause 7(2) to allow KNCHR and UNHCR to vote.	
	<b>Ministry of Interior</b>	<p>(a) This should be an advisory committee.</p> <p>(b) Change the name to 'Refugee Affairs Secretariat (RAS)'</p>	
	<b>DRC</b>	Amend Clause 6(a) to read as Refugee Management Commission.	
<b>Clause 7</b>	<b>Ministry of Interior</b>	<ul style="list-style-type: none"> <li>- Adopt the composition of the Refugee Affairs Committee under the current Act.</li> <li>- Have the Director of the Secretariat to be a member of the Committee.</li> <li>- Secretariat duties be provided</li> </ul>	



		by the RAS	
<b>Clause 9</b>	<b>UNHCR</b>	<p>Define the role of the secretariat properly.</p> <p>Add the following to the functions of the Commissioner for Refugee Affairs-</p> <ol style="list-style-type: none"> <li>(1) Register and maintain a record of all asylum seekers and refugees in Kenya.</li> <li>(2) Issue refugee identification documents and facilitates the issuance of civil registration and other relevant documents.</li> <li>(3) In liaison with Director of Immigration, process and issue conventional travel documents.</li> <li>(4) Facilitate refugees to access work permits and business permits.</li> <li>(5) Manage refugee designated areas and other related facilities; form sub-committees and assign to such sub-committees functions to be exercised in relation to the reception, treatment and welfare of asylum seekers and refugees; co-ordinate the provision of overall security, protection and assistance for asylum seekers and refugees in the designated areas.</li> <li>(6) To ensure civilian and humanitarian character of the designated areas</li> <li>(7) Issue movement passes to refugees and asylum seekers wishing to travel outside the designated areas and within Kenya</li> <li>(8) Exempt asylum seekers and refugees from residing in the designated areas where there are compelling reasons.</li> <li>(9) Protect and assist vulnerable groups, women, children and persons living with disability.</li> <li>(10) Ensure treatment of all asylum</li> </ol>	Harmonise provisions of clauses 9 and 10.

		<p>seekers and refugees in compliance with national law</p> <p>(11) Issue visitors permits from entry into Refugee camps in accordance with the regulations.</p>	
	<b>Ministry of Interior</b>	<p>(1) Replace 'Commissioner' with 'Director'</p> <p>(2) Delete Clause 9(2)</p> <p>(3) Delete Clause 9(3) and replace with-</p> <p><i>Functions of the Director are-</i></p> <p>(a) <i>A member of the Refugee Affairs Committee;</i></p> <p>(b) <i>Head of Refugee Affairs Secretariat.</i></p>	
<b>Clause 10</b>	<b>Ministry of Interior</b>	<p>Review to read-</p> <p><i>The functions of the secretariat are-</i></p> <p>(a) <i>To co-ordinate all measures necessary for promoting the welfare and protection of refugees and asylum seekers and advise the Cabinet secretary thereon;</i></p> <p>(b) <i>To ensure in liaison with other relevant agencies, the provision of adequate facilities and services for the protection, reception and care of asylum seekers, and refugees in Kenya;</i></p> <p>(c) <i>To promote as far as possible durable solutions for refugees granted asylum in Kenya;</i></p> <p>(d) <i>To receive and process applications for refugee status determination;</i></p> <p>(e) <i>To register all asylum seekers and refugees in Kenya;</i></p> <p>(f) <i>To issue refugee identification documents and facilitate the issuance of civil registration and other relevant documents;</i></p> <p>(g) <i>To manage refugee designated areas and other related facilities through co-ordination of the provision of overall security, protection and</i></p>	

		<i>assistance for asylum seekers and refugees in the designated areas.</i>	
<b>Clause 11</b>	<b>UNHCR</b>	<ul style="list-style-type: none"> <li>-The Chairperson of the Appeal Board should not necessarily be a judge of the superior court appointed by the Chief Justice (CJ), but a person with legal background and requisite competencies.</li> <li>- The members of the appeal board should also have legal back ground and experience in refugee matters.</li> <li>- Amend 11(5) (b) by deleting the words “cancellation and revocation” and replacing therefor the word “termination”.</li> </ul>	The Appeal Board is not a court and should not assume the role of the courts.
	<b>Amnesty International</b>	Make the Appeal Board a permanent institution whose members have a defined tenure so that they can dispense with the appeals expeditiously.	
	<b>Ministry of Interior</b>	<ul style="list-style-type: none"> <li>- Review Clause 11(1) for the membership to comprise of- <ul style="list-style-type: none"> <li>(a) A chairperson who is an advocate of not less than 10 years standing appointed by the Cabinet Secretary(CS).</li> <li>(b) 8 members appointed by the CS with experience in refugee affairs, immigration, foreign affairs, national security, and public administration.</li> <li>(c) Allow the Board to co-opt or invite a person with specialized knowledge and skill to attend the sittings but not to vote.</li> </ul> </li> <li>- Provide a second review board to do away with the High Court.</li> <li>- Amend Clause 11(5)(b) to delete termination from matters appealable to the Board.</li> </ul>	
<b>Clause 13</b>	<b>UNHCR</b>	Amend Clause 13(2). It is not the role of UNHCR to notify that a person seeking asylum is present in Kenya.	

		The provisions in Clause 13(4)-(12) be moved to regulations as they describe the RSD Process.	
	<b>Amnesty International</b>	Clarify Clause 13(1) as to which department receives the applications for refugee status.	The role of the authorized officer conflicts with the role of the eligibility committee.
	<b>Ministry of Interior</b>	<ul style="list-style-type: none"> <li>- Amend Clauses 13(1) and (3) to remove the possibility of applying for refugee status to a UN Agency.</li> <li>- Review 13(2) to read- <i>An asylum seeker is to present himself or herself to the nearest government administrative officer who shall direct him/her to the relevant authority.</i></li> <li>- Delete clause 13(4)</li> </ul>	
<b>Clause 14</b>	<b>Ministry of Interior</b>	Delete	No need for NGOs to represent asylum seekers at the initial stages. Lawyers are only necessary at the appeal.
<b>Clause 15</b>	<b>Ministry of Interior</b>	Establish a status eligibility committee. The Director should not be a member but part of the Committee but should appoint a member to sit there. DPP should not be part of the Committee UNCHR be invited when necessary.	
<b>Clause 16</b>	<b>Amnesty International</b>	The composition of the Eligibility Committee should have more people with experience in refugee affairs.	
	<b>Ministry of Interior</b>	Review to read- <i>Functions of the panel is to receive the assessments and recommendations made by the refugee officer during status determination interviews to make recommendations to the Director.</i>	Status determination is a preserve of the government and the UN should not be involved.
<b>Clause 17</b>	<b>UNHCR DRC</b>	Delete Clause 17(1) of the Bill.	Appeals should only be done as per

			clause 17(2).
	<b>Ministry of Interior</b>	Amend Clause 17(2) to read- (2) In any appeal under this Act, the Appeal Board may confirm or set aside the decision of the Director and shall cause the appellant concerned to be notified of this decision in the matter in writing within 60 days of receiving the appeal application: Provided that, before reaching a decision on any such appeal, the Appeal Board may either- (a) Refer the matter to the Director for further investigation and advice; or (b) Make such further inquiry or investigation into the matter as it deems necessary.	
<b>Clause 19</b>	<b>UNHCR</b>	Delete and replace as follows- “Disease surveillance shall be established at the reception centre and conditions of public health concerns managed as per the national guidelines.	
	<b>DRC</b>	Amend Clause 19 to read- The person shall be quarantined in a special holding centre in accordance with the regulations of the Public Health Act pending Refugee Status Determination.	
<b>Clause 20</b>	<b>UNHCR</b>	Amend Section 20(10) of the Bill to state- “where refugee status under this part has been cancelled that person shall cease to be a refugee and any member of his family with derivative status shall cease to be so recognized under this Act on the expiration of 7 days after the date on which the Commissioner notifies the person concerned that his/her recognition has been cancelled; Provided that the family member whose derivative status is affected by the cancellation shall have the right to	

		apply to be considered as a refugee under section 13 of this Act.”	
	<b>DRC</b>	Delete sub-clause 6	
	<b>Ministry of Interior</b>	<ul style="list-style-type: none"> <li>- Delete Clause 20(6)</li> <li>- Delete Clause 20(1)</li> </ul>	<ul style="list-style-type: none"> <li>- Representation be guided by the enabling laws.</li> <li>- When principal applicant’s status gets cancelled, those who benefitted by virtue of derivative should be deprived of the status but given an opportunity to re-apply individually.</li> </ul>
	<b>Amnesty International</b>	Under Clause 20(6) the refugee should be allowed to be accompanied by an advocate of their choice.	
<b>Clause 21</b>	<b>DRC</b>	Amend Clause 21(1) to read- (1) The Cabinet Secretary may revoke the status of any refugee if the refugee at any time after recognition as a refugee has been convicted of a serious crime.	Revocation should be upon rigorous and objective consideration.
	<b>Ministry of Interior</b>	Review to include another ground of a person convicted of committing a felony.	
<b>Clause 22</b>	<b>DRC/ Ministry of Interior</b>	Delete	It risks preferential categories of refugees.
<b>Clause 23</b>	<b>UNHCR/ DRC</b>	<ul style="list-style-type: none"> <li>- Re-number Clause 23(1)(b)</li> <li>- Rights and duties be captured in the regulations.</li> <li>- Documents listed in (b)(ix) and (x) be deleted as they are prejudicial to persons who flee without documents.</li> </ul>	

	<b>Ministry of Interior</b>	Delete and refer to the guidelines in the current Act.	
<b>Clause 24</b>	<b>UNHCR</b>	The provisions of this clause are captured under the duties of the Commissioner under Clause 9(3). This should be re-phrased with most of the procedural aspects captured under the Regulations.	
	<b>Ministry of Interior</b>	Review the provisions	They are discriminatory.
<b>Clause 26</b>	<b>Ministry of Interior</b>	Replace Commission in Clause 26(2) with CS	
<b>Clause 28</b>	<b>Ministry of Interior</b>	Asylum seekers should report to the nearest government administrative officers who will then channel them to the gazette reception centres.	
<b>Clause 29</b>	<b>DRC</b>	Delete Sections 29(d) and (f)	(d) is ambiguous as to purpose of search. (f) is irrelevant since asylum is not accessible to combatants.
	<b>Ministry of Interior</b>	Functions under Clause 29 be re-assigned to the reception centers.	
<b>Clause 30</b>	<b>Ministry of Interior</b>	Limit this provision to asylum seekers and require them to make the application immediately upon arrival in Kenya.	
<b>Clause 31</b>	<b>DRC/ Ministry of Interior</b>	Delete	Refugees and asylum seekers should not carry fire arms.
<b>Clause 32</b>	<b>Ministry of Interior</b>	Retain the provisions as they are in the current section 16(1) of the Act.	
<b>Clause 33</b>	<b>KNCHR</b>	Concerns such as National security be proved to the level of international standards.	

	<b>Ministry of Interior</b>	Delete and retain the provision of section 19 of the Act.	
	<b>DRC</b>	Delete and replace as follows- (1) No person shall be refused entry into Kenya, expelled, extradited from Kenya or returned to another Country or be subjected to similar measures if, as a result of such refusal, expulsion, extradition or return such a person is compelled to return to the country where- (a) The person may be subject to persecution on account of race, religion, nationality, membership of a particular social group or political opinion; (b) The person's life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disturbing public order in part or whole of that country. (2) The benefit of sub-section (1) may not, however, be claimed by a refugee or asylum seeker where there are reasonable grounds for his being regarded as a danger to the national security of Kenya, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the Country.	The threshold for removal is clear.
<b>Clauses 34-38</b>	<b>Ministry of Interior</b>	Delete.	
<b>Clauses 39 and 40</b>	<b>Ministry of Interior</b>	Retain section 21 of the current Act on expulsion.	



Clause 40	UNHCR	Move this Clause to the part on reception and registration and re-word it.	
Clause 41	DRC/ Ministry of Interior	Delete Clause 41	It is a repetition of the offence covered in clause 18 on institution of proceedings for unlawful presence.
Clause 42	Ministry of Interior	Merge with Clause 32(2) on designated areas.	
Clause 43	Ministry of Interior	Delete	The Director to deal with matters of exemption from residing in designated areas.
Clause 44	Ministry of Interior	Amend to read- '...in consultation with UNHCR'	
Clause 45	DRC/ Ministry of Interior	Delete Clause 45(3) as it includes private land used by refugees and asylum seekers. Delete Clause 45(4).	
Clause 46	DRC	Amend Clause 46(1) to read- "...an asylum seeker or refugee shall not be allowed..."	
	Ministry of Interior	Move Clause 46(6) to the part on offences.	
Clause 47	DRC	Delete Clause 47(2)	It reads as though the designated areas are administered by refugees and asylum seekers.
	Ministry of Interior	- Move Clause 47(1) to part X on delegated powers. - Delete Clause 47(2)	
Clause 48	UNHCR	Provisions be included in the regulations.	
	Ministry of	Delete.	

	<b>Interior</b>		
<b>Clause 49</b>	<b>DRC</b>	Delete	It is contrary to the freedom of movement and assembly for the host community.
	<b>Ministry of Interior</b>	Review	Amend to clarify that no person other than a public officer with the mandate of the Director.
<b>Clause 50</b>	<b>UNHCR</b>	Clause 50(1) contravenes the provisions of the Bill.	
<b>Clause 52</b>	<b>Ministry of Interior</b>	Delete	
<b>Clause 53</b>	<b>UNHCR</b>	Delete provisions for a Trust Fund as it is not feasible.	
	<b>Ministry of Interior</b>	Delete Clause 53(3) and (4)	
<b>Clause 54</b>	<b>UNHCR</b>	Clarify Clause 54(2). It is ambiguous.	
	<b>Ministry of Interior</b>	Retain the provisions of 54(1) only.	
<b>Clauses 55 and 56</b>	<b>Ministry of Interior</b>	Delete	They are unsustainable.
<b>Clause 58</b>	<b>UNHCR</b>	Clarify Clause 58(2). It is not clear what the drafters wanted.	
	<b>Ministry of Interior</b>	Delete	
<b>Clause 60</b>	<b>UNHCR/ DRC/ Ministry of Interior</b>	Delete Clause 60.	It seeks to impose jurisdiction on offences outside our jurisdiction.
<b>Clause 61</b>	<b>Ministry of Interior</b>	The function of maintaining a register of all persons that have applied, been granted, resettled, been rejected,	

		cancelled, expelled and disqualified should move to the secretariat.	
<b>Clause 62</b>	<b>Ministry of Interior</b>	Delete.	
<b>Clause 63</b>	<b>DRC</b>	Delete Clause 63(4)	It provides for an offence that has not been mentioned.
	<b>Ministry of Interior</b>	Reduce the timeline in sub-section 4 from 2 years to 90 days	
<b>Clause 64</b>	<b>UNHCR/ DRC</b>	Delete Clause 64	It grants wide discretionary powers to officers for search and questioning.
	<b>Ministry of Interior</b>	Make reference to Article 24 of the Constitution on limitation of rights.	
<b>Clause 65</b>	<b>UNHCR/ DRC</b>	Delete Clause 65	The searches to be conducted are not related to prevention of fraudulent misstatements.
	<b>Ministry of Interior</b>	(a) Add offence under any recognized law. (b) Replace fraudulent misstatement to misrepresentation.	
<b>Clause 66</b>	<b>UNHCR</b>	Delete	No reference has been made to clause 65.
	<b>Ministry of Interior</b>	Amend to include the requirement that the search be conducted with strict regard to decency.	
<b>Clause 67</b>	<b>Ministry of Interior</b>	Delete	
<b>Clause 68</b>	<b>UNHCR/ DRC/ Ministry of</b>	Delete	There is potential for conflict of interest where the

	<b>Interior</b>		need for legal aid is against the Commissioner.
<b>Clause 71</b>	<b>Ministry of Interior</b>	Remove sub-sections (3) and (4) since they are both implied.	
<b>Second Schedule</b>	<b>UNHCR</b>	Attach the entire conventions and not excerpts.	
	<b>Ministry of Interior</b>	Delete as it is automatically provided for in the Constitution.	

## 4.0 COMMITTEE OBSERVATIONS

1. The Bill seeks to repeal the Refugees Act, Cap 173.
2. The Bill provides for expensive processes by making hosting of refugees a permanent venture for the government by proposing to create a Trust Fund as provided for in Clause 55 of the Bill. The envisaged Trust Fund will be a body corporate with powers to sue and be sued and it can acquire property thereby making it expensive to manage as it is likely to occasion more government expenditure.
3. The Bill proposes to domicile management of refugee affairs in two ministries. Clauses 6 and 7 provides for the Cabinet Secretaries for Foreign Affairs and Ministry of Interior & Coordination of National Government to be Chairperson and Vice Chairperson of the Kenya Refugee, Repatriation and Resettlement Commission, respectively. The Committee noted that placing the management of refugee affairs in two ministries may create confusion.
4. Clause 34 of the Bill proposes to provide the employment of refugees and to allow them to run businesses, access to land for cultivation and pasture. The proposals require well thought out government policy in view of the fact that there is a high level of unemployment in the country and opening the job market to refugees will worsen the situation. Furthermore, allowing the refugees to engage in cultivation and to rear livestock may create conflict with the host communities.
5. Clause 35 of the Bill makes provision for refugees the right to access of land for cultivation and pasture; and entitlement to free primary education. The Committee noted that this would raise concern and possible conflict with the host communities. Further, it was observed that the United Nations High Commission for Refugee (UNHCR) had provided good education facilities for the refugees compared to the schools in the local community areas and therefore the government had no obligation to allocate more funds to educate the refugees.
6. The resettlement of refugees provided for in the Bill is open ended. The Bill does not contain the maximum number of refugees that may be allowed into the Country. It only subjects the determination of refugee status to the Eligibility Committee. The Committee therefore noted the need for strict measures to be put in place on acceptance of refugee status to limit the number of refugees allowed into the Country.

## 5.0 COMMITTEE'S CONSIDERATION OF THE BILL

The Committee deliberated on the Bill as follows:-

Clause 3	Agreed to
Clause 4	proposed amendment
Clause 5	Agreed to
Clauses 6	proposed amendment
Clauses 7	proposed amendment
Clause 8	Agreed to
Clause 9	proposed amendment
Clause 10	proposed amendment
Clause 11	proposed amendment
Clause 12	Agreed to
Clauses 13	proposed amendment
Clause 14	proposed amendment
Clause 15	proposed amendment
Clause 16	proposed amendment
Clause 17	proposed amendment
Clause 18	proposed amendment
Clause 19	proposed amendment
Clause 20	proposed amendment
Clause 21	proposed amendment

Clause 22	proposed amendment
Clause 23	proposed amendment
Clause 24	proposed amendment
Clause 25	proposed amendment
Clause 26	proposed amendment
Clause 27	Agreed to
Clause 28	proposed amendment
Clause 29	proposed amendment
Clause 30	proposed amendment
Clause 31	proposed amendment
Clause 32	proposed amendment
Clauses 33	Agreed to
Clauses 34	proposed amendment
Clause 35	proposed amendment
Clause 36	proposed amendment
Clause 37	proposed amendment
Clause 38	proposed amendment
Clause 39	proposed amendment
Clause 40	proposed amendment
Clause 41	proposed amendment
Clause 42	proposed amendment

Clause 43	Agreed to
Clauses 44	proposed amendment
Clause 45	proposed amendment
Clause 46	proposed amendment
Clause 47	proposed amendment
Clause 48	Agreed to
Clauses 49	proposed amendment
Clause 50	proposed amendment
Clause 51	proposed amendment
Clause 52	proposed amendment
Clause 53	proposed amendment
Clause 54	proposed amendment
Clause 55	proposed amendment
Clause 56	proposed amendment
Clauses 57 to 59	Agreed to
Clause 60	proposed amendment
Clauses 61	proposed amendment
Clauses 62	Agreed to
Clause 63	proposed amendment
Clause 64	proposed amendment
Clause 65	proposed amendment



Clauses 66	Agreed to
Clause 67	proposed amendment
Clause 68	proposed amendment
Clause 69	proposed amendment
Clause 70	proposed amendment
First and Second Schedules	Agreed to
Clause 2	proposed amendments
Clause Long title	proposed amendment

## 6.0 COMMITTEE'S PROPOSED AMENDMENTS

The Committee proposes the following amendments to the Bill:-

### Long title

**THAT**, the long title of the Bill be amended by inserting the words "The 1951 United Nations" immediately after the words "to give effect to the".

### Clause 2

**THAT**, Clause 2 of the Bill be amended—

(a) by deleting the definition of the term "asylum seeker" and substituting therefor the following new definition—

"asylum seeker" means a person seeking refugee status in accordance with the provisions of this Act;

(b) in the definition of the term "authorized officer" by deleting the word "Commissioner" and substituting therefor the word "Director";

(c) by deleting the definition of the term "Commission" and substituting therefor the following new definition—

"Commission" means the Refugee Management Commission established under section 7;

(d) by deleting the definition of the term "Commissioner";

(e) in the definition of the term "refugee officer" by deleting the word "Commissioner" and substituting therefor the word "Director";

(f) in the definition of the term "transit centre" by deleting the word "Commissioner" and substituting therefor the word "Director";

(g) by deleting the definition of the term "Trust Fund";

(h) by inserting the following new definitions in their proper alphabetic sequence—

"Director" means the Director for Refugee Affairs appointed under section 9;

"Durable Solutions" means voluntary repatriation and resettlement to a third party country;

"Refugee Management Commission" means the Refugee Management Commission established in section 6;

“Secretariat” means the Refugee Affairs Secretariat established under section 6.

#### Clause 4

**THAT**, Clause 4 of the Bill be deleted and replaced by the following new clause—

Exclusion and 4.(1) A person shall be excluded from being considered for refugee  
disqualification status if there exists serious reason to believe that the person—  
of refugees.

- (a) has committed a crime against peace, a war crime or a crime against humanity as defined in the International Crimes Act;
- (b) has committed a serious non-political crime outside Kenya prior to her/his admission to Kenya as a refugee;
- (c) has been guilty of acts contrary to the purposes and principles of the UN and AU; or
- (d) has sought asylum in another country.

(2) A person shall be disqualified from being a refugee if the person—

- (a) having more than one nationality, has not availed himself or herself for protection of one of the countries which he or she is a national and has no valid fear based on well-founded fear of persecution;
- (b) has been granted refugee status in another country prior to entry in Kenya and can be re-admitted to that country and benefit currently and in the future in that country from effective protection;
- (c) is recognized by competent authorities of the country he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country, can be re-admitted into that country in the same condition and has no valid reasons based on a well-founded fear of persecution to have left that country.

#### Clause 6

**THAT**, clause 6 of the Bill be amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—  
“(a) the Refugee Management Commission”; and

(b) by deleting paragraph (b) and substituting therefor the following new paragraph—  
“(b) the Refugee Affairs Secretariat”

### Clause 7

**THAT**, Clause 7 of the Bill be amended in subsection (1)–

- (a) by deleting the words “foreign affairs” appearing in paragraph (a) and substituting therefor the words “internal affairs”; and
- (b) by deleting the words “internal affairs” appearing in paragraph (b) and substituting therefor the words “foreign affairs”.

### Clause 9

**THAT**, Clause 9 of the Bill be deleted and replaced by the following new clause–

The Refugee Affairs Secretariat. **9.** (1) The Refugee Affairs Secretariat shall comprise of the office of the Director for Refugee Affairs whose shall be an office in the Public Service and such staff as may be necessary to perform the implementation functions of the Commission.

- (2) The functions of the Director for Refugee Affairs shall be to–
  - (1) keep, register and maintain a database of all asylum seekers and refugees in Kenya;
  - (2) in liaison with Director of Immigration, process and issue conventional travel documents;
  - (3) facilitate refugees with specialized skills to access work permits, subject to vetting;
  - (4) issue movement passes to refugees and asylum seekers wishing to travel outside the designated areas and within Kenya;
  - (5) exempt asylum seekers and refugees from residing in the designated areas where there are compelling reasons;
  - (6) protect and assist vulnerable groups including men, women, children, persons living with disability and the older members of society;
  - (7) ensure treatment of all asylum seekers and refugees in compliance with national law; and
  - (8) issue visitors’ permits from entry into refugee camps in accordance with the regulations.

(3) The Director shall comply with instructions that the Commission may assign the Director in the performance of his or her functions specified under this Act.

(4) The Commission may assign to officers or employees in the public service, any of the powers and duties imposed by him or her subject to such conditions as the Commission may determine.

Provided that the provisions of this sub-section shall be invoked only if the substantive Director and his or her deputy are either absent from the country or indisposed or unable to perform by reason of having been relieved of duty.

#### Clause 10

THAT, Clause 10 of the Bill be deleted and replaced by the following new clause—

Functions of the Secretariat. **10.** The functions of the Refugee Affairs Secretariat shall be to—

- (a) co-ordinate all measures necessary for promoting the welfare and protection of refugees and asylum seekers and advise the Cabinet Secretary thereon;
- (b) ensure, in liaison with other relevant agencies, the provision of adequate facilities and services for the protection, reception and care of asylum seekers and refugees in Kenya;
- (c) promote, as far as possible, durable solutions for refugees granted asylum in Kenya;
- (d) receive and process applications for refugee status determination;
- (e) keep, register and maintain a record of all asylum seekers and refugees in Kenya;
- (f) issue refugee identification documents and facilitate the issuance of civil registration and other relevant documents; and
- (g) manage refugee designated areas and other related facilities through co-ordination of the provision of overall security, protection and assistance for asylum seekers and refugees in the designated areas.

#### Clause 11

THAT, Clause 11 of the Bill be amended—

(a) by deleting sub-clause (1) and substituting therefor the following new sub-clause—

(1)“There is established a Board to be known as the Refugee Status Appeal Board which shall consist of—

- (a) an advocate of not less than ten years' standing appointed by the Cabinet Secretary, who shall be the Chairperson;
- (b) eight members appointed by the Cabinet Secretary from among persons having knowledge of and experience in matters relating to—
  - (i) refugee affairs;
  - (ii) immigration;
  - (iii) foreign affairs;
  - (iv) national security;
  - (v) public administration; and
  - (vi) national security.”

(b) by inserting the following new sub-clauses immediately after sub-clause (5)–

(1)“A member of the Appeal Board shall hold office for a term of three years and shall be eligible for re-appointment for one further term of four years.

(2) The Board may, where necessary, co-opt a person with specialized knowledge and skill to attend the sittings of the Board, but such person shall not have the right to vote.”

### **Clause 13**

**THAT**, Clause 13 of the Bill be amended–

(a) by deleting sub-clause (1) and substituting therefor the following new sub-clause–

(1)“An application for the grant of refugee status shall be made to the Refugee Affairs Secretariat either directly or through an authorized officer or an officer of the United Nations appointed by the Commission.”

(b) by deleting sub-clause (2) and substituting therefor the following new sub-clause–

(2)“An authorized officer to whom any asylum seeker presents himself or herself shall refer that asylum seeker to the relevant authority.”

(c) by deleting the word “Commissioner” wherever it appears and substituting therefor the word “Director”.

### **Clause 14**

**THAT**, Clause 14 of the Bill be deleted.

### **Clause 15**

**THAT**, Clause 15 of the Bill be amended–

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause—  
(1) “There is established a Refugee Status Eligibility Committee which shall consist of the following members—  
(a) a chairperson appointed by the Cabinet Secretary;  
(b) not less than four other members appointed by the Cabinet Secretary from the following departments in consultation with their respective Cabinet Secretaries—  
(i) a representative of the ministry responsible for internal affairs;  
(ii) a representative of the Inspector General of Police; and  
(iii) a representative of the Director of Immigration Services.
- (b) by deleting sub-clause (3) and substituting therefor the following new sub-clause—  
(3) “The office of the Refugee Affairs Secretariat shall provide secretariat services to the Committee.”

#### **Clause 16**

**THAT**, Clause 16 of the Bill be amended by deleting the word “Commissioner” wherever it appears and substituting therefor the word “Director”.

#### **Clause 17**

**THAT**, Clause 17 of the Bill be amended—

- (a) by deleting sub-clause (2) and substituting therefor the following new sub-clause—

(2) “ In any appeal under this Act, the Appeal Board may confirm or set aside the decision of the Director and shall cause the appellant concerned to be notified of the decision in writing within sixty days of receiving the application:

Provided that, before reaching a decision on any such appeal, the Appeal Board may either—

- (a) refer the matter to the Director for further investigation and advice; or  
(b) make such further inquiry or investigation into the matter as it deems necessary.”; and

- (b) in sub-clause (4) by deleting the word “Commissioner” and substituting therefor the word “Director”.

#### **Clause 19**

**THAT**, Clause 19 of the Bill be amended by inserting the words “in accordance with the provisions of the Public Health Act” immediately after the words “special holding centre”.

#### **Clause 20**

**THAT**, Clause 20 of the Bill be amended—

- (a) by deleting sub-clause (6);
- (b) by deleting sub-clause (10) and substituting therefor the following new sub-clause—

(10)“Where refugee status under this part has been cancelled that person shall cease to be a refugee and any member of his or her family with derivative status shall cease to be so recognized under this Act on the expiry of seven days after the date on which the Director notifies the person concerned that his or her recognition has been cancelled:

Provided that the family member whose derivative status is affected by the cancellation shall have the right to apply to be considered as a refugee under section 13 of this Act”; and

- (d) by deleting the word “Commissioner” wherever it appears and substituting therefor the word “Director”.

#### **Clause 21**

**THAT**, Clause 21 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause—

(1)“The Cabinet Secretary may revoke the status of any refugee if the refugee at any time after recognition as a refugee has been convicted of a serious crime.”

#### **Clause 22**

**THAT**, Clause 22 of the Bill be deleted.

#### **Clause 23**

**THAT**, Clause 23 of the Bill be deleted.

#### **Clause 24**

**THAT**, Clause 24 of the Bill be deleted and substituted therefor the following new clause—

Refugee women and children. **24.** (1) The Director shall ensure that specific measures are taken to ensure, at all times during their stay in designated areas, the dignity and safety of women and children seeking asylum and women and children who have been granted refugee status.

(2) The Director shall ensure that a child who is in need of refugee status or who is considered a refugee shall, whether accompanied or not by his parents or any other person, receive appropriate protection and assistance.



(3) The Director shall, as far as possible, assist a child referred to in subsection (2) to trace the parents or other members of the family in order to obtain information necessary for the reunification of the child with his or her family.

(4) Where the parents of the child or other members of the child's family cannot be found, the child shall be accorded the same protection as any child permanently or temporarily deprived of his or her family.

**Clause 25**

**THAT**, Clause 25 of the Bill be amended by deleting the word "Commissioner" and substituting therefor the word "Director".

**Clause 26**

**THAT**, Clause 26 of the Bill be amended in sub-clause (2) by deleting the word "Commission" and substituting therefor the word "Cabinet Secretary".

**Clause 28**

**THAT**, Clause 28 of the Bill be amended—

- (a) in sub-clause (1) by deleting the word "Commissioner" and substituting therefor the word "Director"; and
- (b) by inserting the following new subsection immediately after subsection (2)—

(3) "An asylum seeker shall report to the nearest government administrative officer who shall then direct him or her to the designated refugee reception officers."

**Clause 29**

**THAT**, Clause 29 of the Bill be amended by deleting paragraph (f).

**Clause 30**

**THAT**, Clause 30 of the Bill be amended by inserting the words "within forty eight hours" immediately after the words "government administrative centre".

**Clause 31**

**THAT**, Clause 31 of the Bill be deleted.

**Clause 32**

**THAT**, Clause 32 of the Bill be amended in subsection (1) by inserting the following new paragraph immediately after paragraph (ii)—

(iii)“any other relevant laws in force in Kenya.”

**Clause 34**

THAT, Clause 34 of the Bill be deleted.

**Clause 35**

THAT, Clause 35 of the Bill be deleted.

**Clause 36**

THAT, Clause 36 of the Bill be deleted.

**Clause 37**

THAT, Clause 37 of the Bill be amended by deleting the words “shall be entitled to” and substituting therefor the word “may”.

**Clause 38**

THAT, Clause 38 of the Bill be deleted.

**Clause 39**

THAT, Clause 39 of the Bill be deleted.

**Clause 40**

THAT, Clause 40 of the Bill be deleted.

**Clause 41**

THAT, Clause 41 of the Bill be deleted.

**Clause 42**

THAT, Clause 42 of the Bill be amended in sub-clause (2) by deleting the word “Commissioner” and substituting therefor the word “Director”.

**Clause 44**

THAT, Clause 44 of the Bill be amended by deleting the word “after” appearing immediately after the words “the Commission shall” and substituting therefor the word “in”.

**Clause 45**

THAT, Clause 45 of the Bill be amended—

- a) in sub-clause (2) by deleting the word “Commissioner” and substituting therefor the word “Director”;
- b) by deleting sub-clause (3); and
- c) by deleting sub-clause (4).

**Clause 46**

**THAT**, clause 46 of the Bill be amended by deleting the word “Commissioner” wherever it appears and substituting therefor the word “Director”.

**Clause 47**

**THAT**, Clause 47 of the Bill be amended by deleting sub-clause (2).

**Clause 49**

**THAT**, Clause 49 of the Bill be amended in sub-clause (1) by inserting the words “a person with the mandate of the Director” immediately after the words “No person other than”.

**Clause 50**

**THAT**, Clause 50 of the Bill be amended—

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause—
  - (1) “The Director shall ensure that there is shared use of common social amenities between the refugees and the host communities.”
- (b) in sub-clause (2) by deleting the word “Commissioner” and substituting therefor the word “Director”.

**Clause 51**

**THAT**, Clause 51 if the Bill be amended by deleting the word “Commissioner” and substituting therefor the word “Director”.

**Clause 52**

**THAT**, Clause 52 of the Bill be deleted.

**Clause 53**

**THAT**, Clause 53 of the Bill be amended by—

- (a) deleting sub-clause (3); and
- (b) deleting sub-clause (4).

**Clause 54**

**THAT**, Clause 54 of the Bill be amended by—

- (a) deleting sub-clause (2);
- (b) deleting sub-clause (3);
- (c) deleting sub-clause (4); and
- (d) deleting sub-clause (5).

**Clause 55**

THAT, Clause 55 of the Bill be deleted.

**Clause 56**

THAT, Clause 56 of the Bill be deleted.

**Clause 60**

THAT, Clause 60 of the Bill be deleted.

**Clause 61**

THAT, Clause 61 of the Bill be amended—

- (a) in sub-clause (1) by deleting the word “Commissioner” and substituting therefor the word “Secretariat”;
- (b) in sub-clause (2) by deleting the word “Commissioner” and substituting therefor the word “Secretariat”; and
- (c) in sub-clause (3)—
  - (i) by deleting the word “Commissioner” where it appears in the first instance and substituting therefor the word “Secretariat”;
  - (ii) by deleting the word “Commissioner” where it appears in the second instance and substituting therefor the word “Director”.

**Clause 63**

THAT, Clause 63 of the Bill be amended in sub-clause (4) by deleting the words “two years” and substituting therefor the words “ninety days”.

**Clause 64**

THAT, Clause 64 of the Bill be amended in paragraph (c) by deleting the words “or protected person” and substituting therefor the words “asylum seeker”.

**Clause 65**

THAT, Clause 65 of the Bill be amended—

- (a) in paragraph (a) by inserting the words “or any other written law”;
- (b) in paragraph (b) by deleting the word “misstatement” and substituting therefor the word “misrepresentation”.

**Clause 67**

THAT, Clause 67 of the Bill be deleted.

**Clause 68**

**THAT**, Clause 68 of the Bill be amended by deleting the words “Secretariat of Refugee Affairs” and substituting therefor the words “Refugee Affairs Secretariat”.

**Clause 70**

**THAT**, Clause 70 of the Bill be amended in sub-clause (4) by deleting the word “Commissioner” and substituting therefor the word “Director”.

**NEW CLAUSES**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 40–

Expulsion of **40A.** (1) The Cabinet Secretary may, after consultation with the refugees and Director, order the expulsion from Kenya of any refugee or members of member of his or her family if the Cabinet Secretary considers the their families. expulsion to be necessary on the grounds of national security or public order.

(2) Before ordering the expulsion from Kenya of any refugee or member of his or her family in terms of subsection (1), the Cabinet Secretary shall act in accordance with the due process of law.

Signed..........Date.....

**Hon. Asman Kamama, MGH, OGW, MP**

**Chairman, Departmental Committee on Administration and National Security**

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 101 (National Assembly Bills No. 26)*



REPUBLIC OF KENYA

**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2016**

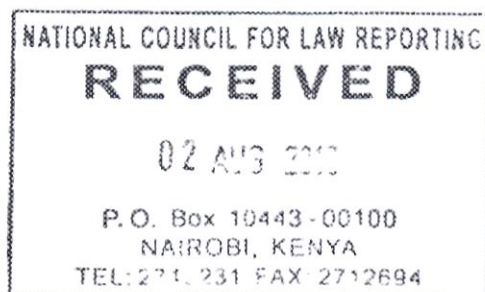
**NAIROBI, 24th June, 2016**

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**THE REFUGEES BILL, 2016**

**A Bill for**

**AN ACT of Parliament to provide for the recognition and protection of refugees; to give effect to the Convention Relating to the Status of Refugees, the Protocol Relating to the Status of Refugees and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and for connected purposes**

**ENACTED** by the Parliament of Kenya as follows—

**PART I—PRELIMINARY**

1. This Act shall be cited as the Refugees Act, 2016 and shall come into operation upon the expiry of ninety days from the date of publication.

Short title and commencement.

2. In this Act, unless the context otherwise requires—

Interpretation.

“Appeal Board” means the Appeals Board established under section 11 of this Act;

“asylum” means protection granted by the Government to persons qualifying for refugee status in accordance with the provisions of this Act;

“asylum seeker” means a person who has sought asylum, whether a formal application has been made for it or not;

“authorized officer” includes the Commissioner for Refugees Affairs, refugee officer, a settlement or immigration officer;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to refugee affairs”;

“Commission” means the Kenya Refugee, Repatriation and Resettlement Commission established under section 7 of this Act;

“Commissioner” means the Commissioner for Refugee Affairs appointed under section 9 of this Act;

“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;

“designated area” means any reception area, transit point or settlement area as may be declared by the Cabinet Secretary.

“eligibility committee” means the national eligibility committee as established under section 15 of this Act;

“essential services” include education, health, water and sanitation services;

“local integration” means the gradual process through which refugees are incorporated into the society through a process that ensures that refugees attain broader rights, have improved standards of living and positively contribute to the social life of the host country;

“members of family of a refugee”, in relation to a refugee means —

- (a) any spouse of the refugee;
- (b) any child of the refugee, including an adopted child under the age of eighteen;
- (c) a person who is related to the refugee by blood or marriage and who is dependent upon the refugee; and
- (d) any other dependent living in the same household as the refugee and who is dependent on the refugee.

“minor” means a person below the age of eighteen years;

“non-citizen” means any person who is not a citizen of Kenya;

“OAU Convention” means the Organization of Africa Unity Convention Governing the Specific Aspects of the Refugee problem in Africa, done at Addis Ababa on 10<sup>th</sup> September, 1969 and ratified by Kenya on 28<sup>th</sup> December, 1987;

“protocol” means the Protocol relating to the status of refugees, done at New York on 31<sup>st</sup> January 1967 and acceded to by Kenya on 13<sup>th</sup> November 1981;

“prima facie refugee status” a declaration of refugee status by the Commission in respect of large scale influxes of persons on the basis of the readily apparent

circumstances in the country of origin giving rise to the exodus;

“reception area” means an area or premises designated for the reception and processing of asylum seekers and includes an area or premises where registration and status determination are undertaken;

“refugee officer” means an officer responsible for refugee matters under this Act and answerable to the Commissioner;

“refugee settlement” means a refugee settlement established in accordance with sections of this Act

“refugee”, has the meaning assigned to it under section 4 of this Act and includes an asylum seeker;

“separated minor”, means a minor who is separated from both parents or from his or her previous legal or customary primary care-giver, but not necessarily from other relatives and may therefore include a child who is accompanied by other adult family members;

“settlement officer” means a person appointed to be in charge of a designated area;

“spouse” includes a common law spouse;

“transit centre” means areas designated by the Commissioner for the purposes of temporarily accommodating persons covered under this Act pending transfer to the reception centers or refugee camps;

“Trust Fund” means Kenya Refugee Trust Fund established under section 55 of this Act.

“torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of—

- (a) obtaining information or a confession from the person or from a third person;
- (b) punishing the person for the act which that person or a third person has committed or is suspected of having committed;
- (c) intimidating or coercing that person or a third person; or

- (d) for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, but does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

“unaccompanied minor” means a minor who is separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so; and

“United Nations Convention” means the United Nations Convention relating to the status of Refugees, done at Geneva on 28<sup>th</sup> July, 1951 and acceded to by Kenya on 13th November, 1981;

3. A person is a refugee under this Act, if—

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, political opinion or sex the person 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

not having a nationality and being outside the country of his or her former habitual residence, the person is unable or, owing to a well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group, political opinion or sex, is unwilling to return to it; or

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 country of origin or nationality; or

the person is a member of a class of persons declared under subsection (2) to be refugees.

(2) Subject to subsection (3), if the Commission considers that any class of persons are refugees as defined

Meaning of  
“refugee”.

in paragraph (a), (b), (c) or (d), the Commission may declare such class of persons to be refugees, and may at any time amend or revoke such declaration.

Provided that no such amendment or revocation shall affect the right of any person—

(i) who is a member of the class of persons concerned and who entered Kenya before the date of such amendment or revocation, to continue to be regarded as a refugee for the purposes of this Act; or

(ii) who is a person referred to in paragraph (a), (b), (c) or (d), to be recognized as a refugee for the purposes of this Act.

(3) The Commission shall cause any declaration under subsection (2), and any amendment or revocation, to be published in the Gazette or in such other manner as it deems fit and shall ensure that it is brought to the attention of authorized officers and persons to whom it relates.

4. This Act shall not apply to—

Exclusion from  
refugees status.

a person who is presently receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance; and

a person who is recognized by the relevant authorities in Kenya as having the rights and obligations which are attached to the possession of the nationality of Kenya.

a person with respect to whom there are serious reasons for considering that —

has committed a crime against peace, a war crime or a crime against humanity, as defined in any international instrument to which Kenya is a party and which has been drawn up to make provision in respect of such crimes;

has committed a serious non-political crime outside Kenya prior to his or her admission to Kenya as a refugee; or

has been guilty of acts contrary to the purposes and principles of the United Nations



Organization of the African Union.

5. A person shall cease to be a refugee for the purposes of this Act if such a person—

Cessation of  
refugee status.

- (i) voluntarily re-avails himself or herself of the protection of the country of his or her nationality;
- (ii) having lost his or her nationality, the person voluntarily re-acquires it;
- (iii) becomes a citizen of Kenya or acquires the nationality of some other country and enjoys the protection of the country of his or her new nationality;
- (iv) voluntarily re-establishes himself or herself in the country which he or she left, or outside which he or she remained owing to fear of persecution;
- (v) can no longer, because the circumstances in connection with which he or she was recognized as a refugee under this Act has ceased to exist and continues to refuse to avail himself or herself of the protection of the country of his or her nationality;
- (vi) being a person who has no nationality, because of the circumstances in connection with which he has been recognized as a refugee have ceased to exist and is able to return to the country of his or her former habitual residence;

Provided that paragraphs (e) and (f) shall not apply to a refugee falling under section 3(a) and (b) of this Act who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his or her former habitual residence.

**PART II—ADMINISTRATIVE PROVISIONS**

6. There is established—

Administrative  
institutions.

- (a) the Kenya Refugee, Repatriation and Resettlement Commission;
- (b) the Secretariat for Refugee Affairs; and
- (c) a Refugee Status Appeal Board.

7. (1) The Commission shall consist of—

Establishment of  
the Commission.

- (a) the Cabinet Secretary for the time being responsible for matters relating to foreign affairs, who shall be the Chairperson;
- (b) the Cabinet Secretary for the time being responsible for matters relating to internal affairs who shall be the Vice-Chairperson;
- (c) a representative from the—
  - (i) Ministry responsible for education;
  - (ii) Ministry responsible for labour;
  - (iii) Ministry responsible for health;
  - (iv) Ministry responsible for social welfare;
  - (v) Ministry responsible for devolution;
  - (vi) National Cohesion and Integration Commission;
  - (vii) Ministry responsible for Land;
  - (viii) Kenya National Commission for Human Rights;
  - (ix) United Nations High Commissioner for Refugees.

(2) The persons referred to in subparagraphs (viii) and (ix) shall have advisory roles without the right to vote.

(3) The quorum for a meeting of the Commission shall be three members excluding the members referred to in subparagraphs (viii) and (ix).

(5) Each member of the Commission shall have one vote but in case of equality of votes, the Chairperson shall have a casting vote.

(6) Except as expressly provided in this Act, the Commission shall regulate its own procedure as it deems fit.

8. The functions of the Commission shall be—

- (a) to formulate a national policy on matters relating to refugees in accordance with international standards;
- (b) to ensure that the rights of refugees are upheld, in accordance with the international obligations of Kenya;

Functions of the  
Commission.

- (c) to make a declaration of refugee status in respect of large scale influxes of refugees;
- (d) to ensure that adequate and appropriate facilities and services are provided for the reception and care of refugees; and
- (e) to propose and ensure the provision of durable solutions for refugees.

9. (1) The Secretariat of Refugee Affairs shall comprise of the office of the Commissioner for Refugee Affairs whose office shall be an office in the Public Service and such staff as may be necessary to perform the implementation functions of the Commission.

The Secretariat for  
Refugee Affairs.

(2) The Secretariat shall perform administrative functions as shall be determined by the Commission.

(3) The functions of the Commissioner for Refugee affairs shall be—

- (i) to assist the Eligibility Committee to undertake individual refugee status determination of persons who are not part of an influx in respect of whom a prima facie declaration of refugee status has been made by the Commission;
- (ii) to work with the United Nations High Commissioner for Refugees in finding durable solutions for refugees, including voluntary repatriation, local integration and resettlement where applicable;
- (iii) to receive applications for refugees status and submit them to the eligibility Committee;
- (iv) to register applications for refugee status and maintain a register of asylum seekers and refugees;
- (v) to co-ordinate the provision of adequate facilities and services for the reception and care of refugees and asylum seekers within Kenya;
- (vi) to ensure that an applicant for refugee status is not ordered to leave the country before his or her claim for refugee status has been determined in accordance with the provisions of this Act;
- (vii) to implement and communicate with applicants the decisions of their status; and

(viii) to exercise any other functions and duties that may be assigned to him or her by the Cabinet Secretary under this Act.

(3) The Commissioner shall comply with instructions that the Commission may assign the Commissioner in the performance of his or her functions specified under this Act.

(4) The Commission may assign to officers or employees in the Public Service, any of the powers and duties imposed upon him or her subject to such conditions as the Commission may determine.

Provided the provisions of sub-section (4) shall be invoked only if the substantive Commissioner and his or her deputy are either absent from the country or indisposed or unable to perform by reason of having been relieved of duty.

10. The functions of the Secretariat of Refugee affairs shall be—

Functions of the Secretariat.

- (i) to handle all operational aspects of protection and assistance of refugees;
- (ii) to consider applications of refugee status and asylum;
- (iii) to consider and make recommendations to the Cabinet Secretary on applications for family reunification with recognized refugees in Kenya;
- (iv) to consider and make recommendations to the Cabinet Secretary on requests from refugees for settlement in Kenya;
- (v) to advise the Cabinet Secretary or the Commissioner on any matter referred to the secretariat.

11. (1) There shall be an Appeal Board which shall consist of—

Establishment of the Appeal Board.

- (a) a judge of a Superior Court appointed by the Chief Justice who shall be the Chairperson;
- (b) a representative of the Kenya National Commission for Human Rights;
- (c) a representative of the National Cohesion and Integration Commission;

(d) a representative of the Immigration Department; and

(e) a representative from the United Nations High Commissioner for Refugees who shall play an advisory role without the right to vote.

(2) The Appeal Board shall meet at such time and place as the Board may determine.

(3) The quorum for a meeting of the Appeal Board shall be three members.

(4) Each member of the Appeal Board shall have one vote but in case of equality of votes, the Chairperson shall have a casting vote.

(5) The function of the Appeal Board shall be to hear and determine appeals against any decision of the Secretariat with regard to —

(a) the rejection of any individual application for refugee status; and

(b) the cancellation and termination of refugee status.

12. The conduct and regulation of the business and affairs of the Appeal Board shall be as provided in the First Schedule to this Act.

Conduct of the  
Appeal Board

### **PART III—APPLICATION FOR REFUGEE STATUS**

13. (1) An application for the grant of refugee status shall be made to the secretariat of refugee affairs, either directly or through any authorized officer or officer of the United Nations.

Application for  
refugee status.

(2) An authorized officer to whom any person seeking recognition as a refugee first presents himself or herself shall refer that person to the nearest office of the secretariat of refugee affairs and shall, as soon as possible, notify the Commissioner that a person seeking refugee status has entered into Kenya.

(3) An application for recognition as a refugee received by any authorized officer or officer of the United Nations shall be forwarded to the Commissioner.

(4) The Commissioner shall, on receiving the application, invite the applicant to appear before him or her, to provide oral or documentary evidence, accompanied

by a legal practitioner from a prescribed list of the secretariat pool of lawyers, if he or she so desires, whose fees or expenses, if any, shall be paid by the Secretariat for refugee affairs.

(5) The decision of the Commissioner to grant or not to grant the application shall be notified to the applicant in writing and where the application is refused, the department shall give reasons for the refusal.

(6) In applying for refugee status the applicant shall—

(a) fill in a prescribed application form and the application shall be registered by an authorized officer within the local area of his or her point of entry into Kenya.

(b) In addition to the application form, be entitled to make any statement and submit evidence in support of his or her claim, if the applicant so wishes.

(7) The authorized officer shall interview the applicant in a language that the applicant understands and reduce the interview into writing.

(8) The transcript shall be read to the applicant in a language that the applicant understands and provide an opportunity to the applicant to make corrections before it is signed by both the interviewing officer and the applicant.

(9) If the applicant does not wish to sign the transcript the reasons for declining shall be indicated on the transcript.

(10) The authorized officer shall within thirty days from the date of the interviews transmit the decision on whether to grant refugees status to the applicant, any statements, transcripts or evidence in support of an application to the Commissioner.

(11) The Commissioner shall upon receipt of the decision submit it before the Eligibility Committee and ensure that the Eligibility Committee convenes and reviews the decision within a period of sixty days from the time of making application.

(12) The Commissioner may for reasonable cause extend the period referred to in subsection (10).

(13) The Commissioner shall issue a temporary pass to the applicant pending registration.

14. (1) A public benefit organization may participate in refugee status proceedings by presentation of oral or written submission on behalf of a person seeking refugee status before the authorized officer.

Participation in  
Refugee status  
proceedings.

(2) An official representing an organization referred to in sub section (1) may also make oral or written representation during appeals.

15. (1) There is established a National Eligibility Committee which shall consist of the following members—

Establishment of  
the National  
Eligibility  
Committee.

- (a) the Commissioner for Refugee affairs;
- (b) not less than four other members appointed by the Cabinet Secretary from the following departments in consultation with their respective Cabinet Secretaries—
  - (i) a representative of the Director of Public Prosecutions;
  - (ii) a representative of the Ministry of Interior;
  - (iii) a representative of the Inspector General of Police; and
  - (iv) a representative of the Director of Immigration Services.

(2) The representative of the office of the United Nations High Commissioner for Refugees in Kenya shall be invited to attend the meetings of the Committee as an observer.

(3) The Office of the Commissioner for Refugees shall provide the Secretariat to the Committee.

(4) The Cabinet Secretary may, when necessary co-opt for a specified period not more than two additional members to the Committee who shall have no right of vote.

(5) Except as expressly provided in this Act, the Committee shall regulate its own procedure.

16. (1) The Eligibility Committee may—

- (a) investigate and seek all relevant information from appropriate sources within and outside the country;

The functions of  
the Eligibility  
Committee.

- (b) be at liberty to summon the applicant before it whenever deemed necessary to clarify or answer questions pertaining his or her claim for refugee status and, or asylum; and
- (c) invite any other person to appear before it and may consider any other relevant or written submissions.

(2) The recommendations of the Eligibility Committee shall be referred to the Commissioner who without delay shall make a determination and cause the applicant to be informed of his or her decision.

(3) The Commissioner shall inform the representative of the United Nations High Commissioner for Refugees in Kenya of the Cabinet Secretary's decision without delay.

(4) In dealing with an application under this section, the applicant may be permitted to bring along a competent interpreter if necessary.

17. (1) A person aggrieved by a decision of the Eligibility Committee under this Act may, within thirty days of receiving the decision, appeal to the Appeal Board against the decision.

Appeals.

(2) An applicant who is aggrieved by a decision of the Commissioner not to recognize him or her as a refugee may, through his or her representative or other interested party, appeal to the Appeal Board, within thirty days of receiving written notification of the decision.

(3) An appellant may be personally present at the hearing of the appeal and may be assisted or represented by a legal practitioner if he or she desires in providing oral or documentary evidence.

(4) The Commissioner shall make oral or written representations in respect of any decision appealed against.

(5) A person aggrieved by the decision of the Appeals Board may within thirty days of such decision appeal to the High Court.

18. Despite the provisions of the Kenya, Citizenship and Immigration Act, no proceedings shall be instituted against any person or any member of his or her family in respect of his or her unlawful entry or presence within Kenya if such a person –

Institution of proceedings for unlawful presence in Kenya.

Cap. 172.



- (a) has made a bona fide application for recognition as a refugee, until a decision has been made on the application and, where appropriate, such person has had an opportunity to exhaust his or her right of appeal; or
- (b) has become a refugee.

19. Where it is established that a person or a group of people seeking refugee status comes from an area of a country that is affected by a notifiable infectious disease, the person shall be quarantined in a special holding centre in order to ensure public safety and security while his or her application for refugee status is being processed.

Asylum seekers from regions with high infectious disease.

20. (1) The Commissioner shall have the power to cancel a refugee status where—

Cancellation of refugee status.

- (a) a person recognized as a refugee has fraudulently misrepresented or omitted material facts which, if known, could have changed the decision to recognize that person as a refugee; or
- (b) new evidence becomes available that a person should not have been recognised as a refugee.

(2) Before cancelling a refugee status, the Commissioner shall cause a written notice to be served upon the refugee—

- (a) informing him or her of the fact that his or her status as a refugee is to be reconsidered;
- (b) inviting him or her to make written representations to the Commissioner within a period of thirty days from the date of service of the notice or such longer period as the Commissioner may allow, regarding his or her status as a refugee; and
- (c) inviting him or her to an interview in order to state his or her case with the department of refugee affairs, accompanied by a legal representative, if he or she so desires.

(3) The Commissioner shall consider every case notified to a refugee under subsection (2) and may make any inquiry or investigation it thinks necessary into such case.

(4) After considering all the evidence, the Commissioner based on a legal assessment of the case may cancel the recognition of the refugee concerned and notify

the person together with reasons for the decision, within a period of twenty-one days of the date of the decision.

(5) A person who is aggrieved by a decision of the Commissioner to cancel recognition of his or her refugee status may, within thirty days of being notified of such cancellation, appeal in writing to the Appeal Board as of right.

(6) The Appeal Board shall invite the appellant to be present at a hearing, to be assisted or represented by a legal practitioner from a list of prequalified legal practitioners provided by the refugee secretariat or any other person of his choice, if he or she so desires, and to present oral or documentary evidence.

(7) The Commissioner shall make oral or written representations in respect of any appeal brought under this section

(8) After considering all the evidence, the Appeal Board may confirm, vary or set aside the decision of the department of refugee affairs and shall cause the department of refugee affairs and the person concerned to be informed of its decision in the matter, together with reasons.

(9) Where recognition as a refugee is cancelled, that person shall be deemed not to have been recognized as a refugee.

(10) Cancellation of refugee status under this section shall not affect the family members or dependents who benefit from derivative status.

Provided that nothing in this section shall prevent a member of the family of the person concerned from applying for and being considered as a refugee.

21. (1) The Cabinet Secretary may revoke the refugee status of a person where there are reasonable grounds for regarding that the person is a danger to national security or to any community of that country, provided that a revocation of a member of the family does not result in a revocation of those who derived their status from the person.

Revocation of  
refugee status.

(2) The procedure referred to in section 20 shall apply before the Cabinet Secretary revokes the refugee status of a person.

22. A person who applies and is granted refugee status in Kenya and is a national of a Member State of the East African Community shall enjoy all the rights and privileges conferred on the "Community nationals" as set out in the Treaty and Protocols for the establishment of the East African Community.

Recognition of refugees in the East African Community.

23. (1) During the refugee status determination process, the applicant has—

Rights during status determination process.

(a) the right to—

- (i) be fully informed by the department of refugee affairs, in a language he or she understands, where necessary, through an interpreter provided free of charge by the department, of the process and of his or her rights;
- (ii) be in contact with the Office of the United Nations High Commissioner for Refugees or any other organization which may assist the applicant;
- (iii) be represented by a legal practitioner or other person of his or choice in the process;
- (iv) (iv) receive a reasoned, written decision in the case of a negative decision; and

(b) the duty to—

- (i) comply with lawful orders of the State and co-operate with competent authorities in the performance of the official duties;
- (ix) submit all documents in his or her possession which may be used to establish his or her identity, nationality, as well as the manner of his entering Kenya;
- (x) certify to the competent authorities where possible of his or her identity, the date and place of birth and his or her family status and details of family members in case he or she does not possess any identity documents;
- (xi) observe all laws governing reception, transit, registration and residence of refugees;

(xii) keep the department of refugee affairs informed of his or her address and comply with any instructions of the State concerning location of residence;

(xiii) provide the competent authorities with full and true information.

24. (1) The Commissioner shall ensure that specific measures are taken to ensure the dignity and safety of women and children seeking asylum and children who have not been granted refugee status at all times stay in the country.

Refugee Women  
and Children.

(2) The Commissioner shall ensure that a child who is in need of refugee status or who is considered a refugee shall, whether or not accompanied, receive appropriate protection and assistance.

(3) Female applicants for refugee status shall have the right to a female interpreter and to be interviewed, wherever possible, by female members or officers of the Commissioner or the Appeal Board, as the case may be, as well as to be treated in accordance with appropriate administrative procedures.

(4) Where the applicant is an unaccompanied or separated minor, the Commissioner or the Appeal Board, as the case may be, shall ensure that appropriate procedures are followed, including, in the case of any unaccompanied minor, by facilitating the appointment of an independent representative, who shall be duty bound to act objectively in the best interests of the minor.

25. The Commissioner shall ensure that appropriate measures are taken having regard to the specific nature of every situation to ensure the safety of asylum seekers and refugees who suffer from disability and persons or groups of persons who have been traumatized or otherwise require special protection at all times during admission into and stay in Kenya.

Care for persons  
with disability and  
persons who have  
suffered trauma.

26. (1) A person who has applied for recognition as a refugee, and every member of his or her family shall have the right to remain within Kenya—

Right to remain in  
Kenya during  
status  
determination.

(a) until such person has been recognised as a refugee under that section;

- (b) in the event of the application of such person being unsuccessful, until such person has had an opportunity to exhaust his right of appeal this Act;
- (c) where such person has appealed under section 17, and his or her appeal has been unsuccessful, until such person has been allowed a reasonable time, not exceeding three months to seek admission to a country of his or her choice.

(2) The Commission may, on application being made to it by the person concerned, extend the three-month period referred to in paragraph (c) if it is satisfied that there is a reasonable likelihood of the person being admitted to a country of his or her choice within such extended period.

27. (1) A person who has submitted an application for refugee status in accordance with the Act shall be issued with a temporary pass valid for ninety days and it shall be evidence that the person has applied for refugee status in Kenya.

Applicant to be issued with an asylum seeker's pass.

(2) Every member of the family of the applicant shall also be issued with a similar document.

(3) The temporary pass issued under this Act shall entitle the applicant and all the members of his or her family to remain in Kenya—

- (a) until his or her application is granted or rejected and no appeal has been filed with the Appeals committee; and
- (b) until that person has exhausted his or her right of appeal.

(4) A temporary pass issued under this Act shall be renewed after the expiry of ninety days until all rights connected with or incidental to an application for refugee status have been exhausted.

#### **PART IV—RECEPTION FOR REFUGEES**

28. (1) The Commissioner shall by notice in the Gazette designate refugee reception officers responsible for every gazetted and authorised entry point into Kenya.

Designation of refugee reception officers.

(2) The designated reception officer shall liaise with the Refugee Eligibility Committee and the office responsible for refugees.

29. The duty of a refugee reception officer shall be—

Duty of Refugee  
Reception  
officers.

- (a) to give applications and guidelines for refugee status to every person who wishes to apply for refugee status at the point of entry;
- (b) to receive all persons who have applied for refugee status or wish to apply for refugee status;
- (c) to take photographs and biometric data of asylum seekers and members of their families;
- (d) to question and search any person or property as he or she may deem necessary and appropriate, and within the law and with strict regard to the dignity and decency of the person in question;
- (e) to screen asylum seekers so as to ensure that they pose no public health hazard to the local population and to ensure those who may pose such risk are isolated and urgently provided with the necessary medical attention; and
- (f) to ensure early and smooth separation of civilian asylum seekers from any armed combatants and that the civilian asylum seekers and armed combatants are located in separate locations.

30. An asylum seeker or refugee entering Kenya shall report to the nearest reception center or government administrative centre upon entry into Kenya.

Entry into Kenya  
by asylum seekers  
or refugees.

31. (1) Every asylum seeker or refugee who brings arms or ammunition into Kenya shall immediately surrender such arms or ammunition to an authorized officer.

Surrender of  
weapons.

(2) The authorized officer may by order in writing, direct that any asylum seeker or refugee in his or her area shall, within such time as may be specified in the order, surrender to an authorized officer any weapon so specified which is in his or her possession unless the person has authority to retain the weapon in accordance with the Firearms Act.

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#### **PART V—RIGHTS AND DUTIES OF REFUGEES AND ASYLUM SEEKERS IN KENYA**

32. (1) Subject to this Act, every refugee and every asylum seeker within Kenya shall be entitled to the rights and be subject to the duties contained in—

Rights of  
Refugees under  
International  
instruments.

(i) the Articles of the United Nations Convention which are set out in Part I of the Second Schedule; and

(ii) the Articles of the OAU Convention which are set in Part II of the Second Schedule to this Act.

(2) The Cabinet Secretary may, by notice in the gazette, designate places and areas in Kenya within which all—

(a) persons who have applied for recognition as refugees;

(b) members of the families of persons referred to in paragraph (a); or

(c) classes of persons, as may be specified in the notice shall live.

(3) Subject to the provisions of this Act, every recognized refugee within Kenya shall, in respect of wage-earning employment, be entitled to the same rights and be subject to the same restrictions, if any, that are conferred on persons who are not citizens of Kenya.

(4) Despite subsection (3), a recognized refugee shall be subject to any such restriction imposed for the protection of the national labour market.

33. (1) A refugee or a member of the refugee family shall not, except on grounds that the expulsion is necessary for reasons of national security or in pursuance of a decision reached after due process, be rejected at the border, expelled or extradited or returned from Kenya to any country where there are substantial grounds for believing that such a person—

Non-Refoulement.

(a) would be persecuted for reasons of race, religion, nationality, membership of a particular social group, political opinion or sex, within the meaning of section 3; or

(b) life, physical integrity or freedom would be threatened owing to external aggression, occupation, foreign domination or events seriously disturbing public order in a part or the whole of that country, within the meaning of the OAU Convention.

Provided that nothing in subsection (1) shall prevent the expulsion, under the provisions of any law, of a refugee to any country whatsoever where, in the opinion of the Commission after consultation with other relevant authorities, such removal is necessary, on the grounds of national security or where the refugee constitutes a danger to the community.

(2) Despite subsection (1), no refugee or a member of his or her family shall be expelled, extradited or returned from Kenya under any circumstances whatsoever to a country where there are substantial grounds for believing that the refugee or his or her family would be in danger of being subjected to torture, within the meaning of Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(3) For the purposes of determining whether there are any such grounds referred to in paragraphs (a) and (b), the Commission shall, after consultation with other relevant authorities, take into account all relevant considerations including, where applicable, the existence in the country of concern of a consistent pattern of gross violations of human rights.

34. A person who has been granted refugee status and is in possession of a valid identity card issued by the Commissioner shall, in order to facilitate his or her local integration, be allowed to engage in gainful or wage earning employment on the most favorable treatment accorded to foreign residents in similar circumstances.

Access to  
employment.

35. (1) A refugee who is residing in a designated refugee settlement or a refugee area shall have free access to use land for the purposes of cultivation or pasturing, except that they shall have no right to sell, lease or otherwise alienate the land that has been allocated to them strictly for their individual or family utilization.

Access to land.

(2) A refugee shall not acquire or hold freehold interest in land in Kenya.

(3) A refugee who resides outside a designated refugee camp as a tenant may legally acquire or dispose of his or her occupancy or leasehold interests in land, as the law provides.



36. (1) Every refugee child shall be entitled to primary education in accordance with the laws of Kenya and every refugee adult who desires to participate in adult education shall be entitled to do so in accordance with the Basic Education Act, 2013.

Education for refugees.

No. 14 of 2013.

(2) Every refugee shall be entitled to post primary education in accordance with rules made by the Cabinet Secretary in accordance with this section.

(3) The Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to education shall make rules prescribing—

- (a) fees; and
- (b) prescribing any matter that may need to be regulated for purposes of better and effective implementation of this section.

37. An asylum seeker or refugee shall be entitled to be issued with a work permit upon making an application in accordance with the Kenya Citizenship and Immigration Act, 2011.

Work permit for refugees.

38. (1) A person holding refugee status in Kenya, who becomes eligible to apply for citizenship in Kenya may do so on his or her own behalf and that of his or her spouse and any dependent minor children.

Refugees attaining citizenship.

(2) A person with refugee status who acquires Kenya citizenship shall cease to be a refugee.

39. (1) Where a refugee is subject to an expulsion order, the relevant authorities shall immediately notify the Cabinet Secretary in writing.

Cabinet Secretary to notify a refugee before expulsion.

(2) Before an expulsion order is issued, the Cabinet Secretary shall cause a written notice to be served upon the refugee who is the subject of expulsion, informing such a refugee—

- (a) the intention to expel him or her and the country to which it is proposed to expel him or her;
- (b) his or her right to make representation to the Appeals Board.

(3) The Cabinet Secretary shall, within twenty-one days before an expulsion order is issued, inform the

representative of the United Nations High Commissioner for Refugees of the proposed expulsion, and provide the Commissioner—

- (a) a copy of the written notice issued under subsection (2);
- (b) the reasons for regarding the refugee as a threat to national security, and
- (c) assistance to have unhindered and confidential access to the refugee during any period of detention.

(4) A refugee, upon whom a notice has been served under subsection (2) may, through the representative of the United Nations High Commissioner for Refugees, within a period of fourteen days from the date of such service, make written representations to the Cabinet Secretary, in respect of the —

- (a) the necessity on the grounds of national security of expelling him or her from Kenya;
- (b) the possibility of being persecuted or of his or her life or freedom being threatened in the country to which it is proposed to expel him on account of his or her race, religion, nationality, membership of a particular social group or political opinion, or on account of external aggression, occupation, foreign domination or events seriously disrupting public order in part or the whole of that country; or
- (c) the possibility of him or her being subjected to torture in the country to which he is to be expelled.

(5) Before the expulsion from Kenya of any refugee is ordered, the Cabinet Secretary shall, after consultation with other relevant state authorities, give due consideration to any representations made under subsection (4).

(6) The execution of any order for the expulsion of a refugee shall, if such refugee or the representative of the United Nations High Commissioner for Refugees so requests, be delayed for a reasonable period, and in any case not less than ninety days, to enable such a refugee to seek admission to a country other than the country to which he or she is to be expelled.

40. (1) The Cabinet Secretary may, after consultation with other relevant state agencies, direct that a refugee awaiting expulsion shall not be detained but shall remain in Kenya subject to any of the following conditions—

Cabinet Secretary directions on a refugee awaiting expulsion.

- (a) that the refugee shall reside at a place or within an area specified by the Cabinet Secretary;
- (b) that the refugee shall not depart from the place or area or only depart from the place subject to such conditions as may be specified by the Cabinet Secretary;
- (c) that the refugee shall give recognizances for his or her good behavior in such form and subject to such conditions as may be specified by the Cabinet Secretary;
- (d) that the refugee shall report to the police or such authority as may be specified by the Cabinet Secretary in such manner as he may determine;
- (e) that the refugee shall not take an active part in the politics of Kenya or of any other country or take part in such activities, being activities of a political nature, as may be specified by the Cabinet Secretary; and
- (f) such additional conditions as the Cabinet Secretary may consider expedient.

(2) The Cabinet Secretary may, at any time, withdraw or modify a direction made under subsection (1).

(3) A refugee to whom subsection (1) applies and who fails to comply with any condition specified in that subsection commits an offence and shall upon conviction be liable for a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or, to both.

41. (1) A person who has, in contravention of the procedure laid down by the law, entered Kenya in order to apply for recognition as a refugee shall not be punished for that act if the person arrives from a country where, his or her life and freedom have been threatened within the meaning of the United Nations Convention, the Protocol and the OAU Convention, provided that Kenya is the first neighboring country of asylum.

Non-punishment for asylum seekers.

(2) A person seeking recognition as a refugee within the meaning of this Act, and who illegally enters Kenya or is illegally present in Kenya shall not—

- (a) be declared a prohibited immigrant;
- (b) be detained; or
- (c) be imprisoned or penalised in any other manner by reason of his illegal entry or presence pending the determination of his application for recognition as a refugee.

42. (1) The Commission may declare any part of Kenya to be a designated area for the reception, transit or residence of any refugee and may for that purpose authorise the establishment in the designated area of refugee camps, settlement and reception centres.

Declaration of designated areas by Commission.

(2) The Commissioner may, after consultation with the relevant agencies, make regulations, for the control and supervision of designated areas, including refugee camps.

43. The Cabinet Secretary may, in writing and for security or other reasons, order any refugee to reside in a refugee camp or settlement or such other place in Kenya as may be specified in the order.

Cabinet secretary orders with regard to refugee settlement.

44. Where there is a large-scale influx of persons claiming to fall within the meaning of refugees under section 4, the Commission shall, after consultation with the representative of the United Nations High Commissioner for Refugees, take action and advise relevant state authorities on emergency measures to be taken, including—

Emergency measures to be undertaken.

- (a) designation of areas for reception, transit and residence of refugees, having due regard to the security requirement for refugees to be settled at a reasonable distance from the frontier of their country of origin;
- (b) provision of adequate and appropriate facilities and services necessary for the group of persons affected by the influx with particular reference to women and children; and
- (c) ensuring the civilian and humanitarian character of areas designated for refugees and the sensitization of the local population for their reception.

## PART VI—CONTROL OF DESIGNATED AREAS

45. (1) The Cabinet Secretary may, by notice in the *Gazette*, declare any part Kenya to be a designated area.

Designated areas.

(2) The Commissioner of Refugee affairs shall appoint a settlement officer to be in charge of refugees settlement, reception, transit or residence area for asylum seekers or refugees.

(3) Every settlement and reception area, shall include all the land and buildings within the settlement, reception, transit, or residence boundaries or enclosure and also any other land or buildings belonging or attached and used by the asylum seekers or the refugees.

(4) In any instrument, which describes a particular designated area by reference to the name of the place or town where it is situated, or other definite description, such instrument shall be valid and sufficient for all purposes.

46. (1) The Commissioner may, in consultation with the Cabinet Secretary, require any asylum seeker or refugee who is within a designated area to move to or reside in any other designated area.

Requirement to reside in a designated area.

(2) An asylum seeker or refugee to whom an order made under this section applies who—

- (a) fails to comply with such order;
- (b) fails to move to or take up residence in a designated area in accordance with such order within reasonable time; or
- (c) having arrived at a designated area, in pursuance of such order, leaves or attempts to leave such area, except in pursuance of another order made under this section, shall be guilty of an offence under this Act.

(3) The Cabinet Secretary as the case may be, may vary, revise or cancel any order or requirement made by the Commissioner under this section.

(4) An asylum seeker or refugee shall be allowed to leave a designated area as directed under this section unless the refugee has sought and obtained a permit from Commissioner as the case may be, and, subject to such terms and conditions as the Commissioner or a Settlement Officer may prescribe in the permit.

(5) An asylum seeker or refugee may not be allowed to be out of a designated area for more than fourteen days unless the Commissioner has allowed in the permit a longer period upon which an asylum seeker or a refugee may stay outside the designated area.

(6) An asylum seeker or refugee to whom a permit or travel document has been issued under this section who fails to comply with the terms and conditions shall be guilty of an offence against this Act.

47. (1) The Cabinet Secretary shall make rules for the control of designated areas and, without prejudice to the generality of the foregoing, such rules and directions may make provision in respect of all or any of the following matters—

Control of  
designated area.

- (a) the organization, safety, discipline and administration of a designated area;
- (b) the reception, transfer, settlement, treatment, health and well-being of asylum seeker or refugee;
- (c) the manner of inquiring into disciplinary offences and the payment of fine and other penalties;
- (d) the powers of settlement officers and the delegation of such powers.

(2) The Commissioner shall give such orders or directions, either orally or in writing, to any asylum seeker or refugee as may be necessary in order—

- (a) to ensure that the designated area is administered in an orderly and efficient manner;
- (b) to ensure the performance of any work or duty necessary for the maintenance of essential services in the designated area or for the general welfare of the asylum seekers or refugees;
- (c) to ensure that all proper precautions are taken to preserve the health and well-being of the asylum seekers or refugees;
- (d) to preserve orderly conduct and discipline in the designated area.

48. (1) The Cabinet Secretary may establish by notice published in the Kenya Gazette an administrative

Administration of  
a designated area

organization for asylum seekers or refugees in any designated area.

(2) Such administrative organization for asylum seekers or refugees shall comprise ten cell leaders at the lowest level and village committees in designated areas or councils at the highest level.

(3) At every administrative level established under this section, there may be established any of the following committees or subcommittees for undertaking any activities relevant to the Committees—

- (a) finance and administration;
- (b) law and order;
- (c) Economic and planning; and
- (d) Community development and social welfare.

(4) Asylum seekers or refugees leaders and representatives at all levels of the administrative organisation established under this section shall be elected by secret ballot based on principles of equality and universal suffrage without any discrimination as basis of sex, clan, tribe, nationality, race or religion.

(5) A designated area's council or village committee may apply for registration of their council or committee as a corporate entity under the relevant law.

(6) The Cabinet Secretary may make regulations published in the Kenya Gazette providing for the functioning or better carrying out of any matter covered under this section.

49. (1) No person other than a person employed in a refugee camp or an asylum seeker or refugee shall enter a designated area except with the permission of the Cabinet Secretary.

Restrictions of persons entering designated areas.

(2) A person seeking to enter a designated area shall make an application to the Cabinet Secretary in writing stating the time and reasons for such an application.

(2) A person may in a designated area address an assembly or meeting of more than five asylum seekers or refugees whether or not such meeting is held in a public place.

(3) A person who contravenes the provisions of this section commits an offence and shall upon conviction be liable to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding five years or, to both.

**PART VII –INTEGRATION, REPATRIATION AND RESETTLEMENT OF REFUGEES**

50. (1) The Commissioner shall ensure that refugees are integrated into the communities where the refugees are settled.

Integration of refugees into communities.

(2) The Commissioner shall sensitize the host communities about the presence of refugees and any other matters relating to their co-existence with each other.

51. The Commissioner shall liaise with the national and county governments for the purposes of ensuring that refugee concerns are taken into consideration in the initiation and formulation of sustainable development and environmental plans.

Consideration of refugee matters in development plans.

52. In the integration of refugees in the host communities, the Commissioner shall, in cooperation with the United Nations High Commissioner for Refugees and the other organizations involved in the assistance of refugees, ensure that special attention is given to women, children and persons with disabilities.

Affirmative action for women, children and persons with disabilities.

53. (1) An asylum seeker or refugee shall have right at any time to return voluntarily to the country of his or her nationality or from which he entered Kenya and any action or omission intended to prevent or restrict an asylum seeker or refugee from voluntary repatriation except in the due process of the law is prohibited.

Voluntary repatriation.

(2) A refugee who leaves Kenya on voluntary repatriation or who ceases to be a refugee for any other cause shall surrender all travel documents, identity cards, permits or any other documents which the refugee acquired by virtue of being a refugee and may take with him or her any movable property which he or she lawfully owns provided the refugee complies with any existing laws relating to property.

(3) Where adequate compensation has not been paid to the refugee owner within one year from the time the



refugee leaves Kenya, such property shall vest into the Refugee Trust Fund.

(4) The Trustees shall pay the requisite fair and adequate compensation to the refugee owner or his or her legal representatives or shall sell the property at the market price the proceeds of which after deduction of its necessary costs shall be paid to the refugee owner or his or her legal representatives.

(4) A person who fails to comply with any provision of this section commits of an offence under this Act.

54. (1) A refugee residing in Kenya may be resettled in any other country outside Kenya.

Resettlement of refugees residing in Kenya.

(2) A refugee residing outside Kenya may before entering Kenya and through the United Nations High Commissioner for Refugees apply to the Cabinet Secretary for resettlement into Kenya.

(3) A refugee shall not be allowed to enter Kenya until the resettlement into Kenya has been granted.

(4) The Cabinet Secretary on receiving any application for resettlement in Kenya shall consider the application and may submit it to the Eligibility Committee which shall make recommendations for further consideration.

(5) A person who contravenes the provisions of this section commits an offence under this Act.

55. (1) There is established a Refugee's Trust Fund which shall be managed by an accounting officer under the supervision of Trustees whose number shall not be less than five or more than nine members.

Establishment of the Refugees Trust Fund.

(2) The Trustees shall consist of—

- (a) the Commissioner who shall be the Chairperson;
- (b) the Representative of United Nations High Commissioner for Refugees Branch Office for Kenya;
- (c) a representative from Kenya Red Cross;
- (d) two refugees, one of whom shall be resident of a designated area; and
- (e) two other persons with experience in refugee matters appointed by the Cabinet Secretary.

(3) The Trust Fund shall consist of monies of the property —

- (a) of a refugee who dies intestate;
- (b) which was unlawfully acquired or which cannot be lawfully repatriated by the owner or possessor on voluntary repatriation or resettlement or deportation outside Kenya;
- (c) which cannot be lawfully utilized by the refugee owner, possessor or beneficiary.

(3) The Trust Fund shall be a charitable body capable of suing and being sued and shall have power to hold fixed and movable property which shall be administered in accordance with the recommendations of the Trustees.

(4) The Trustees shall have power—

- (a) to devise any lawful means of raising funds and property including receiving gifts, presents, donations from any person within or outside the country; and
- (b) to utilize the funds or property and in particular the assistance of refugees to find durable solutions.

(5) The quorum of the Trustees shall be a minimum of half of existing members and the Chairperson shall have a casting vote in case of a tie.

(6) Except as expressly provided in this Act, the Trustees shall regulate their own procedure as they deem fit.

56. The Fund shall be administered by an Accounting Officer appointed by the Cabinet Secretary who shall be under the supervision of the Trustees.

Administration of  
the Fund.

(2) The Accounting Officer may, with the approval of the Cabinet Secretary for the time being responsible for finance, invest or place on a deposit account any of the moneys of the Fund and any interest earned on moneys so invested or deposited shall be placed to the credit of the Fund.

(3) The Accounting Officer shall—

- (a) supervise and control the administration and use of the Fund;

- (b) report at least once in every six months to the Trustees on the management and use of the Fund;
- (c) impose conditions on any expenditure;
- (d) cause to be kept proper books of account and other records in relation to the Fund;
- (e) prepare, sign and transmit to the Auditor General in respect of each financial year and within three (3) months of the end of a financial year, a statement of accounts relating to the Fund in accordance with the Public Audit Act, 2003 ;
- (f) furnish such additional information as may be required for examination and audit by the Auditor-General or under any law; and
- (g) designate such staff as may be necessary to assist in the management of the Fund.

#### **PART VIII—INTERNATIONAL AND REGIONAL CO-OPERATION**

57. The Government shall co-operate with other States, the United Nations High Commissioner for Refugees, the African Union and other international and non-governmental organisations, with a view to protecting and assisting refugees to find durable solutions to their problems.

International  
cooperation.

58. (1) Refugees shall be entitled to assistance provided by the United Nations High Commissioner for Refugees and other organisations.

Cooperation with  
the office of the  
United Nations  
High  
Commissioner for  
Refugees, the  
African Union and  
other  
organizations.

(2) The Government shall assist the Office of the United Nations High Commissioner for Refugees in its duty of monitoring compliance to the provisions of the United Nations Convention, the Protocol and the OAU Convention, as well as monitoring that the rights of refugees are upheld under other relevant human rights instruments.

(3) The Government shall provide to the Office of the United Nations High Commissioner for Refugees and the African Union any information and statistical data concerning relating to the—

- (a) the condition of individual or groups of refugees;

- (b) the implementation of the United Nations Convention, the Protocol, and the OAU Convention;
- (c) laws which are, in force relating to or affecting refugees; and
- (d) any other information relevant to protecting and assisting refugees and finding lasting solutions to their problems.

#### PART IX - MISCELLANEOUS PROVISIONS

59. (1) An asylum seeker or refugee who fails to obey any lawful order of the Cabinet Secretary or of an authorized officer who obstructs any officer in exercise of his or her power under this Act, commits an offence and shall upon conviction be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a period not exceeding six months or, to both.

Offences and penalties.

(2) A person who commits an offence under this Act for which no penalty is provided, shall upon conviction be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a period not exceeding six months or, to both.

60. (1) If the Cabinet Secretary or an authorized officer is satisfied that any asylum seeker or refugee —

Detention of an asylum seeker or refugee.

- (a) is acting in a manner prejudicial to peace and good order of the country; and
- (b) has committed any offence in any other territory for which the refugee has not been punished, being an offence which, if committed within Kenya, would be punishable by law, the Cabinet Secretary or such authorized officer may in writing request the relevant authorities to have the person arrested and prosecuted in a court of law.

61. (1) The Commissioner shall keep and maintain a register of all persons who have been granted refugee status and persons seeking asylum in Kenya.

Registration of asylum seekers and refugees.

(2) The Commissioner shall as soon as practicable, after the coming into force of this Act update the register to take into account the matters provided for by this Act.

(3) The Commissioner shall register and keep records of all asylum seekers and refugees present and the

designated areas established in Kenya and for this purpose shall be deemed to be the Registrar of asylum seekers and refugees provided that the Commissioner may delegate in writing this function to settlement officer or refugee officers.

(4) The Cabinet Secretary may appoint any public officer to be assistant registrar of asylum seeker or refugees for any specific area by order published in the Kenya Gazette provided that such appointed assistant registrars within the areas of their jurisdiction shall carry out their functions under the direction and supervision of the Commissioner.

(5) The registration of asylum seekers or refugees under this Act is without prejudice to any other registration laws requiring registration of persons resident or present in Kenya.

(6) An asylum seeker or refugee who fails to register himself or herself under this Act, commits an offence and shall upon conviction be liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding three years or, to both.

62. An asylum seeker or refugee residing in Kenya shall be liable to pay any taxes according to the taxation laws of Kenya.

Payment of taxes.

63. (1) A refugee resident in Kenya who wishes to join or to be joined by any member of his or her family outside or within Kenya respectively shall make an application for family reunion to the Cabinet Secretary through the United Nations High Commissioner for Refugees who shall submit application to the Eligibility Committee.

Family re-union.

(2) The Eligibility Committee shall recommend to the Cabinet Secretary whether to allow family re-union or not provided that such family re-union shall not take place before permission is granted under this section.

(3) A person aggrieved by the decision of the Cabinet Secretary may appeal to the Appeal Board.

(4) Where there is disunity in the family of a refugee as a result of divorce, separation or death of any member of that family, may remain in Kenya and shall have to apply within a maximum period of two years from the time of

disunity of the family for the acquisition of the refugee status or for a legalisation of the residence in Kenya under the Kenya Citizenship and Immigration Act. Cap. 172.

(4) A person who contravenes the provisions of this section shall be guilty of an offence under this Act.

64. An authorized officer has powers to—

Powers of an authorized officer.

- (a) search any person or property;
- (b) take the finger-prints, palm-prints or photograph of any recognized refugee or protected person or any person who claims to be a refugee for the purposes of this Act or any member of the family of such person;
- (c) question any recognized refugee or protected person or any person who claims to be a refugee for the purposes of this Act or any member of the family of such person.

65. No search of any person or property shall be conducted unless the authorized officer concerned has reasonable grounds for believing that the search is necessary for the prevention, investigation or detection of—

Grounds for conducting a search.

- (a) an offence under this Act; or;
- (b) a fraudulent misstatement or concealment of any fact relevant to his or her identify or status as a refugee or any member of the family of a person refugee.

66. Whenever it is desired to search the body of a woman, such search shall only be made by a medical practitioner or a woman and shall be conducted with strict regard for decency and, if there is no woman available who is an authorised officer, such search may be made by any woman specifically named for the purpose by an authorised officer.

Search to be conducted with decency.

67. The Commissioner shall provide legal aid to refugees and in particular, shall be responsible for paying the fees of legal practitioners or other persons representing or providing legal assistance to refugees.

Provision of legal aid.

68. The Commission, the Secretariat of Refugee Affairs and the Appeal Board shall each prepare and submit

Annual Reports.

to the Cabinet Secretary within three months after the end of each financial year a report of its activities which the Cabinet Secretary shall forward for tabling in the National Assembly.

69. The Refugees Act, Cap. 173 is repealed.

Repeal of Cap.  
173.

70. (1) In this section—

Transitional  
provisions.

“commencement day” means the date when this Act comes into operation;

“former Act” means the Refugees Act, Cap.173.

“former Appeal Board” means the Appeal Board established under section 9 of the former Act.

“former Committee” means the Refugees Affairs Committee established under section 8 of the former Act.

(2) On the commencement day, all rights, powers and liabilities, whether arising under any written law or otherwise which immediately before such day were vested in, imposed on or enforceable against the former Board and Committee shall be deemed to be vested, imposed or enforceable against the former Board and Committee.

(3) Any reference in any written law or in any document or instrument to the former Board and Committee shall, on and after the commencement day, be construed to be a reference to the former Board and Committee.

(4) The administrative directions made by the former Board, Committee or by the Cabinet Secretary which are in force immediately before the commencement day shall, on and after such day, have force as if they were directions made by the Appeal Board, the Commissioner or the Cabinet Secretary under this Act.

(5) Any person who is an officer or employee of the former Board or Committee immediately before the commencement date of this Act shall be deemed to be an officer or employee of the Appeal Board or Committee on the same terms he or she was serving before the enactment of this Act.

Provided that such person shall, within a period of six months from the commencement day, exercise his or her option either to—

- (a) enter into a written contract of service with the Appeal Board, whereupon his or her service with the Government shall be deemed to have been terminated without right to severance pay but without prejudice to all other remuneration and benefits payable upon such termination; or
- (b) be re-deployed by the Government.

(8) The members of the former Board shall continue in office as members of the Appeal Board until the expiry of their existing terms.

#### **PART X-PROVISIONS ON DELEGATED POWERS**

71. (1) The Cabinet Secretary may, make regulations generally for giving effect to this Act, and for prescribing anything required or necessary to be prescribed by or under this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), regulations made under that subsection may provide for—

- (a) the procedure to be followed in applications for recognition as refugees and the form in which such applications shall be made;
- (b) the manner and form in which appeals may be made under this Act;
- (c) the issue of identification documents to persons seeking recognition as refugees and to members of their families;
- (d) the form and issue of identification and travel documents to recognized refugees and protected persons;
- (e) the form of any order or notice required to be served on any refugee under the Act and the manner in which such order or notice may be served;
- (f) the control of persons who are required to live within designated areas, including refugee camps and the circumstances in which such persons may reside outside such areas; and
- (g) the form of any notice required to be served on any person under this Act and the manner in which such notice may be served.



(3) For the purposes of Article 94 (6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section.

*No. 23 of 2013.  
Cap 2.*

(4) The principles and standards applicable to the delegated power referred to under this Act are those found

- (i) the Statutory Instruments Act, 2013;
- (ii) the Interpretation and General Provisions Act,
- (iii) the general rules of international law as specified under Article 2(5) of the Constitution; and
- (iv) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

## FIRST SCHEDULE (s. 12)

## CONDUCT OF BUSINESS AND AFFAIRS OF THE APPEALS BOARD

1. A member of the Appeals Board shall hold office for three years and is eligible for re-appointment for one further term. Tenure of office

2. (1) A member of the Appeals Board may resign by tendering in a written notice of his or her resignation to the Cabinet Secretary. Vacation of office.

(2) A member of the Appeals Board may be removed from office by the Cabinet Secretary for—

- (a) inability to perform the functions of his or her office arising from infirmity of body or mind;
- (b) misbehavior or misconduct;
- (c) incompetence; or
- (d) failure to attend three consecutive meetings of the Board without justifiable reasons.

3. (1) The Cabinet Secretary may appoint a suitable person to fill a vacancy in the Appeals Board arising from the death, resignation or removal from office of a member of the Appeals committee, to serve for the remainder of the term of office of the member in respect of whom the vacancy has occurred. Filling of vacancies in the Appeals Board.

(2) The Secretary shall within fourteen days after the occurrence of a vacancy in the Appeals committee, notify the Cabinet Secretary about the vacancy.

(3) The Appeals Board may continue to act notwithstanding the occurrence of a vacancy in its membership.

4. (1) The Appeal Board shall hold such meetings as may be necessary for the performance of its functions under this Act. Meetings.

(2) The Chairperson, or in the absence of the Chairperson, a member appointed by the members present shall preside the meeting.

5. (1) A decision supported by a majority of the votes cast at a meeting of the Appeal Board at which quorum is present shall be the decision of the Appeal Board. Decisions.

(2) In case of an equal division of vote, the Chairperson shall have a casting vote.

**SECOND SCHEDULE**

(s.32)

**ARTICLES OF CONVENTIONS APPLICABLE TO RECOGNIZED  
REFUGEES AND PROTECTED PERSONS****PART I****ARTICLES OF CONVENTION RELATING TO THE STATUS OF  
REFUGEES OF THE 28TH JULY, 1951****ARTICLE 2****GENERAL OBLIGATIONS**

Every refugee has duties to the country in which he finds himself, which require in particular that he conform 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, 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.....

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.

#### 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 case in the interests of national security.

#### ARTICLE 12

##### PERSONAL STATUS

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his 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 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, trademarks, trade names, and of rights in literary, artistic, and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his 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 in the territory of all Contracting States.

2.A refugee shall enjoy in the Contracting State in which he has his 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 has his habitual residence the treatment granted to a national of the country of his habitual residence.

#### 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 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 consistent 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

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 cannot have recourse, the Contracting States in whose territory he is residing shall

arrange that such assistance be afforded to him 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 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 a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

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.

#### 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 the 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 cost of such proceedings.

#### SCHEDULE

##### (TRAVEL DOCUMENT)

###### Paragraph 1

1.The travel document referred to in Article 28 of this Convention shall be similar to the specimen annexed hereto.

2.The document 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 documents 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.

**Paragraph 8**

The competent authorities in the country to which the refugee desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he 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 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 readmitted to its territory at any time during the period of its validity.

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.

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 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

Specimen Travel Document

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

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.

(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 must, if he wishes to travel again, apply to the competent authorities of his 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)\*

(The document contains.....pages; exclusive of cover.)

(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 birthSex

.....

.....

\* Strike out whichever does not apply

(This document contains.....pages, exclusive of cover.)

(3)

Photograph of holder and stamp of issuing authority

Finger-prints of holder(if required)

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:  
 (This document contains.....pages, exclusive of cover.)

(6)

## 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:  
 (This document contains..... pages, exclusive of cover.)

**PART II**

**OAU CONVENTION GOVERNING SPECIFIC ASPECTS OF  
REFUGEE PROBLEMS IN AFRICA**

**ARTICLE II**

**ASYLUM**

1. Member States of the OAU shall use their best endeavours consistent with their respective legislation to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.

2. The granting of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State.

3. No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2.

4. Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum.

5. Where a refugee has not received the right to reside in any country of asylum, he may be granted temporary residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his re-settlement in accordance with the preceding paragraph.

6. For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.

**ARTICLE III**

**PROHIBITION OF SUBVERSIVE ACTIVITIES**

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

#### ARTICLE IV

##### NON-DISCRIMINATION

Member States undertake to apply the provisions of this Convention to all refugees without discrimination as to race, religion, nationality, membership of a particular social group or political opinions.

#### 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 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 re-settlement 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 penalised 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 organisations, to facilitate their return.

#### ARTICLE VI

##### TRAVEL DOCUMENTS

1. Subject to Article III, Member States shall issue to refugees lawfully staying in their territories travel documents in accordance with

the United Nations Convention relating to the Status of Refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require. Member States may issue such a travel document to any other refugee in their territory.

2. Where an African country of second asylum accepts a refugee from a country of first asylum, the country of first asylum may be dispensed from issuing a document with a return clause.

3. Travel documents issued to refugees under previous international agreements by State Parties thereto shall be recognised and treated by Member States in the same way as if they had been issued to refugees pursuant to this Article.



## MEMORANDUM OF OBJECTS AND REASONS

The principal purpose this Bill is to provide for the recognition and protection of refugees. The Bill seeks to give effect to the Convention Relating to the Status of Refugees, the Protocol Relating to the Status of Refugees and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. As it presently, the existing legal framework for the recognition, protection and management of refugees, is the Refugees Act, Cap. 173. The Act however has a number of deficiencies and in particular does not establish an administrative and structural framework that ensures the recognition and protection of refugees in Kenya. Further, despite the fact that Kenya is party to the International Instruments that seeks to ensure the protection of refugees, the Act does not embody the principles outlined in the Instruments contrary to our international obligations. In this regard therefore, the Bill seeks to repeal the Refugees Act and establish a legal framework that reflects our international obligations.

**PART I**—contains preliminary provisions.

**PART II**—contains provisions outlining the administrative institutions established under the Act which are the Kenya Refugee, Repatriation and Resettlement Commission, the Secretariat for Refugee Affair and the Refugee Status Appeal Board. This Part also sets out the respective functions of the Commission and the Secretariat.

**PART III**—contains provisions relating to the process for applying for grant of refugees status. This Part also establishes the National Eligibility Committee which is tasked to among other things investigate and seek all relevant information from appropriate sources within and outside the country relating to persons making application to be granted refugees status. This Part also contains provisions relating to revocation and cancellation of refugees status and protection and care of refugee women and children, persons with disabilities and persons who have suffered trauma.

**PART IV**—contains provisions relating to the designation of refugee reception officers, the duties of refugee reception officers, places of entry, departure and routes and surrender of weapons by asylum seekers or refugees to authorized officers on arrival to Kenya.

**PART V**—contains provisions relating to the rights of refugees under International Instruments in particular this Part sets out the rights of asylum seekers and refugees in relation to access to employment, land and education. Further, this Part outlines the principle of non-refoulement which provides that a refugee or a member of the refugee family shall not, except on grounds that the expulsion is necessary for reasons of national

security or in pursuance of a decision reached after due process, be rejected at the border, expelled or extradited or returned from Kenya to any country where there are substantial grounds for believing that such a person would be persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, within the meaning of the United Nations Convention.

**PART VI**—contains provisions relating to the control of designated areas. In particular, it gives power to the Commissioner in consultation with the Cabinet Secretary to require any asylum seeker or refugee who is within a designated area to move to or reside in any other designated area. Further, this Part also gives power to the Cabinet Secretary to make rules for the control of designated areas.

**PART VII**—contains provisions relating to the integration, repatriation and resettlement of refugees. In relation to integration of refugees, this Part requires the Commissioner to ensure that refugees are integrated into the communities where the refugees are settled. This Part also establishes a Refugee's Trust Fund which shall be used to assist refugees to find durable solutions.

**PART VIII**— contains provisions relating to the international and regional cooperation by providing that the Government shall co-operate with other States, the United Nations High Commissioner for Refugees, the African Union and other international and non-governmental organisations, with a view to protecting and assisting refugees and finding durable solutions to their problems.

**PART IX**—contains miscellaneous provisions.

**PART X**—contains provisions on Delegated Powers

This Bill once enacted shall confer on the Cabinet Secretary to make regulations generally for giving effect to this Act, and for prescribing anything required or necessary to be prescribed by or under this Act. The Cabinet Secretary for the time being responsible for matters relating to refugees is given authority under section 71 to make regulations to prescribe—

- (a) the procedure to be followed in applications for recognition as refugees and the form in which such applications shall be made;
- (b) the manner and form in which appeals may be made under this Act;
- (c) the issue of identification documents to persons seeking recognition as refugees and to members of their families;

- (d) the form and issue of identification and travel documents to recognized refugees and protected persons;
- (e) the form of any order or notice required to be served on any refugee under the Act and the manner in which such order or notice may be served;
- (f) the control of persons who are required to live within designated areas, including refugee camps and the circumstances in which such persons may reside outside such areas;
- (g) the form of any notice required to be served on any person under sections this Act and the manner in which such notice may be served.

#### **Limits of the Delegated Authority**

The regulations made under this Act shall be limited to the bringing into effect the provisions of this Act.

**FIRST SCHEDULE**—contains provisions relating to the conduct of business and affairs of the Board.

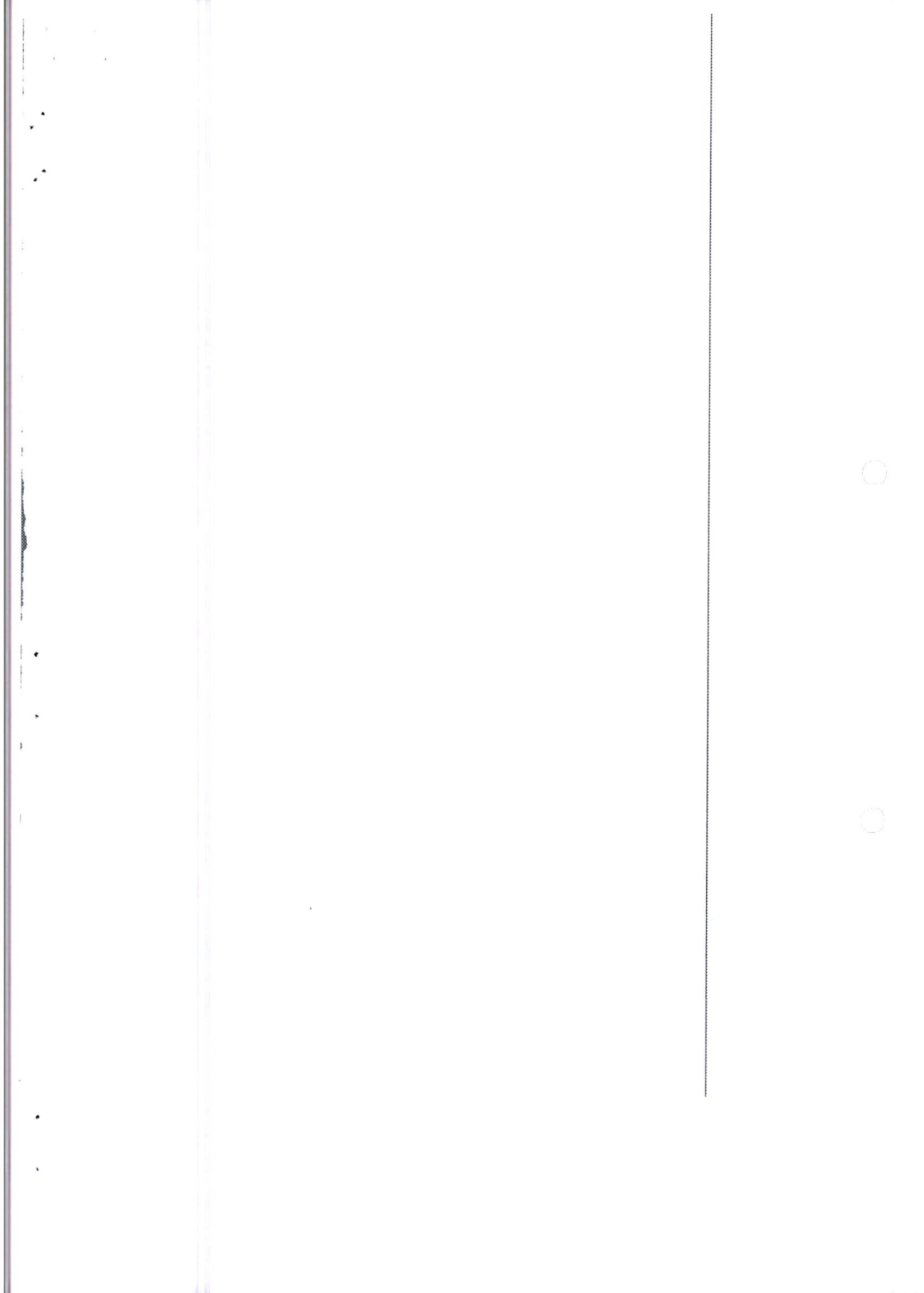
**SECOND SCHEDULE**—contains the articles of Convention applicable to the recognition of refugees

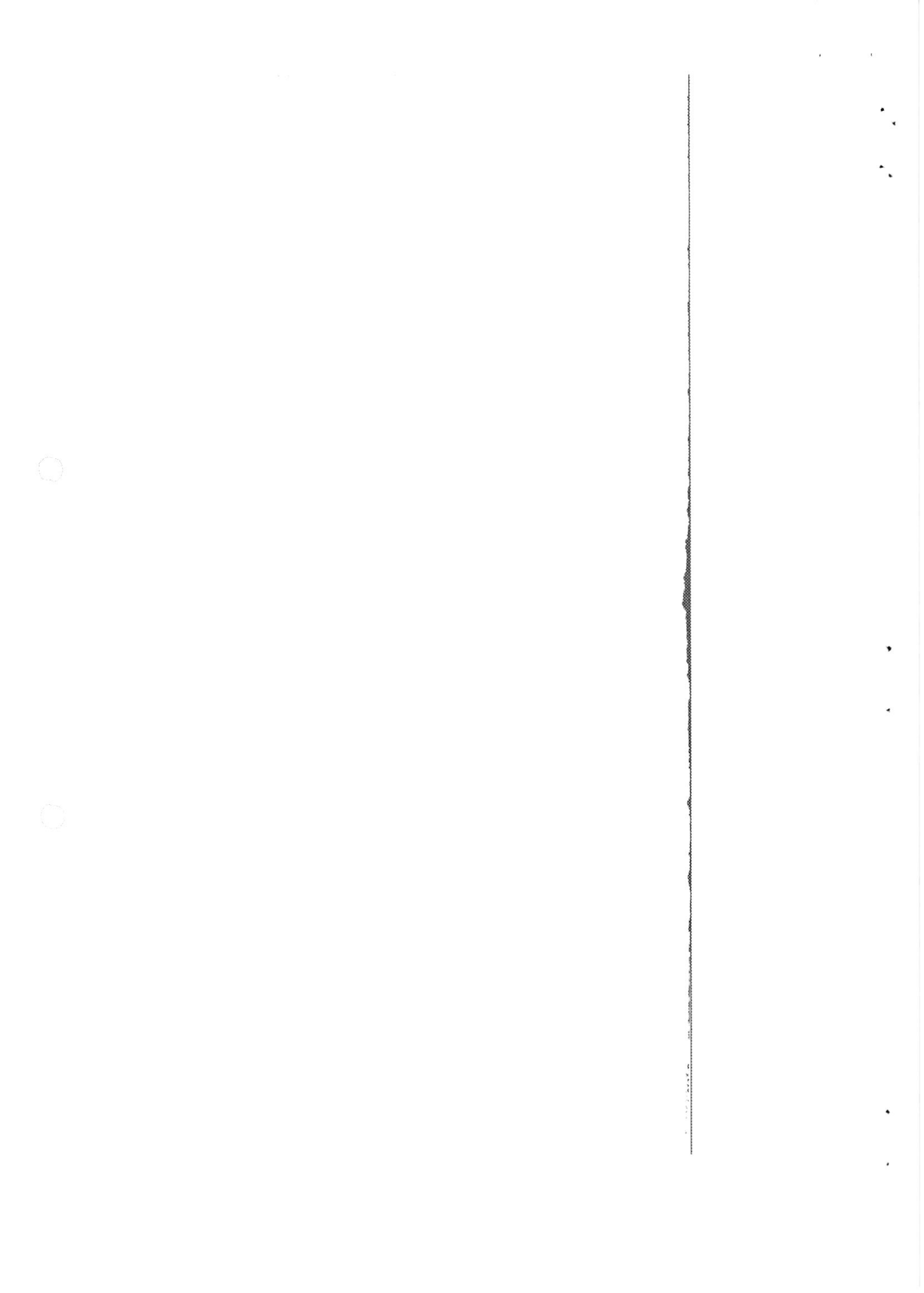
This Bill is not a Bill concerning county governments within the definition of Article 110(1) of the Constitution.

The enactment of this Bill shall occasion expenditure of public funds.

Dated the 22nd June, 2016

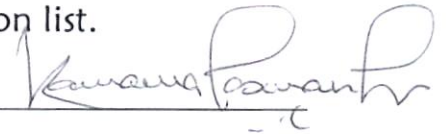
AGOSTINHO NETO,  
*Member of Parliament.*





We, Members of the Departmental Committee on Administration and National Security have pursuant to Standing Order 127 (4) adopted this report on the consideration of The Refugees Bill, 2016 and affix our signatures to confirm our approval and confirm its accuracy, validity and authenticity on ..... as per the attached adoption list.

1. The Hon. Asman Kamama, MGH, OGW, MP – Chairperson



2. The Hon. Alois M. Lentoimaga, MP- Vice Chairperson



3. The Hon. Joseph Lekuton, MP



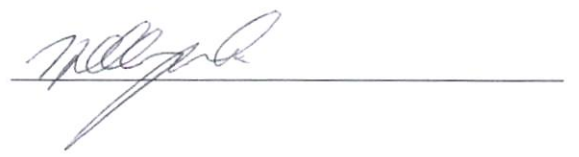
4. The Hon. Alice Wahome, MP



5. The Hon. Zakayo K. Cheruiyot, MP



6. The Hon. Timothy W. Wetangula, MP



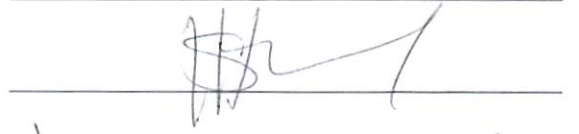
7. The Hon. Patrick Ole Ntutu, MP



8. The Hon. Ali Isaack Shaaban, MP



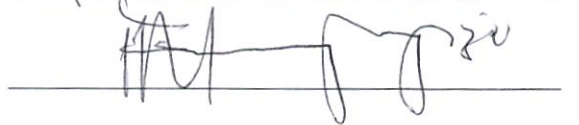
9. The Hon. Samuel Moroto, MP



10. The Hon.(Dr.) Humphrey Njuguna, MP



11. The Hon. Francis K. Mwangangi, MP



12. The Hon. Ibrahim Saney, MP



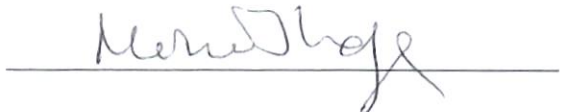
13. The Hon. Rashid J. Bedzimba, MP



14. The Hon. David Gikaria, MP



15. The Hon. Mohamed Shidiye, MP



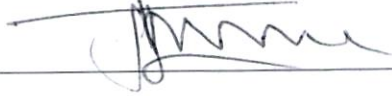
16. The Hon. Jane Machira, MP

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17. The Hon. Charles Nyamai, MP

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18. The Hon. Joseph O. Ndiege, MP



19. The Hon. Wanjiku Muhia, MP

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20. The Hon. Akuja Protus Ewesit, MP

---

21. The Hon. Joseph M. Kahangara, MP

---

22. The Hon. Grace Kiptui, MP

---


23. The Hon. George Theuri, MP



24. The Hon. James Bett, MP

---

25. The Hon. Benard Shinali, MP



26. The Hon. Fatuma Ibrahim Ali



27. The Hon. (Dr.) Makali Mulu, MP



28. The Hon. Peter Kaluma, MP

---

29. The Hon. James Opiyo Wandayi, MP

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**APPENDIX I**

**Minutes**





- |                           |   |                               |
|---------------------------|---|-------------------------------|
| 1. Mr. Leonard Machira    | - | Clerk Assistant I             |
| 2. Ms. Rose Wanjohi       | - | Clerk Assistant II            |
| 3. Ms. Hellen Lokwang     | - | Clerk Assistant III           |
| 4. Ms. Christine Odhiambo | - | Legal Counsel II              |
| 5. Ms. Fiona Musili       | - | Research & Policy Analyst III |

**MIN.NO.276/ANS/2016: PRELIMINARIES**

The Chairperson called the meeting to order at half past ten o'clock. A prayer was said.

**MIN.NO. 277/ANS/2016: CONFIRMATION OF MINUTES**

Confirmation of minutes was deferred to the next sitting.

**MIN.NO.278/ANS/2016: CONSIDERATION OF THE REFUGEES BILL, 2016**

**Clause 11**

The Committee agreed to proposed amendments by Ministry of Interior and Coordination of National Government.

**Clause 13**

The Committee agreed to proposed amendments by Ministry of Interior and Coordination of National Government.

**Clause 14**

The Committee agreed to the proposed deletion to the clause by the Ministry of Interior and Coordination of National Government.

**Clause 15**

The proposed by Ministry of Interior and Coordination of National Government that the Director of public prosecution should not be part of the eligibility committee was agreed to. However the proposal that the UNHCR be invited to the eligibility committee when necessary was rejected.

**Clause 16**

The proposed amended of the Ministry of Interior and Coordination of National Government was accepted.

**Clause 17**

The proposed amendment by the UNHCR and the Danish Refugee Council (DRC) was agreed to.

**Clause 19**

The proposed amendment by the UNHCR and Danish Refugee Council (DRC) was agreed to.

**Clause 20**

1. The proposed amendment to clause 20 (10) by the UNHCR was agreed to.
2. The proposed deletion of clause 20 (6) by the Ministry of Interior and Coordination of National Government was agreed to.

**Clause 49**

1. The proposed amendment by the Danish Refugee Consortium was rejected.
2. The proposed amendment by Ministry of Interior and Coordination of National Government was agreed to.

**Clause 50**

The proposed amendments by Ministry of Interior and Coordination of National Government and the UNHCR were agreed to.

**Clause 52**

The proposed amendments by Ministry of Interior and Coordination of National Government and the UNHCR were agreed to.

**Clause 53**

The proposed amendments by Ministry of Interior and Coordination of National Government and the UNHCR were agreed to.

**Clauses 54 to 56**

The proposed amendments by Ministry of Interior and Coordination of National Government were agreed to.

**Clauses 58**

The proposed amendments by Ministry of Interior and Coordination of National Government and the UNHCR were rejected.

**Clauses 60**

The proposed amendments by Ministry of Interior and Coordination of National Government, the Danish Refugee Consortium and the UNHCR were rejected.

**Clauses 61**

The proposed amendment by Ministry of Interior and Coordination of National Government was agreed to.

**Clauses 62**

The proposed amendments by Ministry of Interior and Coordination of National Government, was rejected.

**Clauses 65**

The proposed amendments by Ministry of Interior and Coordination of National Government and the UNHCR were rejected.

**Clauses 66**

The proposed amendments by Ministry of Interior and Coordination of National Government, the Danish Refugee Consortium and the UNHCR were rejected.

**Clauses 67**

The proposed amendments by Ministry of Interior and Coordination of National Government, was rejected.

**Clauses 68**

The proposed amendments by Ministry of Interior and Coordination of National Government, the Danish Refugee Consortium and the UNHCR were rejected.

**Clauses 71**

The proposed amendments by Ministry of Interior and Coordination of National Government were rejected.

**Second Schedule**

The proposed amendments by Ministry of Interior and Coordination of National Government were rejected.

**MIN.NO. 279ANS/2016: ADJOURNMENT**

There being no other business, the meeting was adjourned at five o'clock until Tuesday 13th September, 2016 at 9:00am.

SIGNED: \_\_\_\_\_

(CHAIRPERSON)

DATE: \_\_\_\_\_

22 Nov 2016

MINUTES OF THE 59<sup>TH</sup> SITTING OF DEPARTMENTAL COMMITTEE ON  
ADMINISTRATION AND NATIONAL SECURITY ON MONDAY 12<sup>TH</sup>  
SEPTEMBER, 2016 IN THE BAOBAB CONFERENCE ROOM, SERENA BEACH  
HOTEL AT 10:00 AM

**PRESENT:**

1. The Hon. Asman Kamama, MGH,OGW,MP - Chairperson
2. The Hon. Zakayo K. Cheruiyot, MP
3. The Hon. George Theuri, MP
4. The Hon. Charles Nyamai, MP
5. The Hon. Akuja Protus Ewesit, MP
6. The Hon. James Bett, MP MP
7. The Hon. Timothy W. Wetangula, MP
8. The Hon. (Dr.) Makali Mulu, MP
9. The Hon. Francis K. Mwangangi, MP
10. The Hon.(Dr.) Humphrey Njuguna, MP
11. The Hon. (Maj. Rtd) John K. Waluke, MP
12. The Hon. Grace Kiptui, MP
13. The Hon. Bernard Shinali, MP
14. The Hon. Joseph Lekuton, MP

**APOLOGIES**

1. The Hon. Alois M. Lentiomaga, MP - Vice- Chairperson
2. The Hon. Ababu Namwamba, EGH, MP
3. The Hon. Alice Wahome, MP
4. The Hon. David Gikaria, MP
5. The Hon. Joseph O. Ndiege, MP
6. The Hon. Fatuma Ibrahim Ali, MP
7. The Hon. Joseph Kahangara, MP
8. The Hon. Patrick Ole Ntutu, MP
9. The Hon. Wanjiku Muhia, MP
10. The Hon. Mohamed Shidiye, MP
11. The Hon. Shabaan Ali Isaack, MP
12. The Hon. Jane Machira,
13. The Hon. Samuel Moroto, MP
14. The Hon. Rashid J. Bedzimba, MP
15. The Hon. Ibrahim Abdi Saney, MP

**IN ATTENDANCE**  
**NATIONAL ASSEMBLY**

1. Hon. Agostinho Neto, MP
2. Hon. Ken Okoth, MP

#### **Committee Secretariat**

- |                           |   |                               |
|---------------------------|---|-------------------------------|
| 1. Mr. Leonard Machira    | - | Clerk Assistant I             |
| 2. Ms. Rose Wanjohi       | - | Clerk Assistant II            |
| 3. Ms. Hellen Lokwang     | - | Clerk Assistant III           |
| 4. Ms. Christine Odhiambo | - | Legal Counsel II              |
| 5. Ms. Fiona Musili       | - | Research & Policy Analyst III |

#### **MIN.NO.272/ANS/2016: PRELIMINARIES**

The Chairperson called the meeting to order at half past ten o'clock. A prayer was said.

#### **MIN.NO. 273/ANS/2016: CONFIRMATION OF MINUTES**

Confirmation of minutes was deferred to the next sitting.

#### **MIN.NO.274 /ANS/2016: CONSIDERATION OF THE REFUGEES BILL, 2016**

The Committee considered the amendments proposed by stake holders as follows:-

##### **Clause Long title**

The proposal by the Danish Refugee Council (DRC) to amend the long title of the Bill was agreed to.

##### **Clause 2**

1. The proposed UNHCR deletion of the definition of "authorized officer" and adoption of a less restrictive definition of "refugee officer" was rejected by the Committee.
2. The proposed amendment by the Ministry of Interior on the definition of 'asylum seeker' means a person seeking refugee status in accordance with the provisions of the Act was agreed to.
3. The proposed amendment by Ministry of Interior for the replacement of 'Commissioner' with 'Director' was agreed to.
4. The proposed amendment by the Ministry of Interior to the definition of 'Durable Solutions' was agreed to.

##### **Clause 3**

1. The UNHCR proposal to amend Clause 3(1) was rejected.
2. The UNHCR proposal to amend Clause 3(2) to" was rejected.
3. The proposal by the Danish Refugee Consortium to amend Clause 6(a) to read "Refugee Management Commission" was agreed to. The same should be included in the definition section of the Refugees Bill, 2016.

##### **Clause 4**

1. The proposed amendment by the Danish Refugee consortium was rejected.
2. The proposed amendment by Ministry of Interior on the review of a person who shall be excluded from being considered for refugee status was agreed

**Clause 6**

The Proposed amendment to clause 6(a) by the Danish Refugee Consortium was agreed to

**Clause 7**

The proposal amended of the Ministry of Interior and Coordination of National Government was rejected.

**Clause 9**

The proposed amendment by the UNHCR in defining the role of the secretariat properly, the following are added to the functions of the Commissioner for Refugee Affairs (Director for Refugee Affairs) was agreed to

**Clause 10**

The Committee agreed that proposed amendments by Ministry of Interior and Coordination of National Government be merged with clause 9.

**Clause 11**

The Committee agreed to proposed amendments by Ministry of Interior and Coordination of National Government.

**MIN.NO. 275ANS/2016: ADJOURNMENT**

There being no other business, the meeting was adjourned at five o'clock until Tuesday 13th September, 2016 at 9:00am.

SIGNED: \_\_\_\_\_

(CHAIRPERSON)

DATE: \_\_\_\_\_

22 NOV 2016

MINUTES OF THE 53<sup>RD</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
ADMINISTRATION AND NATIONAL SECURITY HELD ON TUESDAY, 9<sup>TH</sup> AUGUST  
2016 IN THE MINI CHAMBER COUNTY HALL PARLIAMENT BUILDINGS AT 10.00  
A.M.

**PRESENT**

1. The Hon. Asman Kamama, MGH, OGW, MP - **Chairperson**
2. The Hon. Dr. Makali Mulu, MP
3. The Hon. George Theuri, MP
4. The Hon. Francis Mwangangi, MP
5. The Hon. James Bett, MP
6. The Hon. Joseph Ndiege, MP
7. The Hon. (Maj. Rtd.) John K. Waluke, MP
8. The Hon. Fatuma Ibrahim Ali, MP
9. The Hon. Dr. Humphrey Njuguna, MP
10. The Hon. Ibrahim Abdi Saney, MP
11. The Hon. Samuel Moroto, MP
12. The Hon. Joseph Kahangara, MP
13. The Hon. Mohamed Shidiye, MP
14. The Hon. Wanjiku Muhia, MP
15. The Hon. Joseph Lekuton, MP

**APOLOGIES**

1. The Hon. Alois Lentoimaga, MP - **Vice Chairperson**
2. The Hon. Alice Wahome, MP
3. The Hon. Shaaban Ali Isaack, MP
4. The Hon. Benard Shinali, MP
5. The Hon. Jane Machira, MP
6. The Hon. Timothy Wetangula, MP
7. The Hon. Grace Kiptui, MP
8. The Hon. David Gikaria, MP
9. The Hon. Patrick Ole Ntutu, MP
10. The Hon. Zakayo Cheruiyot, MP
11. The Hon. Rashid Bedzimba, MP
12. The Hon. Charles Nyamai, MP
13. The Hon. Ababu Namwamba, MP



14. The Hon. Protus Akuja Ewesit, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY**

1. Hon. Augustinho Neto, MP
2. Hon. Shukran Hussein Gure, MP
3. Hon. Mohamed Abass, MP

**REFUGEE AFFAIR SECRETARIAT- MINISTRY OF INTERIOR AND  
COORDINATION OF NATIONAL GOVERNMENT**

- |                        |   |                       |
|------------------------|---|-----------------------|
| 1. Mr. Kodeck Makori   | - | Head of Secretariat   |
| 2. Mr. Goeffrey Wafula | - | Assistant/P/RAS       |
| 3. Mr. Stephen Sikolia | - | Programme Officer/RAS |

**AMNESTY INTERNATIONAL**

- |                   |   |                       |
|-------------------|---|-----------------------|
| Ms. Mariam Idriss | - | Amnesty International |
|-------------------|---|-----------------------|

**UNITED NATIONS HIGH COMMISSION FOR REFUGEES**

1. Ms. Karen Kotut
2. Ms. Sadiyo Gurhan
3. Ms. Lilian Odipo
4. Ms. Anne Ndungu

**DANISH REFUGEE COUNCIL**

- |                       |   |                            |
|-----------------------|---|----------------------------|
| 1. Mr. Oscar Muriuki  | - | Programme Officer-Advocacy |
| 2. Mr. Fredrick Koome | - | Programmee Officer -ADP    |

**HESHIMA KENYA**

- |                      |   |                             |
|----------------------|---|-----------------------------|
| 1. Ms. Dinah Makambi | - | Legal & Advocacy Officer    |
| 2. Ms. Claire Walkey | - | Student (Oxford University) |

**COMMITTEE SECRETARIAT**

- |                        |   |                     |
|------------------------|---|---------------------|
| 3. Mr. Leonard Machira | - | Clerk Assistant I   |
| 4. Ms. Rose Wanjohi    | - | Clerk Assistant II  |
| 5. Ms. Hellen Lokwang  | - | Clerk Assistant III |

- |                           |   |                               |
|---------------------------|---|-------------------------------|
| 6. Ms. Christine Odhiambo | - | Legal Counsel II              |
| 7. Mr. Eugene Apaa        | - | Research & Policy Analyst III |
| 5. Mr. Simon Muinde       | - | Audio Officer                 |

MIN.NO.247/ANS/2016 - PRELIMINARIES

The Chairperson called the meeting to order at 10.30 am. A prayer was said.

MIN.NO.248 /ANS/2016 - CONFIRMATION OF MINUTES

There were no minutes to be confirmed.

MIN.NO.249/ANS/2016 - PUBLIC HEARING ON THE REFUGEES BILL, 2016.

The Committee received oral and written submissions on the Bill from the Refugee Affairs Secretariat, Ministry of Interior & Coordination of National Government, Kenya National Commission on Human Rights, the United Nations High Commissioner for Refugees Danish Refugee Council and Amnesty International.

The Refugee Affairs Secretariat stated as follows:-

- (i) **Making the refugee hosting a permanent phenomenon** – The Bill seeks to make refugee hosting a permanent venture for the government whilst it is supposed to be a temporary measure that should have an end point.
- (ii) **Expensive processes** – The Bill creates many institutions the refugees management structure that are likely to occasion more government expenditure. The secretariat proposed the strengthening of the current structures without necessarily coming up with a system that is like to occasion more expenditure.
- (iii) **Limitation of Government powers on decision making** – The Bill seems to curtail government powers in decision making by expanding the role of non-state actors and entrenching them at almost every level of decision making including administrative decisions.
- (iv) **Preference of Refugee interests over citizens' interests**–The Bill advances the interests of refugees and asylum seekers at the expense of Kenyans citizens/host community interests. The situation is likely to further complicate current security challenges. The Government's first responsibility is to protect its citizens in as much as it has the obligation of protecting refugees.
- (v) **Lack of policy guideline** – The Bill purports to address certain matters that need a clear Government policy guideline. It is necessary for the government to formulate

the policy on refugee matters which will provide the necessary guidelines that can be used to lay the framework for a full legislation.

- (vi) The Government is in the process of repatriating refugees back to Somalia and any change in the legal framework will scuttle the process;
- (vii) The proposed bill will open up avenues for litigations by refugees and Non-Governmental Organizations with interests in refugee issues. The continued presence of a large number of refugees in the country will continue to undermine Kenya's national security;
- (viii) The Bill proposes to entrench the 1951 Convention which does not reflect the current emerging security challenges especially those associated with terrorism;
- (ix) The Bill provides for the employment of refugees, allowing them to run businesses, access to land for cultivation and pasture. These are proposals that require well thought out government policy considerations in view of the fact that there is a high level of youth unemployment in the country and allowing refugees engagement in agricultural activities will create conflict with the host communities;
- (x) The structures set to manage the refugee affairs in the Bill do not include relevant government institutions and departments which have direct involvement in the management of refugees and
- (xi) The Bill gives the UNHCR undue prominence and supervisory powers over the Government whereas UNHCR should play a supplementary role in the refugee management.

The Refugee Affairs Secretariat recommended specific amendments to the Bill as follows:-

Clause No.	Comment	Justification	Recommendation
Preamble	Review	The preamble in the Refugee Bill 2016 introduces the International Conventions that the Government has proposed to be reviewed to be in tandem with emerging security challenges.	An Act of Parliament to make provision for the recognition, protection and management of refugees and for connected purposes.
2	Review	Definition of 'asylum seeker'	Means a person seeking refugee status in accordance with the provisions of this Act.
4	Review	The Act to state the grounds on who is excluded from being a refugee.	A person is excluded if there exists serious reasons of exclusion.
6 (a)	Review	The practice globally is that refugee affairs are handled by the Ministry of Interior.	Create an advisory Committee to work and report to the CS Interior.

6 (b)	Amend the name	There is a new government structure that has been recently put in place to provide for a secretariat that has already taken shape.	Create a Refugee Affairs Secretariat
7 (1)	Review the membership to the Committee	The Committee to work under the CS Interior.	Secretarial functions to be provided by the Refugee Affairs Secretariat.
9 (1)	Review the creation of Commissioner	The recently adopted government structure established the Director to replace the Commissioner for purposes of effective management of refugee affairs and as per the common practice for other agencies within the Ministry.	Replace "Commissioner" with "Director".
9 (2)	Delete	Outline the functions of the secretariat clearly as the Committee's tasks is to deal with policy matters in refugee management and not administrative.	List functions of the Director.
9 (3)	Delete	The Commissioner now Director is the Head of the Secretariat.	
10	Review	This provision is contradicting section 9 (2) on the functions of the secretariat.	List the functions of the Refugee Affairs secretariat.
11 (1)	Review	The proposed composition may not effectively deal with refugee appeals as such.	List the professional qualifications of the Appeals Board.
11 (5) b	Review	Termination is not a term in refugee asylum system.	Delete termination from matters appealable to the Board.
13 (1) & (3)	Review	Refugee Status determination is to be done by the government and not UN agency.	Remove the possibility of applying for refugee status to a UN agency.
13 (2)	Review	Not all authorized officers are near the entry point to receive	An asylum seeker is to present himself/herself to the nearest

		asylum seekers.	government administrative officer who shall direct him/her to the relevant authority.
13 (4)	Delete	Obligating the Secretariat to come up with a pool of lawyers and paying for their services is far-fetched.	This can be addressed by the Legal Aid Act, 2016.
14	Delete	Participation of Public Benefit Organizations may open a window for advancing certain interests that may not be in line with the requisite objective.	No need of NGOs representing Asylum Seekers.
15	Review	There is already an existing committee.	Propose to have a Status Eligibility Panel.
16	Review	The listed functions are done by the refugee officer who does the status determination interview.	List the functions of the panel.
17 (2)	Review	The whole provision sounds ambiguous.	
20 (6)	Delete	Burdening the Appeals Board to employ or hire lawyers to represent litigants is untenable.	Representation to be guided by other enabling Kenyan laws.
20 (10)	Delete	Cancellation is occasioned by serious circumstances.	
21	Review	Serious criminal offenders should have their status revoked too.	
22	Delete	It's a policy issue under Foreign Affairs.	
23	Delete	Outline operations procedures	
24	Review	Sounds discriminative.	
26 (2)	Review	Removal from the country is a serious matter that should be handled by the CS.	Replace Commission with CS Interior.
28	Review	Sounds ambiguous	Reception centres to liaise with the Secretariat
29	Review	List the functions to be undertaken by the reception	Have the functions listed under Clause 29.

		centres.	
30	Review	Should apply from the start to asylum seekers and not recognized refugees as suggested.	Limit it to asylum seekers.
31	Delete	Asylum seekers or refugees shall not have firearms in Kenya. Dealt with under Firearms Act.	
32	Review	Have a clear direction on the rights applicable to refugee in Kenya.	Retain section 16 (1) of the current Act with a proviso on as long as such provisions are in tandem with National interests.
33	Delete	Does not capture Non-refoulement as contemplated under the OAU Convention which is more recent and specific to the refugee situation in Kenya i.e. considers security concerns of a country.	
34,35,36,37,38	Delete	The rights thereunder are provided for under the other Kenyan laws that give the procedures and may as well lead to misinterpretation.	
34	Delete	Granting refugees access to employment will exacerbate the current high youth unemployment.	
35	Delete	Granting refugees access to land and pasture will result to conflict between the refugees and the host communities.	
36	Delete	Refugee education will be determined by the government together with other relevant agencies.	
37	Delete	The issue of work permits to refugees should be left to the existing legal framework.	
38	Delete	There is currently no policy	

		to give refugees citizenship.	
39 & 40	Review	Not mandatory to involve UNHCR on the government decision to expel people who deemed to be against the security interests of the Nations.	Retain section 21 of the current Act on expulsion but there is need to provide a procedure to adopt in expelling.
41	Delete	It does not create offences and penalties.	Create a section on all offences and penalties for ease of reference.
42	Review	Same issue captured under two different sections.	Compile together Clause 32 (2) on designated areas.
43	Delete	It is contradicting the general encampment policy.	The Director to deal with matters of exemption from residing in designated areas.
44	Review	The wording may pin the government to strike a consensus with UNHCR before.	Change the wording to be "in consultation with UNHCR" and "with UNHCR" to remove the likelihood of consensus.
45	Delete sub-clause 3 & 4	They add no value but serve to complicate the situation.	
46	Review	Remove sub-section 6	Should move to the offences section.
47 (1)	Review	Restricting the regulations to cover specific issues will limit the Cabinet Secretary.	Should be moved to Part X on provisions for delegated powers.
47 (2)	Delete	Can be properly articulated under the regulations.	
48	Delete	Such is an administrative structure that can be done internally by the Camp Manager.	
49	Review	Do not limit reference to certain individuals.	"No person other than public officers....."
50	Review	Needs clear Government policy on local integration.	
51	Review	Let the interests of the host communities supersede the interests of the refugees.	Replace 'the concerns of the refugees' with 'the concerns of the host community' and bring 50 (2) to be 51 (2).
52	Delete	Already addressed in the earlier provisions.	
53	Delete	53 Sustainability of the Trust	

	(3,4)	Fund and the resultant effect of entrenching permanence.	
54	Review	Retain only subsection 1. Refugee protection is a burden sharing initiative and Kenya having gone out of its way to host many refugees to an extent that it has been constrained of resources, providing a lee way for resettlement into Kenya is over-stretching the already limited resources.	
55 & 56	Delete	There are mechanisms to achieve the objectives of the said provisions.	
58	Delete	Mandating the government to be answerable to a non-governmental agency may work against the interests of the government.	
59	Review	List all the offences under this section to minimize chances of confusion.	
60	Delete	Refugees who commit offences should be subject to the existing Kenyan laws.	
61	Review	Retain sub-section 1	
62	Delete	Provided for under taxation laws.	
63	Review	Overstretching the depleted resources in Kenya	Allow for family re-union for refugees in Kenya who apply to leave the country and join relatives in other countries and not vice versa. Subsection 4, reduce the period.
64	Review	Insert asylum seeker under paragraph (c) to replace protected person	Make reference to Article 24 of the constitution on limitation of rights.
65	Review	Retain with additions	Add offence under any recognized law Replace fraudulent



			misstatement with misrepresentation.
66	Review	Its discriminative provision	
67	Delete	Addressed under other legal aid laws.	
68	Delete	This is an internal administrative arrangement on the mode of supervision and reporting.	
71	Review	Remove sub sections 3 and 4	
Schedules	Review	Delete – second schedule as it automatically provided for under the constitution.	

(ii) The Danish Refugee Council, International Rescue Committee, Heshima Kenya and the Refugee Consortium of Kenya recommended the following amendments to the Bill:-

Clause	Recommendation	Comment
<b>Administrative Provisions Part II</b>		
Clause 6 (a)	Propose to read as Refugee Management Commission.	The recommendation encompasses all the functions related to refugee management specified in the bill including promotion of durable solutions.
Clause 7	Principal Secretary	Function of the PS is advisory role and therefore the CS need not attend a meeting making a decision to advise him/her.
Clause 15	Eligibility Committee – recommend it to be a panel.	
Clause 16	The Status Eligibility Panel shall review the assessments and the recommendations made by the Refugee Officers and make recommendations on the refugee applications.	
Clause 17 (1)	Delete	
Clause 19	The person shall be	Health screening procedures

	quarantined in a special holding centre.	are under the Public health Act.
Clause 20	Delete clause 6	
Section 21	The CS may revoke the status of any refugee at any given time after recognition as a refugee has been convicted of a serious crime.	Suggest the reason for revocation.
Clause 22	Delete the section	Refugees from EA community already benefit from the protection available.
Clause 23	Move the paragraph to the regulations sub clauses 23 (i) (b) (ix) (x) and (xi) - delete	As a procedural section it is better suited to regulations.
Section 24	The Commissioner shall ensure the dignity and safety of women and children seeking asylum and have been granted refugee status at all times.	
Section 29	Delete sub (d) and (f)	
Section 31	Delete	
Rights and Duties of Refugees and Asylum Seekers		
Section 33	Delete and replace with the following: (i) No person shall be refused entry into Kenya, expelled, extradited from Kenya or returned to any other country or be subjected to any similar measure if, as a result of such refusal, expulsion, return or other measure, such person is compelled to return to or remain in a country.....	The threshold for removal is definite.
Section 41	Delete	
Control of Designated Areas Part 4		
Designated area	Delete sub 45 (3)	The instrument needs to be definite or defined with maxim clarity.
Requirement to reside in a designated area	Sub 46 should read "an asylum seeker or refugee shall not be allowed...."	The inclusion of the phrase shall not is important for the phrase to make sense.

Control of designated area	Delete 47 (2)	It reads as though the designated area/s are administered and by refugees and asylum seekers
Restriction of persons entering a designated area	Delete 49	The Clause is contrary to freedom of movement and assembly for the host communities under the Constitution.
Integration repatriation and resettlement of refugees		
Clause 54	Sub 3 should read "a refugee outside of Kenya"	This clause does not apply to an asylum seeker/refugee in Kenya but someone already granted refugee status in another country.
Miscellaneous Provisions		
Detention of an asylum seeker or refugee	Delete Clause 60	The clause seeks to impose jurisdiction to offences occurring outside of our territorial boundaries.
Family reunion	Delete sub 4	It provides for an offence that has not been mentioned. Kindly clarify on the offence that has been committed.
Powers of an authorized officer	Delete the section	Grants wide discretionary powers for search and questioning to officers without considering the due process required by other laws.
Grounds for conducting a search	Delete the section	The searches to be conducted are not related to prevention of fraudulent misstatements – considering rephrasing the clause.
Search to be conducted with decency	Delete the section	The clause is unrelated to the grounds and no reference has been made to the said grounds in section 65 and 66 above.
Provision of legal aid	Delete the section 67	There is potential for conflict of interest where the need for legal aid is against the Commissioner. The Refugee

		Affairs Secretariat should not be given the responsibility to source for lawyers for legal aid for refugees.
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iii. The United Nations High Commission for Refugees (UNHCR) recommended the following amendments to the Bill:-

CLAUSE	PROPOSAL	JUSTIFICATION
Long title	Amend to read- "An Act of Parliament to make provision for the recognition, protection and management of refugees and for connected purposes"	The current definition is too wordy.
Clause 2	Delete the definition of "authorized officer". Adopt a less restrictive definition of "refugee officer" Eligibility Committee is irrelevant.	The definition is restrictive and conflicts with the Kenyan Government appointment policies for public service. The functions of the Committee in the Bill will result in a lengthy and more complicated process in the application for refugee status

<p><b>Clause 3</b></p>	<p>(1) Use international set grounds of persecution to define “refugee”. Include the definition in the UN Convention and the OAU protocol.</p> <p>(2) Rephrase to read- <i>If the Commission considers that any class of persons are prima facie refugees as defines in subsection (1), the Commission may declare such class of persons to be prima facie refugees and may at any time amend or revoke such declaration.</i></p> <p>(3) Amend to read- <i>If the Commission under subsection (2) expressly excludes or exempts any person from a declaration that a class of persons to which that person is a member are refugees, such exclusion or exemption shall not preclude the person concerned fro individually applying under subsection i(c) for recognition of their status as a refugee.</i></p> <p>(4) Break down Clause 3(4) into two parts, i.e exclusion and disqualification from refugee status.</p>	
<p><b>Clause 6</b></p>	<p>(a) Establish an inter-ministerial institution, chaired at the highest level by the Cabinet Secretary or Principal Secretary from the pertinent Ministry, comprising of all the government ministries responsible for refugee affairs.</p>	

<p>Clause 9</p>	<p>Define the role of the secretariat properly.  Add the following to the functions of the Commissioner for Refugee Affairs-</p> <ol style="list-style-type: none"> <li>(1) Keep, register and maintain a record of all asylum seekers and refugees in Kenya.</li> <li>(2) Issue refugee identification documents and facilitate the issuance of civil registration and other relevant documents.</li> <li>(3) In liaison with Director of Immigration, process and issue conventional travel documents.</li> <li>(4) Facilitate refugees to access work permits and business permits.</li> <li>(5) Manage refugee designated areas and other related facilities; form sub-committees and assign to such sub-committees functions to be exercised in relation to the reception, treatment and welfare of asylum seekers and refugees; co-ordinate the provision of overall security, protection and assistance for asylum seeker and refugees in the designated areas.</li> <li>(6) To ensure civilian and humanitarian character of the designated areas</li> <li>(7) Issue movement passes to refugees and asylum seekers wishing to travel outside the designated areas and within Kenya</li> <li>(8) Exempt asylum seekers and refugees from residing in the designated areas where there are compelling reasons.</li> <li>(9) Protect and assist vulnerable</li> </ol>	<p>Harmonise provisions of clauses 9 and 10.</p>
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	<p>groups, women, children and persons living with disability.</p> <p>(10) Ensure treatment of all asylum seekers and refugees in compliance with national law</p> <p>(11) Issue visitors permits from entry into Refugee camps in accordance with the regulations.</p>	
<b>Clause 11</b>	<p>-The Chairperson of the Appeal Board should not necessarily be a judge of the superior court appointed by the CJ, but a person with legal background and requisite competencies.</p> <p>- The members of the appeal board should also have legal back ground and experience in refugee matters.</p> <p>- Amend 11(5) (b) by deleting the words “cancellation and revocation” and replacing therefor the word “termination”.</p>	The Appeal Board is not a court and should not assume the role of the courts.
<b>Clause 13</b>	Amend clause 13(2). It is not the role of UNHCR to notify that a person seeking asylum is present in Kenya. The provisions in Clause 13(4)-(12) be moved to regulations as they describe the RSD Process.	.
<b>Clause 17</b>	Delete Clause 17(1) of the Bill.	Appeals should only be done as per clause 17(2).
<b>Clause 19</b>	Replace as follows- “Disease surveillance shall be established at the reception centre and conditions of public health concerns managed as per the national guidelines.	

<p><b>Clause 20</b></p>	<p>Amend Section 20(10) of the Bill to state-  “where refugee status under this part has been cancelled that person shall cease to be a refugee and any member of his family with derivative status shall cease to be so recognized under this Act on the expiration of 7 days after the date on which the Commissioner notifies the person concerned that his/her recognition has been cancelled;  Provided that the family member whose derivative status is affected by the cancellation shall have the right to apply to be considered as a refugee under section 13 of this Act.”</p>	
<p><b>Clause 23</b></p>	<ul style="list-style-type: none"> <li>- Re-number clause 23(1)(b)</li> <li>- Rights and duties be captured in the regulations.</li> <li>- Documents listed in (b) (ix) and (x) be deleted as they are prejudicial to persons who fee without documents.</li> </ul>	
<p><b>Clause 24</b></p>	<p>The provisions of this clause are captured under the duties of the Commissioner under clause 9(3). This should be re-phrased with most of the procedural aspects captured under the Regulations.</p>	
<p><b>Clause 40</b></p>	<p>Move this clause to the part on reception and registration and re-word it.</p>	
<p><b>Second Schedule</b></p>	<p>Attach the entire conventions and not excerpts.</p>	



**Committee observation**

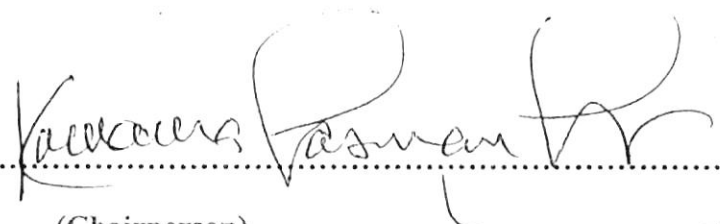
The Committee observed that there was limited public participation on the Bill, despite the publication of an advert inviting the general public to participate in the meeting.

**Committee resolution**

The Committee agreed to hold a retreat to consider the proposed amendments. The date and venue would be scheduled later.

**MIN.NO.250 /ANS/2016 - ADJOURNMENT**

There being no other business the meeting was adjourned at 12.45 pm and the next meeting will be held on Thursday, 11<sup>th</sup> August, 2016 at 10.00 a.m.

Signed.....  
  
(Chairperson)

Date..... 22 / NOV 2016 .....

MINUTES OF THE 51<sup>ST</sup> SITTING OF DEPARTMENTAL COMMITTEE ON  
ADMINISTRATION AND NATIONAL SECURITY HELD ON TUESDAY 2<sup>ND</sup>  
AUGUST, 2016 IN THE COMMITTEE ROOM, 4<sup>TH</sup> FLOOR, CONTINENTAL  
HOUSE, PARLIAMENT BUILDINGS AT 11:30 AM

**PRESENT:**

- |  |   |                          |
|--|---|--------------------------|
| 1. The Hon. Asman Kamama, MGH,OGW,MP   | - | <b>Chairperson</b>       |
| 2. The Hon. Alois M. Lentiomaga, MP    | - | <b>Vice- Chairperson</b> |
| 3. The Hon. Grace Kiptui, MP           |   |                          |
| 4. The Hon. Akuja Protus Ewesit, MP    |   |                          |
| 5. The Hon. Patrick Ole Ntutu, MP      |   |                          |
| 6. The Hon. Francis K. Mwangangi, MP   |   |                          |
| 7. The Hon. David Gikaria, MP          |   |                          |
| 8. The Hon. Joseph O. Ndiege, MP       |   |                          |
| 9. The Hon. Mohamed Shidiye, MP        |   |                          |
| 10. The Hon. Samuel Moroto, MP         |   |                          |
| 11. The Hon. Wanjiku Muhia, MP         |   |                          |
| 12. The Hon.(Dr.) Humphrey Njuguna, MP |   |                          |
| 13. The Hon. Rashid J. Bedzimba, MP    |   |                          |
| 14. The Hon. George Theuri, MP         |   |                          |
| 15. The Hon. (Dr.) Makali Mulu, MP     |   |                          |

**APOLOGIES**

1. The Hon. Zakayo K. Cheruiyot, MP

**ABSENT**

1. The Hon. Ababu Namwamba, EGH, MP
2. The Hon. Alice Wahome, MP
3. The Hon. Timothy W. Wetangula, MP
4. The Hon. Shabaan Ali Isaack, MP
5. The Hon. Ibrahim Abdi Saney, MP
6. The Hon. (Maj. Rtd) John K. Waluke, MP
7. The Hon. Fatuma Ibrahim Ali, MP
8. The Hon. Joseph Lekuton, MP
9. The Hon. James Bett, MP
10. The Hon. Joseph Kahangara, MP
11. The Hon. Bernard Shinali, MP
12. The Hon. Jane Machira, MP
13. The Hon. Charles Nyamai, MP

**IN ATTENDANCE - NATIONAL ASSEMBLY**

- |                           |   |                             |
|---------------------------|---|-----------------------------|
| 1. Ms. Rose M. Wanjohi    | - | Clerk Assistant II          |
| 2. Ms. Hellen Lokwang     | - | Clerk Assistant III         |
| 3. Ms. Christine Odhiambo | - | Legal Counsel II            |
| 4. Mr. Eugene Apaa        | - | Research Policy Analyst III |

**MIN.NO.239/ANS/2016: PRELIMINARIES**

The Vice Chairperson called the meeting to order at twelve o'clock. The Prayer was said.

**MIN.NO.240 /ANS/2016: CONFIRMATION OF MINUTES**

Confirmation of minutes was deferred to the next sitting.

**MIN.NO.241 /ANS/2016: COMMITTEE BRIEF ON THE REFUGEES BILL,2016**

The Committee was informed that the principal purpose of the Refugees Bill, 2016 is to provide for the recognition and protection of refugees. The Bill also seeks to give effect to the Convention Relating to the Status of Refugees, the Protocol Relating to the Status of Refugees and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. The Bill therefore seeks to repeal the Refugees Act and establish a legal framework that reflects our international obligations.

**Part I** contain clauses 1-5 and deals with the preliminary provisions. This Part contains the short title of the Bill and the interpretation of various terms as used in the Bill.

**Part II** of the Bill deals with the administrative provisions and contains clauses 6-12.

This Part establishes the following institutions—

- 1) The Kenya Refugee, Repatriation and Resettlement Commission;
- 2) The Secretariat for Refugee Affairs; and
- 3) The Refugee Status Appeal Board.

This Part sets out the composition of the Commission as well as its functions, which are policy formulation, upholding of the rights of refugees and the declaration of refugee status. The Secretariat for Refugee Affairs shall provide the administrative functions to the Commission.

**Part III** of the Bill provides for the application for refugee status. It provides that an application for the grant of refugee status shall be made in the prescribed form to the Secretariat for Refugee Affairs and forwarded to the Commissioner. The Commissioner shall, within sixty days of the application, make a decision to grant or not to grant the application and such decision shall be notified to the applicant in writing.

This Part provides for the establishment of the National Eligibility Committee whose main function shall be to investigate and summon applicants or other persons in matters relating to refugee status. Under this Part, any person aggrieved by the decision of the Eligibility Committee may appeal to the Appeal Board against such decision, and may make a further appeal to the High Court. The Part provides for the circumstances in which the Commissioner may cancel a refugee status, which is on grounds of misrepresentation of facts or where a person should not have been recognized as a refugee.

**Part IV** of the Bill provides for the reception for refugees and contains clause 28-31. The Commissioner shall designate reception officers who shall receive and process all applications for refugee status. This Part provides that any refugee who enters into Kenya with arms and ammunition shall be required to surrender the same to an authorized officer.

**Part V** of the Bill provides for the rights and duties of refugees and asylum seekers in Kenya and contains clauses 32-44

**Part VI** of the Bill provides for the control of designated areas, and contains clauses 45-49. Under this Part, the Cabinet Secretary shall by notice in the Gazette declare designated areas which shall be used for the reception, transit or settlement of refugees. The Cabinet Secretary may also require refugees to move from one designated area to another, and a refugee who fails to comply with such orders of the Cabinet Secretary commits an offence. This Part also gives the Cabinet Secretary Powers to make rules for the control of designated areas.

**Part VII** of the Bill provides for the integration, repatriation and resettlement of refugees, and contains clauses 50-56. This Part provides that the Commissioner shall ensure the integration of refugees with host communities for purposes of peaceful co-existence.

**Part VIII** of the Bill provides for international and regional co-operation. It provides that refugees shall be entitled to the assistance of other organizations. The government shall assist the Office of the United Nations High Commissioner for Refugees in its duty of monitoring compliance with the provisions of the UN and OAU Conventions. The government shall also provide the office of the Commissioner with any information relating to refugees.

**Part IX** provides for miscellaneous provisions. It creates an offence for an asylum seeker who fails to obey lawful orders, and creates a general penalty for any offence for which no penalty is provided in the Bill. The Part provides that a refugee or asylum seeker may be arrested and prosecuted if he threatens the peace and good order of the country, or if he commits an offence punishable by law. This Part also provides that the Commissioner shall keep and maintain a register of all persons granted refugee status in Kenya. Under this Part, an asylum seeker who fails to register himself or herself under this Act commits an offence. The Commissioner shall also provide legal aid to refugees. This Part repeals the Refugees Act, Cap. 173 and provides for the modalities of transition from the old Act to the new Act.

Part X of the Bill provides for the provisions on delegated powers. This Part gives the Cabinet Secretary the power to make regulations on various issues that would result in the better carrying out of the provisions of this Act.

### Committee Observations

The Committee observed that

1. The Refugee status is meant to be a temporary position, whereby the refugees once registered are hosted for a short period of time before being repatriated either to their country of origin if the situation is stable or to another country of their choice. Further, opportunities of absorption into the local population should be limited as much as possible to encourage the refugees to return to their home countries.
2. Although the Bill makes costly provisions for refugees to have access to land, jobs and primary education facilities. The provision may not be easy to implement and may ignite conflict with the host community ;
3. The current government position regarding the closure of Daadab Refugee camp would be affected by the provisions Bill;

### Submission of memoranda and public participation

The Committee was informed that an advert for submission of memoranda and public participation on the Bill had been placed in the dailies and public hearings were scheduled for Tuesday 9<sup>th</sup> August, 2016.

### MIN.NO.242 ANS/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at one thirty o'clock until Thursday 4<sup>th</sup> August, 2016 at 10:00am.

SIGNED: \_\_\_\_\_

(CHAIRPERSON)

DATE: \_\_\_\_\_

13<sup>th</sup> October 2016

MINUTES OF THE 23<sup>RD</sup> SITTING OF DEPARTMENTAL COMMITTEE ON  
ADMINISTRATION AND NATIONAL SECURITY ON TUESDAY 14<sup>TH</sup> APRIL, 2016 IN  
THE BOARDROOM, 2<sup>ND</sup> FLOOR PROTECTION HOUSE, PARLIAMENT BUILDINGS  
AT 10:00 AM

PRESENT:

1. The Hon. David Gikaria, MP - Session Chairperson
2. The Hon. Ababu Namwamba, EGH, MP
3. The Hon. Mohamed Shidiye, MP
4. The Hon. Alice Wahome, MP
5. The Hon. Samuel Moroto, MP
6. The Hon. Francis K. Mwangangi, MP
7. The Hon. Bernard Shinali, MP
8. The Hon. Shabaan Ali Isaack, MP
9. The Hon. Akuja ProtusEwesit, MP
10. The Hon. (Dr.) Humphrey Njuguna, MP
11. The Hon. James Bett, MP
12. The Hon. Grace Kiptui, MP
13. The Hon. Patrick Ole Ntutu, MP
14. The Hon. Joseph O. Ndiege, MP
15. The Hon. Timothy W. Wetangula, MP
16. The Hon. George Theuri, MP

APOLOGIES

1. The Hon. Asman Kamama, MGH,OGW,MP - Chairperson
2. The Hon. Alois M. Lentiomaga, MP - Vice- Chairperson

ABSENT

1. The Hon. Wanjiku Muhia, MP
2. The Hon. Zakayo K. Cheruiyot, MP
3. The Hon. Joseph Lekuton, MP
4. The Hon. Ibrahim Abdi Saney, MP
5. The Hon. Ahmed Abdikar Ore, MP
6. The Hon. Joseph Kahangara, MP
7. The Hon. Rashid J. Bedzimba, MP
8. The Hon. (Maj. Rtd.) John K. Waluke, MP
9. The Hon. Jane Machira, MP

## IN ATTENDANCE - NATIONAL ASSEMBLY

Hon. Agostinho Neto, MP

## NATIONAL ASSEMBLY- SECRETARIAT

- |                           |   |                      |
|---------------------------|---|----------------------|
| 1. Mr. Leonard Machira    | - | Clerk Assistant I    |
| 2. Ms. Rose Wanjohi       | - | Clerk Assistant II   |
| 3. Ms. Hellen Lokwang     | - | Clerk Assistant III  |
| 4. Mr. Christine Odhiambo | - | Legal Counsel II     |
| 5. Ms. Fiona Musili       | - | Research Officer III |

## MIN.NO.105/ANS/2016: PRELIMINARIES

The Chairperson called the meeting to order at half past ten o'clock A Prayer was said.

## MIN.NO.106 /ANS/2016: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

## MIN.NO. 107/ANS/2016: SUBMISSION BY HON. AGOSTINHO NETO ON THE REFUGEES BILL, 2016

Hon. Agostinho Neto, MP informed the Committee that the proposed Refugee Bill, 2016 intended to response to the identified need to enrich the current law which deals with refugees matters in line with international treaties and conventions.


The Committee was further informed that the refugee situation in Kenya was unique since the Refugee Act, 2006 provided for emergency encampment, where it was anticipated that the situation would normalize and the refugees in the designated camps repatriated back to their countries within a short time. Unfortunately, most of the conflicts from which the refugee fled from had persisted for long leading to a protracted refugee scenario. Further, the refugees and host community belong to the same ethnic community in the North Eastern region and would not be easily distinguished.

In Daadab Refugee Camp, the refugees have been interacting with the host community for years. There are more refugees in Daadab County that the host community. The existing Refugee Bill does not address the plight of the refugees and their status.

The proposed Refugee Bill, 2016 was a means to address the unique situation. The proposed act would provide durable solutions for the unequal treatment and access to services between the refugees and host community. It would also make provisions on how the Refugees with livestock would access water and pasture for their livestock while minimizing conflict.

There being no other business, the meeting was adjourned at half past twelve o'clock until Tuesday 19<sup>th</sup> April, 2016 at 10:00am.

SIGNED

  
\_\_\_\_\_  
(Chairperson) Vice-chairperson

DATE

11<sup>th</sup> June 2016



## **APPENDIX II**

### **Submissions by the Ministry of Interior and Coordination of National Government**

① D/Committees

Liaise with the chair  
person

OPA  
3/8/16



② MHEMRET 56

pls inform the  
Chairperson  
accordingly  
and revert

FA

04/8

## OFFICE OF THE PRESIDENT

Telegraphic Address: "Rais"  
Telephone: Nairobi 2227411  
When replying, please quote

MINISTRY OF INTERIOR  
AND CO-ORDINATION  
OF  
NATIONAL GOVERNMENT

P.O. Box 30510-00100  
Nairobi

Our Ref. **OP.PA. 41/1A**  
And date

3<sup>rd</sup> August, 2016

**Mr. Justin Bundi, CBS**

The Clerk  
National Assembly  
P.O Box 41842-00100  
**NAIROBI**

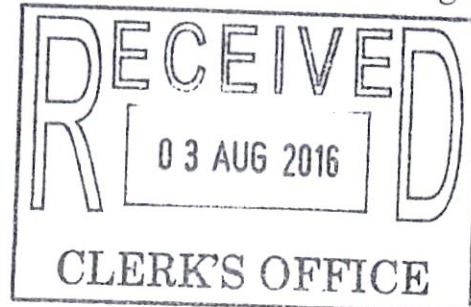
Dear *Mr. Bundi*

**RE: THE REFUGEE BILL 2016**

This is in reference to the Refugee Bill 2016, which was published on 24<sup>th</sup> June 2016 and went through the first reading in the National Assembly on 20<sup>th</sup> July, 2016. This Bill is sponsored by Hon. Augustino Neto, Member of Parliament Ndhiwa Constituency.

Owing to emerging security challenges the Government is currently reorganizing the refugee management in the Country. Notably, new changes have been put in place including disbandment of the Department of Refugee Affairs (DRA) and replacing it with the Refugee Affairs Secretariat (RAS) in order to address the security challenges that the country faces as a result of hosting a large number of refugees.

In light of the current dynamics in refugee management, it is our considered opinion that the Refugee Bill 2016 is not timely. There are various provisions in the Bill that may work against Government objectives as far as the refugee affairs are concerned.



The Government is alive to the fact that the Refugee Act 2006 need to be amended to address the emerging challenges and also accommodate the new structure that has been put in place as well as address the gaps that exist in the current legal framework. Most of these concerns have not been addressed in the proposed legislation. To this end, the Ministry has already commenced the process of amending the Refugee Act 2006.

As the Ministry charged with management of refugee affairs in the country, our major concerns in the Refugee Bill 2016 include, *inter alia*;

(i) **Making the refugee hosting a permanent phenomena**

The Bill brings out an intention of making refugee hosting a permanent venture for the government. Our understanding is that refugee situation by nature is supposed to be a temporary measure that should have an end point even if it cannot be specifically ascertained.

(ii) **Expensive Processes**

The Bill creates more institutions and contemplates further complication in the management structure that is likely to occasion more government expenditure despite the current burden. Our proposal is to strengthen the current structures without necessarily coming up with a system that is likely to occasion more expenditure.

(iii) **Limitation of Government powers on decision making**

The Bill seems to curtail the government powers when it comes to decision-making in that; it has expanded the role of Non-State Actors by entrenching them at almost every level of decision-making including administrative decisions. We are of the opinion that the government should not be restricted in making critical decision as long as they are in line with its obligations under the law.

(iv) **Preference of Refugee Interests over citizens' interests**

The Proposed legislation is likely to advance the interests of refugees and asylum seekers at the expense of Kenyans citizens/host community interests. This situation is likely to further complicate alleviation of the current security challenges. The first responsibility of the government is to protect its citizens in as much as it has the obligation of protecting refugees.

(v) **Lack of Policy Guideline**

The Bill purports to address certain matters that need a clear Government Policy guideline which as at now has not been finalized.

It is our understanding that there is no pressing need to have a completely new legislation before the formulation of the Government policy on refugee matters which will provide the necessary guidelines that can be used to lay the framework for a full legislation.

**Other issues of concern include;**

- a) The Government is in the process of repatriating refugees back to Somalia and any change in the legal framework will scuttle the process;
- b) The proposed Bill will open up avenues for litigations by refugees and Non-Governmental Organizations (NGOs) with interests in refugee issues. The continued presence of a large number of refugees in the country will continue to undermine Kenya's national security;
- c) Gaps in the current Refugee Act, 2006 would be identified and addressed by way of amendments;
- d) The Bill proposes to entrench the 1951 Convention which does not reflect the current emerging security challenges especially those associated with terrorism;
- e) Kenya has proposed the amendment of the 1951 Convention and hence cannot be entrenching the same pending its review;
- f) The Bill proposes employment of refugees. Allowing refugees to run businesses, access to land for cultivation and pasture are proposals that require well thought out Government Policy considerations in view of the fact that;
  - i. There is a high level of youth unemployment in the country and opening the job market to refugees will worsen the level of unemployment for Kenyan citizens;
  - ii. Allowing refugees to engage in cultivation and livestock rearing will create conflict with the host communities over the scarce resources;
- g) The structures set to manage the refugee affairs in the Bill have not been properly thought out and as such some relevant government institutions and departments have not been included. Some of the agencies included in the management of refugee matters are not directly involved in the management of refugees.

- h) The Bill unduly gives the United Nations High Commission for Refugees prominence and supervisory powers over the Government whereas UNHCR should play a supplementary role in refugee management.

In view of the foregoing, I am writing to request the National Assembly to accommodate our concerns and provide us with an opportunity for further engagement and consultations on the proposed Bill. I further request that the National Assembly withdraws the Bill to enable the Government finalise a refugee management policy which will guide the development of a new legal regime.

Enclosed please, find a memorandum detailing our concerns in the Bill for your reference.

Yours *Sincerely*



**Dr. (Eng.) Karanja Kibicho, CBS**  
**PRINCIPAL SECRETARY/INTERIOR**

Encl.



**OFFICE OF THE PRESIDENT**

**MINISTRY OF INTERIOR & COORDINATION  
OF NATIONAL GOVERNMENT**

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**MEMORANDUM ON THE REFUGEE BILL, 2016**

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Clause No.	Comment	Justification	Recommendation
Preamble	Review	The preamble in the Refugee Bill 2016 introduces the International Conventions that the Government has proposed to be reviewed to be in tandem with emerging security challenges.	-Should Read: An Act of Parliament to make provision for the recognition, protection and management of refugees and for connected purposes.
2.	Review	<p>-Definition of 'Asylum Seeker' is giving a lee way for anyone to shield under the umbrella of asylum as it is allowing those people who have not made an express application for asylum to get away.</p> <p>-Replace 'Commissioner' as there is a new government structure that has been put in place to address the current security dynamics in the refugee sector.</p> <p>-Creation of Commission to oversee the refugee management as well as the composition may not advance the interests of the government because of the element of independence that comes with the commissions.</p> <p>-Definition of '<b>Durable Solution</b>' to be inserted under clause two</p>	<p>-Should Read: Means a person seeking refugee status in accordance with the provisions of this Act.</p> <p>-Should be replaced by 'Director' who has been newly appointed.</p> <p>-Replace Commission with an Advisory Committee to function under the CS responsible for refugee affairs and operate as proposed under clause 6.</p> <p>-Should Read: Under the Kenyan context, it should be defined and limited to the two solutions that apply in Kenya i.e. Voluntary Repatriation and Resettlement to a third country.</p>
4.	Review	The Act needs to state the grounds on who is excluded from being a refugee. There is also need to outline grounds for disqualification.	<p>-Should Read - A person shall be excluded from being considered for refugee status if there exist serious reasons to believe that:</p> <p>(a) He/she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the International Crimes Act;</p> <p>(b) He/she has committed a serious non-political crime outside Kenya prior to her/his admission to Kenya as a refugee;</p> <p>(c) He/she has been guilty of</p>

			<p>acts contrary to the purposes and principles of the United Nations and African Union.</p> <p>(d) He/she has already sought asylum in another country.</p> <p>- A person shall be disqualified from being a refugee if,</p> <p>(a) having more than one nationality, he/she has not availed himself/herself of the protection of one of the countries of which the person is a national and has no valid reason, based on well-founded fear of persecution</p> <p>(b) He/she has been granted refugee status in another country prior to his entry into Kenya and can be readmitted to that country and benefit currently and in the future in that country from effective protection</p> <p>(c) He/she is recognized by the competent authorities of the country in which she/he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country, can be readmitted to that country in the same condition and has no valid reasons based on a well-founded fear of persecution to have left that country.</p>
6(a)	Review	<p>Creating an inter-agency commission to oversee refugee management may complicate the process because of the aspect of independence that comes with commissions. Additionally, refugee matters fall within the security docket as observed with the recent challenges of hosting refugees not only in Kenya but even in European countries. As such, it will not be fair to have such an institution chaired by a different CS. Moreover,</p>	<p>-Create an advisory Committee to work under and report to the CS Interior who shall be the overall coordinator for the government.</p>



6(b)	Amend the name	<p>having two CSs become members of a commission is simply reducing them into commissioners and being presidential appointees, it may bring about confusion on decision making vis-à-vis reporting.</p> <p>There is a new government structure that has been recently put in place to provide for a secretariat that has already taken shape.</p>	-Create a Refugee Affairs Secretariat(RAS)
7(1)	Review the membership to the Committee	-Need to have an overall supervisor being the CS in charge of the Ministry responsible for refugee Affairs. The Committee to work under the CS and be chaired by a person appointed by the same CS to represent him. The Composition of the Committee should include representatives from the Security sector as refugee matters touch on national security as well as have a representative from the AG's Office who is the legal advisor of the Government.	<ul style="list-style-type: none"> <li>- Adopt the Composition of the Affairs Committee under the current Act and have their functions listed as per the Refugee Bill, 2016.</li> <li>-Have the Director of the Secretariat to be a member of the Committee</li> <li>-Secretarial functions to be provided by the Refugee Affairs Secretariat.</li> </ul>
9(1)	Review the creation of Commissioner	The recently adopted government structure established the Director to replace the Commissioner for purposes of effective management of refugee affairs and as per the common practice for other agencies within the Ministry.	-Replace 'Commissioner' with 'Director'
9(2)	Delete	-Its proper to outline the functions of the Secretariat clearly as the Committee's tasks is to deal with policy matters in refugee	<ul style="list-style-type: none"> <li>-Outline the functions in the Act for clear accountability purposes.</li> <li>-List all the functions of the secretariat both administrative and</li> </ul>

			<p>designated areas and within Kenya where necessary.</p> <p>i. To consider applications for exemption for asylum seekers and refugees from residing in designated areas where there are compelling reasons to do so</p> <p>j. To protect and assist vulnerable groups, women, children and persons living with disability</p> <p>k. To issue visitors permission for entry into Refugee Camps in accordance with the regulations.</p> <p>l. Coordination of all services and activities provided to refugees and asylum seekers by implementing agencies</p>
11(1)	Review	<p>-The proposed composition may not effectively deal with refugee appeals as such. It is not appropriate to have a judge of the Superior court head the Board and at the same time have second appeals go to another judge of the same level to make another determination. It is fair to have a chair who has qualifications to be appointed as a Judge of superior Court. Then the areas of profession for other members may not bring on board the requisite expertise on refugee matters.</p>	<p>- Should read: The Appeal Board shall consist of—</p> <p>(a) a chairperson who is an advocate of not less than ten years' standing appointed by the Cabinet Secretary;</p> <p>(b) eight members appointed by the Cabinet Secretary from among persons having knowledge of and experience in—</p> <p>(i) refugee affairs;</p> <p>(ii) matters relating to immigration;</p> <p>(iii) matters relating to foreign affairs;</p> <p>(iv) matters relating to national security;</p> <p>(v) matters relating to Public administration; and</p> <p>(vi) Matters relating to National Security</p> <p>(c) When necessary, the Board may co-opt to invite a person with specialized knowledge and skill to attend the sittings without the right to vote.</p> <p>-Provide a second review at the Board and do away with the High Court.</p> <p>- Two terms i.e. first term of four years eligible for re-appointment of</p>

9(3)	Delete	<p>management and not administrative.</p> <p>The Commissioner now Director is the head of the Secretariat and his functions should therefore revolve around all functions of the Secretariat as the person to be held accountable</p>	<p>operational.</p> <p>-Should read: Functions of the Director are;</p> <ul style="list-style-type: none"> <li>a. A member of the Committee.</li> <li>b. Head of Refugee Affairs Secretariat.</li> </ul>
10.	Review	<p>-This provision is contradicting section 9(2) on the functions of the secretariat.</p>	<p>-Should Read: - The functions of the Secretariat are;</p> <ul style="list-style-type: none"> <li>a. To co-ordinate all measures necessary for promoting the welfare and protection of refugees and asylum seekers and advise the Cabinet Secretary thereon;</li> <li>b. To ensure in liaison with other relevant agencies the provision of adequate facilities and services for the protection, reception and care of asylum seekers, and refugees within Kenya</li> <li>c. To promote as far as possible durable solutions for refugees granted asylum in Kenya</li> <li>d. To receive and process applications for refugee status determination;</li> <li>e. To keep, register and maintain a record of all asylum seekers and refugees in Kenya</li> <li>f. To issue refugee identification documents and facilitate the issuance of civil registration and other relevant documents.</li> <li>g. To manage refugee designated areas and other related facilities through co-ordination of the provision of overall security, protection and assistance for asylum seekers and refugees in the designated areas</li> <li>h. To regulate movement of refugees by issuance of movement passes to refugees and asylum seekers wishing to travel outside the</li> </ul>

11(5)b	Review	-Termination is not a term in refugee asylum system	another term of three years. -Delete termination from matters appealable to the Board.
13(1) & (3)	Review	-Refugee Status Determination is to be done by the government and not UN agency.	-Remove the possibility of applying for refugee status to a UN Agency.
13(2)	Review	- Not all Authorized officer are near the entry point to receive asylum seekers.	-An asylum seeker is to present himself or herself to the nearest government administrative officer who shall direct him/her to the relevant authority.
13(4)	Delete	-Obligating the Secretariat to come up with a pool of lawyers and paying for their services is far-fetched	-The Secretariat should not be tasked with providing contracting lawyers, this if need be can be addressed by the Legal Aid Act, 2016
14	Delete	-Participation of Public Benefit Organizations may open a window for advancing certain interests that may not be in line with the requisite objective.	There is no need of having NGOs representing asylum seekers at the initial stage since the information is with the asylum seekers, legal representation may only become necessary during the appeal process.
15.	Review	-There is already an established committee and creating a second one may occasion confusion irrespective of the name. -The Director is the final determiner when it comes to granting status and thus should supervise the Panel. -The Composition to have competent persons to deal with status determination.	-We propose to have a Status Eligibility Panel  -Director not to sit in the Panel but appoint one officer to chair the Panel as his representative.  -Remove a representative from DPP but add two officers of the secretariat plus a representative from the NIS and AG. -Replace a representative of the Inspector General of Police with a representative of the National Police Service. -UNHCR member to be invited when necessary.
16.	Review	-The listed functions are done by the refugee Officer who does the status determination interview.	-Should Read: Functions of the Panel is to review the assessments and recommendations made by the refugee Officer during status determination interviews and make

		<p>-No justification of informing UN Officers.</p> <p>-Delete 16(4)</p>	<p>recommendations to the Director.</p> <p>-Status determination is an administrative function by the government and involvement of UN agencies should be limited.</p> <p>-The government to provide its own translators.</p>
17 (2)	Review	<p>-The whole provision sounds ambiguous</p>	<p>-17(1) Any person aggrieved by the decision of the Director on the rejection of any individuals application for refugee status or the cancellation of refugee status may within thirty days of receiving the decision, appeal to the Appeal Board against the decision.</p> <p>(2) In any appeal under this Act, the Appeal Board may confirm or set aside the decision of the Director and shall cause the appellant concerned to be notified of its decision in the matter in writing within 60 days of receiving the appeal application:          Provided that, before reaching a decision on any such appeal, the Appeal Board may either—</p> <p>(a) refer the matter to the Director for further investigation and advice; or</p> <p>(b) make such further inquiry or investigation into the matter as it deems necessary.</p> <p>(3) An appellant may be personally present at the hearing of the appeal and may be assisted or represented by a legal practitioner if he or she desires in providing oral or documentary evidence.</p> <p>(4) The Director shall make oral or written representations in respect of any decision appealed against.</p> <p>(5) Any Applicant who is aggrieved by the decision of the Appeals Board may within twenty one days file a review application before the Board to make a final pronouncement.</p>

20(6)	Delete	-Burdening the Appeals Board to employ or hire lawyers to represent litigants is untenable.	-Representation to be guided by other enabling Kenyan laws.
20(10)	Delete	-Cancellation is occasioned by serious circumstances and thus should affect derivative status	-When the principal applicant's status gets cancelled, those who benefitted by virtue of derivative should be deprived of the status but given an opportunity to re-apply individually.
21	Review	-Serious criminal offenders should have their status revoked too.	- Add another ground of a person convicted of committing a felony. -Revocation to affect those who benefitted from derivative status but should be allowed to re-apply individually.
22	Delete	-It's a policy issue under Foreign Affairs.	-All refugees should be subject to equal treatment.
23.	Delete	-Outlines operation procedures	-should be dealt with under the regulations as is in the Current Act.
24	Review	-Sounds discriminative	-Should read: 24(1)The Director shall ensure that specific measures are taken to ensure the dignity and safety of women and children seeking asylum and women and children who have been granted refugee status, at all times during their stay in designated areas. -(2) The Director shall ensure that a child who is in need of refugee status or who is considered a refugee shall, whether unaccompanied or accompanied by his parents or by any other person, receive appropriate protection and assistance. -(3) The Director shall, as far as possible, assist such a child to trace the parents or other members of the family of the refugee child in order to obtain information necessary for the reunification of the child with the child's family. -(4) Where the parents of the child or other members of the child's family cannot be found, the child shall be accorded the same protection as any other child

			permanently or temporarily deprived of her/his family
26(2)	Review	-Removal from the country is a serious matter that is to be handled by the CS and he should be the one to determine whether to add extent the timeline	-Replace Commission with CS.
28.	Review	-Sounds ambiguous	-Gazette reception centres instead of reception officer. Asylum seekers should report to the nearest government administrative officers who will channel them to gazette reception centres for further action. -Reception centres to liaise with the secretariat and not the eligibility officers. -List functions done under the reception centre
29	Review	-It is easier to list functions to be undertaken under the reception centre which will in turn inform the kind of personnel to be deployed there.	- Have the functions listed under clause 29 to be assigned to the Reception Centre.
30	Review	-Should apply from the start to asylum seekers and not recognized refugees as suggested	- Limit it to asylum seekers and insert a requirement on making the application immediately upon arrival in Kenya.
31	Delete	-Asylum seekers or refugees shall not have firearms in Kenya.	-Dealt with under the Firearms Act.
32.	Review	-Have a clear direction on the rights applicable to refugee in Kenya..... -It has been noted that not all the provisions in international conventions address the current challenges of refugee hosting in Kenya.	-Retain section 16 (1) of the current Act with a proviso on as long as such provisions are in tandem with National Interests
33.	Delete	-Does not capture Non-refoulment as contemplated under the OAU Convention which is more recent and specific to the refugee situation in Kenya i.e considers security concerns of	-Retain the provisions of sections 18 and 19 of the current Act.

		a country.	
34,35,36,37,38	Delete	-The rights thereunder are provided for under the other Kenyan laws that gives the procedures and may as well lead to miss-interpretation. The issues require a clear policy consideration and not mere introduction by way of legislation.	
34	Delete	Granting refugees access to employment with exacerbate the current high youth unemployment.	
35	Delete	Granting refugees access to land and pasture will result to conflict between the refugees and host community over scarce resources.	
36	Delete	Refugee education will be determined by the government together with other relevant agencies instead of compelling the government to provide the same to refugees.	
37	Delete	The issue of work permits to refugees should be left to the existing legal framework.	
38	Delete	There currently no policy to give refugees citizenship	
39 & 40	Review	-Not mandatory to involve UNHCR on the government decision to expel people deemed to be against the security interests of the Nations. -Expulsion is a decision of the Minister and should not be subject to appeal under an Appeals Board which is answerable to the same Minister.	-Retain section 21 of the current Act on expulsion but there is need to provide a procedure to adopt in expelling.
41.	Delete	-It does not create offences and penalties.	-Create a section on all offences and penalties for ease of reference.
42.	Review	-Same issue captured under two different sections	-Compiled together clause 32(2) on designated areas.



43.	Delete	-It is contradicting the general encampment policy.	-The Director to deal with matters of exemption from residing in designated areas.
44.	Review	-The wording may pin the government to strike a consensus with UNHCR before.	- Change the wording to be 'in consultation with UNHCR and 'with UNHCR' to remove the likelihood of consensus.
45.	Delete Sub Clauses 3 and 4	-delete sub-sections 3 and 4 because they add no value but serve to complicate the situation.	
46	-Review	- Remove sub-section 6	-Should move to the offences section.
47(1)	Review	-Restricting The regulations to cover specific issues will limit the CS. To go to regulations section	-Should be moved to Part X on provisions for delegated powers.
47 (2)	Delete	-Can be properly articulate under the regulations.	
48.	Delete	-Such is an administrative structure that can be done internally by the Camp Manager.	
49.	Review	-Do not limit reference to a certain individuals.	-Should read: No person other than <i>public officers</i> ..... and the permission to be granted by the Director. -Subsection 3 to be captured under the offences.
50.	Review	-Needs clear government policy on local integration	-We better remain silent on the matter pending a clear policy direction.
51.	Review	-Let the interests of the host community supersede the interests of the refugees	-Replace the 'concerns of the refugees' with 'the concerns of the host community' and bring 50(2) to be 51(2).
52.	Delete	-Already addressed in the earlier provisions.	
53	Delete 53(3,4)	-Sustainability of the Trust Fund and the resultant effect of entrenching permanence	
54.	Review	-Retain only subsection 1. Refugee protection is a burden sharing initiative and Kenya having gone out of its	-Only allow for resettlement of refugees outside Kenya.

		way to host many refugees to an extent that it has been constrained of resources, providing a lee way for resettlement into Kenya is over-stretching the already limited resources.	
55, and 56	Delete	-Sustainability, temporariness, there are mechanisms to achieve the objectives of the said provisions.	
58.	Delete	-Mandating the government to be answerable to a non-governmental agency may work against the interests of the government.	
59.	Review	-List all the offences under this section to minimize chances of confusion.	-Should Read: Any person who— (a) makes any false declaration or statement to a refugee officer or appointed officer which she/he knows or has reasonable cause to believe to be false or misleading, for the purpose of obtaining or assisting another person to obtain admission, and or registration as an asylum seeker or refugee; or (b) knowingly misleads any refugee officer or appointed officer seeking information material to the exercise of any of her/his powers under this Act; or (c) resides without authority outside the designated area specified under section 27, or in a place other than the approved place of residence; or (d) after entering Kenya to seek asylum fails to report immediately to a refugee officer or appointed officer to register and submit an asylum application; or (e) after previously being lawfully admitted into Kenya other than as a refugee, knowingly submits a fraudulent application for asylum after the lapse of her/his lawful status; or (f) forges, alters, destroys or

			<p>wilfully defaces an identification document, asylum seeker's pass, movement pass or any other document issued under this Act; or</p> <p>(g) knowingly uses or has in his possession a forged refugee identification document, asylum seeker's pass, movement pass or any other document issued under this Act; or</p> <p>(h) gives, sell or parts with the possession of an identification document, asylum seeker's pass, movement pass or any other document issued under this Act intending or knowing or having reasonable cause to believe the used by another person; or</p> <p>(i) uses an identification document, asylum seeker's pass, movement pass or any other document issued under this Act to another asylum seeker or refugee; or</p> <p>(j) being a Kenya citizen, knowingly applies for or obtains recognition, admission or registration as an asylum seeker or a refugee in Kenya;</p> <p>(k) being a refugee, knowingly applies for or obtains Kenyan identification card or Kenyan passport;</p> <p>(l) attempts to bribe a refugee officer or appointed officer so as to access any of her/his rights or any protection under this Act;</p> <p>(m) knowingly and wilfully enters into a marriage for the sole purpose of obtaining any of the benefits provided for under this Act; or</p> <p>(n) being a refugee, knowingly and wilfully enters into a marriage for the sole purpose of assisting another obtain any of the benefits provided for under this Act</p> <p>(o) being a refugee who works or engages himself/herself in any</p>
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			wage earning activity without a work permit, (p) being a refugee who works or engages himself/herself in any wage earning activity and does not pay tax Commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding eighteen months, or both.
60.	Delete	-Addressed by other Kenyan laws. Refugees who commit offences should be subject to the existing Kenyan laws	
61.	Review	-Retain subsection 1	-Move to the functions of the Secretariat...To maintain a register of all persons who have applied, been granted, resettled, rejected, cancelled, expelled, disqualified.
62.	Delete	-Provided for under taxation laws.	
63.	Review	-Overstretching the depleted resources in Kenya	-Allow for family re-union for refugees in Kenya who apply to leave the country and join relatives in other countries and not vice versa. -Subsection 4, reduce the period from 2 years to 90 days.
64.	Review	-Insert asylum seeker under paragraph (c) to replace protected person.	-Make reference to Article 24 of the constitution on limitation of rights.
65.	Review	-Retain with additions	-Add offence under any recognized law. -Replace fraudulent misstatement to misrepresentation.
66.	Review	-it is discriminative provision	-Provide for searching a person with strict regard to decency
67.	Delete	-Addressed under other legal aid laws.	
68.	Delete	-This is an internal administrative arrangement on the mode of supervision and reporting.	
71.	Review	-Remove subsections 3 and 4 because it is already implied and limiting interpretation to	

Ministry of Interior and Co-ordination of National Government  
Memorandum on the Refugee Bill, 2016

		specific statutes as it may include others not contemplated in this Act.	
Schedules	Review	-Delete second schedule as it automatically provided for under the constitution.	



**Dr. (Eng.) Karanja Kibicho, CBS**  
**PRINCIPAL SECRETARY/INTERIOR**

## **APPENDIX III**

### **Submissions by the National Treasury**



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REPUBLIC OF KENYA  
THE NATIONAL TREASURY

Telegraphic Address:22921  
Finance – Nairobi  
FAX NO. 310833  
Telephone:2252299  
When Replying Please Quote

P.O. Box 30007-00100  
NAIROBI

Ref. ZZ.TS/GP/30/(2)

8th August, 2016

① D/Bundi

Mr. Justin Bundi, CBS  
Clerk of the National Assembly  
Parliament Buildings  
NAIROBI

② MAEWA  
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Dear Mr. Bundi,

RE: MEMORANDUM BY THE CABINET SECRETARY RESPONSIBLE FOR FINANCE  
ON THE REFUGEES BILL, 2016

I refer to your letter Ref.KNA/L.COM/3/2016 dated 16<sup>th</sup> March, 2016 on the above subject matter and herewith enclose a Memorandum by the Cabinet Secretary responsible for Finance on the Refugees Bill, 2016 duly signed for your necessary action.

Yours Sincerely

MRS. ESTHER KOIMETT, CBS  
DIRECTOR GENERAL/PUBLIC INVESTMENTS & PORTFOLIO MANAGEMENT  
FOR: PRINCIPAL SECRETARY/NATIONAL TREASURY

Encl.



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Certified.

# MEMORANDUM BY THE CABINET SECRETARY RESPONSIBLE FOR FINANCE ON THE REFUGEES BILL, 2016

## Overview

1. The Memorandum on "*The Refugees Bill, 2016*" is submitted to the Speaker of the National Assembly by the Cabinet Secretary responsible for Finance in accordance with Article 114(2) of the Constitution. It highlights our comments and recommendation on the Bill.

## Background

2. The Bill seeks to provide for the recognition and protection of refugees in order to give effect to the Convention Relating to the Status of Refugees, the Protocol Relating to the Status of Refugees and OAU Convention governing the specific aspects of refugee problems in Africa.
3. The Bill which also seeks to repeal the Refugees Act, Cap. 173, if enacted, is expected to address a number of deficiencies identified in the Refugees Act, Cap. 173 and in particular an administrative and structural framework that is lacking to ensure the recognition and protection of refugees in Kenya.



## Comments by the National Treasury on the Bill

4. In accordance with Article 114(2) of the Constitution, the Cabinet Secretary responsible for Finance submits his reservations on the Bill based on the following;

a) The Bill seeks to repeal the Refugees Act, Cap. 173 under Clause 69 of the Bill. This is unprocedural considering that the repeal of any law should be exercised in accordance with Article 119 of the Constitution.

b) Clause 9 of the Bill, establishes the Secretariat of the Refugee Affairs, including the office of the Commissioner for Refugee Affairs. The said Secretariat will perform the same functions as the Department of Refugee Affairs and Commissioner for Refugee Affairs established under Sections 6 and 7 of the Refugees Act, Cap. 173

c) Clause 11 of the Bill provides for establishment of an Appeal Board whose function is to hear and determine appeals against any decision of the Secretariat on refugee status. This is catered for under Section 9 of the Refugees Act, Cap. 173.

d) Part III of the Bill establishes the National Eligibility Committee whose function is to determine eligibility of

the refugees. A similar committee is already established under Section 8 of the Refugees Act, Cap. 173.


- e) Part IV of the Bill provides for reception for refugees by the designated Refugee Reception Officers. A similar provision is provided under Section 7(2)(b) of the Refugees Act, Cap. 173.
- f) Part V of the Bill establishes the rights and duties of refugees and asylum seekers within Kenya. This is provided for under Section 16 of the Refugees Act, Cap. 173.
- g) Part VI of the Bill gives the Cabinet Secretary responsible for matters relating to refugee affairs powers to gazette designated areas for refugees in Kenya. The same is provided for under section 16(2) of the Refugees Act, Cap. 173.
- h) Clause 13(4) of the Bill provides for payment of legal fees or expenses by the Secretariat in cases where applicants for refugee status are accompanied by a legal practitioner. This shall occasion additional expenditure of public funds.
- i) The Bill seeks to establish the Refugee's Trust Fund under Clause 55(1) that shall be managed by an Accounting Officer under the supervision of the

Trustees. Sub-Clause 3(b) of Clause 55 will be in direct conflict with the relevant provisions under the Unclaimed Financial Assets Act, Anti-Corruption and Economic Crimes Act, Cap. 65, and Proceeds of Crime and Anti-Money Laundering Act, Cap. 59B.

- j) The Other provisions in the Bill are also catered for under the Refugees Act, Cap. 173 of the Laws of Kenya.

### **Recommendation**

5. In view of the foregoing and considering that the provisions in the Bill are not substantially different from what is provided for in the existing Refugees Act, Cap. 173 which the Bill seeks to repeal, the National Treasury does not support the enactment of the Refugees Bill, 2016.



**CABINET SECRETARY  
NATIONAL TREASURY**

8<sup>th</sup> August, 2016

## APPENDIX IV

### Submissions by Amnesty International

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**AMNESTY  
INTERNATIONAL**



By email: clerk@parliament.go.ke

3 August 2016

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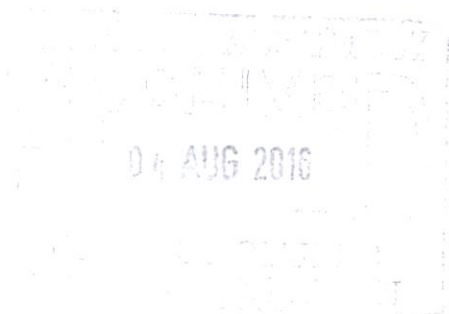
**MEMORANDUM TO THE PARLIAMENTARY COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY ON THE DRAFT REFUGEE BILL 2016**

Amnesty International is pleased to submit this memorandum on the draft Refugee Bill 2016 (herein after referred to as the Bill) to the Parliamentary Committee on Administration and National Security. The National Assembly through a Private Member's Bill will debate a comprehensive rewrite of Kenya's Refugee Act 2006 with the introduction of a new Refugee Bill 2016. The draft Bill, in its current form, contains some provisions which would hinder the right of asylum seekers to have their asylum applications effectively determined and their rights protected.

Amnesty International published in May 2016 the first Refugees Welcome Index<sup>1</sup>, based on a global survey of more than 27,000 people from 27 countries conducted by the internationally renowned strategy consultancy GlobeScan. The survey found that 65% of Kenyans would welcome people escaping war and persecution to Kenya.<sup>2</sup> 62% of Kenyans wanted the Kenyan government to do more to help refugees. 72% of Kenyans would personally accept people fleeing war or persecution into their household, neighbourhood, their city/town/village and Kenya. Based on the foregoing, any legislation being developed should go hand in hand with the aspirations and wishes of many Kenyans to protect and welcome refugees.

<sup>1</sup> Refugees Welcome Survey 2016, Views of Citizens Across 27 Countries, May 2016 available at [https://amnestysgprdasset.blob.core.windows.net/media/12806/amnesty-refugees-welcome-survey\\_globescan-topline-report\\_may2016\\_embargoed.pdf](https://amnestysgprdasset.blob.core.windows.net/media/12806/amnesty-refugees-welcome-survey_globescan-topline-report_may2016_embargoed.pdf) (accessed 3 August 2016).

<sup>2</sup> In Kenya, the survey was conducted in seven out of the eight former administrative provinces targeting 45 per cent of the adult population in urban and mixed settlements. The survey sample included urban populations in 30 counties representing 64 percent of all counties. The counties in the sample were Bungoma, Busia, Kilifi, Kirinyaga, Kisii, Kisumu, Kitui, Kwale, Laikipia, Machakos, Marsabit, Meru, Migori, Mombasa, Nairobi, Nakuru, Narok, Nyamira, Nyandarua, Nyeri, Siaya, Trans Nzoia, Turkana, Uasin Gishu and Vihiga.



Amnesty International has also noted the concerning trend by the Kenyan government to restrict the rights of asylum seekers and refugees on grounds of national security. The Kenyan government has disproportionately targeted Somali asylum seekers in their counter-terrorism response. In 2014, Amnesty International published two reports, *"No Place Like Home": Returns and Relocations of Somalis*<sup>3</sup> and *Kenya: Somalis are Scapegoats in Kenya's Counter-Terror Crackdown*<sup>4</sup> both of which showed how Somali refugees are arbitrarily arrested and their freedom of movement within Kenya limited. In 2014, through the Security Law Amendment Act<sup>5</sup> a number of provisions of the 2006 Refugee Act were amended to restrict asylum space for security reasons.

Amnesty International urges the Parliamentary Committee on Administration and National Security, the National Assembly, and all other relevant institutions to develop legislation that conforms to Kenya's international obligations and protects individual rights as envisioned in the 2010 Constitution of Kenya.

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<sup>3</sup> Amnesty International, *No Place Like Home: Returns and Relocations of Somalis* (AFR 52/001/2014), available at <https://www.amnesty.org/en/documents/AFR52/001/2014/en/> (accessed 3 August 2016).

<sup>4</sup> Amnesty International, *Kenya: Somalis are Scapegoats in Kenya's Counter-Terror Crackdown* (Index: AFR 52/003/2014), available at <https://www.amnesty.org/en/documents/AFR52/003/2014/en/> (accessed 3 August 2016).

<sup>5</sup> Security Laws (Amendment) Act No. 19 of 2014 s. 45 amending s.11 (1) Refugees Act 2006

# SUBSTANTIVE COMMENTS ON THE REFUGEE BILL 2016

## PART I - PRELIMINARY

### 1.1 PRIMA FACIE REFUGEE STATUS

The Bill notes that *prima facie* is a refugee status and defines that it is limited to situations where there is a large influx of refugees into Kenya. However, the Bill should instead state that *prima facie* recognition is a mechanism used to grant refugee status on the basis of readily apparent, objective circumstances in the country of origin or country of former habitual residence. This approach acknowledges that those fleeing these circumstances are at risk of harm that brings them within the applicable refugee definition.<sup>6</sup>

The Bill should define *prima facie* status in such a way that it can apply to both large-scale movements and to individuals who form part of a group whose arrival is not on a large-scale but who share common risk, for example, *prima facie* status for albinos from Tanzania.

### 1.2 MEMBERS OF FAMILY AND SPOUSE

Recognizing the different categories of people who seek protection in Kenya, the family members of lesbian, gay, bisexual, transgender and intersex (LGBTI) asylum seekers may include partners who are of the same sex. It is recommended that the legislation should be reworded to ensure that progressive language is used that will not limit the rights for LGBTI people and their partners to seek asylum in Kenya.

## 2.0 PART II - ADMINISTRATIVE PROVISIONS

### 2.1 FUNCTION OF THE COMMISSION

Section 8 (c) of the Bill limits declaration of *prima facie* status to large-scale influxes of asylum seekers. As has been noted above, *prima facie* status can also cover individual asylum seekers, such as those from a particular area where there are presumptive facts that they have a well-founded fear of persecution.<sup>7</sup>

### 2.2 ROLE OF CIVIL SOCIETY AND REFUGEE ORGANIZATIONS

Amnesty International welcomes the inclusion of the Kenya National Commission of Human Rights and the United Nations High Commissioner for Refugees as members of the Commission. Amnesty International recommends that for effective participation of all

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<sup>6</sup> UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status, 24 June 2015, HCR/GIP/15/11, available at <http://www.refworld.org/docid/555c335a4.html> (accessed 31 July 2016).

<sup>7</sup> See arguments and reference to *prima facie* here above.

stakeholders including refugees in decision making on matter of policy declaration, the Bill should consider including a representative of civil society or humanitarian organizations.

#### 2.3 THE REFUGEE APPEAL

Section 11 establishes the Refugee Appeal Board with members drawn from different government departments, rather than as a permanent structure. The Refugee Appeal Body should instead be configured as a permanent structure with appointments on definite terms to give its members security of tenure and to allow them to dispense with appeals lodged in a timely manner.

The Bill should also explicitly state the qualifications required for members of the appeal board to be able to judge matters as a quasi-judicial body. The 2006 Refugee Act is explicit on the qualification of members of the Refugee Appeal Board.

#### 2.4 DECENTRALISED REFUGEE STRUCTURE

The centralisation of refugee structures in Nairobi and other cities has continuously denied asylum seekers the opportunity to be registered, to lodge their refugee application and an appeal, if necessary, in good time. The Bill should include a decentralized structure in areas with large asylum seekers and refugee populations and at major border entry points.

#### 2.5 BUDGETARY SECURITY

The Kenyan government should ensure that the refugee structure is well funded. Refugees have always suffered due to staffing gaps making it difficult for vulnerable refugees to receive the attention that they require.

### 3.0 PART III: APPLICATION FOR REFUGEE STATUS

It is recommended that the draft legislation is restructured to outline procedures in the order in which they take place, as follows: reception of refugees, registration of refugee status and application of refugee status, appeal and cessation.

#### 3.1 APPLICATION OF REFUGEE STATUS

Section 13 (1) of the Bill is not clear about who needs to receive a refugee status application and the role of the person or departments that receive the application. The role of Authorized Officer<sup>8</sup> appears to conflict with the role of the Eligibility Committee<sup>9</sup> as they both interview asylum seekers and make relevant recommendation for whether asylum seekers should be recognized as refugees.<sup>10</sup>

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<sup>8</sup> The role of Authorized Officer as described in Section 2 and Section 13 of the Bill

<sup>9</sup> Established by Section 16 of the Bill

<sup>10</sup> See Section 13 (10) of the Bill and Section 16 (2) of the Bill



The Bill proposes that the Commissioner receives applications for refugee status from the Authorized Officer<sup>11</sup>, before forwarding them to the Eligibility Committee where the Commissioner is also a member.<sup>12</sup> The Eligibility Committee then conducts another interview with applicants and formulates recommendations to the Commissioner. This would subject applicants to several interviews and is logistically challenging. Amnesty International recommends that there is a structure to allow for a fair clear, robust and transparent process. Those taking the decisions should be qualified to do so and operating in accordance with international law.

### 3.2 THE NATIONAL ELIGIBILITY COMMITTEE

Section 15 of the Bill establishes a National Eligibility Committee. Amnesty International is concerned, however, that the composition of the Eligibility Committee as noted in Section 16 of the Bill has more involvement of security and law enforcement agencies which may impede objective assessments of asylum applications. The composition includes representatives from the Director of Public Prosecutions, the Ministry of Interior, and representatives of the Inspector General of Police and of the Director of Immigration Services. UNHCR is included as an observer. It is recommended that the structure and composition of the committee which has a key role in assessing asylum applications should include persons who have experience on refugee law and can assess refugee claims objectively.

### 3.3 APPEAL

Section 17 envisages that any person can lodge an appeal against a decision of the Eligibility Committee. However, it is the Commissioner who grants refugee status under Section 16. It is recommended that the Bill should be reworded to ensure that appeals for rejected applicants are properly lodged against a decision made by the Commissioner of Refugee Affairs and not the Eligibility Committee.

### 3.4 CANCELLATION AND REVOCATION

The Bill at Section 20 (6) envisions that any legal officer or advocate representing a refugee whose status is due to be cancelled must be "prequalified" by the refugee structure. Refugees should be allowed to be accompanied a lawyer of their choosing.

### 3.5 RECOGNITION OF REFUGEES FROM THE EAST AFRICAN COMMUNITY

The Bill would give refugees from countries within the East African Community rights and privileges as set out in the Treaty creating the East African Community. Amnesty International recommends that the drafters consider whether this could lead to challenges with regard to different treatment of refugees in Kenya.

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<sup>11</sup> Section 13 (10) of the Bill

<sup>12</sup> See Section of the Bill on the composition of the Committee.

## **4.0 PART IV: RECEPTION OF REFUGEES**

### **4.1 DESIGNATED AREAS AND RECEPTION**

The wording of Section 32 (2) read together with Sections 42, 43 and 45 of the Bill makes it mandatory for all asylum seekers and refugees to stay in designated areas. It would allow both the Commission and the Cabinet Secretary to gazette designated areas. Amnesty International recognizes that refugee camps are sometimes necessary to provide humanitarian assistance to refugees on arrival, but legislation should not restrict freedom of movement and association for asylum seekers and refugees. Legislation should make clear that as far as possible refugees should be able to live in the community and have freedom of movement.

## **5.0 INTEGRATION REPATRIATION AND RESETTLEMENT**

### **5.1 RESETTLEMENT IN KENYA**

Amnesty International recognizes the effort made by the Bill to have Kenya as a country of resettlement for refugees from other countries of asylum. The provisions of the Bill should not only offer opportunity to relocate to Kenya for resettlement but also go further to ensure that there are procedural safeguards and processes to allow refugees in Kenya to integrate legally, socially and economically for permanent residence.

### **5.2 WORK PERMIT**

Amnesty International recognizes the effort made in the Bill to allow refugees to access work permits. However, due to logistical challenges the current waiting period for asylum seekers to be recognized as refugees in Kenya is more than four years. Limiting access to work permits to recognized refugees will increase the challenges faced by asylum seekers in Kenya. The law should provide that, as far as possible, asylum seekers can access documentation allowing them to access work and be able to live a gainful life.

### **5.3 DERIVATIVE STATUS FOR FAMILY MEMBERS**

Section 63 of the Bill recognizes that refugee family members and dependants can derive status from relatives who already have refugee status. However Section 63 (4) envisages that family members would lose refugee status if the family subsequently dissolves. Amnesty International notes that it is a recognized principle that individuals who obtain derivative status are entitled to the same rights as recognized refugees and should always retain their status notwithstanding dissolution of family either through death, divorce or when a child reaches the age of majority.

**APPENDIX V**

**Submissions by United Nations High Commissioner for  
Refugees**

① D/Committees

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**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

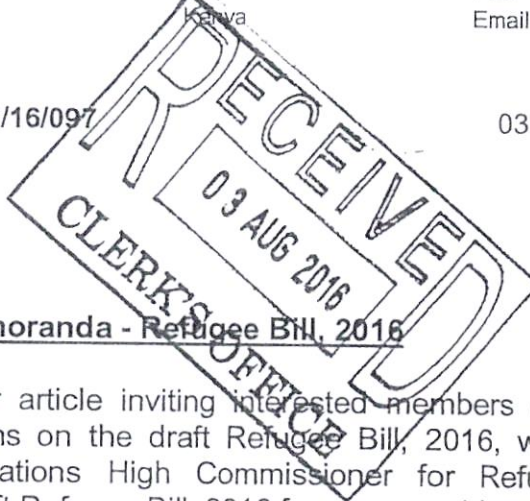
UNHCR  
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Kenya

Tel.: +254-20-4232000  
Fax: +254-20-4232080  
Email mazou@unhcr.org

Notre/Our code: KEN/NBI/EXEC/16/097

03 August 2016

Dear Sir/Madam,



Re: Submission of Memoranda - Refugee Bill, 2016

Further to a newspaper article inviting interested members of the public to submit representations on the draft Refugee Bill, 2016, we are pleased to submit United Nations High Commissioner for Refugees' (UNHCR) comments on the draft Refugee Bill, 2016 for your consideration.

Thank you.

Yours sincerely,

Mr. Raouf Mazou  
Representative



⑤ MAHIRA  
~~ENARS~~  
pls deal  
FA  
04/8

The Clerk of the National Assembly,  
First Floor,  
Main Parliament Buildings,  
P.O. Box 41842-00100,  
Nairobi, Kenya

Encl.

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## REVIEW OF THE KEPHRA LEGISLATIVE PROPOSAL 2016

### PART I—PRELIMINARY

*Title:* UNHCR notes that the proposed title is too wordy and recommends,

**“An Act of Parliament to make provision for the recognition, protection and management of refugees and for connected purposes.”**

2 *Interpretation:* UNHCR proposes the use of standard definitions to define words/phrases that have an international definition.

**Authorized officer** to be avoided, it is restrictive and conflicts with the Kenyan government appointment policies for public service. Adoption of the less restrictive definition of the ‘refugee officer’ is recommended.

**Eligibility committee.** UNHCR is of the opinion that this is not relevant, granted the nature and function of the eligibility committee as captured in the substantive part of the Bill. The function of the eligibility committee will result in a lengthy and more complicated process in the application for refugee status.

**Local integration:** A durable solution for refugees that involves their permanent settlement in the country of asylum. Local integration is a gradual process, comprising three distinct but interrelated dimensions: legal, economic and social-cultural. The process is often conclude with the naturalization of refugees.

*Prima facie:* (“in absence of evidence to the contrary”) refers to the process of group determination of refugee status, as opposed to individual determination, which is usually conducted in situations where a need to provide urgent assistance or other practical difficulties preclude individual determination, and where the circumstances of the flight indicate that members of the group could be considered individually as refugees

**Refugee Officer** means an ‘officer responsible for refugee matters under this Act.’

UNHCR recommends deleting ‘answerable to the Commissioner’. This is too restrictive and may change depending on government appointments.

‘**Refugee**’ has the meaning assigned to it under section 3 (not 4) of this Act. It should not include asylum seeker.

**Separated and Unaccompanied minor:** UNHCR recommends to substitute minor with child in the definition.

3. UNHCR recommends the international definition of refugee that comprises five grounds for persecution.

being outside of his or her country of nationality and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion who is in Kenya and is unable or, owing to such fear, is unwilling to avail

herself/himself of the protection of her/his country of nationality or the country of habitual residence;

*If the added ground of sex must be included, UNHCR recommends the use of the term Gender which is more inclusive of various gender orientations.*

The definition also combines the UN Convention definition and the OAU definition, for ease of reading the paragraphs can be separated as (a) and (b) respectively.

Section 3 (2) refers to *prima facie* status, however this does not come out clearly and UNHCR recommends to rephrase as follows:

(2) If the Commission considers that any class of persons are *prima facie* refugees as defined in subsection (1), the Commission may declare such class of persons to be *prima facie* refugees and may at any time amend or revoke such declaration.

Note that Section 3 (2) refers to paragraphs (a) (b) (c) and (d), which do not exist. There is need to harmonise this to reflect the correct paragraphs.

(3) If the Commission under subsection (2) expressly excludes or exempts any person from a declaration that a class of persons to which that person is a member are refugees, such exclusion or exemption shall not preclude the person concerned from individually applying under subsection 1 (c) for recognition of their status as a refugee.

4 UNHCR recommends breaking down the section into two i.e. Exclusion and Disqualification from refugee status.

Sub section (a) and (b) refer to disqualification from grant of refugee status, because of the absence of a well-founded fear due to the availability of effective protection from another agency of the UN or availability of effective protection in a third country . Sub section (c) refers to exclusion where applicants have a well-founded fear of persecution but are underserving because of having committed certain serious crimes.

## **PART II—ADMINISTRATIVE PROVISIONS**

6 (a) UNHCR acknowledges the significance of an autonomous, strong and effective agency responsible for policy decisions and the overall management of refugee affairs in the country. UNHCR recommends the establishment of an inter-ministerial institution, chaired at the highest level by the Cabinet Secretary or Principal Secretary from the pertinent Ministry. The institution will comprise of relevant Ministries that are charged with refugee affairs and other government departments/agencies mandated with administration of refugees will be accountable to this body.

9 Under this section the functions of the secretariat of Refugee Affairs (described in detail under section 10) and the roles of the Commissioner need to be well defined. In 9 (2) the Secretariat's role is administrative whereas in 10 it goes beyond administrative support.

9 (3) UNHCR notes that under this section, articles (a), (c), (d), (f) and (g) relate to the procedural aspects of the refugee status determination (RSD) process. UNHCR thus recommends that they be summarized in the following function;

“Receive and process applications for refugee status determination”

UNHCR further recommends that the functions of the Commissioner for Refugee Affairs should also include-

- (a) keep, register and maintain a record of all asylum seekers and refugees in Kenya;
- (b) Issue refugee identification documents and facilitate the issuance of civil registration and other relevant documents.
- (c) In liaison with Director of Immigration, process and issue conventional travel documents.
- (d) Facilitate refugees to access work permits and business permits.
- (e) manage refugee designated areas and other related facilities; form sub-committees and assign to such sub-committees functions to be exercised in relation to the reception, treatment and welfare of asylum seeker and refugees; co-ordinate the provision of overall security, protection and assistance for asylum seeker and refugees in the designated areas;
- (f) To ensure the civilian and humanitarian character of the designated areas.
- (g) issue movement passes to refugees and asylum seekers wishing to travel outside the designated areas and within Kenya;
- (h) exempt asylum seekers and refugees from residing in designated areas where there are compelling reasons to do so
- (i) protect and assist vulnerable groups, women, children and persons living with disability;
- (j) ensure treatment of all asylum seekers and refugees in compliance with national law;
- (k) issue visitors permits for entry into Refugee Camps in accordance with the regulations;

#### 11 Appeal Board.

1. UNHCR notes that the appeal board is a quasi-judicial body. However the body should not assume the role of the courts. It is thus recommended that the Chairperson should not necessarily be a judge of the Superior Court appointed by the Chief Justice but a person with a legal background and the requisite competencies.



Further the members of the appeal board should be persons whose profile or roles relate to the key functions of the appeal board. A legal background and experience in refugee matters is recommended.

UNHCR recommends that in 5 (b) the use of cancellation and revocation instead of termination of refugee status.

### PART III—APPLICATION FOR REFUGEE STATUS

- UNHCR recommends that this section begins with the registration of asylum seekers.
- Section 13 (2), it is not the role of UNHCR to notify that a person seeking asylum is present into Kenya. The new asylum seeker is systematically oriented on the procedure and asked to approach DRA to formally lodge the asylum procedure.
- UNHCR notes that Section 13, paragraphs 4-12 seem to describe the RSD process. These can be captured under the regulations enacted to guide the RSD process. Only key issues of the application for RSD should be captured here.

Section 17 (1): Needs to be deleted as one can only appeal against the decision of the Commissioner for Refugee Affairs as captured in 17 (2) and not the Eligibility Committee.

Section 19: UNHCR recommends that the section be replaced by the following:

Disease surveillance shall be established at the Reception centre and conditions of public health concerns managed as per the national guidelines.

Section 20 (10) on the effects of cancellation of refugee status on those with derivative status is not correct. It should state that,

Where refugee status under this part has been cancelled that person shall cease to be a refugee and any member of her/his family with derivative status shall cease to be so recognised under this Act on the expiration of seven days after the date on which the Commissioner notifies the person concerned that her/his recognition has been cancelled.

Provided that the family member whose derivative status is affected by the cancellation shall have the right to apply to be considered as a refugee under section 13 of this Act

Section 23: Numbering of paragraph (b) needs to be amended.

The rights and duties captured in this section are procedural and can be captured in the regulations. It is noteworthy however that the duty to provide documentation under (b) (ix) and (x) is prejudicial to refugees who flee without documents and should be deleted.

Section 24: Refugee Women and Children; UNHCR recommends that since this is one of the duties of the commissioner (Section 9 (3)). This section can be rephrased with most of the procedural aspects captured under regulations.

#### **PART IV —RECEPTION FOR REFUGEES**

UNHCR recommends that this section should be reviewed with existing laws and regulations that deal with the areas herein e.g. Health, searches and other security aspects.

#### **PART V—RIGHTS AND DUTIES OF REFUGEES AND ASYLUM SEEKERS WITHIN KENYA**

Section 34: Access to employment, whereas employment is crucial to self-reliance and hence integration, there is no need to include the phrase 'in order to facilitate his or her local integration' in this paragraph, this can be replaced with livelihood or self-reliance.

Section 34 relates to access to work for recognised refugees only, whereas Section 37 on work permits refers to both asylum seekers and refugees. Need to harmonise this in terms of the right to work.

Section 40: It is proposed to move this section to the reception and registration section as well as to reword it.

#### **PART VI —CONTROL OF DESIGNATED AREAS**

Section 48: Administration of a designated area.

Granted that the designated areas are currently in devolved areas there is need to review the linkages with county government

The section is also very detailed and touches on procedural issues. UNHCR proposes that these can be addressed by regulations (6).

#### **PART VII—INTEGRATION, REPATRIATION AND RESETTLEMENT OF REFUGEES**

Section 50 (1). The section is vague and does not capture integration as a durable solution. Further it contradicts other sections of the Bill.

Section 53 (3) (4) and Section 55. UNHCR considers that the Trust Fund is currently not relevant or feasible and recommends that the same be deleted.

Section 54 (2) on resettlement of refugees residing in Kenya. UNHCR find that this section is open to various interpretations e.g. refers to returnees, family reunification or Kenya as a resettlement country. There is need for clarity of this section.

#### **PART VIII—INTERNATIONAL AND REGIONAL CO-OPERATION**

Section 58 (2) it is not clear what the drafters intended.

## PART IX—MISCELLANEOUS PROVISIONS

Section 60 to be deleted, it seeks to impose jurisdiction to offences occurring outside of our territorial boundaries.

Section 64 to be deleted, it grants wide discretionary powers to officers, for search and questioning .

Section 65 to be deleted, the searches to be conducted are not related to prevention of fraudulent misstatements.

Section 66 to be deleted, it is not related to the grounds and no reference has been made to the said grounds in 65 above.

Section 68 to be deleted as there is potential for conflict of interest where the need for legal aid is against the commissioner

### SECOND SCHEDULE

UNHCR proposes the annexure of the full Conventions and not excerpts.

## APPENDIX VI

### Submissions by the Kenya National Commission on Human Rights

① / Committee

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ADVOSORY ON THE REFUGEE BILL, 2016

SUBMITTED TO THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY OF THE NATIONAL ASSEMBLY, AUGUST 3, 2016

Kenya National Commission on Human Rights

1<sup>st</sup> Floor, CVS Plaza, Lenana Road

P.O. Box 74359-00200

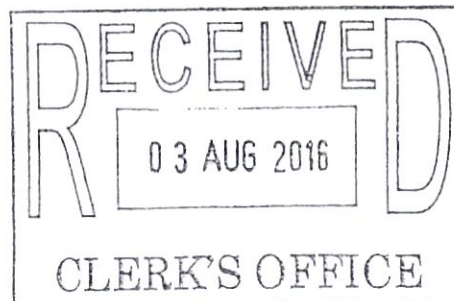
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## A. Introduction

The Kenya National Commission on Human Rights (KNCHR) is a constitutional body established under Article 59 of the Constitution of Kenya and Section 3 of the Kenya National Commission on Human Rights Act No 14 of 2011 (revised 2012). It has the core mandate to develop a culture of human rights through the promotion and protection of rights and fundamental freedoms as well as state compliance on both domestic and international obligations.

The KNCHR submits this advisory pursuant to its mandate under Articles 59 (2) (f) and 59 (2) (g) Constitution of Kenya and Sections 8 (e) (f) Kenya National Commission on Human Rights Act 2011 (revised 2012) to 'investigate and research a matter in respect of human rights and make recommendations to improve the functioning of state organs.' The submission are also made pursuant to article 249 (1) (c) which identifies the promotion of constitutionalism as one of the principle objects of Constitutional Commissions and Independent Offices.

It is an Act of Parliament to provide for the recognition and protection of refugees; to give effect to the Convention Relating to the Status of refugees and the OAU Convention Governing the Specific aspects of Refugees problem in Africa and for connected purposes. This Act repeals the Refugees Act No. 13 of 2006.

The Act is divided into 10 parts; preliminary part, administrative provisions, application for refugee status, reception for refugees, rights and duties of refugees and asylum seekers within Kenya, control of designated areas, integration, repatriation and resettlement of refugees, international cooperation, miscellaneous provisions and provisions on delegated legislation.

## B. Constitutionality of the Bill

*Article 2(6) of the Constitution 2010* provides that any treaty or Convention ratified in Kenya forms part of the Kenyan Constitution.

*Article 10* provides for the national values and principles that include among other things; human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized.

*Article 18 (b)* provides that parliament shall enact legislation governing entry into and residence in Kenya.

*Chapter 4 of the Constitution* provides for the Bill of Rights which is an integral part of Kenya's democratic State. The Bill of Rights apply to all persons who are entitled to enjoy the freedoms to the greatest extent consistent with the nature of the right and fundamental freedom. Any person can enforce the bill of rights. The rights under the bill of rights ( other than the freedom from torture and cruel, inhuman or degrading treatment or punishment, freedom from slavery or servitude, right to a fair trial and the order of habeous corpus) can be limited by law in a reasonable, justifiable, open and democratic society based on human dignity, equality and freedom.

*Article 47* provides for the right to a fair administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.

*Article 50* of the Constitution provides for the right to a fair trial.

#### **The power of the minister transferred to the commission**

Unlike in No. 13 of 2006, where the minister individually held great sway on the declaration of persons as refugees, under the bill that responsibility has been majorly transferred to the Commission and any revocation of the declaration of refugee status has to be brought to the attention of the concerned person(s) and officers. The minister in No. 13 of 2006 could simply just revoke the declaration.

The bill adds additional grounds under section 4 that may exclude one from refugee status. This includes persons who are receiving protection and assistance from other UN organs and agencies other than the UNHCR and a person recognized by the authorities as having rights and obligations which are attached to the possession of the nationality of Kenya.

#### **Administrative institutions and the right to a fair administrative action**

The bill introduces 3 administrative institutions which are not provided under Cap 173, namely;

- a. The Kenya Refugee Repatriation and Resettlement Commission.
- b. The Secretariat for Refugee Affairs.
- c. Refugee Status Appeal Board.

As regards the Kenya Refugee Repatriation and Resettlement Commission, the inclusion of representation of the KNCHR and UNHCR is welcome though the two are

included as having 'advisory roles' only. The two should be voting members because they are well positioned to give expert opinion as their respective mandates touch on the very subject matter of refugees. Inclusion on advisory roles means that they would be toothless and are no more than spectators. Their advice can be taken or not.

The Secretariat for Refugee Affairs on its part under the leadership of the Commissioner for Refugee Affairs is to perform administrative functions as to be determined by the KRRRC.

The bill establishes the Appeal Board under Section 9, whose function is to hear and determine appeals against any decision of the secretariat on the rejection of applications for refugee status and the cancellation and termination of refugee status.

There is also established the National Eligibility Committee. This committee has an investigative role and it informs the Commissioner of its finding. It has the power to summon an applicant and may consider relevant submissions. A decision of the Eligibility Committee can be appealed from to the appeal board.

Under Section 20, the Commissioner is clothed with powers to cancel refugee status but after granting the person concerned a fair administrative action.

Section 21 provides for the power of the Cabinet Secretary to revoke refugee status when a person is considered a threat to national security. These powers of the CS are similar to the ones of the Commissioner in revocation of refugee status.

### Non refoulment of refugees.

This is perhaps the most controversial provision and of relevant concern because of the Kenyan state intended action to close Kakuma and Daadab refugee camps. The principle of non-refoulment is one that prohibits States from returning a refugee or an asylum seeker to territories that pose a risk to their lives and freedom on account of race, religion, nationality, political opinion, and membership to a social group.<sup>1</sup> From a human rights perspective the principle of non-refoulment allows for no limitation or derogation. The principle is also progressively mutating to be jus cogens.<sup>2</sup> This means that the principle is to be observed strictly.

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<sup>1</sup> See Article 33 of the Refugee Convention of 1951.

<sup>2</sup> See the General Comment No. 20 (1992) of the Human Rights Committee (HRI/HEN/1/Rev.1, 28 July 1994).



This principle is also in line with the international laws that prohibit and prevent torture. The UNCHR has thus been tasked with the key role to provide international protection of refugees. It is, therefore, the primary mandate of the UNCHR to find solutions to the problem of refugees. One of the mandates includes working in cohorts with governments to facilitate voluntary repatriation of the refugees or assimilation within their new territories.

As is expressly manifest from the Refugee Convention of 1951, Kenya being a contracting state, is bound by its provisions and more particularly it is bound by provisions of its own Constitution. Refugees, who thus come to the effective control and jurisdiction of Kenya, enjoy the protection afforded to them by the outlined laws. Being under the jurisdiction of the state means that when refugees come under the effective control of Kenya or are affected by actions of those acting on behalf of Kenya whether within or without the national territory, then the international and municipal laws apply. Article 1A of the Convention provides that a refugee is any person who; *owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.*

Being a refugee is not a formal status conferred by municipal law.<sup>3</sup> Thus in the spirit of the convention even if entry to state is illegal *refoulement* is not an option because the dangers of *refoulement* outweigh the penalties that may be imposed for illegal entry. The Convention as well as the Refugees Act No. 13 of 2006 do not recognize a person as a refugee when they have committed international crimes or when they have committed serious crimes which are non-political in nature or are guilty of acts which are contrary to the purposes and principles of the UN.

The principle of *non refoulement* does not apply to a refugee who having been convicted previously of a serious crime constitutes a danger to the community or the country of refugee. Whereas it is true that there exists exceptions to the principle of non refoulement on 'overriding reasons of national security' in order to safe guard the population, a state

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<sup>3</sup>Handbook on Procedures and Criteria for Determining Refugee Status prepared by UNHCR provided as follows:

*A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee*

should first and foremost consider granting the person concerned an opportunity whether by provisional asylum or otherwise of going to another safe state. The only permissible exceptions to *non refoulment* are on grounds of national security and public safety though the rule here is that the threat posed by the refugee should outweigh the threat to their life if he/she is repatriated. This exception has to be interpreted restrictively. True to Kenya's action, what may constitute a national security concern will play out on the state's margin of appreciation though it cannot be based on any unreasonable threat and blanket condemnation. Secondly, situations of national security in relation to expulsion of refugees have to be assessed on a case by case basis where the danger posed by the particular refugee outweighs the threats posed to him or her if repatriated. In any event any action by the state to repatriate has to be hinged on the proportionality principle where the danger, imminence and seriousness of a case has to be assessed.

### Recommendations

1. The Commissioner for Refugee Affairs cannot and should not be the prosecutor, witness and judge at the same time when determining applications for refugee status.
2. If the Bill provides for 3 institutions to deal with issues of refugees, then the Cabinet Secretary should not individually and unilaterally have the powers to cancel refugee status without involving other tiers to guarantee checks and balances and prevent arbitrariness.
3. The functions of the Commission as well as the Secretariat should expressly include '...the management of refugee affairs in accordance with international standards.'
4. The principle of *non-refoulment* has to be observed strictly, issues such as 'national security concerns' have to be justified to a threshold established under international law. Consequently, *refoulement* to be effected only after due process.
5. The KNCHR and UNCHR should have full membership status in the Commission with full rights in including voting rights.

**APPENDIX VII**

**Submissions by Danish Refugee Council**

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① D/commas



3<sup>rd</sup> August, 2016

Justin Bundi, CBS  
Clerk of the National Assembly,  
National Assembly, First Floor,  
Main Parliament Buildings,  
P.O. Box 41842 – 00100,  
Nairobi, Kenya.

② MAETHRA  
ph [signature]  
FA  
05/8

Dear Sir,

RE: SUBMISSION OF MEMORANDA – REFUGEES BILL, 2016

DRC is an international non-governmental organization working with refugees and internally displaced persons in Kenya since 2005. The letter is in response to the call for memoranda regarding the Refugee Bill 2016 under consideration by the National Assembly dated July 18<sup>th</sup> 2016. DRC is hereby writing on behalf of the International Rescue Committee, Refugee Consortium of Kenya and Heshima Kenya.

Accompanying this letter is a detailed recommendations matrix on particular clauses of the Refugee Bill, 2016. DRC would also like to inform you of the intention of partners to present oral submissions on the Bill during public hearings to be conducted on the 9<sup>th</sup> August.

For any further information on the memorandum you can reach me through: [d.kang'ethe@drckenya.org](mailto:d.kang'ethe@drckenya.org) or 0714402879 to follow up.

Yours faithfully,

David Kang'ethe,  
Country Director.  
Danish Refugee Council



INTERAGENCY REVIEW OF THE REFUGEES BILL, 2016

MEMORANDUM TO THE PARLIAMENTARY COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY ON THE LEGISLATIVE PROVISIONS THAT ARE THE DRAFT REFUGEES BILL

The summary of recommendations has been developed by the Danish Refugee Council, International Rescue Committee, Heshima Kenya and the Refugee Consortium of Kenya. The recommendations are in response to the call for submission of memorandum for the Refugee Bill, 2016.

CLAUSE	RECOMMENDATION	COMMENT
Preamble	Any reference to the UN convention should read as " <i>The 1951 United nations Convention Relating to the Status of Refugees</i> "	
Definition	<ul style="list-style-type: none"> <li>Prima facie ("in absence of evidence to the contrary") refers to the process of group determination of refugee status, as opposed to individual determination, which is usually conducted in situations where a need to provide urgent assistance or other practical difficulties preclude individual determination, and where the circumstances of the flight indicate that members of the group could be considered individually as refugees.</li> </ul>	While refugee status must normally be determined on an individual basis, situations have also arisen in which entire groups have been displaced under circumstances indicating that members of the group could be considered individually as refugees. In such situations the need to provide assistance is often extremely urgent and it may not be possible for purely practical reasons to carry out an individual determination of refugee status for each member of the group. Recourse has therefore been had to so called "group determination" of refugee status, whereby each member of the group is regarded <i>prima facie</i>
	<ul style="list-style-type: none"> <li>Local integration To contribute to the social and economic life of the country refuge (should read as clause 3)</li> </ul>	It is a process that encompasses social, economic and legal components.
	<ul style="list-style-type: none"> <li>Refugee (should read without the phrase 'asylum seeker')</li> </ul>	Refugee status is granted after one has undergone assessment in the form of Refugee Status Determination (RSD). An asylum seeker is still in the process.
Meaning of refugee clause 3 ( <i>note it is not broken into numbered paras, we</i>	3. (1) A person shall be a refugee for the purposes of this Act if such person— (a) being outside of his or her country of nationality and owing to a well-founded fear	Replace the phrase "Cabinet Secretary" with "Commission"

<p>recommend this to happen)</p>	<p>of being persecuted for reasons of race, religion, nationality, membership of a particular social group, political opinion or sex who is in Kenya and is unable or, owing to such fear, is unwilling to avail herself/himself of the protection of her/his country of nationality or the country of habitual residence; or</p> <p>(b) not having a nationality and being outside the country of her/his former habitual residence owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, political opinion or sex who is in Kenya and is unable or, owing to such fear, unwilling to return to the country of her/his habitual residence.</p> <p>(c) owing to external aggression, occupation, foreign domination or events seriously disturbing public order in any part or whole of her/his country of origin or nationality is compelled to leave her/his place of habitual residence in order to seek refuge in another place outside her/his country of origin or nationality.</p> <p>(2) A person shall be a <i>prima facie</i> refugee for purposes of this Act if the Cabinet Secretary may declare such persons to be prima facie refugees and may at any time amend or revoke such declaration.</p> <p>(3) If the Cabinet Secretary under subsection (2) expressly excludes or exempts any person from a declaration that a class of persons to which that person is a member are refugees, such exclusion or exemption shall not preclude the person concerned from applying under subsection 1 (c) for recognition of their status as a refugee.</p>	<p>The rationale behind this is that the commission being a policy formulating body will have the mandate of declaring classes of persons for purposes of this section and review of the same.</p>
<p>Exclusion from refugee status clause 4</p>	<p>The provisions of this Act shall not apply to any person with respect to whom there are serious reasons for considering that:</p> <p>(a) She/he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the International Crimes Act;</p> <p>(b) She/he has committed a serious non-political crime outside</p>	

	Kenya prior to her/his admission to Kenya as a refugee; She/he has been guilty of acts contrary to the purposes and principles of the United Nations and African Union; or	
<b>ADMINISTRATIVE PROVISIONS PART II</b>		
Administrative institutions <i>clause 6 (a)</i>	<ul style="list-style-type: none"> <li>Propose to read as Refugee Management Commission</li> </ul>	The title is recommended as it encompasses all the functions related to refugee management specified in the bill including promotion of durable solutions
Composition <i>clause 7</i>	<ul style="list-style-type: none"> <li>Principal Secretary level</li> </ul>	The composition should reflect the functions i.e. Advisory role and therefore the CS need not attend a meeting making a decision to advise him/her
Eligibility committee <i>clause 15</i>	<ul style="list-style-type: none"> <li>Composition (recommend it to be a panel)</li> </ul> <p>The commissioner shall establish a panel known as the Status Eligibility Panel which shall review the recommendations made on refugee status determination applications.</p> <p>(1) The Status Eligibility committee shall consist of</p> <p>(a) The chairperson of the committee shall be a refugee officer from the department of refugee affairs who has knowledge and experience in refugee matters of a period of not less than five years.</p> <p>(b) At least 3 refugee officers in the Refugee Management Commission who have knowledge and experience in refugee law.</p> <p>(c) One representative from Ministry of foreign affairs</p> <p>(d) One representative from the Inspector Generals' Office</p> <p>(e) One representative from the Department of immigration</p> <p>(2) The Office of UNHCR Representative shall be invited to attend the meetings of the Panel in an advisory capacity</p>	
Functions of the eligibility committee <i>clause 16</i>	The Status Eligibility Panel shall review the assessments and the recommendations made by the Refugee Officers and make	

	recommendations on the refugee applications.	
Appeals	Delete clause 17 (1)	The appeal should be directed against the commission in the person of the commissioner and not the Committee (Panel)
<i>clause 19</i> Asylum seekers from regions with high infectious disease.	The person shall be quarantined in a special holding centre in accordance to regulations of the Public Health Act pending Refugee Status Determination	Health screening procedures are detailed under the Public Health Act
Cancellation of refugee status <i>clause 20</i>	Delete clause 6	
Revocation of refugee status <i>Section 21</i>	The Cabinet Secretary may revoke the status of any refugee if the refugee at any time after recognition as a refugee has been convicted of a serious crime.	In the new clause suggested the threshold for revocation is more rigorous and objective (a reasonable belief is insufficient considering the ramifications of revocation)
Recognition of refugees in the EA community <i>clause 22</i>	Delete the section	Refugees from the EA community already benefit from the protection available It risks creating preferential categories of refugees
Rights during status determination process <i>clause 23</i>	Move the paragraph to the regulations Sub clauses 23 (1) (b) (ix), (x) and (xi) - delete	<ul style="list-style-type: none"> <li>As a procedural section it is better suited to regulations</li> <li>It is prejudicial to refugees who flee without documents</li> </ul>
Refugee women and children <i>Section 24</i>	The Commissioner shall ensure that specific measures are taken to ensure the dignity and safety of women and children seeking asylum and women and children who have been granted refugee status, at all times	
Duty of refugee reception officers <i>Section 29</i>	Delete sub (d) Delete sub (f)	<ul style="list-style-type: none"> <li>There is ambiguity as to the purpose of the search therefore needs further clarity on the grounds for the search</li> <li>Asylum process is not accessible to combatants i.e. It is purely civilian therefore sub clause (f) is not relevant</li> </ul>
Surrender of weapons <i>Section 31</i>	Delete s 31	Refugees and asylum seekers should not carry firearms
<b>RIGHTS AND DUTIES OF REFUGEES AND ASYLUM SEEKERS</b>		



Rights and duties under international instruments	Delete sub (4)	Ambiguity on the criteria to determine the need for protection of the national labour market
Non refoulment <i>Section 33</i>	Delete and replace with the following: (1) No person shall be refused entry into Kenya, expelled, extradited from Kenya or returned to any other country or be subjected to any similar measure if, as a result of such refusal, expulsion, return or other measure, such person is compelled to return to or remain in a country where— (a) the person may be subject to persecution on account of race, religion, nationality, membership of a particular social group or political opinion; or (b) the person's life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disturbing public order in part or whole of that country. (2) The benefit of the subsection 1 may not, however, be claimed by a refugee or asylum seeker whom there are reasonable grounds for him or her being regarded as a danger to the national security of Kenya, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the country.	The proposed clause is better for the reason that the threshold for removal is definite
Non punishment of asylum seekers <i>Section 41</i>	Delete section 41	A repetition of the offence covered by clause 18 on Institution of proceedings for unlawful presence
<b>CONTROL OF DESIGNATED AREAS PART 4</b>		
Designated area	Delete sub 45 (3) specifically the phrase "and also any other land belonging or attached belonging or attached and used by asylum seekers and refugees" Delete sub 4	Includes private property temporarily used by refugees  The instrument needs to be definite

Requirement to reside in a designated area	Sub 46 (1) should read "...an asylum seeker or refugee shall not be allowed..."	The inclusion of the phrase "shall not" is important for the phrase to make sense
Control of designated area	Delete 47 (2)	It reads as though the designated area/ s are administered by refugees and asylum seekers
Restriction of persons entering a designated area	Delete 49	The clause is contrary to freedom of movement and assembly for the host communities under the constitution
<b>INTEGRATION REPATRIATION AND RESETTLEMENT OF REFUGEES</b>		
Resettlement of refugees residing in Kenya <i>clause 54</i>	Sub 3 should read "a refugee outside of Kenya"	To be clear this clause does not apply to an asylum seeker/refugee in Kenya but someone already granted refugee status in another country
<b>MISCELLANEOUS PROVISIONS</b>		
Detention of an asylum seeker or refugee	Delete clause 60	The clause seeks to impose jurisdiction to offences occurring outside of our territorial boundaries
Family reunion	Delete sub 4	It provides for an offence that has not been mentioned. Kindly clarify on the offence that has been committed
Powers of an authorized officer	Delete the section	Grants wide discretionary powers for search and questioning to officers without considering the due process required by other laws.
Grounds for conducting a search	Delete the section	The searches to be conducted are not related to prevention of fraudulent misstatements – consider rephrasing the clause.
Search to be conducted with decency	Delete the section	The clause is unrelated to the grounds and no reference has been made to the said grounds in section 65 above.
Provision of legal aid	Delete the section	There is potential for conflict of interest where the need for legal aid is against the commissioner. The Refugee Affairs Secretariat should not be given the responsibility to source for

	lawyers for legal aid for refugees.
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**DRC**  
**REFUGEE**  
**COUNCIL**

  
**INTERNATIONAL**  
**RESCUE**  
**COMMITTEE**

  
**RCK**  
REFUGEE CONSORTIUM OF KENYA

  
**HESHIMA**  
**KENYA**

**APPENDIX VIII**

**Advert for submission of memoranda**

**REPUBLIC OF KENYA**



**NATIONAL ASSEMBLY  
ELEVENTH PARLIAMENT - FOURTH SESSION**

**In the Matter of consideration by the National Assembly  
of the Refugees Bill, 2016**

**SUBMISSION OF MEMORANDA**

Article 118(1)(b) of the Constitution provides that "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Standing Order 127(3) states that, "the Departmental Committee to which the Bills are committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House".

The Refugees Bill, 2016 has undergone First Reading pursuant to Standing Order 127(3) and is now committed to the Departmental Committee on Administration and National Security for consideration. The Committee will thereafter submit a report to the House.

Pursuant to the provisions of Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the public to submit any representations that they may have on the said Bill. Members of the public may make oral representations or submit written memoranda as follows:

- Public Hearings shall be held on **Tuesday, 9<sup>th</sup> August, 2016 from 10:00 a.m. to 1:00 p.m. in the Mini Chamber, First Floor, County Hall, Parliament Buildings, Nairobi**; or Written Memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk of the National Assembly, First Floor, Main Parliament Buildings, Nairobi**, or emailed to **clerk@parliament.go.ke**, to be received on or before **Wednesday, 3<sup>rd</sup> August, 2016 at 5:00 p.m.**

A copy of the Bill as passed by the National Assembly may be downloaded from the Website of the Parliament of Kenya: [www.parliament.go.ke](http://www.parliament.go.ke).

**JUSTIN BUNDI, CBS  
CLERK OF THE NATIONAL ASSEMBLY**



**MINISTRY OF AGRICULTURE, LIVESTOCK AND FISHERIES  
STATE DEPARTMENT OF LIVESTOCK  
SMALLHOLDER DAIRY COMMERCIALIZATION PROGRAMME (SDCP)**

**REQUEST FOR PROPOSALS (RFP)  
RFP NO: MOALF/SDCP/IFAD/RFP/02/2016-2017**

**OVERSIGHT TECHNICAL SERVICE PROVIDER (TSP) FOR GRANTS TO DAIRY ENTERPRISES SCHEME**

**IFAD LOAN NO: 678 KE / GRANT NO. 815-KE  
IFAD PROJECT NO: KEN/05/F01**

- The Government of Kenya (GOK) and International Fund for Agricultural Development (IFAD) have signed an agreement for an additional funding (AF) to scale up the good results of the existing Smallholder Dairy Commercialization Programme (SDCP). It is intended that part of the proceeds of this loan will be set aside to be given as grants to dairy enterprises in the Programme area that meet the laid down requirements. The Programme shall engage a consultancy firm as a Grant Oversight Technical Service Provider (TSP) to ensure quality of proposal appraisal, monitoring of the funded activities, technical advice to the groups during monitoring and oversight on behalf of the Programme to ensure that all parties involved in the process are complying with policies and procedures.
- Smallholder Dairy Commercialization Programme (SDCP) now invites eligible consultancy firms to submit proposals. A complete set of Request for Proposals (RFP) document may be downloaded free of charge from the SDCP Website: [www.sdcp.or.ke](http://www.sdcp.or.ke) or Ministry's website: [www.kilimo.go.ke](http://www.kilimo.go.ke) or from National Treasury's Supplier portal: [www.supplier.treasury.go.ke/](http://www.supplier.treasury.go.ke/).
- Eligible firms who download the RFP document from the above websites are required to submit their particulars (name & address of the firm, contact person & email address and their mobile numbers) to the SDCP official email address: [pcu.sdcp@gmail.com](mailto:pcu.sdcp@gmail.com) using their official email addresses. The email addresses shall be for our records and for the purpose of receiving any further clarifications and/or addendums. All clarifications and/or addendums shall only be posted on the SDCP Website and sent to the official email addresses of the consultants who register.
- A complete set of the Request for Proposal documents enclosed in plain sealed envelopes and clearly marked "Request for Proposal for a Grant Oversight Technical Service Provider" and "RFP" reference number" should be addressed to:

The Programme Coordinator,  
Smallholder Dairy Commercialization Programme (SDCP),  
P.O. Box 12261-20100 Nakuru, Kenya  
Email: [pcu.sdcp@gmail.com](mailto:pcu.sdcp@gmail.com)

and be deposited in the Tender Box at Programme Coordination Unit (PCU), Nakuru or to be addressed to Programme Coordinator, so as to be received on or before 11.00 a.m. (East African Time) on Monday, 15<sup>th</sup> August, 2016.

- The Request for Proposals documents will be opened immediately thereafter in the Conference room of the Programme Coordination Unit (PCU), Nakuru in the presence of candidates or their representatives who choose to attend. Late and email submissions of Request for Proposals will be rejected.

**PROGRAMME COORDINATOR  
FOR: PRINCIPAL SECRETARY**



**TECHNICAL AND VOCATIONAL EDUCATION  
AND TRAINING AUTHORITY**

**TENDER NOTICE**

**PREQUALIFICATION OF SUPPLIERS/ CONTRACTORS FOR THE SUPPLY  
OF GOODS, WORKS AND SERVICES FOR FINANCIAL YEAR 2016/2018:  
TENDER NO. TVETA/001/2016-2018**

The Technical and Vocational Education and Training Authority is in the process of pre-qualifying Suppliers/Contractors for the supply/provision of various Goods, Works and Services for the financial year ending 30th June 2018. Interested and eligible Suppliers/Contractors specializing in the various categories of supply/provision of goods and services mentioned here below are invited to apply for pre-qualification:

1. SUPPLY OF GOODS		
CATEGORY NO.	ITEM DESCRIPTION	BID BOND
TVETA/PRE/001/2016-2018	Supply of general office Stationery and computer/printer consumables (This Category is reserved for the disadvantaged groups)	N/A
TVETA/PRE/002/2016-2018	Supply of Computers, Laptops, Servers, UPS, Printers, Scanners, Software, Accessories and other related ICT Items	
TVETA/PRE/003/2016-2018	Supply of cleaning materials, detergents, disinfectants and tissue papers (This category is reserved for the disadvantaged groups)	
TVETA/PRE/004/2016-2018	Supply of office furniture, carpets, curtains and related fittings	
TVETA/PRE/005/2016-2018	Supply of motor vehicle tyres, tubes and batteries	
TVETA/PRE/006/2016-2018	Supply of hardware, electrical, fittings, Air conditioning and related items	
TVETA/PRE/007/2016-2018	Supply of Staff uniforms, footwear, protective clothing and CMT Charges (This category is reserved for the disadvantaged groups)	
TVETA/PRE/008/2016-2018	Supply of Newspapers, Magazines and Periodicals (This category is reserved for the disadvantaged groups)	
TVETA/PRE/009/2016-2018	Supply of electronic and telecommunication equipment (camera, TVs, Telephone Heads, mobile phones etc)	
TVETA/PRE/010/2016-2018	Supply of mobile phone Airtel/pre-paid telephone Cards (This category is reserved for the disadvantaged groups)	
TVETA/PRE/11/2016-2018	Supply of Fuel, Oils and Lubricants	
2. PROVISION OF SERVICES		
CATEGORY NO.	ITEM DESCRIPTION	
TVETA/PRE/12/2016-2018	Provision of Air travel and ticketing services – both Local and International Travel (IAT Registered Firms Only)	
TVETA/PRE/13/2016-2018	Provision of outside catering services	
TVETA/PRE/14/2016-2018	Supply and Provision of Design, artwork, Colour separation and Printing of promotional, communication and advertising materials, (such T-shirts, caps, banners, etc) (This category is reserved for the disadvantaged groups)	
TVETA/PRE/15/2016-2018	Provision of general printing Services	
TVETA/PRE/16/2016-2018	Provision of engraving and marking of Authority's Assets (This category is reserved for the disadvantaged groups)	
TVETA/PRE/17/2016-2018	Repair and maintenance of ICT equipment, servers, Desktops Computers, Laptops, Notebooks, Local Area Network, Printers, UPS etc	
TVETA/PRE/18/2016-2018	Provision of cleaning services for curtains, carpets, sofa sets and other related upholstery (This category is reserved for the disadvantaged groups)	
TVETA/PRE/19/2016-2018	Repair, Maintenance and servicing of motor vehicles (CM & TE Registered Firms Only)	
TVETA/PRE/20/2016-2018	Website, Bulk SMS, Database development, Internet connectivity (ISP), Cloud services. (This category is reserved for the disadvantaged groups)	
TVETA/PRE/21/2016-2018	Collection and disposal of garbage services (This category is reserved for the disadvantaged groups)	
TVETA/PRE/22/2016-2018	Provision of pest control and fumigation services (This category is reserved for the disadvantaged groups)	
TVETA/PRE/23/2016-2018	Servicing and maintenance of photocopiers and other related office equipment, other than where there is dealership contract(s)	
TVETA/PRE/24/2016-2018	Repair and Maintenance of CCTV and Access Control Equipment	
TVETA/PRE/25/2016-2018	Provision of Tracking service for Motor Vehicles.	
3. PROVISION OF CONSULTANCY SERVICES		
TVETA/PRE/26/2016-2018	Provision of Event management/Consultancy services (This category is reserved for the disadvantaged groups)	
TVETA/PRE/27/2016-2018	Provision of Public Relations, consultancy in provision of policy formulation, surveys and services promotion/Consultancy services, ICT consultancy (ERP Systems, MIS, Document management system)	
TVETA/PRE/28/2016-2018	Provision of Insurance services (Medical, motor vehicles and other equipments)	
4. PROVISION OF MINOR WORKS		
CATEGORY NO.	ITEM DESCRIPTION	
TVETA/PRE/29/2016-2018	Minor construction works, partitioning, repairs, painting and demolition of building, offices and structures	
TVETA/PRE/30/2016-2018	Minor plumbing, drainage and sewerage services	

The Pre-qualification/Registration of suppliers/contractors documents detailing relevant terms and conditions may be obtained at No cost from the Authority's website [www.tvetauthority.go.ke](http://www.tvetauthority.go.ke).

Duly completed Pre-qualification/Registration documents in plain sealed envelopes clearly marked with the Tender Number and/or Pre-qualification Category No. should be mailed or deposited in the Tender Box provided on the 25<sup>th</sup> floor tel Posta Building, addressed to:-

The Director General,  
Technical and Vocational Education and Training Authority  
P. O. Box 35525-00100,  
Nairobi.

so as to be received on or before 25<sup>th</sup> August 2016 at 10:00 a.m. East African Time. Applications/tenders will be opened immediately thereafter at the Conference Room on the 25<sup>th</sup> floor TELPOSTA Towers, in the presence of candidates or their representatives who may wish to attend. Any canvassing in whatever way will render the prospective bidder(s)/applicant(s) ineligible for participation.

The Government reserves the right to accept or reject any application/tender in whole or in part without giving reason(s) for its decision.

**DR. KIPKIRUI LANGAT, PhD, FIETK  
DIRECTOR GENERAL/CEO**

