

SPECIAL ISSUE

Kenya Gazette Supplement No. 155 (Senate Bills No. 41)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2014

NAIROBI, 31st October, 2014

CONTENT

Bill for Introduction into the Senate—

PAGE

The Refugees Bill, 2014..... 743

THE REFUGEES BILL, 2014
ARRANGEMENT OF CLAUSES

Clause

- 1—Short title and Commencement.
- 2—Interpretation.
- 3—Qualifications for grant of Refugee Status.
- 4—Exclusion.
- 5—Recognition of Refugees.
- 6—Residence in Kenya Pending Recognition.
- 7—Identification Documents.
- 8—Removal.
- 9—Cessation of Refugee Status.
- 10— Functions of the Service.
- 11—Appointment of refugee officers.
- 12—Stay of Proceedings.
- 13—Provisions relating to families of refugees.
- 14—Rights and duties of refugees in Kenya.
- 15—Non-refoulment of refugee claimants, refugees,
their families or other persons.
- 16—Revocation of Refugee Status.
- 17—Expulsion of refugees and members of their
families.
- 18—Appointed Officers.
- 19—Vulnerable groups.
- 20—Appeal.
- 21—Offences.
- 22—Regulations.
- 23—Repeal of Refugees Act.

THE REFUGEES BILL, 2014**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—

1. This Act may be cited as the Refugees Act, 2014 and shall come into operation on a date to be gazetted by the cabinet secretary which date shall not be later than three months after the publication of the Act. Short title

2. In this Act unless the context otherwise requires — Interpretation

“Appeal tribunal” means the Kenya Citizenship and Immigration Service Appeals tribunal established under section 23 of the Kenya Citizens and Foreign Nationals Management Service Act; No. 31 of 2011

“appointed officer” means an officer in the public service, other than a refugee officer, appointed 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;

“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 is participating actively in military activities including training or recruitment of military personnel or who has been in regular or irregular command or decision-making position in an armed organization;

“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 relative to a refugee claimant’s entry into Kenya;

“host community” means persons, other than refugees, residing within a fifty kilometre 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 any other dependent ordinarily living in the same household as the refugee and during the time that the refugee claims to have suffered persecution;

“reception centre” means an area, premises or any place designated for the reception and processing or part processing of refugee claimants 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 3;

“refugee claimant” means a person who is seeking or intends to seek refugee status in accordance with this Act;

“refugee officer” means an officer appointed by the service for the purposes of discharging the duties and responsibilities provided under section 10(3);

“serious non-political crime” means a criminal offence committed outside Kenya and for which if committed in Kenya a penalty of at least seven years imprisonment or a more severe penalty may be imposed;

“serious crime” means a criminal offence committed in Kenya and for which a term of imprisonment of three or more years has been imposed; and

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

No. 31 of 2011

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

Qualification for grant of refugee status

- (a) 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 the person is unable or, unwilling to avail himself or herself or herself of the protection of the person's country of nationality or the country of habitual residence; or

- (b) being outside the country of the person's former habitual residence, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is unable or unwilling to return to the country of the person's habitual residence.

(2) The cabinet secretary may declare any class or group of persons as refugees—

- (a) owing to external aggression, occupation, foreign domination or events seriously disturbing public order in any part or in the whole of the country of origin or nationality; or
- (b) where the persons are compelled to leave their place or places of habitual residence in order to seek refuge in Kenya.

(3) The cabinet secretary may in appropriate circumstances amend or revoke a declaration made under subsection (2).

(4) If the cabinet secretary 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 the person's status as a refugee.

4. A refugee claimant shall be excluded from the grant of refugee status in Kenya if there are serious reasons of considering that such person—

- (a) has committed a crime against peace, a war crime, or a crime against humanity as defined in any international instrument and which has been drawn up to make provision in respect of such crimes;
- (b) has committed a serious non-political crime

Exclusion from grant of refugee status.

outside Kenya prior to admission as a refugee;

- (c) has committed acts contrary to the purposes and principles of the United Nations or the African Union;
- (d) is a combatant or continues to take part in armed activities;
- (e) is a member of a group declared as a terrorist group under any law; or
- (f) has the rights and obligations which are attached to the possession of the nationality of another country and for which he or she has not demonstrated any well-founded fear relative to that country.

5. (1) A person 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 upon his entry and without unreasonable delay and make an application in the prescribed manner for the grant of refugee status.

Recognition of
refugees.

(2) A person who was lawfully admitted into Kenya and is subsequently unable to return to his country of origin or residence for any of the reasons specified in section 3(1) may make an application for grant of refugee status without unreasonable delay by presenting himself before a refugee officer or an appointed officer to apply for recognition as a refugee in accordance with the provisions of this Act.

(3) Without prejudice to the provisions of this section, no refugee claimant shall merely, by reason of illegal entry, be declared a prohibited immigrant or an inadmissible person.

(4) Any appointed officer to whom an application is made under subsection (1) shall within seven days of receipt of the application refer it to the Service.

(5) Within ninety days of receipt of an application from a refugee claimant, the Service shall consider the application, make such inquiry or investigation as it considers necessary and shall either grant refugee status to the applicant or reject the application.

(6) Within fourteen days following the consideration of the application referred to in subsection (5), the Service shall, notify the applicant in writing of the decision made and in the case of a rejection the applicant shall be informed of the reasons thereof.

(7) The Service may, when considering an application under subsection (1), call upon the applicant to provide oral or documentary evidence for the purpose of establishing the applicant's claim for refugee protection.

(8) The Service shall reject the refugee claim of a person who prior to the person's entry into Kenya—

- (a) has transited through one or more countries that are signatory to the United Nations Refugee Convention and is unable to show reasonable cause for failure to seek asylum in such countries; or
- (b) has transited through a country that is a member of the African Union and is unable to show reasonable cause for failure to seek asylum in such country.

(9) The Service shall reject the refugee claim of a person who has been granted refugee status or asylum in another country prior to the person's entry into Kenya provided that a person arriving from a territory where there has been a serious breach of peace or a serious threat to personal safety will have the person's application for recognition as a refugee considered.

6. Notwithstanding the provisions of any other law, any refugee claimant who has applied under section 5 for recognition as a refugee together with members of the person's family may remain in Kenya—

- (a) until the person's status has been determined;
- (b) in the event of rejection of the application of such refugee claimant, until such refugee claimant has had an opportunity to exhaust all rights of appeal.

7. (1) Every refugee and refugee claimant shall be issued with a refugee identity card or any other document of identification prescribed in Regulations and which shall serve as *prima facie* evidence of the person's identity and recognized legal status in Kenya.

Residence in
Kenya pending
recognition.

Identification
documents.

(2) The documents referred to in subsection (1) shall be issued within the timelines prescribed in law relating to the registration of persons in Kenya.

(3) A refugee or refugee claimant issued with any document referred to in subsection (1) shall be permitted to remain in Kenya, in accordance with the provisions of this Act.

8. (1) A person who has applied to be recognized as a refugee and the person's application has been rejected and—

Rejection of application

(a) the appeal period has lapsed; or

(b) the appeal has been unsuccessful;

shall leave Kenya within thirty days of such rejection unless otherwise allowed to remain by operation of any other law.

(2) The cabinet secretary shall ensure that a person whose application for refugee status has been rejected and who has failed to leave Kenya within the prescribed time is immediately removed from Kenya.

9. (1) A person ceases to be a refugee for purposes of this Act if—

Cessation of refugee status

(a) the person voluntarily re-avails himself or herself of the protection of the country of the person's former habitual residence;

(b) having lost the person's nationality, the person voluntarily re-acquires it and regains protection of that country;

(c) the person acquires the nationality of another country and enjoys the protection of the country of the person's new nationality;

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

(e) the circumstances which necessitated the person's recognition as a refugee have ceased to exist despite any refusal to avail himself or herself of the protection of the person's country of nationality; or

(f) the circumstances in connection with which the

person was recognized as a refugee have ceased to exist and the person is able to return to the country of the person's former habitual residence.

10. (1) The Service shall be responsible for the administration of this Act.

Functions of the Service

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

No. 31 of 2011

(3) Without prejudice to the generality of subsection (2) the Service shall—

- (a) co-ordinate all measures necessary for promoting the welfare and protection of refugees and refugee claimants;
- (b) advise the cabinet secretary on policy issues relating to refugee matters;
- (c) ensure the provision of adequate facilities and services for the protection, reception and care of refugee claimants and refugees within Kenya;
- (d) promote durable solutions for refugees granted asylum in Kenya;
- (e) receive and process applications for determination of refugee status;
- (f) register and maintain a record of all refugee claimants and refugees in Kenya;
- (g) devise mechanisms for following up on persons who are registered as refugees in Kenya;
- (h) issue refugee identification documents;
- (i) process and recommend applications for issuance of travel documents for refugees and refugee claimants;
- (j) manage refugee camps and other related facilities in a manner to promote a dignified life for the refugees;
- (k) advise the cabinet secretary on the rehabilitation of

refugee hosting areas;

- (l) ensure that economic and productive activities of refugees do not have a negative impact on host communities, natural resources or the local environment;
- (m) advise the cabinet secretary on the sustainable use of resources in designated refugee hosting areas;
- (n) ensure treatment of all refugee claimants and refugees in compliance with national law;
- (o) arrest any person suspected of committing an offence under this Act;
- (p) co-ordinate the provision of overall security, protection and assistance for refugees in the camp;
- (q) issue documents of registration and identification to refugees and refugee claimants who may want to travel outside the camp and within Kenya;
- (r) ensure adequate mechanisms to protect and assist vulnerable groups, women, the elderly, children and persons with disabilities;
- (s) ensure all refugees and refugee claimants are treated in compliance with national law;
- (t) ensure that legal assistance is provided to refugee claimants;
- (u) facilitate the safe return of Kenyans living as refugees in other countries; and
- (v) issue visitors permits for entry into Refugee Camps in accordance with regulations.

(4) In the performance of the functions specified in subsection (3), the Service shall comply with any general directions or instructions that are issued by the cabinet secretary and shall submit quarterly reports on matters and activities relating to refugees to the cabinet secretary.

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

Appointment of
refugee officers

12. No proceedings shall be instituted against a person or any member of the person's family in respect of a person's unlawful entry or presence within Kenya if such a

Stay of
Proceedings

person has made a *bona fide* application under section 5 for recognition as a refugee unless a final decision has been made in relation to that application.

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—

Provisions
relating to the
families of
refugees

- (a) be issued with a refugee identification document in the prescribed manner and form on attaining the prescribed age; and
- (b) subject to subsections (2) and (3), be permitted to remain in Kenya in accordance with the provisions of this Act and any other law;

(2) The Service 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 14 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, a person who, immediately before the death, divorce or legal separation was within Kenya as a member of the family of the 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 5.

14. (1) Subject to this Act, a refugee and members of the refugee's family in Kenya shall—

Rights and
obligations of
refugees in Kenya

- (a) be entitled to the rights applicable to refugees under international conventions and be subject to all laws in force in Kenya, and
- (b) in respect of employment, unless the cabinet secretary specifies otherwise through Regulations, be subject to the same restrictions as are imposed on persons who are not citizens of Kenya.

(2) The cabinet secretary in consultation with the County Governments may, by notice in the *Gazette*,

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 refugee 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) A refugee shall not reside outside the designated area indicated in the person's refugee identity card or other registration document without the written authority of the Service.

(4) A refugee or refugee claimant who may want to change the refugee's place of residence shall apply to the Service in the prescribed manner.

15. (1) A person shall not be refused entry into Kenya, expelled, extradited from Kenya or returned to any other country if, as a result of such refusal, expulsion, return or other measure, such a person is compelled to return to or remain in a country where the person may be subject to persecution on the basis of the grounds specified in section 3 of this Act.

Non-refoulement

(2). The provisions of subsection (1) shall not apply to a person—

- (a) who is suspected to be a danger to the security of Kenya; or
- (b) who has been convicted of a serious crime.

16. (1) The grant of refugee status may be cancelled or revoked at any time if—

Cancellation and
revocation of
refugee status

- (a) the refugee status was acquired by fraud or false representation or concealment of any material fact;
- (b) the refugee ceases to be a refugee for the purposes of this Act;
- (c) the refugee is convicted of treason; or
- (d) the refugee has within five years from the date of following recognition as a refugee has been convicted of a serious crime;

(2) The Service shall notify a person whose refugee

status has been cancelled or revoked of the cancellation or revocation of the refugee status in writing within fourteen days of the decision together with the reasons thereof.

(3) Except where compelling reasons of national security otherwise require the refugee shall have the right to make an application for review or appeal pursuant to section 21 of this Act.

(4) Where refugee status under this section has been cancelled or revoked, the person shall cease to be a refugee and any member of the person's family shall cease to be recognized as a refugee under this Act on the expiration of seven days after the date on which the Service notifies the person concerned that his recognition has been cancelled or revoked.

(5) Notwithstanding subsection (3), a member of the family of a refugee shall not be barred from applying for refugee recognition under section 5.

(6) 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.

17. (1) Subject to the provisions of this Act, 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 granting the person an opportunity to be heard, order the revocation of the refugee status and proceed to expel such person or member of the person's family from Kenya.

Expulsion of
refugees and
members of their
families

(2) Nothing in this section shall prevent a member of the family of a refugee who is not adversely mentioned in relation to the reasons of revocation and expulsion from applying for recognition under section 5.

(3) Any person aggrieved by a decision made under subsection 17(1) may, within fourteen days of receipt of the decision, apply to the High Court for a review of the cabinet secretary's decision.

18. (1) The cabinet secretary may by notice in the *Gazette* appoint appointed officers for the purposes of this

Appointed
officers.

Act.

(2) An appointed officer may, for purposes of exercising his or her 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 the refugee's 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, refugee claimant or member of the refugee's family.

(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 a refugee claimant or a refugee, member of the refugee's family or person claiming to be a refugee for the purposes of this Act or any member of the family of such person, of any fact relevant to the refugee's identity or status.

(4) Whenever it is necessary for a refugee claimant or a refugee to be searched, the search shall be conducted by an appointed officer having strict regard to decency and principles of human dignity.

19. (1) The Service shall ensure that specific measures are taken at all times having regard to the specific nature of every situation to safeguard the safety and interests of refugee claimants and refugees who are vulnerable persons including persons with disabilities and persons or groups of persons who have been traumatized or otherwise require special protection.

Protection of
vulnerable groups

(2) The Service shall ensure that specific measures are taken to ensure the dignity and safety of women and children seeking refugee status at all times during their stay in the designated areas.

(3) The Service shall ensure that a child who is in need of refugee status or who is considered a refugee shall, whether unaccompanied or accompanied by the child's parents or by any other person, receives appropriate protection and assistance.

(4) The Service 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.

(5) 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 the child's family.

20. A person aggrieved by a decision of a State or public officer made under this Act may, within fourteen days of the notification of the decision, apply to the appeal tribunal for a review of the decision.

Review and
Appeal

21. A person who—

Offences

- (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 or registration as a refugee claimant or refugee;
- (b) knowingly misleads a refugee officer or appointed officer seeking information material to the exercise of any of the person's powers under this Act;
- (c) resides without authority outside the designated area specified under section 14(3) or in a place other than the approved place of residence;
- (d) after entering Kenya with intentions to seek asylum fails to report without unreasonable delay to a refugee officer or an appointed officer to register and submit an asylum application;
- (e) forges, alters, destroys or willfully defaces an identification document, refugee claimant's pass, movement pass or any other document issued

under this Act;

- (f) knowingly uses or has in the person's possession a forged refugee identification document, refugee claimant's pass, movement pass or any other document issued under this Act;
- (g) gives, sells or parts with the possession of an identification document, refugee claimant's pass, movement pass or any other document issued under this Act intending, knowing or having reasonable cause to believe the use by another person;
- (h) uses an identification document, refugee claimant's pass, movement pass or any other document issued under this Act for another refugee claimant or refugee; or
- (i) harbors any refugee claimant 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 a refugee claimant 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.

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

Regulations.

(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 Service of functions relating to investigation, inspection and supervision of the reception, treatment and welfare of refugees;
- (c) formation of committees and the assignment of functions to such committees subject to the

direction and control of the Service;

- (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 and the rights that attaches to the respective documents;
- (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 16 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 vulnerable groups;
- (k) surrender of any documents of registration or identification upon one ceasing to be a refugee or refugee claimant;
- (l) structures for and processes of resolving disputes arising from the administration of this Act; and
- (m) procedures for return or repatriation where such procedures are not specified under any other law.

23. The Refugees Act, 2006 is hereby repealed.

Repeal of the
Refugees Act
2006

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The Bill makes provision for the recognition, protection and management of refugees and refugee affairs. It repeals the Refugees Act 2006 in order to bring the current legal regime into conformity with the Constitution. The Bill adopts a leaner administrative structure and further utilizes institutions established under the Kenya Citizens and Foreign Nationals Management Service Act (No. 31 Of 2011) to implement the provisions of the Bill.

The Bill makes provision for the safeguarding of interests of refugees and outlines the rights and obligations of refugees in Kenya.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill delegates legislative powers only to the extent of giving effect to the provisions of the Bill.

The Bill does not limit fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill makes provision for the recognition, protection and management of refugees and refugee affairs. The Bill affects counties as refugee camps and reception centres for refugees are established mainly in counties along Kenyan borders. The presence of such camps or reception centres in a county significantly affect the host county and usually result in a strain on the natural and other resources of a county.

It is therefore evident that the legislation on refugees is of concern to county governments and in terms of Article 110(1)(a) of the Constitution. The establishment of refugee camps and reception centres affects the functions and powers of the counties under Part 2 of the Fourth Schedule to the Constitution, particularly those relating to agriculture, county health services, trade development and regulation, county planning and development, pre-primary education and county public works and services.

It is for these reasons that the Bill further provides that before a refugee camp is established, the Cabinet Secretary must consult the Governor of the relevant county.

The Bill therefore concerns county governments in terms of Article 110(a) of the Constitution as it affects the functions and powers of County Governments set out in the Fourth Schedule.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 17th October, 2014

MOHAMED YUSUF HAJI,
*Chairperson, Committee on National Security and
Foreign Relations.*