

SPECIAL ISSUE

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



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

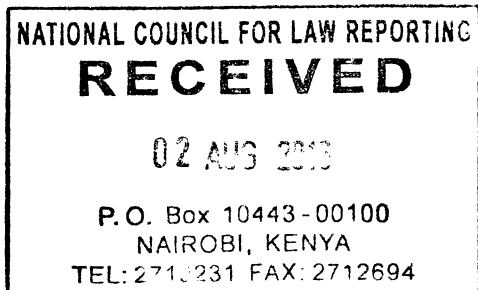
NATIONAL ASSEMBLY BILLS, 2016

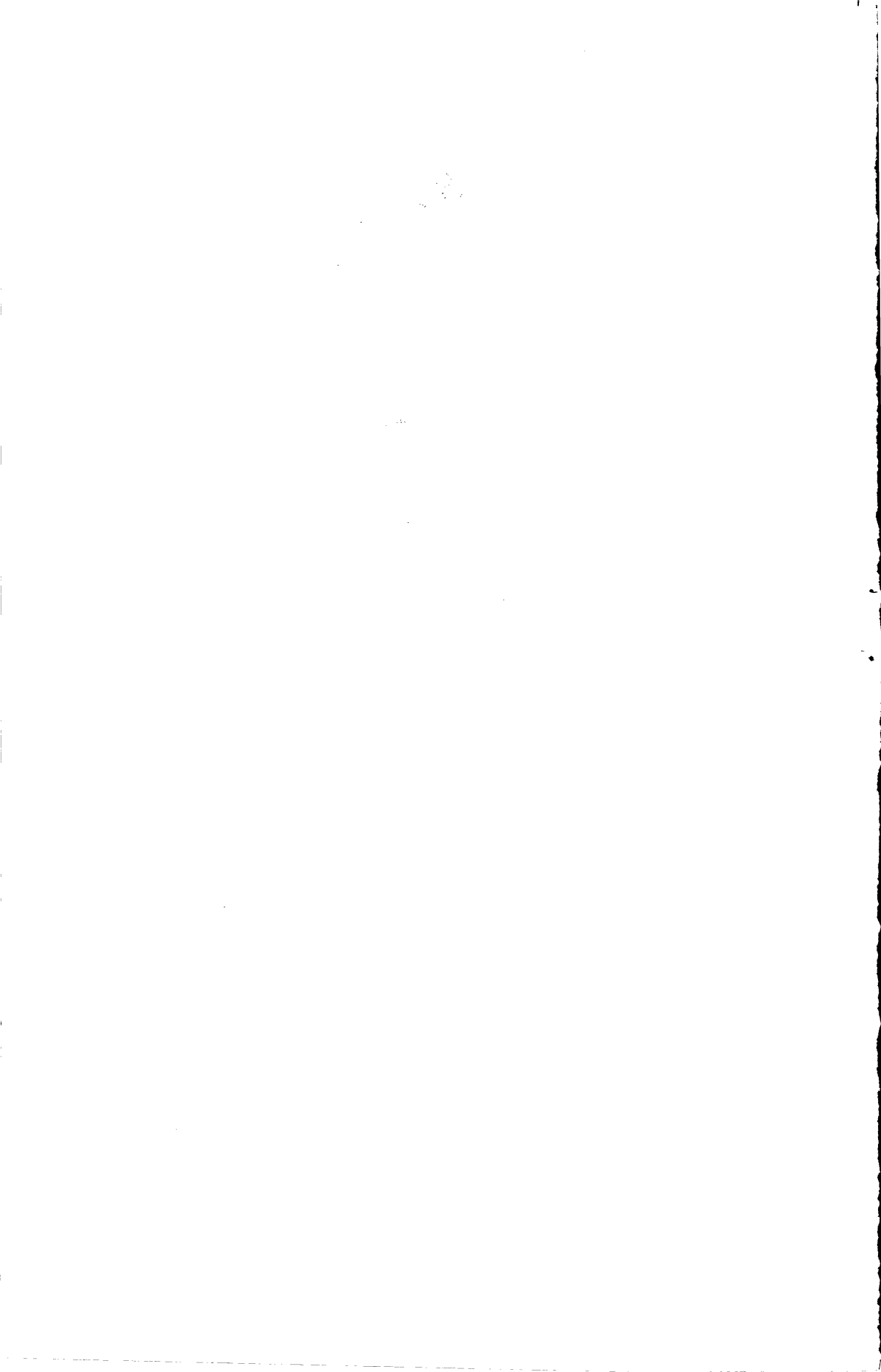
NAIROBI, 24th June, 2016

CONTENT

Bill for Introduction into the National Assembly—

	PAGE
The Refugees Bill, 2016.....	385





THE REFUGEES BILL, 2016
ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1 — Short title and commencement
- 2 — Interpretation
- 3 — Meaning of “refugee”
- 4 — Exclusion from refugee status
- 5 — Cessation of refugee status

PART II—ADMINISTRATIVE PROVISIONS

- 6 — Administrative Institutions
- 7 — Establishment of the Commission
- 8 — Functions of the Commission
- 9 — The Secretariat for Refugees Affairs
- 10 — Functions of the Secretariat
- 11 — Establishment of the Appeals Board.
- 12. — Conduct of the Appeals Board.

PART III—APPLICATION FOR REFUGEE STATUS

- 13 — Application for refugees status
- 14 — Participation in refugee status proceedings
- 15 — Establishment of the National Eligibility Committee
- 16 — Functions of the Eligibility Committee
- 17 — Appeals
- 18 — Institution of proceedings for unlawful presence in Kenya
- 19 — Asylum seekers from regions with high infectious disease
- 20 — Cancellation of Refugee Status.
- 21 — Revocation of refugee status

- 22—Refugee women and children
- 23—Rights during status determination process
- 24—Recognition of Refugees in the East African community
- 25—Care for persons with disabilities
- 26—Right to remain in Kenya during status determination
- 27—Applicant to be issued with asylum seeker's pass

PART IV —RECEPTION FOR REFUGEES

- 28—Designation of refugee reception officers
- 29—Duty of Refugee reception officers
- 30—Entry into Kenya by asylum seekers or refugees
- 31—Surrender of weapons.

PART V—RIGHTS AND DUTIES OF REFUGEES AND ASYLUM SEEKERS WITHIN KENYA

- 32—Rights of refugees under International Instruments
- 33—Non- Refoulement
- 34—Access to employment
- 35—Access to Land
- 36—Education for Refugees.
- 37—Work Permit for refugees
- 38—Refugees attaining citizenship
- 39—Cabinet Secretary to notify a refugee before expulsion
- 40—Cabinet Secretary directions on a refugee awaiting expulsion
- 41—Non-punishment for asylum seekers
- 42—Declaration of designated areas
- 43—Cabinet secretary orders with regard to refugee settlement
- 44—Emergency measures to be undertaken.

PART VI—CONTROL OF DESIGNATED AREAS

- 45—Designated areas
- 46—Requirement to reside in a designated area
- 47—Control of a designated area
- 48—Administration of a designated area
- 49—Restrictions of persons entering designated areas

PART VII—INTEGRATION, REPATRIATION AND RESETTLEMENT OF REFUGEES

- 50—Integration into host communities
- 51—Consideration of refugees matters in development policies
- 52—Affirmative action for women, children and persons with disabilities
- 53—Voluntary repatriation
- 54—Resettlement of refugees residing in Kenya
- 55—Establishment of the Refugee Trust Fund.
- 56—Administration of the Refugee Trust Fund

PART VIII—INTERNATIONAL AND REGIONAL CO-OPERATION

- 57—International cooperation
- 58—Cooperation with Office of United Nations High Commissioner for Refugees, the African Union and other organizations

PART IX—MISCELLANEOUS PROVISIONS

- 59—Offences and penalties
- 60—Detention of asylum seekers or refugees
- 61—Registration of asylum seekers and refugees
- 62—Payment of taxes
- 63—Family Re- Union
- 64—Powers of an authorized officer
- 65—Grounds for conducting a search
- 66—Search to be conducted with decency

67—Provision of legal aid

68—Annual Reports

69—Repeal of Cap. 173

70—Transitional provisions

**PART X—PROVISIONS ON DELEGATED
LEGISLATION**

71—Regulations

**FIRST SCHEDULE—CONDUCT OF
BUSINESS AND
AFFAIRS OF THE
APPEALS BOARD**

**SECOND SCHEDULE—ARTICLES OF
CONVENTION
APPLICABLE TO
RECOGNITION
OF REFUGEES
AND
PROTECTED
PERSONS**

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 10th September, 1969 and ratified by Kenya on 28th December, 1987;

“protocol” means the Protocol relating to the status of refugees, done at New York on 31st January 1967 and acceded to by Kenya on 13th 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 28th 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—

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

Exclusion from refugees status.

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;