

THE REFUGEES ACT, 2021



A POPULAR AND SIMPLIFIED VERSION



PRODUCED BY
INUKA SUCCESS ORGANIZATION
With Support from HIVOS

INUKA SUCCESS ORGANIZATION

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Foreword

On 16th May 1966 and 13th November 1981 Kenya acceded to the 1951 UN Convention and its 1967 Protocol respectively. Later on 23rd June 1992, Kenya ratified the 1969 OAU Convention on Refugees. At the time, for international law to be applicable it had to be domesticated into national law. It was only until 2006 that Kenya enacted the Refugees Act. The Act had some limitations. It was inconsistent with the Constitution of Kenya 2010 that provided special protection for refugee children born in Kenya. It also legislated the encampment policy of the Kenya Government. For almost a decade, refugee protection organizations have advocated for a review of the Refugees Act 2006. It was only until November 2021 that the President of Kenya assented to the Refugees Bill 2019 and since it hosts over 500,000 refugees drawn from countries in the Great Lakes Region, the East and Horn of Africa Region and even the Middle Eastern Region, having a legal framework to manage and regulate their affairs is important

Inuka Success Organization with other partners like Refugee Consortium of Kenya are promoting the rights of refugees in Kenya through pro bono legal services, public interest litigation, advocacy, capacity building of refugee-led organizations, state and non-state actors and monitoring, research and documentation of their rights. The new Act, which took effect in February 2022, provides robust protection whilst empowering refugees for integration. The new Act acknowledges that refugees in Kenya have rights like everyone else. It establishes government institutions such as Refugee Affairs Secretariat (RAS) tasked with the responsibility of managing refugee affairs. The Refugees Act 2021 has the potential of providing a legal environment for refugees in Kenya to not only survive but to also thrive.

Finally, the new Act domesticates the three durable solutions to the refugee crisis i.e. local integration, resettlement and voluntary repatriation. The adoption of these three durable solution ensures that Kenya, as a state party to the 1951 UN Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refuge. Therefore, the publication seeks to summarize and simplify the provisions of the Refugees Act 2021.

The objective of having the simplified version is to create awareness on the new legal framework on refuge: amongst stakeholders such as Government officers, civil society organizations, private sector and refugees and asylum seekers and we hope that the publication will achieve its intended objective.



Introduction

The Refugees Act 2021 precedes the 2006 legislation on refugees. The objective of enacting a new law on refugees was informed on the need to provide a more robust framework that would safeguard the rights of refugees in line with the Constitution of Kenya (2010). This popular version is a simplified summary of the Refugee Act 2021.

The new Refugee Act provides for the recognition, protection, and management of refugees as per the 1951 United Nations Convention on the Status of the Refugees and the 1969 Organization of Africa Unity Convention governing key aspects of Refugee Problems in Africa. The Act was signed by the President into law on 17th November 2021 and came into operation upon expiry of 90 days of publication

The Refugee Act 2021 is arranged from sections one to nine. The sections are:

- Preliminary
- Administrative provisions
- Application for Refugee Status
- Reception for refugees and asylum seekers.
- Rights and duties of refugees and asylum seekers within Kenya

- Control of designated areas
- Integration, repatriation, and
- Miscellaneous provision
- Provisions on delegated legislation

The nine sections are highlighted in the booklet.

Part One - Preliminary (sections 1-5)

The section deals with definitions and interpretations of key words and terms in the Act. The Act defines the following important terminologies:

- i. **"Asylum"** is the protection that is granted to a person in Kenya who is outside his or her country of nationality or habitual residence who is fleeing persecution or serious harm or any other reason"
- ii. An **"asylum seeker"** is a person who is seeking protection from Kenya under the Refugee Act 2021 but his or her case is yet to be determined.
- iii. **"Country of nationality"** is widely defined as all the countries to which one may be a national.
- iv. **"Designated area"** means the reception area. Transit point or settlement area as declared or set aside by the Cabinet Secretary
- v. **"Durable solutions"** mean voluntary repatriation to country of origin, resettlement to a third party country or local Integration.
- vi. **"Essential services"** are defined as education, health. Water and sanitation services.
- vii. **"Local integration"**, one of the durable solutions. Is defined as the gradual process through which refugees are incorporated into the society through a process through which refugees attain border rights, have improved standards of living and contribute positively to the social life of the host country.
- viii. **"Members of family of a refugee"** include the spouse, child including those adopted and under 18 years blood or

marital relative who is dependent and any other any other person living in the household and is dependent on the refugee.

- ix. **"Prima facie refugee"** means a declaration of refugee status by the Refugee Advisory Committee in respect of a large scale of influxes of persons due to apparent circumstances in the country of origin that underlies mass exodus
- x. **"Reception area"** is premises or area that meant to receive process asylum seekers and conduct registration and refugee status determination
- xi. **"Refugee"** Includes an asylum seeker and is defined in detail under section 3 of the Refugee Act as described hereunder.
- xii. **"Transit Centre"** are areas that arc declared by the Cabinet Secretary to temporarily accommodate any persons that are covered under the Act e.g. asylum seekers, refugees etc. pending their transfer designated areas, Settlement centres, reception centres and or as they await health or security screenings. The Act allows the use of prisons, Police stations, Immigration detention centres and remand homes to be used by the Government of Kenya as transit centres.
- xiii. **"Unaccompanied minor"** means a minor who separated from both parents and other relatives not under the care of the person who by law and custom should take responsibility.

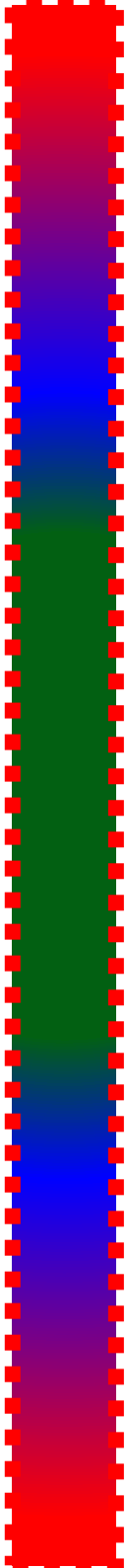
The preliminary section also introduces key government officers in the refugee sector. They are: the Commissioner for Refugees' affairs, the Refugee Advisory committee refugee officers Settlement officers any other person given the duty. The refugee officer is responsible refugee matters and reports to the commissioner for refugees' affairs. On the other hand the settlement Officer is in charge of a designated area.

1.1 Definition of the term "refugee"

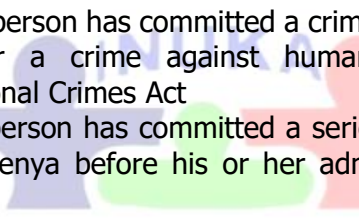
Section 3 of the Act comprehensively defines a refugee as a person:

- a. 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 who is unable or owing to such fear is unwilling to avail himself or herself of the protection of his or her country of nationality or country of habitual residence; or
- b. Not having a nationality and being outside the country of his or her former habitual residence 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 owing to such fear, unwilling to return to the country of habitual residence; or



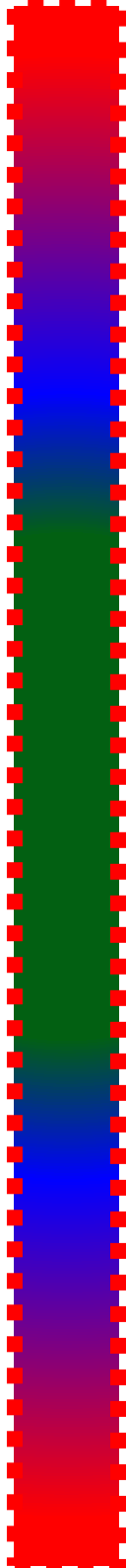
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- c. Owing to external aggression, occupation, foreign domination or events seriously disturbing public order in any part of whole of or her country of origin, or nationality compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin or nationality.
 - d. A person who is member of a class of persons who are declared by the Cabinet Secretary on recommendation from the Committee as a prima facie refugees. Even though the declaration may be amended or revoked by the Cabinet Secretary, a person declared prima facie refugee prior to the said revocation or amendment does not lose his or her refugee status.

The conferring of refugee status is not automatic. A person can be excluded from being considered for refugee status. Under section 4, the Refugees Act outlines following factors for this exclusion:

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- 1) Where a person has committed a crime against peace, a war crime, or a crime against humanity contrary to the International Crimes Act
 - 2) When a person has committed a serious non-political crime outside Kenya before his or her admission to Kenya as a refugee;
 - 3) Where a person has been guilty of acts contrary to the principles of United Nations and the African Union.
 - 4) Where a person has sought asylum in another country.


On the other hand, a person who can be considered for refugee status may be disqualified if:

1. He or she has more than one nationality and has not sought protection from one of the countries which he or she is a national and has no valid reason based on well-founded fear of persecution
2. He or she is already a refugee in another country and able to be re-admitted in that country and benefit from effective protection.
3. He or she is recognized by authorities in a country as having rights



and duties attached to possession of nationality in the country where he or she has taken residence and can be re-admitted into that country and has no valid reason based on well-founded fear or persecution.

Under section 5 of the Act, a refugee can also cease to be a refugee for the following reasons:

- When the refugee voluntarily re-avails himself the protection of his country
 - When the one who had lost his or her nationality, voluntarily re-acquires it.
 - When the refugee acquires nationality of any other country and enjoy the protection of the country of his or her new nationality
 - When one's circumstances of being recognized a refugee ceased and one refuses to avail himself or herself for the protection of the country of his or her nationality. However, where the person is able to raise compelling reasons arising from the previous persecution for refusing to avail himself or herself the protection of the country of habitual residence, the refugee status shall not cease.
 - Where a person without a nationality and is able to return to his or her country of habitual residence when the circumstances that caused him or her to be declared a refugee have ceased to exist. However, where the person is able to raise compelling reasons arising from the previous persecution for refusing to avail himself or herself the protection of the country of habitual residence, the refugee status shall not cease.
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Part Two - Administrative Provisions (sections 6-11)

In section 6, the Refugees Act sets up three main government institutions charged with dealing with refugees' affairs. They are as follows:

a) Department of Refugee Service

The Refugee Service Department is an office in Public Service.

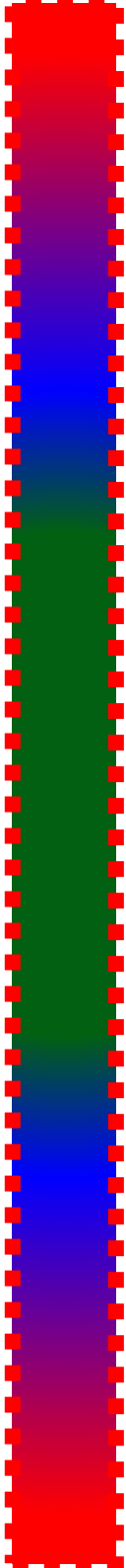
It was formerly referred to as the Refugee Affairs Secretariat. It is headed by the Commissioner for Refugee Affairs. Its functions include all administrative function relating to asylum seekers and refugees, coordination of activities and programmes concerning refugees and asylum seekers and operational aspects of handling of protection and assistance of refugees. The law places a responsibility on the Government of Kenya to ensure that the Department has adequate staff to execute its mandate and support the Commissioner for Refugee Affairs.



● Commissioner for Refugee Affairs

Section 8 of the Refugees Act 2021 provides for the important office of the Commissioner for Refugee Affairs. The Commissioner is a public servant. The functions of the Commissioner for Refugee Affairs are:


1. Convening and chairing the Refugee Advisory Committee meetings
2. Keeping and managing the register of refugees in Kenya
3. Receiving and processing the applications for refugees status
4. Issuing refugee identification documents and facilitating issuance of civil registration and other documentation by government departments
5. Coordinating all measures that promote the welfare and protection of refugees and asylum seekers
6. Liaising with relevant authorities and agencies for provision of adequate facilities and services for the protection, reception and care of refugees and asylum seekers
7. Promoting durable solutions for refugees in Kenya
8. Being the liaison between state actors, stakeholders and departments
9. Sensitizing and informing state actors and stakeholders on new developments and policy
10. Liaising with the Department of Immigration in the issuance of conventional travel documents
11. Liaising with the police in the arrest of any person who commits a crime under the Refugees Act 2021.
12. Managing refugee designated areas and facilities

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13. Forming sub-committees to deal with issues relating to reception, treatment and welfare of asylum seekers and refugees
 14. Coordinating the security, protection and assistance for asylum seekers and refugees in designated areas
 15. Ensuring that the treatment of all refugees and asylum seekers is in compliance with the national law
 16. Issuing visitor permits for entry into the refugee camps
 17. Together with the Cabinet Secretary, setting up structures for the management of refugee humanitarian emergencies
 18. Initiating projects that promote peaceful coexistence between the host and refugee communities
 19. Coordinating all services and activities provided for refugees and asylum seekers by implementing agencies
 20. Ensuring that the economic activities Of refugees do not have a negative impact on the host community, natural resources or the local environment
 21. Ensuring that resources are used sustainably in the refugee hosting areas

b) Refugee Advisory Committee


The Refugee Advisory Committee is consists of only state representation at both national and county levels. There is no representation from civil society. The following are the members of the Committee:

- Commissioner for Refugee Affairs, who is the Chair to the Committee and provides Secretariat services to it
- Principal Secretary or representative from Ministry responsible for refugee affairs
- Principal Secretary or representative from Ministry responsible for foreign affairs

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- Attorney-General or representative
 - Principal Secretary or representative from Ministry of health
 - Principal Secretary or representative from Ministry of devolution affairs
 - Principal Secretary or representative from Ministry of education
 - Principal Secretary or representative from Ministry of finance
 - Director of Department of Immigration or a representative
 - Inspector-General of Police or a representative
 - Representative from the Council of Governors

Section 9(2) of the Refugees Act allows the Committee to co-opt members for advisory purposes. The Committee ought to meet at least four times annually. The Chairperson has the responsibility to convene the meetings of the Committee. The quorum for the meeting shall be five members excluding members who have been co-opted.

The functions of the Committee are as follows:

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1. To advise the Cabinet Secretary on formulation of refugee policy in line with international standards;
 2. To advise the Cabinet Secretary on matters relating to refugees
 3. To make recommendations to the Cabinet Secretary on matters relating to declaration and revocation of prima facie refugee status
 4. To ensure, in collaboration with other government authorities, that adequate and appropriate facilities and services are provided for reception and care of refugees during emergency situations.

e. Refugee Status Appeals Committee

The Refugee Status Appeals Committee is the successor to the Appeal

Board established under section 10 of the repealed Refugees Act of 2006. The new Refugees Act confers power on the Cabinet Secretary to appoint members of the Refugee Status Appeals Committee.

The quorum for the meetings of the Appeals Committee is three members. The members of the Appeals Committee shall be drawn from the following state departments:

- Representative from the Principal Secretary responsible refugee matters, who will also be the Chairperson of the Appeals Committee
- Representative from the Kenya National Commission for Human Rights
- Representative from the Department of Immigration



- Representative from Attorney office
- Three other persons with knowledge and experience on refugee matters

The Appeals Committee may co-opt a representative from the United Nations High Commissioner for Refugees provide advice on the performance of its functions.

Section 11(2) outlines the functions of the Appeals Committee, which are as follows:

To hear and determine appeals from the decisions of the Commissioner for Refugee Affairs with regard to:

- a) The rejection of an individual application for refugee status
- b) The cancellation and termination of refugee status

A right of appeal lies in the High Court of Kenya where a person is aggrieved by the decision of the Appeals Committee. The appeal in the High Court must be lodged within thirty (30) days of notification of the decision of the Appeals Committee.

Part Three - Application for Refugee Status (Sections 12-23)

The Refugee Act 2021 also provides for the procedure for applying for refugee status. In section 12, the Act states that the applications shall be made to the Commissioner directly or through an authorized officer. When the Commissioner receives the application, he or she shall invite the Applicant to appear before him or her in person. The Act allows the Applicant to be accompanied by a legal representative provided that the cost for counsel is not borne by the Commissioner.

The Applicant is expected to present his or her claim and identification documents for the interview. The Commissioner may delegate the function of conducting interviews to the staff within his or her Department. After the interview has been conducted, the file will be forwarded to the Status Eligibility Panel for review. Upon review, the Eligibility Panel shall forward to the Commissioner recommendations

to grant or not grant status. The Commissioner is required to issue the Applicant with a temporary pass valid for 90 days as he or she awaits the determination of the application. A similar pass will be issued to every family member of the Applicant. Under section 23 (4) of the Act, the temporary pass can be extended for a further period during the refugee status determination process.

The Act requires the Commissioner to determine the Application within

90 days; this time frame may be extended for reasonable cause depending on the circumstances of the case. As provided in section 22(1) (a) of the Act, the Applicant has and every member of his or her family has a right to remain in Kenya until they have been recognized as refugees.

- The Eligibility Panel, which conducts the refugee status determination, consists of several members. These are:
- A chairperson who has knowledge and experience in refugee status determination and appointed by the Commissioner from the Refugee Service Department

At least four other members appointed by the Commissioner from among persons in the Department who have knowledge about refugee affairs.

The Commissioner may co-opt a representative from the United Nations

High Commissioner for Refugees or other agencies for technical advice.

The quorum for the Eligibility Panel is three members and it shall regulate its own procedures in line with the Refugees Act.

Section 14 of the Act provides that when a person is aggrieved by the decision of the Commissioner, he or she shall appeal to the Appeals

Committee within 30 days of receiving the decision. The aggrieved person may appeal in person, through a legal representative or an interested party.

A person aggrieved by the decision of the Appeals Committee may appeal to the High Court within 30 days of such decision.

When the High Court disallows the Appeal, the Commissioner shall within 60 days refer the matter to the Director of Immigration to deal with the applicant under the written law on immigration. As provided under section 22 (l) of the Act, the refugee and his or her family have a right to remain in Kenya until the appeals have been fully exhausted. If an appeal against an unsuccessful decision of the Commissioner is not lodged, the Commissioner will refer the Applicant to the Director of Immigration. Section 22 (l) (c) allows the refugee and his or her family remain Kenya for a period not exceeding 60 days to seek admission to the country of choice. The Cabinet Secretary has the discretionary power to extend the period of stay where there IS a reasonable likelihood that the unsuccessful applicant will be admitted into the country of choice within the extended period.

There are no ices charged for the filing of applications and appeals under this section. Despite the provision of the Kenya, Citizenship, and Immigration Act 2011, 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 the person has made Bona fide application for recognition as a refugee or is already a refugee. Refugees and the asylum seekers shall be subjected to health screening to detect and contain the spread of contagious diseases.

3.1 Cancellation of Refugee Status

The Commissioner has power to cancel refugee status where: -

- A person recognized as a refugee had fraudulently misrepresented or omitted material facts, which if had been known would have changed the decision to grant him or her refugee status.
- New evidence becomes available that a person should not have been recognized as a refugee

Before cancellation of refugee status, the Commissioner must notify the Refugee In writing that his or her status is being reconsidered and require him or her to:

- Make written representations within 14 days or more as directed by the Department on his or her refugee status
- Attend an interview to state his or her case to the Department in person or in the company of a legal representative or other representative

The Commissioner will then investigate the case and make the necessary inquiries. After considering all the evidence, the Commissioner will make a decision based on the law and may cancel the refugee status. The Commissioner ought to then inform the person concerned of the cancellation decision and the reasons thereof. The effect of the cancellation decision is that the person ceases to be a refugee. In addition, his or her family members who had derivative status will also lose the recognition as refugees after seven days of notification of the cancellation decision. Provided that the family member whose derivative status has been affected by the cancellation shall have a right to apply for refugee status under section 12 of the Act.

The refugee whose status is cancelled has a right to appeal. Should the right to appeal be exhausted or not preferred, the person shall leave the country within 30 days failure to which the Cabinet Secretary shall proceed to order for his or immediate removal.

3.2 Revocation of Refugee Status

Section 18 of the Refugees Act confers power on the Commissioner to revoke a person's refugee status at any time. The grounds for revocation are where the person recognized as a refugee commits a war crime or crime against humanity in contravention with international instrument to which Kenya is a party.

Where refugee status has been revoked, the person shall cease to be a refugee under the Refugees Act upon the expiry of seven days from notification of the decision. Every family member, who before the revocation of refugee status, derived their status from the person whose refugee status was revoked, may apply for status determination.

Just like in the case of cancellation, a person whose refugee status has been revoked should leave the country within 30 days. Failure

to which, the Cabinet Secretary will order for the immediate removal of the person.

3.3 Expulsion of Refugees and or their Families

Under Section 19 of the Act, the Cabinet Secretary may order expulsion of any refugee or member of his or her family if it is considered necessary on grounds of national security or public order. In arriving at this decision, the Cabinet Secretary must use due process.

The Refugees Act provides that a refugee or asylum seeker that engages in conduct that disrupts public order or is against public morality may be expelled from Kenya whether or not the conduct is related to their claim for asylum. The Refugees Act does not define what constitutes "public order" or "public morality".

Under section 23 (5), refugees and asylum seekers have an obligation to obey lawful orders during their stay in Kenya. Failure to which, the Commissioner may strike them out of the asylum seeker process and recommend expulsion to the Cabinet Secretary subject to applicable immigration laws.

3.4 *Special Provisions for Vulnerable Populations (Refugee women, children and persons with disabilities)*

The Commissioner has an obligation to ensure that at all times specific measures are taken to ensure the dignity and safety of women and children seeking asylum and those who have been granted refugee status during their stay in the designated areas.

Children seeking asylum or those granted refugee status should be granted protection and assistance whether or not they are accompanied by their families. The Commissioner shall take all necessary steps to trace and reunite children with their families.

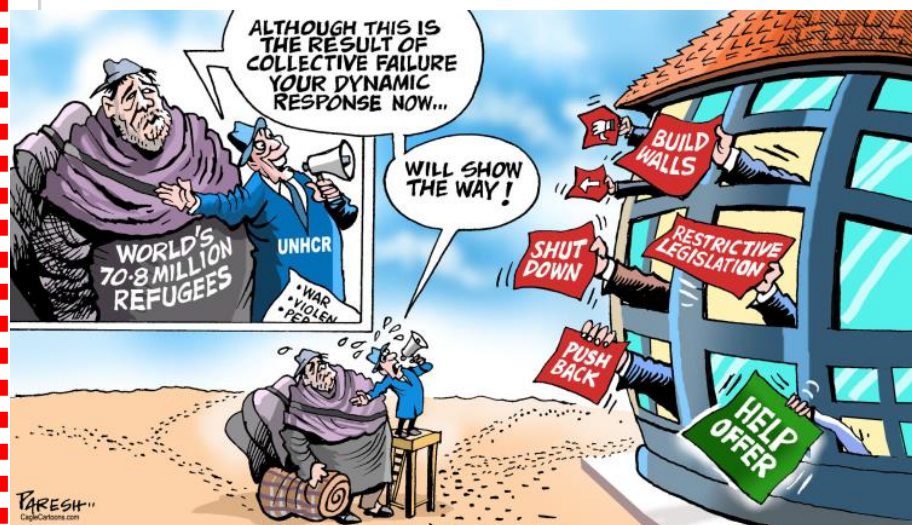
The Commissioner has a duty to ensure the safety of refugees or asylum seekers with disabilities or those who have suffered trauma or require special protection.

Part Four - Reception for Refugees and Asylum Seekers (sections 24-27)

Persons entering Kenya to seek asylum shall make their intentions known immediately upon entering the country or within 30 days by reporting to the nearest government administrative office or reception centre.

The Commissioner must ensure that there are reception officers available at designated entry points. In the absence of reception officers, immigration or other government officers stationed at the entry points shall be allowed to act as reception officers. In this situation, the government or immigration officer should liaise with the Department for assistance and guidance. Section 25(3) of the Act allows asylum seekers to be temporarily accommodated at holding areas awaiting processing by the Department

Asylum seekers who enter the country through non-gazetted points shall immediately report to the nearest government administrative office for further assistance.



Section 26 provides the duties of reception officers as:

- To give the applications and guidelines for refugee status to everyone wishing to apply at the point of entry
- To receive all persons who applied or wish to apply for refugee status
- To take biometrics and photographs of the asylum seekers and their family members
- To question and search any person or property as necessary provided it is done within the law and with due regard to the dignity and decency of the person
- To provide health screening for asylum seekers and ensure those that may pose a risk are isolated and provided with medical assistance

Security screening is also conducted at the entry point in accordance to the law and for the primary purpose of detecting and containing any person who may pose a security threat to Kenya and its people and prevent proliferation of arms and contraband items.

Part Five- Rights and Duties of Refugees and Asylum Seekers in Kenya (sections 28 -29)

Every refugee and asylum seeker in Kenya is entitled to rights. The entitlement to rights comes with duties and responsibilities. Every refugee and asylum seeker has duties under international, regional and national law.

The Cabinet Secretary may, by notice in the Gazette and in consultation with the relevant county government, designate specific counties to host refugees. The Cabinet Secretary may also by notice in the Gazette designate places and areas in Kenya to be transit centres for temporarily accommodating refugees. Refugees shall be enabled to contribute to the economic and social development of the country by facilitating access to and issuance of required documentation at both national and county level

Section 29 of the Refugees Act provides the principle of non-refoulement. It states that no person shall be denied entry into Kenya, expelled, extradited or returned to any other country or be subjected to similar measure if, following such measure, return, refusal or expulsion, person will be compelled to return to or remain in a country where

- a) He or she may be subjected to persecution on grounds of race, religion, nationality, membership of a particular social group or political opinion; or
- b) His or her life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events that seriously disturb public order in part or whole of that country.

The principle of non-refoulement does not apply to a refugee or asylum seeker who is a danger to the national security or public order of Kenya.

When there is a large-scale influx of persons claiming to fall within the meaning of refugees under the Act, the Commissioner shall, in consultation with the representatives of the UNHCR, advise the Cabinet Secretary on emergency measures to be taken including:

- the designation of areas for reception, transit, and residence of refugees with due regard to the security requirement of settling them at a reasonable distance from the border of their country of origin;
- provision of adequate and appropriate facilities and services for the group of persons affected especially women and children; and
- ensuring the areas designated for refugees have a civilian and humanitarian outlook and the sensitization of the host population for their reception.

Both asylum seekers and refugees have the right to identification and civil registration documents and such documents shall be enough to identify

a refugee or an asylum seeker to access other rights and government services. The refugee Identity Card shall at a minimum have a similar status to the Foreign National Registration Certificate and Immigration Act for purpose of accessing other rights. No one shall be refused entry into the country except in cases where there are reasons enough to do so. The benefit of the subsection on the rights of one to enter the country may not be claimed where there are reasonable grounds for one being regarded as a danger to the national security of Kenya.

Part Six - Control of Designated Areas (sections 30-33)

The Commissioner shall work with the national and county government to ensure the protection of the environment and rehabilitation of areas used as designated areas. The Commissioner may require a refugee to move to or reside in any other designated area. If a refugee refuses to comply with the relocation order, he or she shall be guilty of an offence. A refugee who wishes to change his or her place of residence shall notify the Commissioner for direction. All designated areas, reception, transit or residence areas for asylum seekers or refugees shall be placed under the charge of settlement officers who are appointed by the Commissioner.

The Cabinet Secretary shall make rules for the control of designated areas which are on the following matters:

- the organization, safety, discipline, and administration of a designated areas.
- the reception, transfer, settlement, treatment, health, and wellbeing of refugees;
- the manner of inquiring into disciplinary offences and the payment of fines and other penalties; or .
- the powers of settlement officers and delegation thereof.

Only persons authorized by the Commissioner, refugees or employees of the Department can enter a designated area. To

access designated areas, a person ought to make an application to the Commissioner in writing stating the reasons and time for such entry. Failure to comply with this requirement is a criminal offence punishable with a fine not exceeding KShs 200,000 or imprisonment for a term not exceeding five years or both.

Part Seven - Integration, Repatriation, and Resettlement of the Refugees (sections 34-38)

The Refugees Act makes specific provision for the three durable solutions to the refugee crisis. To promote integration, the Commissioner has a responsibility to ensure there is shared use of social amenities between refugees and host communities. At the same time, the Commissioner shall sensitize the host communities about the refugees and the need for peaceful co-existence. The Act recognizes that upon the departure of refugees, the amenities that had been set up for their use would be handed over to national and county governments. As such, the Commissioner in consultation with the Cabinet Secretary shall establish measures for handing over such amenities.

It is the responsibility of the Commissioner to liaise with the national and county governments so that they ensure that refugees needs and



concerns are taken into consideration in the conceptualization and formulation of sustainable development and environmental plans.

Under section 36, in the integration of refugees in host communities, the Commissioner shall ensure that special attention is given to women, children and persons with disabilities. The Commissioner is directed to cooperate with the UNHCR and other refugee protection organizations

An asylum seeker or a refugee shall at all times have the right to return voluntarily to the country of his or her nationality or return to the country from which he or she entered Kenya. Any action or omission aimed at preventing or restricting a refugee or asylum seekers wish to voluntarily repatriate is prohibited. A refugee who leaves Kenya on voluntary repatriation or ceases to be a refugee is required to surrender all travel documents and identification documents acquired by virtue of being a refugee. The refugee may take with him or her movable property he or she lawfully acquired and in accordance with any existing property laws.

Finally, section 38 of the Refugees Act provides that a refugee in Kenya may access resettlement in a third country except his or her country of origin. The Commissioner has an obligation to seek for additional resettlement quarters in conjunction with the Ministry of Foreign Affairs. The Act recognizes that other resettlement quarters may be allocated through other agencies.

Part Eight - Miscellaneous Provisions (sections 39 - 42)

The Department shall keep and maintain a register of all persons who have been granted refugee status and those seeking asylum in Kenya. As soon as the Refugees Act 2021 comes into force, the Department has to update the register in line with the new law.

The Commissioner shall register and keep records of all asylum seekers and refugees and the designated areas in Kenya. Therefore, the Commissioner shall also be referred to as the Registrar of asylum seekers and refugees. The said function can be delegated in writing to a settlement or refugee officer.

Section 40 of the Refugees Act provides for the following offences:

- a) It is an offence if a person makes a false declaration or statement to a refugee officer or other appointed officer which the person 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.
- b) It is also an offence if a person knowingly misleads a refugee officer or authorized officer seeking material information to the exercise of his or her powers under the Refugees Act.
- c) It is an offence if a person enters Kenya and fails to report within the thirty days period to a refugee or authorized officer for application for asylum or recognition as a refugee.
- d) Additionally, it is an offence if a person who has been lawfully admitted into Kenya, other than as a refugee or asylum seeker, knowingly submits an application for asylum without justifiable cause after expiry of the period for which he or she was initially admitted in Kenya.
- e) It is an offence if a person forges, alters, destroys or willfully defaces a refugee identification document or any other document issued under the Refugees Act 2021.
- f) The Act makes it an offence to knowingly use or have in possession a forged refugee identification document or other document issued under the Act.
- g) It is an offence if a person gives, sells or parts with the possession of a refugee identification document or other document issued under the Act with the intention, knowledge or reasonable cause to believe that the document may be used by another person.
- h) It is an offence if a person uses a refugee identification document or any other document issued under the Act to another asylum seeker or refugee.
- i) It is an offence if a person bribes or attempts to bribe a refugee officer or other authorized officer so as to access any of his or her rights or protections provided under the Act.

- j) It is an offence for a person to solicit a bribe from a refugee or asylum seeker in order to facilitate access to services or rights.
- k) It is an offence for a person to knowingly and willfully enter into a marriage for the sole purpose of obtaining any benefits under the Act.
- l) It is an offence for a refugee, knowingly and willfully to enter into a marriage for the sole purpose of assisting another refugee to obtain any of the benefits provided under the Act.
- m) It is an offence for a refugee to work or be engaged in gainful employment without paying tax.

A person convicted of the above offences or any other offence under the Act whose penalty is not prescribed shall be liable to a fine not exceeding Kshs 50,000 or imprisonment for a term not exceeding six months or both

The Refugees Act 2021 prohibits and criminalizes double registration Section 40(3) provides that a person commits an offence if:

- Being a Kenyan citizen, knowingly applies for or obtains recognition, admission or registration as an asylum seeker or refugee in Kenya;
- Being a refugee, knowingly applies for a Kenyan identity card or passport, or
- Assists another person to commit the offence of double registration.

The penalty for the offence of double registration is a fine not exceeding KShs 500,000 or imprisonment for a term not exceeding three years or both.

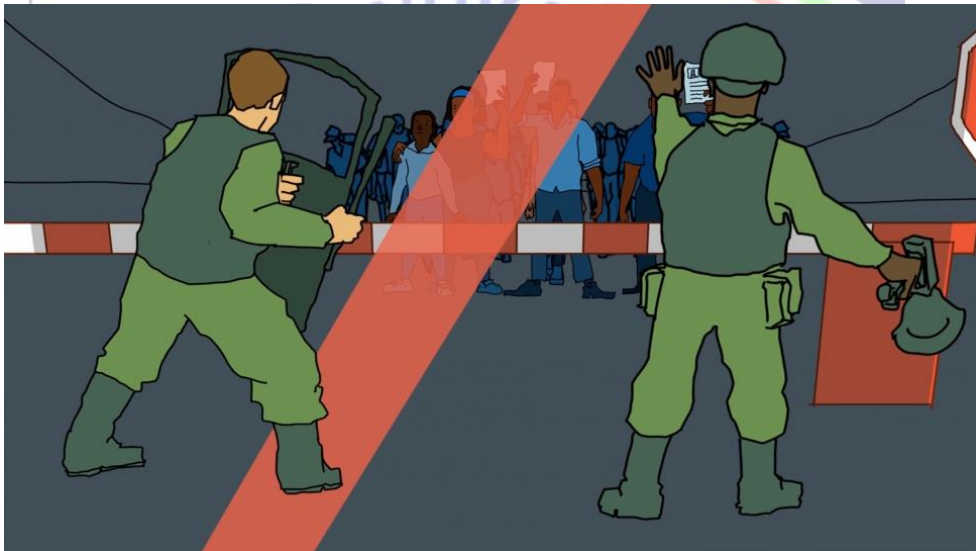
Transitional Provisions

Section 42 of the Refugees Act 2021 stipulates the transitional provisions. The term "commencement day" means the date when

the Act comes into operation. Therefore, 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 or imposed or enforceable against the former Board and Committee

The administrative directions that were made by the former Board, Committee or Cabinet Secretary which are in force at the time of the commencement date shall have the force as if they were directions made by the Refugee Status Appeals Committee, the Refugee Advisory Committee, the Commissioner or the Cabinet Secretary under the new Act.

A person who is an officer or employee of the former Board or Committee before the commencement date of the Act shall remain an officer or employee of the Appeals Committee or Committee on the same terms before the enactment of the new Act



The members of the former Appeal Board shall continue to serve under the new Act until the expiry of their existing term. Thereafter, the assets of the Appeal Board shall be handed over to the Commissioner for use by the Refugee Status Appeal Committee.

Part Nine - Provision on Delegated Powers (section 43)

The Cabinet Secretary shall make regulations generally for giving effect to this Act, and for prescribing anything required or necessary under the Act after the commencement of the Act.

Section 43(2) provides a list of the areas for which regulations and guidelines will be made. The areas hereunder are not exhaustive:

- the conferring of duties of the Commissioner relating to the investigation, inspection and supervision of reception, treatment and welfare of the refugees.
- procedure for applications for refugee status and the form of such applications
- the procedure for expulsion of refugees
- the form and issue of identification and travel documents to refugees and members of their families
- the application of the refugee database
- the form and issue of identification documents to persons awaiting status determination
- the procedures and rights of refugees status interviews
- the control and regulation of persons who may be required to live within a designated area or place

- the control and regulation of persons exempted from living in designated areas
- the form of any order or notice required to serve on any person under the Act and the manner of service
- the protection of women, children, unaccompanied minors, persons with disabilities and other vulnerable groups
- the procedure to be followed in application of cessation, cancellation and revocation of refugee status
- the durable solution for refugees
- the form and procedures during family reunification of refugees
- the form and issue of exemption documents to be issued to persons exempted from living in designated areas
- the Refugee Advisory Committee
- the Refugee Status Eligibility Panel
- the form and issue of instrument of delegation for appointed officers
- the reception, resettlement and re-integration of refugees and related purposes
- the form and processes of appeals under the Act

The objectives of the delegation are to enable the Cabinet Secretary to make regulations for the better carrying into effect the provision of the Act. The power of the Cabinet Secretary to make regulations is limited to bringing into effect the provision of this Act and fulfillment of the objectives. The principles and standards applicable to the delegated power referred to under this Act are those found in:

1. the Statutory Instruments Act, 2013

2. the Interpretation and General Provisions Act
3. the general rules of international law as provided under article 2(5) of the Constitution
4. any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

