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**NATIONAL ASSEMBLY BILLS, 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—**

Meaning of  
“refugee”.

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

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 or 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—**

Functions of the Commission.

- (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;

- (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—

The functions of  
the Eligibility  
Committee.

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

(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) (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) 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 of 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 the 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 identity 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.

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Cap 2.*

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

- (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, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

2.After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3.Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4.....

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

1The 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.)

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(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.)

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(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.*



