



THE REPUBLIC OF KENYA

LAWS OF KENYA

THE REFUGEES ACT

CHAPTER 173

Revised Edition 2022

Published by the National Council for Law Reporting
with the Authority of the Attorney-General

www.kenyalaw.org

CHAPTER 173

REFUGEES ACT

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section

1. Short title
2. Interpretation
3. Meaning of "refugee"
4. Exclusion and disqualification from refugee status
5. Cessation of refugee status

PART II – ADMINISTRATIVE PROVISIONS

6. Administrative institutions
7. Department of Refugee Services
8. Commissioner for Refugee Affairs
9. The Refugee Advisory Committee
10. Functions of the Committee
11. Refugee Status Appeals Committee

PART III – APPLICATION FOR REFUGEE STATUS

12. Application for refugee status
13. Establishment of the Refugee Status Eligibility Panel
14. Appeals
15. Institution of proceedings for unlawful presence in Kenya
16. Medical Screening
17. Cancellation of refugee status
18. Revocation of refugee status
19. Expulsion of refugees or members of their families
20. Refugee women and children
21. Care for persons with disability and persons who have suffered trauma
22. Right to remain in Kenya during status determination
23. Applicant to be issued with an asylum seeker's pass

PART IV – RECEPTION FOR REFUGEES AND ASYLUM SEEKERS

24. Entry into Kenya by refugees
25. Designation of refugee reception officers
26. Duty of Reception officers
27. Security Screening

PART V – RIGHTS AND DUTIES OF
REFUGEES AND ASYLUM SEEKERS IN KENYA

28. Rights of and obligations of Refugees
29. Non-Refoulement

PART VI – CONTROL OF DESIGNATED AREAS

30. Designated areas

Refugees

- 31. Requirement to reside in a designated area
- 32. Control of Designated Areas
- 33. Restriction of Persons Entering a Designated Area

PART VII – INTEGRATION, REPATRIATION
AND RESETTLEMENT OF REFUGEES

- 34. Integration of refugees into communities
- 35. Consideration of refugee matters in development plans
- 36. Affirmative action for women, children and persons with disabilities
- 37. Voluntary repatriation
- 38. Resettlement of refugees residing in Kenya

PART VIII – MISCELLANEOUS PROVISIONS

- 39. Register for Refugees and Asylum Seekers
- 40. Confidentiality
- 41. Offences and penalties
- 42. *[Spent]*
- 43. Transitional provisions

PART IX – PROVISIONS ON DELEGATED POWERS

- 44. Regulations
-

CHAPTER 173

REFUGEES ACT

[Date of assent: 17th November, 2021.]

[Date of commencement: 21st February, 2022.]

An Act of Parliament to provide for the recognition, protection and management of refugees; to give effect to the 1951 United Nations Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and for connected purposes

[Act No. 10 of 2021.]

PART I – PRELIMINARY

1. Short title

This Act shall be cited as the Refugees Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"Appeal Committee" means the Refugee Status Appeals Committee established under section 11 of this Act;

"asylum" means the protection granted to a person in Kenya who is outside his or her country of nationality or habitual residence, who is fleeing persecution or serious harm or for other reasons;

"asylum seeker" means a person seeking protection in Kenya in accordance with the provisions of this Act but whose application has not been determined;

"authorized officer" includes the Commissioner for Refugees Affairs, refugee officer, a settlement or immigration officer or any other officer assigned such responsibility;

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

"Commissioner" means the Commissioner for Refugee Affairs appointed under section 8;

"Committee" means the Refugee Advisory Committee established under section 11 of the 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;

"Department" means the Department of Refugees Services established under section 7;

"designated area" means any reception area, transit point or settlement area as may be declared by the Cabinet Secretary;

"durable solutions" means voluntary repatriation to the country of origin, local integration in the country of asylum or resettlement to a third country;

"Eligibility Panel" means the Refugee Status Eligibility Panel established under section 13;

"essential services" means services that meet the immediate needs of refugees and asylum seekers and include food, shelter, 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 Refugee Problems in Africa, adopted in Addis Ababa on 10th September, 1969 and ratified by Kenya on 28th December, 1987;

"protocol" means the Protocol relating to the Status of Refugees, adopted in New York on 31st January 1967 and acceded to by Kenya on 13th November 1981;

"*prima facie* refugee status" means a declaration of refugee status by the Cabinet Secretary as provided for under this Act;

"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", has the meaning assigned to it under section 3 of this Act and includes an asylum seeker;

"separated child" means a child who has been separated from both parents, or other relatives or by an adult who by law or custom is responsible for being the care giver;

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

"spouse" includes a customary law or common law spouse;

"transit centre" means areas designated by the Cabinet Secretary for the purposes of temporarily accommodating persons covered under this Act pending transfer to the designated areas, reception centres, settlement centres or pending repatriation and resettlement or pending health or security screening and includes

a prison, immigration detention centre, police station, remand home or any other similar place that may be designated as a transit centre;

"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, adopted in Geneva on 28th July, 1951 and acceded to by Kenya on 16th May, 1966.

3. Meaning of "refugee"

(1) A person shall be a refugee for the purposes of this Act if such person—

- (a) being outside of his or her country of nationality and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion who is in Kenya and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of his or country of nationality or the country of habitual residence;
- (b) not having a nationality and being outside the country of his or her former habitual residence owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, who is in Kenya and is unable or, owing to such fear, unwilling to return to the country of his or her habitual residence;
- (c) owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or whole of his or her country of origin or nationality is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin or nationality; or
- (d) the person is a member of a class of persons declared under subsection (2) to be refugees.

(2) Subject to sub-section (1), if the Cabinet Secretary, on recommendation from the Committee considers that any class of persons are *prima facie* refugees as defined in subsection (1)(a),(b),(c) or (d) the Cabinet Secretary may, through the *Gazette*, declare such class of persons to be *prima facie* 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 subsection (1) (d), to be recognized as a refugee for the purposes of this Act.

4. Exclusion and disqualification from refugee status

(1) A person shall be excluded from being considered for refugee status if there exists serious reason to believe that the person—

- (a) has committed a crime against peace, a war crime or a crime against humanity referred to in any international instrument to which Kenya is a party;

- (b) has committed a serious non-political crime outside Kenya prior to his or her admission to Kenya as a refugee;
 - (c) has been guilty of acts contrary to the purposes and principles of the United Nations and the African Union; or
 - (d) is determined to be a threat to national security.
- (2) A person shall be disqualified from being a refugee if the person—
- (a) having more than one nationality, has not availed himself or herself for protection of one of the countries which he or she is a national and has no valid fear based on well-founded fear of persecution;
 - (b) has sought asylum in another country or has been granted refugee status in another country prior to entry in Kenya and can be re-admitted to that country and benefit currently and in the future in that country from effective protection; or
 - (c) is recognized by competent authorities of the country he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country, can be re-admitted into that country in the same condition and has no valid reasons based on a well-founded fear of persecution to have left that country.

5. Cessation of refugee status

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

- (a) voluntarily re-avails himself or herself of the protection of the country of his or her nationality;
- (b) having lost his or her nationality, the person voluntarily re-acquires it;
- (c) acquires the nationality of some other country and enjoys the protection of the country of his or her new nationality;
- (d) 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;
- (e) 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;
- (f) 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 who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself the protection of their country of nationality or former habitual residence.

PART II – ADMINISTRATIVE PROVISIONS

6. Administrative institutions

There is established—

- (a) the Department of Refugee Services;
- (b) the Refugee Advisory Committee; and
- (c) the Refugee Status Appeals Committee.

7. Department of Refugee Services

(1) There is established a Department known as the Department of Refugee Services which shall be an office in the public service.

(2) The Department shall—

- (a) be responsible for all administrative matters concerning asylum seekers and refugees in Kenya;
- (b) co-ordinate activities and programmes relating to asylum seekers and refugees; and
- (c) handle all operational aspects of protection and assistance of refugees.

(3) The Government shall ensure that the Department is comprised of relevant officers with the requisite expertise necessary to assist the Commissioner in the performance of his/her duties.

8. Commissioner for Refugee Affairs

(1) There shall be a Commissioner for Refugee Affairs whose office shall be an office in the Public Service and who shall be the head of the Department.

(2) The functions of the Commissioner shall be to—

- (a) convene and chair the Refugee Advisory Committee;
- (b) receive, register and maintain a register for all refugees in Kenya;
- (c) receive and process applications for refugee status;
- (d) issue refugee identification documents and facilitate issuance of civil registration and other relevant documentation by other government agencies;
- (e) co-ordinate all measures necessary for promoting the welfare and protection of refugees and asylum seekers and advise the Cabinet Secretary and the Committee thereon;
- (f) ensure in liaison with other relevant agencies the provision of adequate facilities and services for the protection, reception and care of asylum seekers and refugees within Kenya;
- (g) promote as far as possible durable solutions for refugees granted asylum in Kenya;
- (h) be the liaison between the department, state actors and relevant stakeholders and shall in that capacity, sensitize and inform on new developments and policy;
- (i) in liaison with Director of Immigration, process and issue conventional travel documents;
- (j) in liaison with the police, arrest any person suspected of committing an offence under this Act;
- (k) manage refugee designated areas and other related facilities;
- (l) form sub-committees and assign to such sub-committees functions to be exercised in relation to the reception, treatment and welfare of asylum seekers and refugees;

- (m) co-ordinate the provision of overall security, protection and assistance for asylum seekers and refugees in the designated areas;
- (n) co-ordinate activities to ensure the civilian and humanitarian character of the designated areas is maintained;
- (o) issue movement passes to refugees and asylum seekers wishing to travel outside the designated areas and within Kenya;
- (p) exempt asylum seekers and refugees from residing in designated areas where there are compelling reasons to do so;
- (q) ensure treatment of all asylum seekers and refugees in compliance with national law;
- (r) issue visitor permits for entry into refugee camps in accordance with regulations;
- (s) in consultation with the Cabinet Secretary, establish structures and mechanisms for management of refugee humanitarian emergencies;
- (t) initiate, in collaboration with the development partners, projects that promote peaceful and harmonious co-existence between the host communities and refugees;
- (u) co-ordinate, where relevant in collaboration with county authorities, all services and activities provided to refugees and asylum seekers by implementing agencies;
- (v) ensure that refugee economic and productive activities do not have a negative impact on host communities, natural resources or the local environment;
- (w) ensure sustainable use of resources in designated refugee hosting areas; and
- (x) promote, insofar as is practicable, the procurement or purchase of local products and services in support of refugee intervention and support programmes.

9. The Refugee Advisory Committee

- (1) The Committee shall consist of—
- (a) the Commissioner who shall be the chairperson and who shall provide secretariat services to the Committee;
 - (b) the Principal Secretary from the Ministry responsible for refugee affairs or a representative nominated, in writing, from the Ministry responsible for refugee affairs;
 - (c) the Principal Secretary or a representative nominated, in writing, from the Ministry responsible for foreign affairs;
 - (d) the Principal Secretary or a representative nominated, in writing, from the Ministry responsible for devolution affairs;
 - (e) the Principal Secretary or a representative nominated, in writing, from the Ministry responsible for health;
 - (f) the Principal Secretary or a representative nominated, in writing, from the Ministry responsible for finance;
 - (g) the Principal Secretary or a representative nominated, in writing, from the Ministry responsible for education;
 - (h) the Attorney-General or a representative nominated in writing;

- (i) the Director of the Department of Immigration or a representative nominated in writing;
- (j) the Inspector-General or a representative nominated in writing; and
- (k) one person representing the Council of Governors.

(2) The Committee may when necessary co-opt any person to attend the meeting of the Committee and advise it on performance of its duties.

(3) The quorum for a meeting of the Committee shall be five members excluding members under subsection (2).

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

(5) The chairperson shall convene at least four meetings in every year.

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

10. Functions of the Committee

The functions of the Committee shall be to—

- (a) advise the Cabinet secretary on formulation of national policies on matters relating to refugees in accordance with international standards;
- (b) advise the Cabinet Secretary on matters relating to refugees;
- (c) advise the Cabinet Secretary in respect to declaration, amendment or revocation of *prima facie* determinations; and
- (d) ensure in liaison with other government authorities that adequate and appropriate facilities and services are provided for the reception and care of refugees during emergency situation.

11. Refugee Status Appeals Committee

(1) There is established a committee to be known as a Refugee Status Appeals Committee.

(2) The Cabinet secretary shall, by notice in the *Gazette* appoint the following persons to serve in the Appeals Committee—

- (a) a representative of the Principal secretary responsible for refugee matters who shall be the chairperson of the Committee;
- (b) a representative of the Kenya National Commission for Human Rights;
- (c) a representative of the State Department responsible for Immigration;
- (d) one person nominated by the Attorney General; and
- (e) three other persons with knowledge and experience in refugee matters.

(3) The quorum for a meeting of the Appeals Committee shall be three members.

(4) The function of the Appeals Committee shall be to hear and determine appeals against any decision of the Commissioner with regard to—

- (a) the rejection of any individual application for refugee status; and
- (b) the cancellation, revocation and termination of refugee status.

(5) A member of the Appeals Committee shall hold office for a term of three years and shall be eligible for re-appointment for one further term.

(6) Each member of the Appeals Committee shall have one vote but in case of a tie in votes, the Chairperson shall have a casting vote.

(7) The Public Service Commission shall provide the Appeals Committee with a secretariat for the purposes of discharging its mandate.

(8) The Appeals Committee may co-opt an officer of the United Nations High Commissioner for Refugees to advise the Committee in performance of its functions.

(9) The Appeals Committee shall convene as and when appeals have been filed against decisions of the Commissioner and, save as expressly provided in this Act, regulate its own procedures.

(10) A person who is aggrieved by the decision of the Appeals Committee may appeal to the High Court within thirty days of being notified.

PART III – APPLICATION FOR REFUGEE STATUS

12. Application for refugee status

(1) An application for the grant of refugee status shall be made to the Commissioner either directly or through an authorized officer.

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

(3) The Commissioner shall, on receiving the application, invite the applicant to appear before him or her, to provide oral or documentary evidence in support of the claim for asylum.

(4) The Applicant shall present his claim in person but retains the right to be accompanied by legal practitioner if he or she desires, provided that the expense for legal representation shall not be borne by the Department.

(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 Commissioner shall give reasons for the refusal.

(6) The Commissioner may delegate the function of conducting interviews to his or her staff within the Department who shall, upon finalization of the interview, forward the interview files to the Status Eligibility Panel for further review.

(7) The Eligibility Panel shall, upon review, forward to the Commissioner recommendations to grant or not grant status on a case by case basis.

(8) The Commissioner shall, on receiving an application for status, issue a temporary pass to the applicant pending the determination of the application.

(9) The Commissioner shall make a determination for status application within ninety days from the date of receiving the application, provided that this time-line may be extended on reasonable cause depending on the circumstances of the cases.

13. Establishment of the Refugee Status Eligibility Panel

(1) There is established a Refugee Status Eligibility Panel whose function shall be to review recommendations made on refugee status determination.

(2) The Eligibility Panel shall consist of the following members—

- (a) a chairperson appointed by the Commissioner from the Department who has knowledge and experience in matters of refugee status determination;
- (b) not less than four other members appointed by the Commissioner from among persons in the Department who have knowledge and experience in refugee affairs and refugee law.

(3) The Eligibility Panel may, through the Commissioner co-opt representatives of the United Nations High Commissioner for Refugees or other agencies to provide technical advice.

(4) The quorum for the Eligibility Panel shall be three persons and except as provided for in this Act, the Panel shall regulate its own procedures

14. Appeals

(1) A person aggrieved by the decision of the Commissioner under this Act may, within thirty days of receiving the decision, appeal in person or through his or her representative or through any other interested party to the Appeals Committee against the decision.

(2) A person who is aggrieved by the decision of the Appeals Committee may appeal to the High Court within thirty days of being notified.

(3) Where the High Court upholds the decision of the Commissioner against which an applicant had unsuccessfully appealed to the Appeals Committee, the Commissioner shall within sixty days of the ruling of the High Court notify the Director of Immigration of the decision, who shall thereafter deal with the applicant in accordance with written law on immigration.

(4) For purposes of sub-section (3), where an unsuccessful applicant fails to file an appeal within the time set out in this Act and a court of competent jurisdiction has not issued any orders thereof, the Commissioner shall notify the Director of Immigration, within sixty days of his or her determination or ruling of the Appeals Committee, who shall thereafter deal with the applicant in accordance with written law on immigration.

(5) No fee shall be charged for filing of applications and appeals under this section.

15. Institution of proceedings for unlawful presence in Kenya

Despite the provisions of the Kenya Citizenship and Immigration Act (Cap. 170) 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—

- (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.

16. Medical Screening

All refugees and asylum seekers who have entered Kenya shall be subjected to health screening upon entry in accordance with the provisions of the Public Health Act (Cap. 242) for purposes of detecting and containing the spread of contagious diseases.

17. Cancellation of refugee status

- (1) The Commissioner shall have the power to cancel a refugee status where—
- (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 fourteen days from the date of service of the notice or such longer period as the Department 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, in person, accompanied by a legal representative or other representative.
- (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.
- (5) A person whose status has been cancelled and does not appeal or has exhausted the available appeal mechanisms, shall leave the country within thirty days, failure to which the Cabinet Secretary shall order his or her immediate removal.
- (6) Where refugee status under this part has been cancelled, that person shall cease to be a refugee and any member of his or her family with derivative status shall cease to be so recognised under this Act on the expiration of seven days after notification of cancellation of status by the Commissioner.
- Provided that the family member whose derivative status is affected by the cancellation shall have the right to apply to be considered as a refugee under section 12 of this Act.

18. Revocation of refugee status

- (1) The Commissioner may revoke the status of any refugee if the refugee at any time after recognition as a refugee has committed a war crime or a crime against humanity, as defined in any international instrument to which Kenya is a party.
- (2) Where refugee status under this part has been revoked that person shall cease to be a refugee under this Act on the expiration of seven days after the date on which the Commissioner notifies the person concerned that his or her recognition has been revoked.
- (3) Where refugee status under this part has been revoked, every person who, immediately before such revocation, was within Kenya as a member of the family

of such refugee shall have the right to apply to be considered as a refugee under section 12 of this Act.

(4) The provisions of section 17(2), (3), (4) and (5) shall, with the necessary modifications, apply to the revocation of refugee status by the Commissioner.

(5) Any person whose refugee status has been cancelled or revoked shall leave the country within thirty days of notification of the final order relating to the cancellation or revocation, failing which the Cabinet Secretary shall remove such person immediately.

19. Expulsion of refugees or members of their families

(1) Subject to section 29, the Cabinet Secretary may order the expulsion from Kenya of any refugee or member of his family if the Cabinet Secretary considers the expulsion to be necessary on the grounds of national security or public order.

(2) Subject to subsection 19 (1) a refugee or an asylum seeker engaging in a conduct that is in breach or is likely to result in breach of public order or contrary to public morality under the law irrespective of whether the conduct is linked to his claim for asylum or not, may be expelled from the Kenya by an order of the Cabinet Secretary.

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

20. Refugee women and children

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

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

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

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

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

The Commissioner shall ensure that appropriate measures are taken to ensure the safety of asylum seekers and refugees who suffer from disability or are of old age 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.

22. Right to remain in Kenya during status determination

(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—

- (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 14, and his or her appeal has been unsuccessful, until such person has been allowed a reasonable time, not exceeding sixty days to seek admission to a country of his or her choice.

(2) The Cabinet Secretary may, on application being made to him or her by the person concerned, extend the three-month period referred to in subsection (1)(c) if he or she 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.

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

(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.

(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.

(5) A person who has submitted an application for refugee status shall be under obligation to abide by all the laws of Kenya including all the lawful orders given by the mandated institutions under this Act.

PART IV – RECEPTION FOR REFUGEES AND ASYLUM SEEKERS

24. Entry into Kenya by refugees

(1) Any person entering Kenya to seek asylum shall make his or her intention known immediately upon entry or within thirty days by reporting to the nearest reception centre or the nearest government administrative office.

(2) Where a person is lawfully in Kenya and is subsequently unable to return to his country of origin for any of the reasons specified in section 3, the person shall, prior to the expiration of his lawful stay, present himself before an appointed officer and apply for recognition as a refugee, in accordance with the provisions of this Act.

(3) Where there is a large-scale influx of persons claiming to fall within the meaning of refugees under section 3, the Commissioner shall, in consultation with other agencies advise the Cabinet Secretary on emergency measures to be taken including—

- (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, children, victims of trauma, persons of old age and persons with disabilities; and
- (c) ensuring the civilian and humanitarian character of areas designated for refugees and the sensitization of the local population for their reception.

25. Designation of refugee reception officers

(1) The Commissioner shall ensure availability of reception officers at designated entry points provided that where there are no designate reception officers, the immigration officers or other government officers stationed at the entry points shall act as reception officers.

(2) If the reception officer who comes into contact with an asylum seeker is not an officer from the Department, the officer shall liaise with the Department for the necessary assistance or guidance.

(3) Subject to subsection (2) asylum seekers may be temporarily accommodated at the reception holding areas as they await further processing by the Department.

(4) Asylum seekers at transit centres shall be processed within a reasonable time.

(5) Asylum seekers who enter the country through places, other than gazetted entry points, shall immediately report to the nearest government administrative office for further assistance.

26. Duty of Reception officers

The duty of a reception officer shall be—

- (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; and
- (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.

27. Security Screening

Any asylum seeker or refugee entering Kenya shall be subjected to security screening in accordance with the provisions of this Act and any other written law for purposes of detecting and containing any person who may pose a danger to the security of Kenya or the safety of the people and to prevent the trafficking in persons, especially women and children, terrorism and proliferation of arms and other contraband items.

PART V – RIGHTS AND DUTIES OF
REFUGEES AND ASYLUM SEEKERS IN KENYA

28. Rights of and obligations of Refugees

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

- (a) to the duties contained in the UN Convention, its Protocol and the OAU Convention; and
- (b) all the laws in force in Kenya.

(2) The Cabinet Secretary may, by notice in the *Gazette* and in consultation with the relevant county governments, designate specific counties to host refugees.

(3) The Cabinet Secretary may, by notice in the *Gazette*, designate places and areas in Kenya to be transit centres for purposes of temporarily accommodating refugees.

(4) Subject to this Act, refugees shall be enabled to contribute to the economic and social development of Kenya by facilitating access to, and issuance of, the required documentation at both levels of Government.

(5) Subject to the laws applicable and taking into special consideration the special circumstances of refugees, a refugee recognized under this Act shall have the right to engage individually or in a group, in gainful employment or enterprise or to practice a profession or trade where he holds qualifications recognized by competent authorities in Kenya.

(6) A refugee and an asylum seeker shall have the right to identification and civil registration documents and such documents shall be sufficient to identify a refugee or asylum seeker for the purposes of access to rights and services under this Act and any other applicable law.

(7) Without prejudice to the generality of the foregoing, and subject to the special circumstances of refugees, the Refugee Identity Card shall at a minimum have a similar status to the Foreign National Registration Certificate issued under section 56 (2) of the Kenya Citizenship and Immigration Act (Cap. 170) for the purposes of accessing the rights and fulfilling obligations under this law.

(8) A person from a Partner State of the East African Community who has been recognised as a refugee under this Act may opt to voluntarily give up his or her refugee status for the purposes of enjoying any of the benefits due to him or her under the Treaty for the Establishment of the East African Community, the Protocol for the Establishment of the East African Community Common Market, and any other relevant written law.

29. Non-Refoulement

(1) No person shall be refused entry into Kenya, expelled, extradited from Kenya or returned to any other country or be subjected to any similar measure if, as a result of such refusal, expulsion, return or other measure, such person is compelled to return to or remain in a country where—

- (a) the person may be subject to persecution on account of race, religion, nationality, membership of a particular social group or political opinion; or
- (b) the person's life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disturbing public order in part or whole of that country.

(2) The benefit of subsection 1 may not, however, be claimed by a refugee or asylum seeker whom there are reasonable grounds for him or her being regarded as a danger to the national security of Kenya.

PART VI – CONTROL OF DESIGNATED AREAS

30. Designated areas

The Commissioner shall work with the national and county Government authorities within and around the designated areas to ensure the protection of the environment and the rehabilitation of areas that had been used as designated areas.

31. Requirement to reside in a designated area

(1) The Commissioner may upon consideration of any special needs or conditions that may affect the refugee's protection and safety require any refugee within a designated area to move to or reside in any other designated area.

(2) A refugee to whom an order has been made under this section; fails to comply with such an order shall be guilty of an offence under this Act.

(3) The Commissioner shall appoint, from among officers within the Department, settlement officers to be in-charge of designated areas, reception, transit or residence areas for asylum seekers or refugees.

(4) Every refugee or asylum seeker who wishes to change his or her place of residence shall notify the Commissioner in the prescribed manner.

(5) Any refugee or asylum seeker residing outside a designated area at the commencement of this Act shall, as soon as is practicable after the commencement, notify the Commissioner in the prescribed manner of his or her situation and the Commissioner shall make such orders as may be necessary in the circumstances.

32. Control of Designated Areas

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—

- (a) the organization, safety and discipline and administration of a designated area;
- (b) the reception, transfer, settlement, treatment, health and well-being of refugees;
- (c) the manner of inquiring into disciplinary offences and the payment of the fine and other penalties;
- (d) the powers of settlement officers and the delegation of such powers; or
- (e) the provision of special services to women, girls and persons with disabilities including legal and psychosocial services to victims of sexual and gender-based violence; reproductive services and other specialized services.

33. Restriction of Persons Entering a Designated Area

(1) No person or body other than a person authorized by the Commissioner, a person employed by the Department, or a refugee shall enter a designated area except with the permission of the Commissioner.

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

(3) The Commissioner may, on an application, review a decision made under subsection (1) where any new circumstance is brought to his attention.

(4) 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

34. Integration of refugees into communities

(1) The Commissioner shall, so far as is practicable, ensure that there is shared use of public institutions, facilities and spaces between the refugees and the host 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.

(3) The Commissioner shall, in consultation with the Cabinet Secretary, establish measures for the handing over of amenities set up for the use of asylum seekers and refugees to national and county government authorities upon the departure of refugees from the place where the amenities had been set up for their use.

35. Consideration of refugee matters in development plans

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

36. Affirmative action for women, children and persons with disabilities

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, older persons, victims of trauma and persons with disabilities.

37. Voluntary repatriation

(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.

(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.

38. Resettlement of refugees residing in Kenya

(1) A refugee residing in Kenya may access resettlement in any other country outside Kenya except their country of origin.

(2) The Commissioner in liaison with the relevant government ministry shall seek for more resettlement quarters in addition to the ones allocated through other agencies.

PART VIII – MISCELLANEOUS PROVISIONS

39. Register for Refugees and Asylum Seekers

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

(2) The Department 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 the asylum seekers and refugees provided that he or she may delegate this function in writing to a Settlement officer or refugee officer.

40. Confidentiality

(1) No member of the Committee, employee or agent of the Department of Refugees shall disclose information acquired under this Act except—

- (a) in the course of his duties under this Act; or
- (b) with the consent of the Commissioner.

(2) No person who receives information in contravention of sub section (1) shall disclose or publish the information.

(3) A person who contravenes any provision of this section commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or both.

41. Offences and penalties

(1) A person commits an offence if that person—

- (a) makes any false declaration or statement to a refugee officer or appointed officer which the person knows or has reasonable cause to believe to be false or misleading, for the purpose of obtaining or assisting another person to obtain admission, and or registration as an asylum seeker or refugee;
- (b) knowingly misleads any refugee officer or authorized officer seeking information material to the exercise of any of her/his powers under this Act;
- (c) after entering Kenya, fails to report without good reason within the period set out in this Act to a refugee officer or authorised officer to apply for asylum or recognition as a refugee;
- (d) after having been lawfully admitted into Kenya other than as an asylum-seeker or refugee, knowingly submits without justifiable cause an application for asylum after the period for which he or she was admitted in Kenya expires;
- (e) forges, alters, destroys or willfully defaces a refugee identification document or any other document issued under this Act;
- (f) knowingly uses or has in his or her possession a forged refugee identification document or any other document issued under this Act;

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- (g) gives, sells or parts with the possession of a refugee identification document or any other document issued under this Act intending, knowing or having reasonable cause to believe that the document may be used by any other person;
 - (h) uses a refugee identification document or any other document issued under this Act to another asylum-seeker or refugee;
 - (i) bribes or attempts to bribe a refugee officer or authorised officer in order to access any of his or her rights or any protections conferred by this Act;
 - (j) solicits a bribe from a refugee or asylum-seeker in order to facilitate access to services or rights;
 - (k) knowingly and wilfully enters into a marriage for the sole purpose of obtaining any of the benefits conferred by this Act;
 - (l) being a refugee, knowingly and wilfully enters into a marriage for the sole purpose of assisting another refugee to obtain any of the benefits conferred by this Act; or
 - (m) being a refugee, works or is engaged in gainful employment without the payment of tax.

(2) A person convicted of any of the offences set out in subsection (1) or any other offence under this Act whose penalty has not been prescribed, shall be liable, on conviction, to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months, or both.

(3) A person commits an offence if that person—

- (a) being a Kenyan citizen, knowingly applies for or obtains recognition, admission or registration as an asylum-seeker or refugee in Kenya;
- (b) being a refugee, knowingly applies for a Kenyan identity card or passport; or
- (c) assists another person to commit the offence set out in paragraph (a) or (b),

and shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding three years, or both.

42.

[Spent]

43. Transitional provisions

(1) In this section—

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

"former Act" means the Refugees Act (Repealed).

"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 Refugee Affairs Secretariat, Refugee Appeals Board and Refugee Affairs Committee shall be deemed to be vested, imposed or enforceable against the current Department for Refugee

Services, Refugee Status Appeal Committee and Refugee Advisory Committee respectively.

(3) Any reference in any written law or in any document or instrument to the former Refugee Affairs Secretariat, Refugee Appeals Board and Refugee Affairs Committee shall, on and after the commencement day, be construed to be a reference to the current Department for Refugee Services, Refugee Status Appeal Committee and Refugee Advisory Committee respectively.

(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 Refugee Status Appeals Committee, the Refugee Advisory Committee, 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 Appeals Committees 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 Appeals Committee, 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.

(6) The members of the former Appeal Board shall continue in office until the expiry of their existing term and upon the expiry of their existing term, all the assets of the Appeal Board shall be handed over to the Commissioner for use by the Refugee Status Appeal Committee.

PART IX – PROVISIONS ON DELEGATED POWERS

44. Regulations

(1) The Cabinet Secretary shall, make regulations generally for giving effect to this Act, and for prescribing anything required or necessary to be prescribed by or under this Act within six months of the commencement of this Act.

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

- (a) the assignment to the Commissioner of functions relating to the investigation, inspection and supervision of the reception, treatment and welfare of refugees;
- (b) the procedure to be followed in applications for recognition of refugee status and the form in which such applications shall be made;
- (c) the procedure to be followed in the expulsion of refugees;
- (d) the form and issue of identification and travel documents to refugees and members of their families and the rights that attach to the respective documents;
- (e) the application of the refugee database;
- (f) the form and issue of identification documents to persons awaiting determination of their status;

Refugees

- (g) the procedures and rights during refugee status interviews;
 - (h) the control and regulation of persons who may be required to live within a designated place or area;
 - (i) the control and regulation of persons exempted from living in designated areas;
 - (j) the form of any order or notice required to be served on any person under this Act and the manner in which such order or notice may be served;
 - (k) the protection of women, children, unaccompanied minors, persons with disabilities and other vulnerable groups;
 - (l) the procedure to be followed in the application of cessation clauses, cancellation and revocation of refugee status;
 - (m) the durable solutions for refugees;
 - (n) the form and procedures during family re-unification of refugees;
 - (o) the form and issue of exemption documents to be issued to persons exempted from residing in designated areas;
 - (p) the Refugee Advisory Committee;
 - (q) the Refugee Status Eligibility Panel;
 - (r) the form and issue of the instrument of delegation for appointed officers;
 - (s) the reception, settlement and re-integration of refugees and connected purposes;
 - (t) the form and processes of appeals under this Act;
 - (u) period of validity of documentation;
 - (v) circumstances on limitation of rights granted to refugees; and
 - (w) documentation to be provided to a recognised refugee.
- (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.
- (4) The principles and standards applicable to the delegated power referred to under this Act are those found in—
- (i) the Statutory Instruments Act (Cap. 2A);
 - (ii) the Interpretation and General Provisions Act (Cap. 2) ;
 - (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.
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