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THE REFUGEE ACT 2006

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

ENACTED by the Parliament of Kenya as follows:-

Short title and commencement.

1. This Act may be cited as the Refugees Act, 2006 and shall come into operation on such day as the Minister may by notice in the Gazette appoint.

Interpretation.

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

“asylum” means shelter and protection granted by the Government to persons qualifying for the refugees status in accordance with the provisions of this Act and in accordance with International Conventions relating the refugee matters referred to in section 16;

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

“appointed officer” means an officer in the public service and gazetted by the Minister for the purposes of this Act;

“Appeal Board” means the Refugee Appeal Board established under section 9;

“Committee” means the Refugee Affairs Committee established under section 8;

“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;

“Commissioner” means the Commissioner for refugees affairs appointed under section 7;

“entry point” means the nearest government administrative centre;

“refugee camp” means any such place as shall be prescribed by the Minister to be a refugee camp;

“refugees camp officer” means a senior officer in the office of the Commissioner appointed under section 17;

“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;

“Minister” means the Minister responsible for refugee affairs.

**Meaning of
“refugee”**

3. (1) A person shall be a statutory refugee for the purposes of this Act if such person –
- (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 is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; 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) A person shall be a *prima facie* refugee for purposes of this Act if such person owing to external aggression, occupation, foreign domination or events seriously disturbing public order in any part or whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.
- (3) If the Minister considers that any class of persons are *prima facie* refugees as defined in subsection (2), the Minister may declare such class of persons to be a *prima facie* refugees and may at any time amend or revoke such declaration.
- (4) If the Minister under subsection (3) 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 (2) for recognition of their status as a refugee.

Disqualification from grant of refugee status.

4. A person shall not be a refugee for the purposes of this Act 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 and admission into Kenya as a refugee;
 - (c) has committed a serious non-political crime inside Kenya after the persons arrival and admission into Kenya as a refugee;
 - (d) has been guilty of 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.

Cessation of refugee status

5. 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;
 - (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 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) has committed a serious non-political crime outside Kenya prior to his admission to Kenya as a refugee;
 - (g) 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.

Establishment of

6. (1) There is established a Department of Refugee Affairs which shall be a public

Department

office.

(2) The Department of Refugee Affairs shall be responsible for all administrative matters concerning refugees in Kenya, and shall, in that capacity, co-ordinate activities and programmes relating to refugees.

**Commissioner of
Refugee Affairs**

7.

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

(2) Without prejudice to the generality of subsection (1) the functions of the Commissioner shall be to –

- (a) act as secretary to the Committee;
- (b) co-ordinate all measures necessary for promoting the welfare and protection of refugees and advise the Minister thereon;
- (c) formulate policy on refugee matters in accordance with international standards;
- (d) ensure, in liaison with the United Nations Agencies and any other institutions, the provision of adequate facilities and services for the protection, reception and care of refugees within Kenya;
- (e) promote as far as possible durable solutions for refugees granted asylum in Kenya;
- (f) convene meetings of the Committee;
- (g) receive and process applications for refugee status;
- (h) implement the decisions of the Committee;
- (i) register all refugees;
- (j) issue refugee identification cards and travel documents to refugees;
- (k) manage refugee camps and other related facilities;
- (l) advise the Minister on the care and welfare of refugees and the rehabilitation of refugee hosting areas; and
- (m) initiate, in collaboration with the development partners, projects that promotes peaceful and harmonious co-existence between the host communities and refugees
- (n) advise the Minister on the soliciting funds for refugee assistance programmes which have a positive impact on host communities;
- (o) ensure that refugee economic and productive activities do not have a negative impact on host communities, natural resources or the local environment;
- (p) ensure sustainable use of resources in designated refugee hosting areas;

- (q) arrest any person suspected of committing an offence under this Act;
- (r) perform any other duties that may be assigned to the Commissioner under this Act;

(3) In the performance of the functions specified in subsection (2), the Commissioner shall comply with any general directions or instructions that are issued or given to him by the Minister and shall submit regular reports on matters and activities relating to refugees to the Minister.

Establishment of committee

- 8.** (1) There is established a committee to be known as the Refugee Affairs Committee.
- (2) The Committee shall assist the Commissioner in matters concerning the recognition of persons as refugees for the purposes of this Act.
- (3) The Committee shall consist of –
- (a) the chairperson who shall be appointed by the Minister;
 - (b) one representative from the Ministry responsible for provincial administration and internal security;
 - (c) one representative from the Ministry responsible for refugee affairs;
 - (d) one representative from the Ministry responsible for foreign affairs;
 - (e) one representative from the Ministry responsible for local government;
 - (f) a representative of the Attorney-General;
 - (g) one representative from the Ministry responsible for health;
 - (h) one representative of the Ministry responsible for finance or planning;
 - (i) one representative from the Department of Immigration;
 - (j) one representative from the Department of Police;
 - (k) one representative from the National Security Intelligence Service; and
 - (l) one representative from the Department of National Registration Bureau.
- (4) At least one third of the members of the Committee shall be women.
- (5) The Committee shall include a representative from the host community and one member from the civil society for the purpose of assisting and advising the Committee.

Refugee Appeal

- 9.** (1) There is established a Board to be known as the Refugee Appeal Board to

Board

consider and decide appeals under this Act.

- (2) The Appeal Board shall consist of –
 - (a) a chairperson who is an advocate of not less than ten years standing appointed by the Minister;
 - (b) members appointed by the Minister from among persons having knowledge of, or experience in –
 - i. refugee law;
 - ii. matters relating to immigration;
 - iii. matters relating to foreign affairs;
 - iv. matters relating to national security;
 - v. matters relating to local administration;
 - vi. matters relating to refugee affairs;
- (3) All appointments to the Appeal Board shall be by name and by Gazette Notice issued by the Minister.
- (4) The Appeal Board shall be independent in the exercise of its functions under this Act.
- (5) A member of the Appeal Board shall hold office for a term of three years and shall be eligible for re-appointment for one further term of four years.
- (6) The provisions of the First Schedule shall have effect in relation to the Appeal Board.

Appeals.

10. (1) Any person aggrieved by a decision of the Commissioner under this Act may, within thirty days of receiving the decision, appeal to the Appeal Board against the decision.
- (2) In any appeal under this Act, the Appeal Board may confirm or set aside the decision of the Commissioner and shall cause the appellant concerned to be notified of its decision in the matter in writing:

Provided that, before reaching a decision on any such appeal, the Appeal Board may either –

- (a) refer the matter to the Commissioner for further investigation and advice;
or
- (b) make such further inquiry or investigation into the matter as it deems necessary.

(3) Any person who is aggrieved by the decision of the Appeal Board may within twenty-one days appeal to the High Court.

Recognition of refugees

11. (1) Any 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 the Commissioner immediately upon his entry or, in any case, within thirty days after his entry into Kenya.

(2) In case of a person who is lawfully in Kenya and is subsequently unable to return to his country of origin for any of the reasons specified in section 3 (1), he 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) Without prejudice to the provisions of this section, no person claiming to be a refugee within the meaning of section 3 (1) shall merely, by reason of illegal entry be declared a prohibited immigrant, 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 twenty thousand shillings or to imprisonment for a term not exceeding six months, or both.

(4) Any appointed officer to whom an application is made under subsection (1) shall, if he is not himself the Commissioner, refer the application to the Commissioner.

(5) The Commissioner may consider all applications referred to him under subsection (4) within ninety days, of the application being so referred and may, within ninety days, make such inquiry or investigation as he thinks necessary into any such application and shall call upon the applicant to make an oral presentation.

(6) After considering the application referred to in subsection (4), the Commissioner

- (a) shall either grant refugee status to the applicant or reject the application; and
- (b) shall, within fourteen days, notify the applicant concerned in writing of the decision and in the case of a rejection the applicant shall be informed of the reasons therefore.

Residence in Kenya pending recognition as

12. (1) Notwithstanding the provisions of any other law, any person who has applied under section 11 for recognition of his status as a refugee and every member of his

refugee, etc

family, may remain in Kenya –

- (a) until such person has been recognized as a refugee in terms of that section;
- (b) in the event of the application of such person being rejected, until such person has had an opportunity to exhaust his right of appeal:
- (c) where such person has appealed and the appeal has been unsuccessful, he shall be allowed reasonable time, not exceeding ninety days, to seek admission to a country of his choice.

(2) The Commissioner may, on application made to him by the person concerned, extend the ninety days period referred to in subsection (1) (c) if he is satisfied that there is a reasonable likelihood of the person being admitted to a country of his choice within such extended period.

**Stay of
proceeding
Cap.172
Cap 173**

13. Notwithstanding the provisions of the Immigration Act or the Aliens Restriction Act, no proceedings shall be instituted against any person or any member of his family in respect of his unlawful presence within Kenya –
- (a) if such a person has made a bona fide application under section 11 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 under that section: or
 - (b) if such person has become a refugee.

**Residence in
Kenya**

14. Every refugee and asylum seeker shall –
- (a) be issued with a refugee identity card or pass in the prescribed form; and
 - (b) be permitted to remain in Kenya in accordance with the provisions of this Act.

**Provisions
relating to the
families of
refugees.**

15. (1) A member of the family of a refugee who has entered Kenya shall, subject to subsection and (3) and any other provisions of this Act –
- (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 to a dependent member of the family of a refugee upon application to enter and reside in Kenya 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 11.

Rights and duties of refugees in Kenya

16. (1) Subject to this Act, every recognized refugee and every member of his family in Kenya –
- (a) shall be entitled to the rights and be subject to the obligations contained in the international conventions to which Kenya is party;
 - (b) shall be subject to all laws in force in Kenya.
- (2) The Minister may, by notice in the Gazette, in consultation with the host community, designate places and areas in Kenya to be -
- (a) transit centres for the purposes of temporarily accommodating persons who have applied for recognition as refugees or members of the refugee's family while their applications for refugee status are being processed; or
 - (b) refugee camps.
- (3) The designated areas provided for in subsection (2) shall be maintained and managed in an environmentally sound manner.
- (4) 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.

Refugee Camp Officer

17. There shall be a refugee camp officer, for every refugee camp whose functions shall be to –
- (a) manage the refugee camp;
 - (b) receive and register all asylum seekers and submit to the Committee all applications for the determination of their refugee status;

- (c) ensure refugees in the camps are issued with refugee identity cards or refugee identification passes;
- (d) manage the camps in an environmentally and hygienically sound manner;
- (e) co-ordinate the provision of overall security, protection and assistance for refugees in the camp;
- (f) issue movement passes to refugees wishing to travel outside the camps; and
- (g) protect and assist vulnerable groups, women and children;
- (h) ensure treatment of all asylum seekers and refugees in compliance with national law.

Non-return of refugees, their families or other persons.

18. No person shall be refused entry into Kenya, expelled, extradited from Kenya or returned to any other country or to subjected 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 the whole of that country.

Commissioner may withdraw refugee status

19. The Commissioner may withdraw the refugee status of any person where there are reasonable grounds for regarding that person as a danger to national security or to any community of that country.

Withdrawal of recognition of refugees

20. (1) If, at any time, the Commissioner considers that there are reasonable grounds for believing 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,
- the Commissioner shall revoke such recognition and shall notify the person concerned in writing of the decision together with the reasons therefor.
- (2) Where the Commissioner has under this section withdrawn 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 withdrawn:

Provided that nothing in this subsection shall prevent a member of the family of such refugee from applying for recognition under section 11.

Expulsion of refugees and members of their family

21. (1) Subject to 18(1) and subsection (2) of this section, the Minister may, after consultation with the Minister responsible for matters relating to immigration and internal security, order the expulsion from Kenya of any refugee or member of his family if the Minister considers the expulsion to be necessary on the grounds of national security or public order.

(2) Before ordering the expulsion from Kenya of any refugee or member of his family in terms of subsection (1) of this section, the Minister shall act in accordance with the due process of law.

Appointed officers

22. (1) The Minister may by notice in the Gazette appoint 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 finger-prints, foot-prints, photographs, 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 purpose 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 a refugee, member of his family or person claiming to be a refugee for the purpose of this Act or any member of the family of such a person, of any fact relevant to his identity or status.

(4) Whenever it is necessary to cause a refugee to be searched, the search shall be made by an appointed officer of the same sex who, in conducting the search, shall have strict regard to decency.

Provided that where an appointed officer of the same sex as the refugee to be searched cannot be found, the search may be conducted by another person of the same sex not withstanding that the other person is not an appointed officer.

Refugee women and children.

23. (1) The Commissioner shall ensure that specific measures are taken to ensure the safety of refugee women and children 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.

Confidentiality

24. (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 subsection (1) shall disclose or publish the information.
- (3) A person who contravenes any provision of this section commits an offence and shall on conviction be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or both such fine and imprisonment.

Offences

25. Any person who –
- (a) is unlawfully in Kenya in contravention of this Act;
 - (b) makes any false declaration or statement to an appointed officer;
 - (c) knowingly misleads any appointed officer seeking information material to the exercise of any of his powers under this Act;
 - (d) having left or been removed from Kenya in consequence of an order made under section 21 of this Act, is found in Kenya while that order is still in force;
 - (e) not being a refugee and not having a valid refugee identification document, fails to comply with an order of the Minister to leave Kenya; or
 - (f) resides without authority outside the designated areas specified under section 15(2),

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

Regulations

26. The Minister 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 Board;
- (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 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 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 and 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.

**SCHEDULE
REFUGEE APPEAL BOARD**

(S.9(6))

Term of office

1. (1) A member of the Appeal Board shall hold office for such term, not exceeding three years, as may be specified in the instrument of his appointment.
- (2) A member shall be eligible for re-appointment for one further term.

- Terms and the conditions** 2. The terms and conditions of service of a member, remuneration, traveling and other expenses to which he is entitled shall be determined by the Minister, with the consent of the Minister for Finance.
- Vacancy in office of a member** 3. (1) The office of a member shall become vacant if the
- a. has been absent from three consecutive meetings of the Board without the permission of the chairman;
 - b. is unable to discharge the functions of his office by reason of mental or physical infirmity; or
 - c. is an undischarged bankrupt; or
 - d. is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or a fine exceeding ten thousand shillings.
- Staff** 4. (1) The Minister may appoint such persons to be members of the staff of the Appeal Board as he considers necessary to assist the Appeal Board in the performance of its functions.
- (2) Members of staff of the Appeal Board shall be Public servants.
- Meetings** 5. (1) The Appeal Board shall hold such meetings as may be necessary for the performance of its functions under this Act
- (2) The chairperson, or in the absence of the chairperson, a member appointed by the members then present shall preside at a meeting of the Appeal Board.
- Quorum** 6. A majority of the members for the time being holding office as members of the board shall constitute a quorum at any meeting of the board.
- Decisions** 7. (1) A decision supported by a majority of the votes cast at a meeting of the Appeal Board at which a quorum is present shall be the decision of the Appeal Board.
- (2) In case of an equal division of votes cast under subparagraph (1), the Chairperson of the meeting shall have a casting vote.
- Rules** 8. Except as expressly provided in this Act or any regulations made there under, the Appeal Board shall regulate its proceedings as it deems fit.