

THE REFUGEES BILL, 2011

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THE REFUGEES BILL, 2011

A Bill for

An Act of Parliament to make provision for the recognition, protection and management of refugees and refugee affairs and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Refugees Act, 2011 and shall come into operation on the date to be gazetted by the Cabinet Secretary.

Interpretation

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

"Appeal tribunal" means the Appeal tribunal established under the Kenya Citizens and Foreign Nationals Management Service Act;

"appointed officer" means an officer in the public service other than a refugee officer gazetted by the Cabinet secretary for the purposes of this Act;

"asylum" means shelter and protection granted by the Government to persons qualifying for refugee status in accordance with the provisions of this Act and in accordance with International Conventions relating to refugee matters.

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

"Cabinet secretary" means the cabinet secretary responsible for refugee affairs.

"combatant" means a member of a regular or irregular armed force or armed group or a person who has been participating actively in military activities or recruitment to military

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activities

"Commissioner" means the Commissioner for Refugees' affairs appointed under the Kenya Citizens and Foreign Nationals Management Service 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;

"Entry point" means the nearest government administrative centre;

"Host community" means a citizen residing within 50km radius from the outer perimeter of an area designated as a refugee camp

"members of family of a refugee", means

(a) any spouse of the refugee;

(b) any dependent child, brother or sister of the refugee under the age of eighteen years; or

(c) Any dependent grandparent, parent, grandchild, or ward living in the same household as the refugee;

"Reception centre" – means an area, premises, any place designated for the reception and processing or part processing of asylum seekers and includes an area, premises or place which activities provided for in section 5(1) are undertaken.

"Refugee" means a person who has been granted refugee status in accordance with section 4 of this Act.

"refugee camp" means any such place as shall be prescribed by the Cabinet Secretary to be a refugee camp;

"Refugee officer" means an officer appointed by the service for the purposes of discharging the duties and responsibilities

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provided under section 11

“Service” means the Kenya Citizens and Foreign Nationals Management Service established under the Kenyan Citizens and Foreign Nationals Management Service Act.

“Technical review committee” means the technical review committee established under the Kenya Citizens and Foreign Nationals Management Service Act

Qualification for grant of refugee status

3. (1) A person shall be recognized as a refugee in Kenya if :-

(a) not being a Kenyan citizen and owing to a well-founded fear of being persecuted for reasons of race, religion, sex, nationality, membership of a particular social group or political opinion, has entered Kenya and is unable or, owing to such fear, is unwilling to avail himself of the protection of his country of nationality or the country of residence immediately before entering Kenya; or

(b) not having a nationality and being outside the country of his former habitual residence, is unable or, owing to a well-founded fear of being persecuted for any of the aforesaid reasons is unwilling, to return to it.

(2) the cabinet secretary may declare in a prescribed manner any class or group of persons as refugees, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in any part or whole of this country of origin or nationality is compelled to leave their place or places of habitual residence in order to seek refuge in Kenya, and may in appropriate circumstances amend or revoke such declaration.

(3) If the Cabinet Secretary under subsection (2) expressly excludes or exempts any person from a declaration that a class of persons to which that person is a member are refugees, such exclusion or exemption shall not preclude the person concerned from applying under subsection (1) for recognition of their status as a refugee.

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Exclusion

4. An asylum seeker shall be excluded from the grant of refugee status in Kenya if such person-

(a) 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;

(b) has committed a serious non-political crime outside Kenya prior to the person's arrival in Kenya;

(c) has committed a serious non-political crime inside Kenya after the person's arrival in Kenya.

(d) has committed acts contrary to the purposes and principles of the United Nations or the African Union; or

(e) having more than one nationality, had not availed himself of the protection of one of the countries of which the person is a national and has no valid reason, based on well-founded fear of persecution.

(f) has been granted refugee status or asylum in another country prior to his entry into Kenya provided that a person arriving from a territory where there has been serious breach of peace will have his application for asylum considered

(g) prior to his entry into Kenya has transited through one or more countries and is unable to show reasonable cause for failure to seek asylum in those countries

(h) is a combatant or continues to take part in armed activities

Recognition of refugee

5. (1) Any asylum seeker who has entered Kenya, whether lawfully or otherwise and wishes to remain within Kenya as a refugee in terms of this Act shall make his intentions known by appearing in person before a refugee officer or an appointed officer immediately upon his entry and making an

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application in the prescribed manner for the grant of refugee status.

(2) In the case of a person who is lawfully present in Kenya and is subsequently unable to return to his country of origin or residence for any of the reasons specified in section 3 (1), he shall, prior to the expiration of his lawful stay unless he intends to leave Kenya, present himself before, a refugee officer or an appointed officer and apply for recognition as a refugee in accordance with the provisions of this Act.

(3) Without prejudice to the provisions of this section, no asylum seeker shall merely, by reason of illegal entry be declared a prohibited immigrant or an undesirable person, detained or penalized in any way save that any person, who after entering Kenya, or who is within Kenya fails to comply with subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one year, or to both.

(4) Any appointed officer to whom an application is made under subsection (1) shall refer the application to the Commissioner

(5) Within ninety days of receipt of an application from an asylum seeker the Commissioner shall consider the application, make such inquiry or investigation as he thinks necessary and shall either grant refugee status to the applicant or reject the application

(6) The commissioner may for the purpose of considering an application under sub section (1) where he deems it necessary call upon the applicant to make presentation or provide any other document or evidence and may orally interview the applicant

(7) After considering the application referred to in subsection (5), the Commissioner shall, within fourteen days, notify the applicant in writing of the decision and in the case of a rejection the applicant shall be informed of the reasons

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thereof.

Residence in Kenya pending recognition

6. (1) Notwithstanding the provisions of any other law, any asylum seeker who has applied under section 4 for determination of his status as a refugee and every member of his family, may remain in Kenya-

(a) until the status has been determined

(b) in the event of the application of such asylum seeker being rejected, until such asylum seeker has had an opportunity to exhaust his right of appeal.

Identification documents

7. Every refugee and asylum seeker shall-

(a) be issued with a refugee identity card or asylum seeker's pass in the prescribed form; and

(b) be permitted to remain in Kenya in accordance with the provisions of this Act.

Removal

8. (1) Any asylum seeker who has applied to be recognized as a refugee and his application has been rejected and

i) the appeal period has lapsed or

ii) the appeal has been unsuccessful;

Shall be removed from Kenya.

Cessation of refugee status

9. A person shall cease to be a refugee for the purposes of this Act if that person-

(a) voluntarily re-avails himself of the protection of the country of his nationality;

(b) having lost his nationality, voluntarily re-acquires it and

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regains protection of that country

(c) acquires the nationality of another country and enjoys the protection of the country of his new nationality;

(d) voluntarily re-establishes himself in the country which he left or outside which he remained owing to fear of persecution;

(e) can no longer, because circumstances in connection with which he was recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; or

(f) having lost his nationality, continues to refuse to return to the country of his former habitual residence:

Provided that the provisions of this paragraph shall not apply to a person who has compelling reasons arising out of previous persecution for refusing to avail himself or herself the protection of the country of nationality or to return as the case may be.

PART II: ADMINISTRATION

Appointment and functions of commissioner

10. (1) The Service shall appoint a Commissioner to be in charge of Refugee Affairs as provided for under this Act.

(2) The Commissioner shall subject to the provisions of the Kenya Citizens and Foreign Nationals Management Service Act be responsible for all administrative matters concerning refugees in Kenya, and shall, in that capacity, co-ordinate activities and programmes relating to refugees.

(3) Without prejudice to the generality of subsection (2) the Commissioner shall;-

(a) co-ordinate all measures necessary for promoting the

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welfare and protection of refugees and advise the Service thereon;

b) Advise the Service on policy issues relating to refugee matters.

(c) ensure the provision of adequate facilities and services for the protection, reception and care of refugees within Kenya;

(d) promote as far as possible durable solutions for refugees granted asylum in Kenya;

(e) receive and process applications for refugee status determination;

(f) register and maintain a record of all asylum seekers and refugees in Kenya

(g) issue refugee identification documents;

(h) Processing and recommending applications for issuance of conventional travel document

(i) manage refugee camps and other related facilities;

(j) advise the Service on the rehabilitation of refugee hosting areas; and

(k) ensure that refugee economic and productive activities do not have a negative impact on host communities, natural resources or the local environment;

(l) ensure sustainable use of resources in designated refugee hosting areas;

(m) arrest any person suspected of committing an offence under this Act;

(n) co-ordinate the provision of overall security, protection and assistance for refugees in the camp;

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(o) issue movement passes to refugees wishing to travel outside the camp and within Kenya

(p) protect and assist vulnerable groups, women and children;

(q) ensure treatment of all asylum seekers and refugees in compliance with national law.

(r) facilitate the safe return of Kenyans living as refugees in other countries

(s) issue visitors permits for entry into Refugee Camps in accordance with the regulations.

(4) In the performance of the functions specified in subsection (3), the Commissioner shall comply with any general directions or instructions that are issued or given to him by the Director General and shall submit regular reports on matters and activities relating to refugees to the Director General.

Appointment of refugee officers

11. The Service shall appoint such refugee officers as may be necessary for carrying out of the provisions of this Act.

Stay of Proceedings.

12. No proceedings shall be instituted against an asylum seeker or any member of his family in respect of his unlawful presence within Kenya if such a person has made a *bona fide* application under section 4 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 right of appeal.

Provisions Relating to the Families of

13. (1) A member of the family of a refugee who has entered Kenya shall, subject to subsection (3) and any other provisions of this Act-

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Refugees.

(a) be issued with a refugee identity card in the prescribed form on attaining the age of eighteen years;

(b) be issued with a refugee identification pass if below the age of eighteen years; and

(c) subject to subsections (2) and (3), be permitted to remain within Kenya for as long as the refugee concerned is permitted to so remain:

Provided that such member of the family has not been excluded under section 3(3).

(2) The Commissioner may grant permission for reunification to a dependent member of the family of a refugee upon application and such a member shall be entitled to the rights and privileges specified in section 15 for such period as the refugee is entitled to remain in Kenya.

(3) Upon the death of a refugee or upon the refugee's divorce or legal separation from the refugee's spouse, every person who, immediately before such death, divorce or legal separation was within Kenya as a member of the family of such refugee shall be permitted to continue to remain in Kenya in accordance with the provisions of this Act.

(4) Nothing in this section shall prevent a member of the family of a refugee or a person who has under subsection (2) been permitted to continue to remain in Kenya from applying for recognition as a refugee under section 4.

Rights and Duties of Refugees in Kenya.

14. (1) Subject to this Act, every refugee and every member of his family in Kenya shall be entitled to the rights subject to all laws in force in Kenya.(2) Subject to this Act, every refugee and member of his family in Kenya shall, in respect of wage-earning employment, be subject to the same restrictions as are imposed on persons who are not citizens of Kenya.

(2) The Cabinet Secretary may, by notice in the Gazette, in

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consultation with the local authority, designate places and areas in Kenya to be-

(a) reception centers for the purposes of temporarily accommodating persons who have applied for recognition as refugees or members of the refugees' families while their applications for refugee status are being processed; or

(b) refugee camps for temporary settlement and provision of humanitarian services to refugees

(3) No refugee shall reside outside the designated area indicated in his refugee certificate or other registration document without the authority of the Commissioner

(4) It shall be the duty of every refugee or asylum seeker who wishes to change his place of residence to apply to the Commissioner in the prescribed manner.

Non-refoulement of Asylum Seekers, Refugees, their families or other persons.

15. (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, sex, religion, nationality, membership of a particular social group or political opinion; or

(b) the person's life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disturbing public order in part or whole of that country.

(2). The benefit of the provision of this section may not be available to a refugee or an asylum seeker where there are reasonable grounds for regarding such a refugee or asylum seeker as a danger to the security of Kenya

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Revocation of Refugee Status.

16. (1) If, at any time, the Commissioner considers that there are reasonable grounds for regarding that a person who has been recognized as a refugee for the purposes of this Act-

(a) should not have been so recognized; or

(b) has ceased to be a refugee for the purposes of this Act, or

(c) if the recognition was acquired by fraud or false representation or concealment of any material fact; or

(d) if the person at any time after recognition as a refugee has been convicted for treason or an offence for which a penalty of at least seven years imprisonment or more severe penalty may be imposed; or

(e) if the person has within five years from the date of recognition as a refugee been convicted of an offence and sentenced to imprisonment for a term of three years or longer

the Commissioner shall revoke such recognition and shall notify the person concerned in writing within fourteen days of the decision together with the reasons thereof.

(2) Where the Commissioner has under this section revoked the recognition of any person as a refugee, that person shall cease to be a refugee and any member of his family shall cease to be so recognized under this Act on the expiration of seven days after the date on which the Commissioner notifies the person concerned that his recognition has been revoked:

Provided that nothing in this subsection shall prevent a member of the family of such a refugee from applying for recognition under section 4.

(3) Any refugee whose status has been revoked shall in consultation with the authority responsible for immigration matters, be removed.

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Expulsion of Refugees and Members of Their Families.

17. (1) Subject to section 16 and subsection (2) of this section, where the Cabinet Secretary considers the revocation of the refugee status of any person and the expulsion from Kenya of that person to be necessary on grounds of national security and public order, the Cabinet Secretary may, after consultation with the Cabinet Secretary responsible for matters relating to internal security, order the revocation of the refugee status and proceed to expel such a person or member of his family from Kenya.

Appointed Officers.

18. (1) The Cabinet Secretary may by notice in the Gazette appoint appointed officers for the purposes of this Act.

(2) An appointed officer may, for the purposes of exercising his powers and carrying out his duties under this Act-

(a) subject to subsections (3) and (4), search any person or property;

(b) take the biometrics, x-rays and other electromagnetic ray photographs of any refugee or member of his family or any person who claims to be a refugee for the purposes of this Act or any member of the family of such person; or

(c) question any refugee or member of his family or any person who claims to be a refugee for the purposes of this Act or any member of the family of such person.

(3) No search of any person or property shall be conducted in terms of subsection 2(a) unless the appointed officer concerned has reasonable grounds for believing that the search is necessary for the prevention, investigation or detection of-

(a) a contravention of the provisions of this Act; or

(b) a fraudulent statement or concealment by an asylum seeker or a refugee, member of his family or person claiming to be a refugee for the purposes of this Act or any member of

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the family of such person, of any fact relevant to his identity or status.

(4) Whenever it is necessary to cause an asylum seeker or a refugee to be searched, the search shall be conducted by an appointed officer who while conducting the search, shall have strict regard to decency.

Refugee Women and Children.

19. (1) The Commissioner shall ensure that specific measures are taken to ensure the 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 shall, whether unaccompanied or accompanied by his parents or by any other person, receive appropriate protection and assistance.

(3) The Commissioner shall, as far as possible, assist such a child to trace the parents or other members of the family of the refugee child in order to obtain information necessary for the reunification of the child with the child's family.

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

Vulnerable groups

20. The Commissioner shall ensure that specific measures are taken having regard to the specific nature of every situation to ensure the safety of asylum seekers and refugees who suffer from physical or mental 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 designated areas

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Review Appeal

- and 21. (i)** Any person aggrieved by a decision of a public officer made under this Act may subject to the provisions of section 23(4) of the Kenya Citizens and Foreign Nationals Management Service Act, apply to the technical review committee for a review of the decision
- (ii) An appeal against a decision made by the Cabinet Secretary or by the Service under this Act may be made to the Appeals tribunal

Offences

22. Any person who-

(a) makes any false declaration or statement to a refugee officer or appointed officer which he knows or has reasonable cause to believe to be false or misleading, for the purpose of obtaining or assisting another person to obtain admission, and or registration as an asylum seeker or refugee; or

(b) knowingly misleads any refugee officer or appointed officer seeking information material to the exercise of any of his powers under this Act; or

(c) resides without authority outside the designated area specified under section 5(1), or in a place other than the approved place of residence;

(d) after entering Kenya with intentions to seek asylum fails to report immediately to a refugee officer or appointed officer to register and submit an asylum application; or

(e) forges, alters, destroys or willfully defaces an identification document, asylum seeker's pass, movement pass or any other document issued under this Act; or

(f) knowingly uses or has in his possession a forged refugee identification document, asylum seeker's pass, movement pass or any other document issued under this Act; or

(g) gives, sell or parts with the possession of an identification document, asylum seeker's pass, movement pass or any other

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document issued under this Act intending or knowing or having reasonable cause to believe the used by another person; or

(h) uses an identification document, asylum seeker's pass, movement pass or any other document issued under this Act to another asylum seeker or refugee; or

(i) harbors any asylum seeker or refugee whom he knows or has reasonable cause to believe to be a person who has committed an offence under this Act; or

(j) being a Kenya citizen, knowingly applies for or obtains recognition, admission or registration as an asylum seeker or a refugee;

commits an offence and shall on conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding eighteen months, or to both such fine and imprisonment.

Regulations.

23. (1) The Cabinet Secretary may make Regulations generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1) regulations made under this section may provide for the-

(a) manner and form in which appeals may be made to the Appeals Tribunal;

(b) assignment to the Commissioner of functions relating to the investigation, inspection and supervision of the reception, treatment and welfare of refugees.

(c) formation of committees and the assignment to such committees of functions to be exercised, subject to the direction and control of the Commissioner or any such committee in relation to the reception, treatment and welfare

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of refugees;

(d) procedure to be followed in applications for recognition of refugee status and the form in which such applications shall be made;

(e) procedure to be followed in the expulsion of refugees;

(f) form and issue of identification and travel documents to refugees and members of their families;

(g) form and issue of identification documents to persons awaiting determination of their status;

(h) control and regulation of persons who may be required to live within a designated place or area;

(i) form of any order or notice required to be served on any person under section 19 and the manner in which such order or notice may be served; or

(j) Protection of women, children, unaccompanied minors, persons with disabilities and other disadvantaged groups.

Repeal of the Refugees Act of 2006

24. The Refugees Act of 2006 is hereby repealed.