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How: Kenneth Paul

CHAIR PARLIAMENT OF KENYA

LEMONA MUGI

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FOURTH SESSION (2020)

**DEPARTMENTAL COMMITTEE ON
ADMINISTRATION AND NATIONAL SECURITY**

REPORT ON:

THE REFUGEES BILL, 2019

**Directorate of Committee Services,
The National Assembly,
Parliament Buildings,
NAIROBI**

March, 2020

TABLE OF CONTENTS

LIST OF ANNEXURES	3
CHAIRPERSON'S FOREWORD	4
1.1. Mandate of the Committee	5
1.2. Committee Membership	6
1.3. Committee Secretariat	7
4. The Committee's secretariat comprises by the following officers –	7
2.1 Memorandum of Objects and Reasons of the Bill	8
3 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL	8
3.1 Legal provisions on public participation.....	8
3.2 Methodology used by the Committee in public participation.....	8
(a) Nairobi and Mombasa.....	9
(b) Uasin Gishu and Turkana	9
(c) Nakuru and Garissa.....	10
3.3 Sources of views.....	10
4. RECOMMENDATIONS	11

LIST OF ANNEXURES

VOLUME 1

- Annexure 1:** Minutes of Committee sittings on consideration of the Bill
- Annexure 2:** Signed list of Members who attended the s
- Annexure 3:** Copy of newspaper advertisements of 9th October, 2019 inviting the public to submit memoranda on the Bill and also notifying the public about hearings to be conducted in six (6) counties.
- Annexure 4:** Analysis of public submissions on the Bill
- Annexure 5:** Public memoranda from the public on the Bill
- Annexure 6:** List of members of the public who participated in public hearings

CHAIRPERSON'S FOREWORD

The Refugees Bill, 2019 (National Assembly Bills No. 62) underwent First Reading on 10th September, 2019. Thereafter, the Bill was committed to the Departmental Committee on Justice and Legal Affairs for review and report to the House pursuant to the provisions of Standing Order 216(5)(c).

Pursuant to the provisions of Article 118 of the Constitution of Kenya and Standing Order 127(3) of the National Assembly Standing Orders, the Committee through local daily newspapers of 9th October, 2019 published an advertisement inviting the public to submit memoranda on the Bill and indeed received memoranda. The Committee through the same advertisement notified the public about its conducting of public hearings on the Bill in selected counties.

The public hearings took place in Nairobi, Mombasa, Nakuru, Uasin Gishu, Garissa and Turkana during which members of the public either individually or representing institutions and organizations made oral presentations and or submitted written memoranda which the Committee took into account while reviewing the Bill.

The report contains public views on the Bill, public participation process, observations and recommendations. The report also contains analysis of public submissions which the Committee found relevant and useful in review of the Bill as well as written memoranda and lists of members of the public who attended the public hearings.

May I take this opportunity to thank and commend Committee Members for devotion and commitment to duty, the Speaker and Clerk of the National Assembly for providing leadership and direction and finally the Committee secretariat for exemplary performance in the provision of technical and logistical support. Indeed, their efforts were critical in the consideration of the Bill and production of this report.

On behalf of the Departmental Committee on Administration and National Security and pursuant to the provisions of Standing Order 199 (6), it's my pleasant privilege and duty to present to the House a report of the Committee on the Refugees Bill, 2019 (*National Assembly Bills No. 62*)

HON. PAUL KOINANGE, M.P.
CHAIRPERSON

1. PREFACE

1.1. Mandate of the Committee

1. The Departmental Committee on Administration and National Security derives its mandate from the provisions of Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows-

- (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- (b) study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;*
- (c) study and review all legislation referred to it;*
- (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- (e) investigate and enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)*
- (g) examine treaties, agreements and conventions;*
- (h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- (i) consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and*
- (j) examine any questions raised by Members on a matter within its mandate.*

2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-

- (i) National security;
- (ii) Police services;
- (iii) Home affairs;
- (iv) Public administration;

- (v) Public service;
- (vi) Prisons;
- (vii) Immigration;
- (viii) Management of natural disasters; and
- (ix) Community service orders.

1.2. Committee Membership

3. The Committee was constituted on Thursday, 14th December, 2017 and comprises the following Honourable Members-

Chairperson

Hon. Paul Karuga Koinange, MP
Kiambaa Constituency

Jubilee Party

Vice-Chairperson

Hon. John Waluke, MP
Sirisia Constituency

Jubilee Party

Hon. Wamunyinyi, Athanas Wafula, MP
Kanduyi Constituency

Ford Kenya Party

Hon. Kaluma, George Peter Joseph, MP
Homa Bay Town Constituency

ODM Party

Hon. (Dr.) Makali Mulu, MP
Kitui Central Constituency

Wiper Party

Hon. Theuri George, MP
MP for Embakasi West Constituency

Jubilee Party

Hon. Joshua Aduma Owuor, MP
Nyakach Constituency

ODM Party

Hon. Capt. (Rtd) Didmus Barasa Mutua, MP
Kimilili Constituency

Jubilee Party

Hon. Col. (Rtd) Geoffrey King'ang'i, MP
Mbeere South Constituency

Jubilee Party

Hon. (Dr.) Tecla Tum, MP
Nandi County

Jubilee Party

Hon. Josphat Kabinga, MP
Mwea Constituency

Jubilee Party

Hon. Nimrod Mbai, MP
Kitui East Constituency

Jubilee Party

Hon. Ngunjiri Wambugu, MP
Nyeri Town Constituency

Jubilee Party

Hon. Abdi Shurie Omar, MP
Balambala Constituency

Jubilee Party

Hon. Halima Mucheke, MP
Nominated Member

Jubilee Party

Hon. Oku Kaunya, MP
Teso North Constituency

ANC Party

Hon. Arbelle, Marselino Malimo, MP
Laisamis Constituency
Jubilee Party

Hon. Ahmed Kolosh, MP
Wajir West Constituency
Jubilee Party

Hon. Peter Masara, MP
Suna West Constituency
Independent Party

1.3. Committee Secretariat

4. The Committee's secretariat comprises by the following officers –

Mr. George Gazemba
Principal Clerk Assistant

Mr. Joshua Ondari
Clerk Assistant

Ms. Brigita Mati
Legal Counsel

Mr. Edson Odhiambo
Fiscal Analyst

Mr. James Muguna
Research Officer

Mr. Josephat Bundotich
Serjeant-at-Arms

Ms. Eva Kaara
Serjeant-at-Arms

Mr. Yaqub Ahmed
Media Officer

Mr. Rodgers Kilungya
Serjeant-at-Arms

5. Minutes of the Committee sittings on consideration of the Bill form annexure 1 of this report.

2.0 THE REFUGEES BILL, 2019 (NATIONAL ASSEMBLY BILLS No. 62)

2.1 Memorandum of Objects and Reasons of the Bill

5. The principal object of the Bill is 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, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.
7. The Bill does not limit fundamental rights and freedoms neither does it delegate legislative power. The Bill does not directly affect functions and powers of county governments as set out in the Fourth Schedule to the Constitution. The enactment of the Bill shall not occasion additional expenditure of public funds.

3 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL

3.1 Legal provisions on public participation

8. Public participation on the Bill was undertaken in compliance with the provisions of Article 118 (1) (b) of the Constitution of Kenya which provides that "*Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees*" and Standing Order 127(3) which states that "*The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House*"

3.2 Methodology used by the Committee in public participation

9. The Bill was read a First time on 10th September, 2019 and immediately committed to the Departmental Committee on Administration and National Security for review. The review process was to entail public participation through appropriate mechanisms including inviting submission of memoranda, holding public hearings and consulting relevant stakeholders pursuant to the provisions of Article 118 (1) (b) of the Constitution of Kenya and Standing Order 127(3) of the National Assembly Standing Orders.
10. Pursuant to the said provisions of the Constitution and Standing Orders, the Committee in the local daily newspapers of Wednesday, 9th October, 2019 invited the public to make representations on the Bill by way of written memoranda as per annexure 3 of the report. The public indeed submitted written memoranda which is part of Volume II of this report.

11. Pursuant to the same advertisement of 9th October, 2019 of the report, the Committee conducted public hearings in selected counties reflecting the face of Kenya. The public hearings were conducted in Nairobi, Mombasa, Eldoret, Nakuru, Turkana and Garissa during which members of the public either individually or representing institutions and organizations made presentations and or submitted memoranda which the Committee took into account while considering the Bill.
12. In order to conveniently cover as many counties as possible in public participation while taking into account the Committee's tight work schedule, timelines and logistical challenges, the Committee constituted three (3) sub-committees which conducted hearings in the various counties.

(a) Nairobi and Mombasa

13. The Members of the sub-committee who conducted the public hearings in these counties were-

- (i) Hon. John Waluke, M.P. - *Vice Chairperson*
- (ii) Hon. Oku Kaunya, M.P.
- (iii) Hon. Ngunjiri Wambugu, M.P.
- (iv) Hon. Abdi Shurie, M.P.
- (v) Hon. Geoffrey Kingangi Muturi, M.P.
- (vi) Hon. Peter Masara, M.P.
- (vii) Hon. Ahmed Kolosh, M.P.

14. The public hearing was conducted at County Hall, Parliament Buildings in Nairobi on 17th October, 2019 and Kenya School of Government's Tsavo Hall in Mombasa on 19th October, 2019.

(b) Uasin Gishu and Turkana

15. The sub-committee Members who conducted public hearings in these counties were-

- (i) Hon. Paul Koinange, M.P. - *Chairperson*
- (ii) Hon. John Waluke, M.P. - *Vice Chairperson*
- (iii) Hon. Peter Opondo Kaluma, M.P.
- (iv) Hon. Josephat Kabinga, M.P.

16. The public hearing was conducted at the Teachers Advisory Centre (TAC) in Eldoret on 8th November, 2019 and Silga Valley Restaurant in Kakuma on 9th November, 2019. The hearing was originally to be conducted on 17th October, 2019 in Uasin Gishu and on 18th October, 2019 in Turkana but was rescheduled as a result of unavoidable circumstances.

(c) Nakuru and Garissa

17. The sub-committee Members who conducted public hearings in these counties were-

- (i) Hon. Paul Koinange, M.P. - *Chairperson*
- (ii) Hon. John Waluke, M.P. - *Vice Chairperson*
- (iii) Hon. Abdi Shurie, M.P.
- (iv) Hon. Peter Opondo Kaluma, M.P.
- (v) Hon. Peter Masara, M.P.
- (vi) Hon. Aduma Owour, M.P.
- (vii) Hon. Oku Kaunya, M.P.

18. The public hearing was conducted at the Old Town Hall in Nakuru on 23rd October, 2019 and at Daadab IOM (Daadab) Hall in Garissa on 24th October, 2020. The hearing was originally to be conducted in Nakuru on 17th October, 2019 and Garissa on 18th October, 2019 but had to be rescheduled due to unavoidable circumstances.

3.3 Sources of views

19. In response to the Committee's invitation, several members of the public either individually or representing institutions and organizations submitted their views to the Committee by way of written and oral submissions.

20. The institutions and organizations which made representations to the Committee were-

- (i) The Refugees Consortium of Kenya;
- (ii) Danish Refugee Council – Kenya;
- (iii) Agency of Peace;
- (iv) Kituo Cha Sheria;
- (v) United Nations High Commissioner for Refugees;
- (vi) Amnesty Kenya;
- (vii) International Rescue Committee;
- (viii) Central Organization of Trade Unions (COTU)

21. A comprehensive list of members of the public who attended the hearings in the various counties is in Volume II of the report. Written submissions received from the public noting general comments in support of or against the amendments are in Volume II of the report. Analysis of public submissions on the Bill is contained in Volume 1 of the report as annexure 4.

4. RECOMMENDATIONS

22. Upon considering the Bill clause by clause, the Committee recommends the following amendments.

(I) **CLAUSE 2**

THAT clause 2 of the Bill be amended—

- (a) in the definition of “asylum seeker” by deleting the word “case” appearing immediately after the words “but whose” and substituting therefor the word “application”;

Rationale: *For the purposes of consistency the word ‘case’ be replaced with the word ‘application’. Part III of the Act uses the word application rather than case.*

- (b) in the definition of “authorised officer” by inserting the words “ or any other officer assigned such responsibility” immediately after the words “ or immigration officer”;

Rationale: *The Department of Refugee Services officers cannot man all the border and transit routes. Therefore other officers such as chiefs, police officers e.t.c. can be authorized to receive asylum seekers. This is cost effective in the long run.*

- (c) by deleting the definition of “Department” and substituting therefor the following new definition—

“Department” means the Department of Refugee Services established under section 7;

Rationale: *Reference to section 7 cannot be any other law other than the present one. Recommend a correction of the words ‘refugees’ as it appears in this section to refugee.*

- (d) in the definition of “durable solutions” by deleting the words “resettlement to a third party country or local integration” and substituting therefor the words “ local integration in the country of asylum and resettlement to a third country”;

Rationale: *The addition of the word ‘party’ is unnecessary therefore recommend that it be removed. The additional ‘in the country of asylum’ qualifies local integration.*

- (e) in the definition of “Eligibility Panel” by deleting the words “ under section 14” and substitute therefor the words “ under section 13”;

Rationale: *The section makes reference to the wrong section that establishes the panel. It should refer to section 13 and not 14.*

- (f) in the definition of “local integration” by deleting the word “ border” appearing immediately after the words “ refugees attain” and substitute therefor the word “broader”;

Rationale: *The word broader is misspelt. To correct the error.*

- (g) by deleting the definition of “essential services” and substituting therefor the following new definition—

“essential services” means the services that meet the immediate needs of refugees and asylum seekers and include food shelter, education, health, water and sanitation services;

Rationale: *The definition should sufficiently cover all essential services necessary with the notable inclusion of food and shelter.*

- (h) By deleting the definition of “OAU Convention” and substituting therefor the following new definition—

“OAU Convention” means the Organization of Africa Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, done at Addis Ababa on 10th September, 1969 and ratified by Kenya on 28th December, 1987;

Rationale: *The full title of the OAU Convention in the Bill is inaccurate. To reflect the full title of OAU convention*

- (i) By deleting the definition of “Protocol” and substituting therefor the following new definition—

“protocol” means the Protocol relating to the Status of Refugees, done at New York on 31st January 1967 and acceded to by Kenya on 13th November 1981;

Rationale: *To reflect the full title of the Protocol.*

- (j) By deleting the definition of “prima facie refugee status” and substituting therefor the following new definition—

prima facie refugee” means a declaration of refugee status by the Cabinet Secretary as provided for under section 3(2) of this Act;

Rationale: *The definition erroneously states that the committee is the authority that declares prima facie status. This can only be done by the Cabinet Secretary. Also prima facie is a process for recognition and not a status.*

- (k) in the definition of “refugee” by deleting the words “and includes an asylum seeker”;

Rationale: *Accession date is incorrect hence the amendment suggestion. There is an additional capitalization mistake.*

- (l) By deleting the definition of “United Nations Convention” and substituting therefor the following new definition—

“United Nations Convention” means the United Nations Convention relating to the Status of Refugees, done at Geneva on 28th July, 1951 and acceded to by Kenya on 16th May, 1966.

Rationale: *Accession date is incorrect hence the amendment suggestion. There is an additional capitalization mistake.*

- (m) in the definition of “transit centre” by inserting the words “for protection reasons” immediately after the words “under this Act”;

Rationale: *The inclusion of prisons, police stations and remand homes should be qualified only for protection purposes. Refugees should not share with persons who are serving or waiting to resolve their legal situation.*

- (n) by inserting the following new definitions in their proper alphabetical sequence—

“separated child” means a child who has been separated from both parents, or from their previous legal or customary care giver, but is under the care of adults.

Rationale: *The inclusion of the definition of separated children will acknowledge and by extension provide increased protection for this group of individuals*

(II) CLAUSE 3

THAT clause 3 of the Bill be amended—

(a) in subclause (1) by—

- (i) inserting the word “sex” immediately after the words “ race, religion” in paragraph (a);
- (ii) inserting the word “sex” immediately after the words “ race, religion” in paragraph (b); and

Rationale: *The bill omits a well-founded fear of being persecuted on basis of sex as one of the reasons one would be considered for consideration for refugees’ status.*

- (iii) deleting the word “any” appearing immediately after the words “public order in” and substitute therefor the word “either” in paragraph (c);

Rationale: *That the definition reflects and remains consistent with the OAU Convention’s definition.*

(b) by deleting subclause (2) and substitute therefor the following new clause

—

“(2) The Cabinet Secretary, on recommendation from the Refugee Advisory Committee may, through the Gazette, declare any class of persons to be refugees on a prima facie basis if it is evident that these persons qualify to be refugees under section 3 (1) (a), (b) or (c) and may at any time, upon recommendation from the Refugee Advisory Committee, amend or revoke such declaration.

Provided that no such amendment or revocation shall affect the right of any person 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.”

Rationale: *This subclause makes reference to section 3(1)(d) which in turn makes reference to section 3(2). In addition, proviso (ii) does not add any value and only creates confusion.*

(III) CLAUSE 4

THAT clause 4 of the Bill be amended—

(a) in sub clause (1)—

(i) by deleting the words “ the International Crimes Act” appearing immediately after the words “defined in the” and substituting therefor the words “ any international instrument to which Kenya is a party”, in paragraph (a);

(ii) by deleting paragraph (d);

(b) in subclause (2), by inserting the words “ has sought asylum in another country or” before the words “has been granted” in paragraph (b)

Rationale: *Seeking asylum in another country are not grounds for exclusion but rather disqualification. Therefore we recommend that this provision be moved from section 4(1) and be inserted in section 4(2)(b).*

(IV) CLAUSE 5

THAT clause 5 of the Bill be amended in the proviso by deleting the words-

“falling under section 3 (1)(a) and (b) of this Act” appearing immediately after the words “a refugee” and substituting therefor the words “as defined by this Act”

Rationale: *To correct errors in the Bill*

(V) CLAUSE 7

THAT clause 7 of the Bill be amended in subclause (2) by inserting the word “asylum-seeker” immediately after the words” and assistance of” in paragraph (c)

Rationale: *To provide for the inclusion of asylum seekers.*

(VI) CLAUSE 8

THAT clause 8 of the Bill be amended in subclause (2) by —

- (a) inserting the words “and asylum seekers” immediately after the words “all refugees” in paragraph (b);
- (b) inserting the words “coordinate activities to” before the words “ensure the civilian” in paragraph (n);
- (c) deleting the words “co-ordination of” and substituting therefor the words “co-ordinate ,where relevant in collaboration with county authorities,” in paragraph (u).

Rationale: *To provide for collaboration with counties.*

(VII) CLAUSE 9

THAT clause 9 of the Bill be amended by deleting subclause (1) and substituting therefor the following ne subclause—

9. (1) The Committee shall consist of—

- (a) the Commissioner and 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 in writing from the Ministry responsible for Refugee Affairs
- (c) the Principal Secretary or their representative in writing from the Ministry responsible for foreign
- (d) affairs;
- (e) the Principal Secretary or their representative in writing from the Ministry responsible for devolution affairs;
- (f) the Principal Secretary or their representative in writing from the Ministry responsible for health;
- (g) the Principal Secretary or their representative in writing from the Ministry responsible for
- (h) finance;
- (i) the Principal Secretary or their representative in writing from the Ministry responsible for education;
- (j) the Attorney-General or their representative in writing;
- (k) the Director General of National Intelligence Service or their representative in writing;
- (l) the Director of the Department of Immigration or their representative in writing;
- (m) the Inspector-General or their representative in writing; and
- (n) one person representing the Council of Governors.

Rationale: *To provide that any representative shall be done in writing.*

(VIII) CLAUSE 10

THAT clause 10 of the Bill be amended—

- (a) By inserting the words “asylum seekers” immediately after the words “refugees and” in paragraph (a);

- (b) by inserting the words “asylum seekers” immediately after the words “refugees and” in paragraph (b);
- (c) by deleting paragraph (c) and substituting therefor the following new paragraph—
- “(c) to advise the Cabinet Secretary in respect of declaration, amendment or revocation of prima facie determinations;”

Rationale: *To include asylum seekers and also to align it to the powers the Cabinet Secretary has been given.*

(IX) CLAUSE 11

THAT clause 11 of the Bill be amended—

- (a) by deleting subclause (1) and substituting therefor the new subclause —
- “(1) There shall be a Refugee Status Appeals Committee.”
- (b) by deleting subclause (3) and substituting therefor the new subclause —
- “(3) The quorum for a meeting of the Appeal Committee shall be three members and shall include at least one member under section 11(2) (e).”
- (c) in subclause (4) by inserting the word “revocation” immediately after the word “cancellation”, in paragraph (b).
- (d) by inserting the following new subclauses immediately after subclause (4)—
- “(4A) A member of the Appeal Committee shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.
- (4B) The quorum for a meeting of the Appeal Committee shall be three members and shall include at least one member under section 11(2) (e).
- (4C) Each member of the Committee shall have one vote but in case of a tie in votes, the Chairperson shall have a casting vote.
- (4D) The Public Service Commission shall provide the Appeal Committee with a Secretariat for the purposes of discharging its mandate.”
- (e) by deleting subclause (7).

Rationale: *-To provide a mandatory provision for inclusion of experts to form quorum;*
-To provide a secretariat to the Committee.
-To provide a mandatory provision for inclusion of experts to - form quorum;

(X) CLAUSE 12

THAT clause 12 of the Bill be amended—

(a) by inserting a new subclause immediately after subclause (4)—

“(4A)The department shall liaise with the state legal aid system to provide representation for a refugee where such refugee cannot afford a legal practitioner.”

(b) in subclause (5), by deleting the word “the application” appearing immediately after the words “not to grant” and substitute therefor the words “refugee status”.

Rationale- *To provide for legal aid for refugees and also correct errors.*

(XI) CLAUSE 14

THAT clause 14 of the Bill be amended—

by deleting subclause (2) and substituting therefor the following new subclause—

“(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.”

In subclause (3) by deleting the words “sixty days” appearing immediately after the words “shall within” and substitute therefor the words “ninety days”.

Rationale: *To make the period consistent*

(XII) CLAUSE 18

THAT clause 18 of the Bill be amended in subclause (5) by deleting the words “cancelled or revoked” appearing immediately after the words “has been” and substitute therefor the words “revoked and does not appeal or has exhausted the available appeal mechanisms”.

Rationale: *To provide that the CS shall act only when all appeal mechanisms have been exhausted.*

(XIII) CLAUSE 19

THAT Clause 19 of the Bill be amended by deleting the words “section 29” appearing immediately after the words “Subject to” and substituting therefor the words “section 30”.

Rationale: *To correct numbering errors.*

(XIV) CLAUSE 21

THAT Clause 21 of the Bill be amended by inserting the words “trauma or are of old age” immediately after the words “suffer from disability”.

Rationale: *To include other vulnerable persons.*

(XV) CLAUSE 22

THAT Clause 22 of the Bill be in subclause (1) by deleting the words “sixty days” appearing immediately after the words “not exceeding” and substituting therefor the words “ninety days” in paragraph (c).

Rationale: *There is an inconsistency at the time allowed for an asylum seeker whose claim has been rejected to seek admission to another country of his/her choice. A 90 day period is recommended as provided in the current Refugees Act, 2006.*

(XVI) CLAUSE 24

THAT Clause 24 of the Bill be amended —

- (a) by renumbering clause 24 as subclause (1).
- (b) by inserting the following new subclauses immediately after subclause (1)—
 - (2) In the 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 of this Act, 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) 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.

Rationale: *The affected subsection was misplaced in section 29 (3).*

(XVII) CLAUSE 25

THAT Clause 25 of the Bill be amended by inserting a new subclause immediately after subclause (3)—

(3A) Asylum seekers at transit centres shall be processed and released within reasonable time.

Rationale: *Asylum seekers should not be held ad infinitum in transit centres.*

(XVIII) CLAUSE 26

THAT Clause 26 of the Bill be amended —

(a) by renumbering clause 26 as subclause (1).

(b) by inserting the following new subclause immediately after subclause (1)—

(2) Reception officer shall serve asylum seekers taking into account the principle of gender.

Rationale: *To provide for male and female reception officers should be available so the refugee has the option to choose who to talk to.*

(XIX) CLAUSE 28

THAT Clause 28 of the Bill be amended by inserting the following new clauses immediately after clause 28—

Right to free movement

28A A recognised refugee is entitled to free movement in Kenya subject to reasonable restrictions specified in the laws of Kenya, or directions issued by the Commissioner, which apply to foreigners generally in the same circumstances, especially on grounds of national security, public order,

public health, public morals or the protection of the rights and freedoms of others.

Right to work

28B. subject to the laws applicable, a refugee recognized under this Act shall, subject to this Act, have the right to have access to employment opportunities and engage in gainful employment.

Rationale: *To provide for the right to work and freedom of movement of a refugee but subject to the laws of the land.*

(XX) CLAUSE 29

THAT Clause 29 of the Bill be amended—

- (a) in subclause (2), by deleting the words “or public order” appearing immediately after the words “national security” ;
- (b) by deleting subclause (3).

Rationale: *Clause 29(2) appears to negate the non-refoulement principle as it empowers government to refouler back to their country individuals considered a threat to public order. The inclusion of public order as a ground needs to be reconsidered.*

(XXI) CLAUSE 31

THAT Clause 31 of the bill be amended by inserting a new subclause immediately after subclause (1)—

- (1a) Despite subsection (1), the Commissioner shall consider any special needs or conditions that may hinder the refugees’ protection and safety before making an order under subsection (1).

Rationale: *To include the condition that safety and protection of the refugee is ensured and prioritised before they are moved.*

(XXII) CLAUSE 33

THAT Clause 33 of the Bill be amended—

- (a) In subclause (1) by inserting the word “entity” immediately after the words “No person”;
- (b) By inserting a new subclause immediately after subclause 2—

(2a) The Commissioner may, on an application, review a decision made under subsection (1) where any new circumstance is brought to his or her attention.

Rationale: To provide for a review process

(XXIII) CLAUSE 34

THAT Clause 34 of the Bill be amended by deleting subclause (1) and substituting therefor the following new clause—

(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.

Rationale: *To show that the Commissioner is to perform the tasks as is practicable taking into consideration circumstances on the ground.*

(XXIV) CLAUSE 35

THAT Clause 35 of the Bill be amended by deleting the word “concerns” appearing immediately after the words “that refugee” and substitute therefor the words “matters and concerns”

Rationale: *For clarity purposes.*

(XXV) CLAUSE 36

THAT Clause 36 of the Bill be amended by inserting the words “older persons, victims of trauma” immediately after the words “women, children”.

Rationale: *To provide for other vulnerable persons.*

(XXVI) CLAUSE 38

THAT clause 38 of the Bill be amended by deleting the words “ministry of foreign affairs” and substituting therefor the words “relevant government ministries”

Rationale: *To provide for other agencies other than the ministry of foreign affairs.*

(XXVII) CLAUSE 39

THAT Clause 39 of the Bill be amended by inserting a new clause immediately after clause 39—

Confidentiality

39A. (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 (1) shall disclose or publish the information.

(3) A person who contravenes any provision of this 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.

Rationale: *To retain the confidentiality provisions under section 24 of the Refugees Act, 2006. The section provides for confidentiality in handling asylum seeker and refugee information. Noting that article 31 Constitution of Kenya 2010 provides for the right to privacy and data protection, it is not clear why the provision was dropped in the Bill.*

(XXVIII) CLAUSE 40

THAT Clause 40 of the Bill be amended in subclause (1) by inserting the words “without good reason” immediately after the words “fails to report”.

Rationale: *Not to make it a strict liability offence.*

(XXIX) CLAUSE 42

THAT Clause 42 of the Bill be amended by deleting subclause (2) and (3) and substituting therefor the following new clauses—

- (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.
- (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.

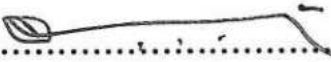
Rationale: *To provide clarity.*

(XXX) CLAUSE 43

THAT Clause 43 of the Bill be amended—

- (a) in subclause (2) by inserting the words “older persons, victims of trauma” immediately after the words “un accompanied minors, in paragraph (k);
- (b) by inserting the following paragraphs immediately after paragraph (t)—
 - (u) period of validity of documentation;
 - (v) circumstances on limitation of rights granted to refugees;
 - (w) documentation to be provided to a recognised refugee.

Rationale: *To provide for clear circumstances when rights are limited and documentations for refugees.*

SIGNED..........this...12th... day of...March 2020


HON. PAUL KOINANGE, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON
ADMINISTRATION AND NATIONAL SECURITY

ANNEXURE 1

(Minutes of Committee sittings on the
consideration of the Bill and adoption of
report)

MINUTES OF THE 17TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON THURSDAY, 12TH MARCH, 2020 AT 9.30 A.M. IN THE BOARDROOM ON 11TH FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS

PRESENT-

1. Hon. Paul Koinange, M.P. - *Chairperson*
2. Hon. John Waluke, M.P. - *Vice Chairperson*
3. Hon. Wafula Wamunyinyi, MP
4. Hon. Peter George Kaluma, MP
5. Hon. Dr. Makali Mulu, MP
6. Hon. Aduma Owuor, MP
7. Hon. Dr. Tecla Chebet Tum, MP
8. Hon. Josphat Kabinga Wachira, MP
9. Hon. Didmus Wekesa Barasa Mutua, MP
10. Hon. Oku Kaunya, MP
11. Hon. Peter Masara, MP
12. Hon. Ahmed Kolosh Mohamed, MP
13. Hon. Halima Mucheke, MP

ABSENT WITH APOLOGIES

1. Hon. Ngunjiri Wambugu, MP
2. Hon. Geoffrey Kingagi Muturi, MP
3. Hon. Nimrod Mbithuka Mbai, MP
4. Hon. Abdi Omar Shurie, MP
5. Hon. George Theuri, MP
6. Hon. Marselino Malimo Arbelle, MP

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

1. Mr. George Gazemba - Principal Clerk Assistant II
2. Mr. Joshua Ondari - Clerk Assistant
3. Mr. Leonard Walala - Legal Counsel
4. Mr. James Muguna - Researcher Officer

- 5. Mr. Rodgers Kilungya
- 6. Mr. James Oloo

- Audio Officer
- Support Staff

MIN No. 52/2020:-

**PRELIMINARIES AND COMMUNICATION
FROM THE CHAIRPERSON**

The Chairperson called the meeting to order at ten minutes past ten. Prayer was said by Hon. Josephat Kabinga, M.P.

MIN No. 53/2020:-

**CONSIDERATION AND ADOPTION OF
REPORT ON THE REFUGEES BILL, 2019**

The Committee considered and unanimously adopted its report on the Refugees Bill, 2019. The adoption was proposed by Hon. Peter Kaluma and seconded by Hon (Dr) Tecla Tum. The report was adopted with the following amendments-

(I) CLAUSE 2

THAT clause 2 of the Bill be amended—

- (a) in the definition of “asylum seeker” by deleting the word “case” appearing immediately after the words “but whose” and substituting therefor the word “application”;

Rationale: *For the purposes of consistency the word ‘case’ be replaced with the word ‘application’. Part III of the Act uses the word application rather than case.*

- (b) in the definition of “authorised officer” by inserting the words “ or any other officer assigned such responsibility” immediately after the words “ or immigration officer”;

Rationale: *The Department of Refugee Services officers cannot man all the border and transit routes. Therefore other officers such as chiefs, police officers e.t.c. can be authorized to receive asylum seekers. This is cost effective in the long run.*

- (c) by deleting the definition of “Department” and substituting therefor the following new definition—

“Department” means the Department of Refugee Services established under section 7;

Rationale: *Reference to section 7 cannot be any other law other than the present one. Recommend a correction of the words ‘refugees’ as it appears in this section to refugee.*

- (d) in the definition of “durable solutions” by deleting the words “resettlement to a third party country or local integration” and substituting therefor the words “local integration in the country of asylum and resettlement to a third country”;

Rationale: *The addition of the word ‘party’ is unnecessary therefore recommend that it be removed. The additional ‘in the country of asylum’ qualifies local integration.*

- (e) in the definition of “Eligibility Panel” by deleting the words “under section 14” and substitute therefor the words “under section 13”;

Rationale: *The section makes reference to the wrong section that establishes the panel. It should refer to section 13 and not 14.*

- (f) in the definition of “local integration” by deleting the word “border” appearing immediately after the words “refugees attain” and substitute therefor the word “broader”;

Rationale: *The word broader is misspelt. To correct the error.*

- (g) by deleting the definition of “essential services” and substituting therefor the following new definition—

“essential services” means the services that meet the immediate needs of refugees and asylum seekers and include food shelter, education, health, water and sanitation services;

Rationale: *The definition should sufficiently cover all essential services necessary with the notable inclusion of food and shelter.*

- (h) By deleting the definition of “OAU Convention” and substituting therefor the following new definition—

refugees under section 3 (1) (a), (b) or (c) and may at any time, upon recommendation from the Refugee Advisory Committee, amend or revoke such declaration.

Provided that no such amendment or revocation shall affect the right of any person 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.”

Rationale: *This subclause makes reference to section 3(1)(d) which in turn makes reference to section 3(2). In addition, proviso (ii) does not add any value and only creates confusion.*

(III) CLAUSE 4

THAT clause 4 of the Bill be amended—

(a) in sub clause (1)—

(i) by deleting the words “ the International Crimes Act” appearing immediately after the words “defined in the” and substituting therefor the words “ any international instrument to which Kenya is a party”, in paragraph (a);

(ii) by deleting paragraph (d);

(b) in subclause (2), by inserting the words “ has sought asylum in another country or” before the words “has been granted” in paragraph (b)

Rationale: *Seeking asylum in another country are not grounds for exclusion but rather disqualification. Therefore we recommend that this provision be moved from section 4(1) and be inserted in section 4(2)(b).*

(IV) CLAUSE 5

THAT clause 5 of the Bill be amended in the proviso by deleting the words-

“falling under section 3 (1)(a) and (b) of this Act” appearing immediately after the words “a refugee” and substituting therefor the words “as defined by this Act”

Rationale: *To correct errors in the Bill*

(V) CLAUSE 7

THAT clause 7 of the Bill be amended in subclause (2) by inserting the word “asylum-seeker” immediately after the words “and assistance of” in paragraph (c)

Rationale: *To provide for the inclusion of asylum seekers.*

(VI) CLAUSE 8

THAT clause 8 of the Bill be amended in subclause (2) by —

- (a) inserting the words “and asylum seekers” immediately after the words “all refugees” in paragraph (b);
- (b) inserting the words “coordinate activities to” before the words “ensure the civilian” in paragraph (n);
- (c) deleting the words “co-ordination of” and substituting therefor the words “co-ordinate ,where relevant in collaboration with county authorities,” in paragraph (u).

Rationale: *To provide for collaboration with counties.*

(VII) CLAUSE 9

THAT clause 9 of the Bill be amended by deleting subclause (1) and substituting therefor the following ne subclause—

9. (1) The Committee shall consist of—

- (a) the Commissioner and 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 in writing from the Ministry responsible for Refugee Affairs
- (c) the Principal Secretary or their representative in writing from the Ministry responsible for foreign
- (d) affairs;
- (e) the Principal Secretary or their representative in writing from the Ministry responsible for devolution affairs;
- (f) the Principal Secretary or their representative in writing from the Ministry responsible for health;
- (g) the Principal Secretary or their representative in writing from the Ministry responsible for

- (h) finance;
- (i) the Principal Secretary or their representative in writing from the Ministry responsible for education;
- (j) the Attorney-General or their representative in writing;
- (k) the Director General of National Intelligence Service or their representative in writing;
- (l) the Director of the Department of Immigration or their representative in writing;
- (m) the Inspector-General or their representative in writing; and
- (n) one person representing the Council of Governors.

Rationale: *To provide that any representative shall be done in writing.*

(VIII) CLAUSE 10

THAT clause 10 of the Bill be amended—

- (a) By inserting the words “asylum seekers” immediately after the words “ refugees and” in paragraph (a);
- (b) by inserting the words “asylum seekers” immediately after the words “ refugees and” in paragraph (b);
- (c) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) to advise the Cabinet Secretary in respect of declaration, amendment or revocation of prima facie determinations;”

Rationale: *To include asylum seekers and also to align it to the powers the Cabinet Secretary has been given.*

(IX) CLAUSE 11

THAT clause 11 of the Bill be amended—

- (a) by deleting subclause (1) and substituting therefor the new subclause —

“(1) There shall be a Refugee Status Appeals Committee.”

- (b) by deleting subclause (3) and substituting therefor the new subclause —

“(3) The quorum for a meeting of the Appeal Committee shall be three members and shall include at least one member under section 11(2) (e).”

(c) in subclause (4) by inserting the word “revocation” immediately after the word “cancellation”, in paragraph (b).

(d) by inserting the following new subclauses immediately after subclause (4)—

“(4A)A member of the Appeal Committee shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(4B) The quorum for a meeting of the Appeal Committee shall be three members and shall include at least one member under section 11(2) (e).

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

(4D) The Public Service Commission shall provide the Appeal Committee with a Secretariat for the purposes of discharging its mandate.”

(e) by deleting subclause (7).

Rationale: *-To provide a mandatory provision for inclusion of experts to form quorum;*

-To provide a secretariat to the Committee.

-To provide a mandatory provision for inclusion of experts to -form quorum;

(X) CLAUSE 12

THAT clause 12 of the Bill be amended—

(a) by inserting a new subclause immediately after subclause (4)—

“(4A)The department shall liaise with the state legal aid system to provide representation for a refugee where such refugee cannot afford a legal practitioner.”

(b)in subclause (5), by deleting the word “the application” appearing immediately after the words “not to grant” and substitute therefor the words “refugee status”.

Rationale- *To provide for legal aid for refugees and also correct errors.*

(XI) CLAUSE 14

THAT clause 14 of the Bill be amended—

by deleting subclause (2) and substituting therefor the following new subclause—

“(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.”

In subclause (3) by deleting the words “sixty days” appearing immediately after the words “shall within” and substitute therefor the words “ninety days”.

Rationale: *To make the period consistent*

(XII) CLAUSE 18

THAT clause 18 of the Bill be amended in subclause (5) by deleting the words “cancelled or revoked” appearing immediately after the words “has been” and substitute therefor the words “revoked and does not appeal or has exhausted the available appeal mechanisms”.

Rationale: *To provide that the CS shall act only when all appeal mechanisms have been exhausted.*

(XIII) CLAUSE 19

THAT Clause 19 of the Bill be amended by deleting the words “section 29” appearing immediately after the words “Subject to” and substituting therefor the words “section 30”.

Rationale: *To correct numbering errors.*

(XIV) CLAUSE 21

THAT Clause 21 of the Bill be amended by inserting the words “trauma or are of old age” immediately after the words “suffer from disability”.

Rationale: *To include other vulnerable persons.*

(XV) CLAUSE 22

THAT Clause 22 of the Bill be in subclause (1) by deleting the words “sixty days” appearing immediately after the words “not exceeding” and substituting therefor the words “ninety days” in paragraph (c).

Rationale: *There is an inconsistency at the time allowed for an asylum seeker whose claim has been rejected to seek admission to another country of his/her choice. A 90 day period is recommended as provided in the current Refugees Act, 2006.*

(XVI) CLAUSE 24

THAT Clause 24 of the Bill be amended —

(a) by renumbering clause 24 as subclause (1).

(b) by inserting the following new subclauses immediately after subclause (1)—

(2) In the 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 of this Act, 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) 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.

Rationale: *The affected subsection was misplaced in section 29 (3).*

(XVII) CLAUSE 25

THAT Clause 25 of the Bill be amended by inserting a new subclause immediately after subclause (3)—

(3A) Asylum seekers at transit centres shall be processed and released within reasonable time.

Rationale: *Asylum seekers should not be held ad infinitum in transit centres.*

(XVIII) CLAUSE 26

THAT Clause 26 of the Bill be amended —

(a) by renumbering clause 26 as subclause (1).

(b) by inserting the following new subclause immediately after subclause (1)—

(2) Reception officer shall serve asylum seekers taking into account the principle of gender.

Rationale: *To provide for male and female reception officers should be available so the refugee has the option to choose who to talk to.*

(XIX) CLAUSE 28

THAT Clause 28 of the Bill be amended by inserting the following new clauses immediately after clause 28—

Right to free movement

28A A recognised refugee is entitled to free movement in Kenya subject to reasonable restrictions specified in the laws of Kenya, or directions issued by the Commissioner, which apply to foreigners generally in the same circumstances, especially on grounds of national security, public order, public health, public morals or the protection of the rights and freedoms of others.

Right to work

28B. subject to the laws applicable, a refugee recognized under this Act shall, subject to this Act, have the right to have access to employment opportunities and engage in gainful employment.

Rationale: *To provide for the right to work and freedom of movement of a refugee but subject to the laws of the land.*

(XX) CLAUSE 29

THAT Clause 29 of the Bill be amended—

- (a) in subclause (2), by deleting the words “or public order” appearing immediately after the words “national security” ;
- (b) by deleting subclause (3).

Rationale: *Clause 29(2) appears to negate the non-refoulement principle as it empowers government to refouler back to their country individuals considered a threat to public order. The inclusion of public order as a ground needs to be reconsidered.*

(XXI) CLAUSE 31

THAT Clause 31 of the bill be amended by inserting a new subclause immediately after subclause (1)—

- (1a) Despite subsection (1), the Commissioner shall consider any special needs or conditions that may hinder the refugees’ protection and safety before making an order under subsection (1).

Rationale: *To include the condition that safety and protection of the refugee is ensured and prioritised before they are moved.*

(XXII) CLAUSE 33

THAT Clause 33 of the Bill be amended—

- (a) In subclause (1) by inserting the word “entity” immediately after the words “No person”;
- (b) By inserting a new subclause immediately after subclause 2—

- (2a) The Commissioner may, on an application, review a decision made under subsection (1) where any new circumstance is brought to his or her attention.

Rationale: *To provide for a review process*

(XXIII) CLAUSE 34

THAT Clause 34 of the Bill be amended by deleting subclause (1) and substituting therefor the following new clause—

- (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.

Rationale: *To show that the Commissioner is to perform the tasks as is practicable taking into consideration circumstances on the ground.*

(XXIV) CLAUSE 35

THAT Clause 35 of the Bill be amended by deleting the word “concerns” appearing immediately after the words “that refugee” and substitute therefor the words “matters and concerns”

Rationale: *For clarity purposes.*

(XXV) CLAUSE 36

THAT Clause 36 of the Bill be amended by inserting the words “older persons, victims of trauma” immediately after the words “women, children”.

Rationale: *To provide for other vulnerable persons.*

(XXVI) CLAUSE 38

THAT clause 38 of the Bill be amended by deleting the words “ministry of foreign affairs” and substituting therefor the words “relevant government ministries”

Rationale: *To provide for other agencies other than the ministry of foreign affairs.*

(XXVII) CLAUSE 39

THAT Clause 39 of the Bill be amended by inserting a new clause immediately after clause 39—

Confidentiality

39A. (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 (1) shall disclose or publish the information.

(3) A person who contravenes any provision of this 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.

Rationale: *To retain the confidentiality provisions under section 24 of the Refugees Act, 2006. The section provides for confidentiality in handling asylum seeker and refugee information. Noting that article 31 Constitution of Kenya 2010 provides for the right to privacy and data protection, it is not clear why the provision was dropped in the Bill.*

(XXVIII) CLAUSE 40

THAT Clause 40 of the Bill be amended in subclause (1) by inserting the words “without good reason” immediately after the words “fails to report”.

Rationale: *Not to make it a strict liability offence.*

(XXIX) CLAUSE 42

THAT Clause 42 of the Bill be amended by deleting subclause (2) and (3) and substituting therefor the following new clauses—

(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.

(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.

Rationale: *To provide clarity.*

(XXX) CLAUSE 43

THAT Clause 43 of the Bill be amended—

- (a) in subclause (2) by inserting the words “ older persons, victims of trauma” immediately after the words “un accompanied minors, in paragraph (k);
(b) by inserting the following paragraphs immediately after paragraph (t)—


- (u) period of validity of documentation;
(v) circumstances on limitation of rights granted to refugees;
(w) documentation to be provided to a recognised refugee.

Rationale: *To provide for clear circumstances when rights are limited and documentation for refugees.*

MIN No. 46/2020:-

ADJOURNMENT

There being no other business to transact, the chairperson adjourned the meeting at five minutes past noon until Monday, 16th March, 2020 at 9.00 am.

Signed.....
Chairperson

Date.....12th March 2020

**MINUTES OF THE 12TH SITTING OF THE DEPARTMENTAL
COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY
HELD ON MONDAY, 2ND MARCH, 2020 AT 2.30 P.M. AT HILTON
GARDEN INN HOTEL, MACHAKOS COUNTY**

PRESENT-

1. Hon. Wafula Wamunyinyi, MP *(Chairing)*
2. Hon. Peter George Kaluma, MP
3. Hon. Aduma Owuor, MP
4. Hon. George Theuri, MP
5. Hon. Dr. Tecla Chebet Tum, MP
6. Hon. Josphat Kabinga Wachira, MP
7. Hon. Marselino Malimo Arbelle, MP
8. Hon. Oku Kaunya, MP
9. Hon. Peter Masara, MP
10. Hon. Halima Mucheke, MP

ABSENT WITH APOLOGIES

1. Hon. Paul Koinange, MP - *Chairperson*
2. Hon. John Waluke, MP *Vice Chairperson*
3. Hon. Dr. Makali Mulu, MP
4. Hon. Ngunjiri Wambugu, MP
5. Hon. Geoffrey Kingagi Muturi, MP
6. Hon. Nimrod Mbithuka Mbai, MP
7. Hon. Ahmed Kolosh Mohamed, MP
8. Hon. Abdi Omar Shurie, MP
9. Hon. Didmus Wekesa Barasa Mutua, MP

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

- | | | |
|-----------------------|---|------------------------------|
| 1. Mr. George Gazemba | - | Principal Clerk Assistant II |
| 2. Mr. Joshua Ondari | - | Clerk Assistant |
| 3. Ms. Brigitta Mati | - | Legal Counsel |
| 4. Mr. James Muguna | - | Researcher Officer |

- | | | |
|-------------------------|---|---------------|
| 5. Mr. Rodgers Kilungya | - | Audio Officer |
| 6. Mr. James Oloo | - | Support Staff |

MIN No. 44/2020:-

**PRELIMINARIES AND COMMUNICATION
FROM THE CHAIRPERSON**

In the absence of the Chairperson and Vice-chairperson, Members present elected Hon. Wafula Wamunyinyi, MP to chair the meeting, pursuant to Standing Order No. 188. Hon. Wafula Wamunyinyi, MP then called the meeting to order at 3.00 am and said a prayer.

MIN No. 45/2020:-

**CONSIDERATION OF THE REFUGEES
BILL, 2019**

During the sitting, the Committee considered the Bill and made the following observation as follows:-

CLAUSE 10

THAT clause 10 of the Bill be amended—

- (a) By inserting the words “asylum seekers” immediately after the words “refugees and” in paragraph (a);
- (b) by inserting the words “asylum seekers” immediately after the words “refugees and” in paragraph (b);
- (c) by deleting paragraph (c) and substituting therefor the following new paragraph—
“(c) to advise the Cabinet Secretary in respect of declaration, amendment or revocation of prima facie determinations;”

To include asylum seekers

To align it to the power CS has been given.

CLAUSE 11

THAT clause 11 of the Bill be amended—

- (a) by deleting subclause (1) and substituting therefor the new subclause —
“(1) There shall be a Refugee Status Appeals Committee.”

(b) by deleting subclause (3) and substituting therefor the new subclause —

“(3) The quorum for a meeting of the Appeal Committee shall be three members and shall include at least one member under section 11(2) (e).”

(c) in subclause (4) by inserting the word “revocation” immediately after the word “cancellation”, in paragraph (b).

(d) by inserting the following new subclauses immediately after subclause (4)—

“(4A) A member of the Appeal Committee shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(4B) The quorum for a meeting of the Appeal Committee shall be three members and shall include at least one member under section 11(2) (e).

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

(4D) The Public Service Commission shall provide the Appeal Committee with a Secretariat for the purposes of discharging its mandate.”

(e) by deleting subclause (7).

Provide a mandatory provision for inclusion of experts to form quorum;

Provide a secretariat of the Committee.

Provide a mandatory provision for inclusion of experts to form quorum;

CLAUSE 12

THAT clause 12 of the Bill be amended—

(a) by inserting a new subclause immediately after subclause (4)—

“(4A) The department shall liaise with the state legal aid system to provide representation for a refugee where such refugee cannot afford a legal practitioner.”

(b) in subclause (5), by deleting the word “the application” appearing immediately after the words “not to grant” and substitute therefor the words “refugee status”.

To provide for legal aid for refugees. To correct errors

CLAUSE 14

THAT clause 14 of the Bill be amended—

by deleting subclause (2) and substituting therefor the following new subclause—

“(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.”

In subclause (3) by deleting the words “sixty days” appearing immediately after the words “shall within” and substitute therefor the words “ninety days”.

To make the period consistent

CLAUSE 18

THAT clause 18 of the Bill be amended in subclause (5) by deleting the words “cancelled or revoked” appearing immediately after the words “has been” and substitute therefor the words “revoked and does not appeal or has exhausted the available appeal mechanisms”.

To provide that the CS shall act only when all appeal mechanisms have been exhausted

CLAUSE 19

THAT Clause 19 of the Bill be amended by deleting the words “section 29” appearing immediately after the words “Subject to” and substituting therefor the words “section 30”.

To correct errors

CLAUSE 21

THAT Clause 21 of the Bill be amended by inserting the words “trauma or are of old age” immediately after the words “suffer from disability”.

To include other vulnerable persons

CLAUSE 22

THAT Clause 22 of the Bill be in subclause (1) by deleting the words “sixty days” appearing immediately after the words “not exceeding” and substituting therefor the words “ninety days” in paragraph (c).

There is an inconsistency at the time allowed for an asylum seeker whose claim has been rejected to seek admission to another country of his/her choice. A 90 day period is recommended as provided in the current Refugees Act, 2006.

CLAUSE 24

THAT Clause 24 of the Bill be amended —

(a) by renumbering clause 24 as subclause (1).

(b) by inserting the following new subclauses immediately after subclause (1)—

(2) In the 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 of this Act, 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) 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.

The affected subsection was misplaced in section 29 (3).

CLAUSE 25

THAT Clause 25 of the Bill be amended by inserting a new subclause immediately after subclause (3)—

(3A) Asylum seekers at transit centres shall be processed and released within reasonable time.

Asylum seekers should not be held ad infinitum in transit centres.

CLAUSE 26

THAT Clause 26 of the Bill be amended —

(a) by renumbering clause 26 as subclause (1).

(b) by inserting the following new subclause immediately after subclause (1)—

(2) Reception officer shall serve asylum seekers taking into account the principle of gender.

To provide for male and female reception officers should be available so the refugee has the option to choose who to talk to.

CLAUSE 28

THAT Clause 28 of the Bill be amended by inserting the following new clauses immediately after clause 28—

Right to free movement

28A A recognised refugee is entitled to free movement in Kenya subject to reasonable restrictions specified in the laws of Kenya, or directions issued by the Commissioner, which apply to foreigners generally in the same circumstances, especially on grounds of national security, public order, public health, public morals or the protection of the rights and freedoms of others.

Right to work

28B. subject to the laws applicable, a refugee recognized under this Act shall, subject to this Act, have the right to have access to employment opportunities and engage in gainful employment.

To provide for the right to work and freedom of movement of a refugee but subject to the laws of the land

CLAUSE 29

THAT Clause 29 of the Bill be amended—

(a) in subclause (2), by deleting the words “or public order” appearing immediately after the words “national security” ;


(b) by deleting subclause (3).

Clause 29(2) appears to negate the non-refoulment principle as it empowers government to refoul back to their country individuals considered a threat to public order. The inclusion of public order as a ground needs to be reconsidered.

MIN No. 46/2020:-

ADJOURNMENT

The Chairperson adjourned the meeting at half past one in the afternoon. The meeting was to be reconvened at 2:30 pm at the same place.

Signed.....
Chairperson

Date.....20th March 2020

**MINUTES OF THE 11TH SITTING OF THE DEPARTMENTAL
COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY
HELD ON MONDAY, 2ND MARCH, 2020 AT 9.00 A.M. AT HILTON
GARDEN INN HOTEL, MACHAKOS COUNTY**

PRESENT-

1. Hon. Wafula Wamunyinyi, MP *(Chairing)*
2. Hon. Peter George Kaluma, MP
3. Hon. Aduma Owuor, MP
4. Hon. George Theuri, MP
5. Hon. Dr. Tecla Chebet Tum, MP
6. Hon. Josphat Kabinga Wachira, MP
7. Hon. Marselino Malimo Arbelle, MP
8. Hon. Oku Kaunya, MP
9. Hon. Peter Masara, MP
10. Hon. Halima Mucheke, MP

ABSENT WITH APOLOGIES

1. Hon. Paul Koinange, MP - *Chairperson*
2. Hon. John Waluke, MP *Vice Chairperson*
3. Hon. Dr. Makali Mulu, MP
4. Hon. Ngunjiri Wambugu, MP
5. Hon. Geoffrey Kingagi Muturi, MP
6. Hon. Nimrod Mbithuka Mbai, MP
7. Hon. Ahmed Kolosh Mohamed, MP
8. Hon. Abdi Omar Shurie, MP
9. Hon. Didmus Wekesa Barasa Mutua, MP

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

- | | | |
|-----------------------|---|------------------------------|
| 1. Mr. George Gazemba | - | Principal Clerk Assistant II |
| 2. Mr. Joshua Ondari | - | Clerk Assistant |
| 3. Ms. Brigitta Mati | - | Legal Counsel |
| 4. Mr. James Muguna | - | Researcher Officer |

Jedgers Kilungya
James Oloo

- Audio Officer
- Support Staff

40/2020:-

PRELIMINARIES AND COMMUNICATION
FROM THE CHAIRPERSON

presence of the Chairperson and Vice-chairperson, Members present elected
Wafula Wamunyinyi, MP to chair the meeting, pursuant to Standing Order
8. Hon. Wafula Wamunyinyi, MP then called the meeting to order at 9.30
and said a prayer.

No. 41/2020:-

CONSIDERATION OF THE REFUGEES
BILL, 2019

During the sitting, the Committee considered the Bill and made the
following observation as follows:-

CLAUSE 2

THAT clause 2 of the Bill be amended—

- (a) in the definition of “asylum seeker” by deleting the word
“case” appearing immediately after the words “but whose”
and substituting therefor the word “application”;

**For the purposes of consistency the word ‘case’ be replaced with
the word ‘application’. Part III of the Act uses the word
application rather than case**

- (b) in the definition of “authorised officer” by inserting the
words “ or any other officer assigned such responsibility”
immediately after the words “ or immigration officer”;

**Department of Refugee Services officers cannot man all the border
and transit routes. Therefore other officers such as chiefs, police
officers etc can be authorized to receive asylum seekers. This is cost
effective in the long run.**

- (c) by deleting the definition of “Department” and substituting
therefor the following new definition—
“Department” means the Department of Refugee Services
established under section 7;

ANNEXURE 2

(Signed list of Members who attended
the sitting that adopted the report)

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY

ATTENDANCE SCHEDULE

DATE: 12th March, 2019


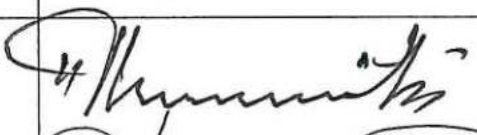
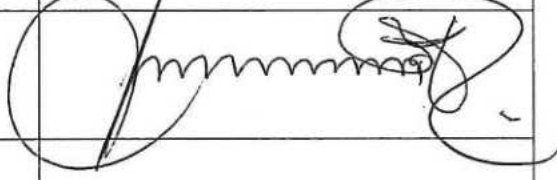
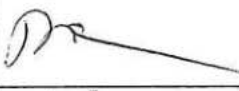



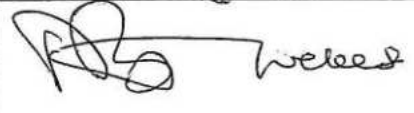
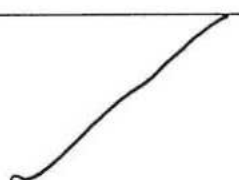
TIME: 9.30 a.m.

VENUE: Boardroom on 11th Floor, Protection House

AGENDA: a) Adoption of the Report on the Refugees Bill, 2019

b) Adoption of the Report on the Alcoholic Drinks Control (Amendment) Bill, 2019

c) Meeting with Hon. Mwambu Mabongah, MP regarding his Petition on insecurity incidences in Bumula Constituency

NO.	NAME	SIGNATURE
1.	Hon. Paul Koinange, MP - Chairperson	
2.	Hon. John Waluke, MP - Vice Chairperson	
3.	Hon. Wafula Wamunyinyi, MP	
4.	Hon. George Peter Kaluma, MP	
5.	Hon. Dr. Makali Mulu, MP	
6.	Hon. George Theuri, MP	
7.	Hon. Aduma Owuor, MP	
8.	Hon. Didmus Wekesa Barasa Mutua, MP	
9.	Hon. Geoffrey Kingagi Muturi, MP	

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osphat Kabinga Wachira, MP

. Nimrod Mbithuka Mbai, MP

on. Ngunjiri Wambugu, MP

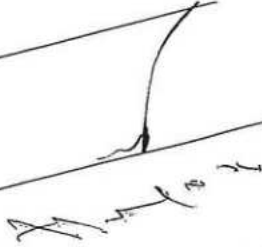
Hon. Abdi Omar Shurie, MP

6. Hon. Halima Mucheke, MP

17. Hon. Peter Masara, MP

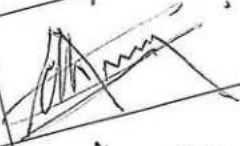
18. Hon. Oku Kaunya, MP

19. Hon. Ahmed Kolosh Mohamed, MP







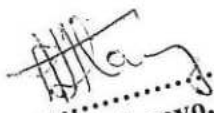






Signed.....
George Gazemba, ACI Arb, CPM,
Principal Clerk Assistant,
Departmental Committee on Administration and National Security.

Date..... 12/03/2020



Signed.....
Florence Atenyo-Abonyo,
Director, Committee Services.

Date..... 12/3/2020

		County			Seeking asylum is not a criminal act and there is therefore a risk of blurring the distinction between suspects and civilians seeking asylum.	
6.	Clause 2	Lutheran World Federation World Service (LWF WS)		Amend by inserting the words "for protection reasons" immediately after the words "covered under this Act"	The inclusion of prisons, police stations and remand homes is problematic and should only be considered if they are qualified for protection purposes. They should not share with persons serving awaiting to resolve their legal situation	
7.	CLAUSE 2	RCK (Refugee Consortium Kenya)	Definition of an asylum seeker "asylum seeker" means a person seeking protection in Kenya in accordance with the provisions of this Act but whose case has not been determined;	Amend by replacing the word "case" with "application" as follows: "asylum seeker" means a person seeking protection in Kenya in accordance with the provisions of this Act but whose application for refugee status has not been determined	For the purposes of consistency we propose that the word 'case' be replaced with the word 'application'. Part III of the Act uses the word application rather than case.	
8.	CLAUSE 2	RCK (Refugee Consortium Kenya)	Definition of an authorized officer "authorized officer" includes the Commissioner for Refugees Affairs, refugee officer, a settlement or immigration officer	"authorized officer" includes the Commissioner for Refugees Affairs, refugee officer, a settlement or immigration officer or any other administrative officer	Department of Refugee Services officers cannot man all the border and transit routes. Therefore other officers such as chiefs, police officers etc can be authorized to receive asylum seekers. This is cost effective in the	

					long run.	
9.	CLAUSE 2	RCK (Refugee Consortium Kenya)	Definition of Department of Refugee Services Department" means the Department of Refugees Services established under section 7 of the Act;	Amend the section by deleting the letter 's' after the word 'Refugees' and deleting the words 'of the Act' that appear at the end of the definition as follows: "Department" means the Department of Refugee Services established under section 7;	We recommend the removal of the words as they are redundant. The reference to section 7 cannot be any other law other than the present one. We also recommend a correction of the words 'refugees' as it appears in this section.	
10.	CLAUSE 2	RCK (Refugee Consortium Kenya)	Definition of durable solutions "durable solutions" means voluntary repatriation to the country of origin, resettlement to a third party country or local integration;	Amend the section as follows: "durable solutions" means voluntary repatriation to the country of origin, local integration in the country of asylum and resettlement to a third country;	The addition of the word 'party' is unnecessary therefore recommend that it be removed. The additional 'in the country of asylum' qualifies local integration.	
11.	CLAUSE 2	RCK (Refugee Consortium Kenya)	Definition of eligibility panel "Eligibility Panel" means the Refugee Status Eligibility Panel established under section 14;	Amend the section by deleting 'section 14' that appears at the end of the definition and replacing it with the words 'section 13' as follows: "Eligibility Panel" means the Refugee Status Eligibility Panel established under section 13;	The section makes reference to the wrong section that establishes the panel. It should refer to section 13 and not 14.	
12.	CLAUSE 2	RCK (Refugee Consortium Kenya)	Definition of essential services "essential services" include education, health, water and sanitation services;	Amend the section by as follows: "essential services" means the services that meet the immediate needs of refugees and asylum seekers and include food, shelter, education, health, water and sanitation services;	The definition does not sufficiently provide for other essential services such as food and shelter.	
13.	CLAUSE 2	RCK (Refugee)	Definition of local integration "local integration" means the gradual	Amend the section by replacing the word "border" that appears	The word broader is misspelt and the	

		Consortium Kenya)	process through which refugees are incorporated into the society through a process that ensures that refugees attain border rights, have improved standards of living and positively contribute to the social life of the host country;	between the words 'attain' and 'rights' with the word "broader" and by including the words 'and economic' between the words 'social' and 'life' as follows: "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 and economic life of the host country;	definition is also incomplete.	
14.	CLAUSE 2	RCK (Refugee Consortium Kenya)	Definition of OAU convention "OAU Convention" means the Organization of Africa Unity Convention Governing the Specific Aspects of the Refugee problem in Africa, done at Addis Ababa on 10th September, 1969 and ratified by Kenya on 28th December, 1987;	Amend by deleting the word 'the' that appears between the words 'aspects of' and 'refugee problem' and also add the letter 's' after the word 'problem' ad capitalize the letter 'p' that appears in the word 'problem' as follows: "OAU Convention" means the Organization of Africa Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, done at Addis Ababa on 10th September, 1969 and ratified by Kenya on 28th December, 1987;	The full title of the OAU Convention in the Bill is inaccurate.	
15.	CLAUSE 2	RCK (Refugee Consortium Kenya)	Definition of Protocol "protocol" means the Protocol relating to the status of refugees, done at New York on 31st January 1967 and acceded to by Kenya on 13th November 1981	Amend the section as follows: "protocol" means the Protocol relating to the Status of Refugees, done at New York on 31st January 1967 and acceded to by Kenya on	To reflect the full title of the Protocol	

16.	CLAUSE 2	RCK (Refugee Consortium Kenya)	Definition of prima facie "prima facie refugee status" means a declaration of refugee status by the Committee in respect of large scale influxes of persons on the basis of the readily apparent circumstances in the country of origin giving rise to the exodus;	13th November 1981; Amend the section by deleting the word 'status'; replace the word 'Committee' with "Cabinet Secretary as provided for under section 3(2) of this Act" as follows: prima facie refugee" means a declaration of refugee status by the Cabinet Secretary as provided for under section 3(2) of this Act;	The section erroneously states that the committee is the authority that declared prima facie status. This can only be done by the Cabinet Secretary. Also prima facie is a process for recognition and not a status.	
17.	CLAUSE 2	RCK (Refugee Consortium Kenya)	Definition of United Nations Convention "United Nations Convention" means the United Nations Convention relating to the status of Refugees, done at Geneva on 28th July, 1951 and acceded to by Kenya on 13th November, 1981	Amend the section to read as follows: "United Nations Convention" means the United Nations Convention relating to the Status of Refugees, done at Geneva on 28th July, 1951 and acceded to by Kenya on 16 th May, 1966.	Accession date is incorrect hence the amendment suggestion. There is an additional capitalization mistake.	
18.	CLAUSE 2	RCK (Refugee Consortium Kenya)	Definition of refugee "refugee", has the meaning assigned to it under section 3 of this Act and includes an asylum seeker;	Amend the section by deleting the words "and includes an asylum seeker" that appears at the end of the clause as follows: "refugee", has the meaning assigned to it under section 3;	The section includes asylum seekers which is already defined elsewhere in section 2.	
19.	CLAUSE 2	RCK (Refugee Consortium Kenya)	Definition of separated children No provision has been made	Amend by inserting the following clause between the clauses that define "settlement officer" and "spouse": "separated child" means a child who has been separated from both parents, or from their previous legal or customary primary caregiver, but is under the care of adults;	No provision has been made in the Bill.	

20.	CLAUSE 2	RCK (Refugee Consortium Kenya)	Definition of a transit centre “transit centre” means areas designated by the Cabinet Secretary for the purposes of temporarily accommodating persons covered under this Act pending transfer to either the designated areas, reception centres, settlement centres or pending health or security screening, and may include prisons, immigration detention centres, police stations, remand homes or any other areas designed as such;	“transit centre” means premises used for the purposes of temporarily accommodating refugees and asylum seekers in order to undertake health or security screening or for the purposes of repatriation or resettlement;	Seeking asylum is not a criminal offence. We therefore recommend that mention of prisons, immigration detention centres and police stations be deleted.	
21.	Clause 3(1)	Kituo cha sharia-Coast Regional office	Definition 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	Amend by inserting the word “sex” both paragraph (a) and (b).	The bill omits a well-founded fear of being persecuted on basis of sex as one of the reasons one would be considered for consideration for refugees’ status. This is unlike the 2006 Act(in line with the 1951 UN and the 1969 OAU conventions on refugees matters that listed fear of persecution based on sex as a reason for seeking refugee status. This would result to many being barred from seeking and / or getting asylum based on their sexual orientation.	

			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		
22.	Clause 3(1)(c)	RCK (Refugee Consortium Kenya)	Meaning of "refugee" (c) owing to external aggression, occupation, foreign domination or events seriously disturbing public order in any 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;	Amend the section by deleting the word 'any' that appears between the words '...public order in' and the words 'part or whole...' and replace it with the word 'either' as follows: Section 3(1)(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;	That the definition remain consistent with the OAU Convention's definition.
23.	Clause 3(1)	Francis Njoroge	Meaning of Refugee	Amend by deleting the words "who is in Kenya" and substitute therefore the words ", is outside the country of his or her nationality" in paragraphs (a) and (b)	The insertion of the phrase "who is in Kenya" operate to restrict the definition of refugee. It excludes persons with well founded fear of persecution based on the convention grounds and are at the frontier or seeking asylum at any Kenyan mission.
24.	Clause 3(2)	RCK (Refugee Consortium)	Meaning of "refugee" (2) Subject to sub-section (1), if the Cabinet Secretary, on recommendation from	Amend the section by deleting section 3(2) and replacing with a new section 3(2) and deleting	There is a circular logic in that this subsection makes reference to section

		Kenya)	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—	proviso (ii) as follows:	3(1)(d) which in turn makes reference to section 3(2). In addition, proviso (ii) does not add any value and only creates confusion.	
		UNHCR	(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	3(2) The Cabinet Secretary, on recommendation from the Refugee Advisory Committee may, through the Gazette, declare any class of persons to be refugees on a prima facie basis if it is evident that these persons qualify to be refugees under section 3 (1) (a), (b) or (c) and may at any time, upon recommendation from the Refugee Advisory Committee, amend or revoke such declaration.		
			(ii) who is a person referred to in subsection (1) (d), to be recognized as a refugee for the purposes of this Act.	Provided that no such amendment or revocation shall affect the right of any person 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.		
25.	Clause 4(1)(a):	RCK (Refugee Consortium Kenya) Kituo cha sharia	Exclusion and disqualification from refugee status (a) has committed a crime against peace, a war crime or a crime against humanity as defined in the International Crimes Act;	Amend section 4(1)(a) by deleting the words 'the international Crimes Act' and replace with 'any international instrument to which Kenya is a party' as follows: Section 4(1)(a) has committed a crime against peace, a war crime or a crime against humanity as	The reference of the International Crimes Act may not adequately cover other similar crimes not provided under the said Act but provided under the Geneva Conventions IIV and Additional Protocol I & II.	

		Amnesty International		defined in any international instrument to which Kenya is a party;		
26.	Clause 4(1)(b):	RCK (Refugee Consortium Kenya) UNHCR	Exclusion and disqualification from refugee status 4.(1)A person shall be excluded from being considered for refugee status if there exists serious reason to believe that the person- (d) has sought asylum in another country. (2) A person shall be disqualified from being a refugee if the person- (b) 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	Amend by deleting section 4(1)(d) and inserting the words 'has sought asylum' before the words 'has been granted...' as appears in section 4(2)(b) as follows: Section 4(2)(b) has sought asylum 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	<i>Seeking asylum in another country are not grounds for exclusion but rather disqualification. Therefore we recommend that this provision be moved from section 4(1) and be inserted in section 4(2)(b).</i>	
27.	Clause 4 (1) (d)	Kituo cha Sheria Francis Njoroge Abdulahi Ali 30 Refugee	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 — (d) has sought asylum in another country.	Amend by deleting section 4 (1) (d)	The Bill excludes secondary movers from seeking asylum in the country unlike the previous Act, which was silent on this. The bill puts this as one of the reasons to exclude persons from seeking asylum in the country. To recommend removal of the paragraph as seeking asylum in another country should not be the basis for	

		Representatives			denying one a right to apply for asylum in Kenya as provided under the international conventions	
28.	Clause 5 (proviso):	RCK (Refugee Consortium Kenya)	Cessation of refugee status Provided that paragraphs (e) and (f) shall not apply to a refugee falling under section 3(1)(a) and (b) of this Act 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	Amend the proviso to the section by deleting the words 'falling under section 3(1)(a) and (b) of' and replacing therefore with 'as defined by this Act' as follows: Provided that paragraphs (e) and (f) shall not apply to a refugee as defined by this Act 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.	The manner the proviso is framed creates confusion. We propose that the section be reframed as suggested.	
29.	Clause 7 (1)	Relief, Reconstruction and Development Organisation (R.R.D.O)	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.	Delete subsection (1) and substitute therefor the following— (1) There is established a Department known as the Department of Refugee Services which shall be an autonomous entity with powers to make decisions without the interference of other bodies.	To make the office independent from interference from other players in making decisions	
30.	Clause 7(2)(c):	RCK (Refugee Consortium Kenya)	Department of Refugee Services (2) The functions of the Department shall be— (c) to handle all operational aspects of	Amend the section 7(2)(c) to include the words 'and asylum seekers' after the words 'refugees' as follows:	We recommend to include asylum-seekers. This is more so given the recommendation to	

		Amnesty International	protection and assistance of refugees;	Section 7(2) The functions of the Department shall be—(c) to handle all operational aspects of protection of asylum-seekers and refugees;	remove asylum-seekers from the definition of “refugee”; this also consistent with 7(2) (a) and (b).	
31.	Clause 8	Garissa County	8. (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..	Amend by insertion subsection (1) (a) The Commissioner for refugee shall a) Hold a degree from a recognized university in Kenya; b) Have over ten years’ experience in a relevant field; and c) Be competitively and transparently be recruited.	The overall manager the requirements should be clearly spelt out.	
32.	Clause 8(2) (e)	LWFWF	Functions for Commissioner of Refugees (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	Inserting the words “paying special attention to the promotion, protection and fulfillment of all their rights and fundamental freedoms in adherence to the relevant international, regional and national legal frameworks immediately after the words “refugees and asylum seekers	The functions of the commissioner are concentrated on management and operational matters for refugees, and less on ensuring the fulfillment of the rights of refugees	
33.	Clause 8 (2) (i)	LWFWF	in liaison with the police, arrest any person suspected of committing an offence under this Act;	Delete the words “in liaison with the police” and substitute therefore the words “refer to the police for the”	The commissioner should refer the case to the police or the Ag and they should conduct the arrest	

					and proceed with the investigation	
34.	Clause 8 (2) (q)	LWF WF	ensure treatment of all asylum seekers and refugees in compliance with national law;	Insert the words "and pertinent international law" immediately after the words "national law"		
35.	Clause 8(2)(b):	RCK (Refugee Consortium Kenya)	Commissioner for Refugee Affairs (2) The functions of the Commissioner shall be to— (b) receive, register and maintain a register for all refugees in Kenya;	Amend section 8(2)(b) to insert the words 'and asylum seekers' after the word 'refugees' as follows: Section 8(2)(b) receive, register and maintain a register for all refugees and asylum seekers in Kenya.	We recommend to include asylum-seekers. This is more so given the recommendation to remove asylum-seekers from the definition of "refugee".	
		UNHCR		Amend by inserting the following words "and asylum seekers in Kenya and ensure that the fingerprints of an asylum seeker and family members are checked against all national fingerprint databases.	There is need to ensure that the data of asylum seekers and refugees are stored safely and no personal data shall be disclosed.	
36.	clause 8(2)(n):	RCK (Refugee Consortium Kenya)	Commissioner for Refugee Affairs (n) ensure the civilian and humanitarian character of the designated areas is maintained;	Amend the section by adding the words 'co-ordinate activities to' before the word 'ensure' as follows: (n) 'coordinate activities to ensure the civilian and humanitarian character of the designated areas is maintained;	Beyond the capacity of the Commissioner to ensure that the civilian and humanitarian character of the designated areas is maintained.	
37.	clause 8(2)(u):	RCK (Refugee Consortium)	Commissioner for Refugee Affairs (u) co-ordination of all services and activities provided to refugees and	Amend the section by inserting the words 'where relevant in cooperation with county	Given the fact that asylum-seekers and refugees will be more and	

		Kenya)	asylum seekers by implementing agencies;	authorities' between the words 'coordination' and 'of all services and activities' as follows: (u) co-ordinate, where relevant in cooperation with county authorities, all services and activities provided to refugees and asylum seekers by implementing agencies;	more included in Government services and the international community is no longer funding parallel structures, some devolved services will be provided by the county authorities. Hence, need to include reference to county authorities.	
38.	Clause 8 (2) (d)	Equity Bank Limited	(d) issue refugee identification documents and facilitate issuance of civil registration and other relevant documentation by other government agencies;	(d) to exempt agencies in issuing identification documents	The commissioner to be given powers to issue an exemption to refugees in obtaining a document from other government agencies e.g. KRA or explicitly assure the refugee in obtaining PIN numbers among other relevant documentation	
39.	CLAUSE 9(1):	RCK (Refugee Consortium Kenya) UNHCR	The Refugee Advisory Committee 9. (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 or their representative from the Ministry responsible for refugee affairs; (c) the Principal Secretary or their representative from the Ministry responsible for foreign	Amend section 9(1)(a) to (k) by inserting the word 'in writing' after the word 'representative' wherever it appears as follows: 9. (1) The Committee shall consist of— the Principal Secretary from the Ministry responsible for refugee affairs who shall be the chairperson or in his or her absence the Commissioner and	It is recommended to include the Principal Secretary from the Ministry responsible for refugee affairs as the chairperson and in his/her absence, the Commissioner (hence, deletion of current 9(1)(b). Designation of representatives of ministries and other officers on the RAC ought	

		<p>affairs;</p> <p>(d) the Principal Secretary or their representative from the Ministry responsible for devolution affairs;</p> <p>(e) the Principal Secretary or their representative from the Ministry responsible for health;</p> <p>(f) the Principal Secretary or their representative from the Ministry responsible for finance;</p> <p>(g) the Principal Secretary or their representative from the Ministry responsible for education;</p> <p>(h) the Attorney-General or their representative;</p> <p>(i) the Director of the Department of Immigration or their representative;</p> <p>(j) the Inspector-General or their representative; and</p> <p>(k) one person representing the Council of Governors.</p>	<p>who shall in the presence of the Principal Secretary be a member of the Committee and also provide secretariat services to the Committee;</p> <p>(b) the Principal Secretary or their representative in writing from the Ministry responsible for foreign affairs;</p> <p>(c) the Principal Secretary or their representative in writing from the Ministry responsible for devolution affairs;</p> <p>(d) the Principal Secretary or their representative in writing from the Ministry responsible for health;</p> <p>(e) the Principal Secretary or their representative in writing from the Ministry responsible for finance;</p> <p>(f) the Principal Secretary or their representative in writing from the Ministry responsible for education;</p> <p>(g) the Attorney-General or their representative in writing;</p> <p>(h) the Director of the Department of Immigration or their representative in writing;</p> <p>(i) the Inspector-General or their representative in writing; and</p> <p>(j) one person representing the Council of Governors.</p>	<p>to be in writing. This will guarantee that the officer chosen to represent the appointing authority would be accountable and consistency in the representation at the Committee.</p>	
40.	Clause 9 (1)	Relief,	The Refugee Advisory Committee	Delete Clause 9(1) and substitute	

		Reconstructi on and Developme nt Organisatio n (R.R.D.O)	<p>9. (1) The Committee shall consist of—</p> <p>(a) the Commissioner who shall be the chairperson and who shall provide secretariat services to the Committee;</p> <p>(b) the Principal Secretary or their representative from the Ministry responsible for refugee affairs;</p> <p>(c) the Principal Secretary or their representative from the Ministry responsible for foreign affairs;</p> <p>(d) the Principal Secretary or their representative from the Ministry responsible for devolution affairs;</p> <p>(e) the Principal Secretary or their representative from the Ministry responsible for health;</p> <p>(f) the Principal Secretary or their representative from the Ministry responsible for finance;</p> <p>(g) the Principal Secretary or their representative from the Ministry responsible for education;</p> <p>(h) the Attorney-General or their representative;</p> <p>(i) the Director of the Department of Immigration or their representative;</p> <p>(j) the Inspector-General or their representative; and</p>	<p>therefore the following—</p> <p>(1) There is established a Refugee Advisory Board whose function shall be—</p> <p>(a) Appointing the Commissioner of Refugees;</p> <p>(b) Appointing of Senior managers in Refugee Affairs Secretariat;</p> <p>(c) Oversight the Commissioner of Refugee Affairs and Refugee Affairs Secretariat</p> <p>(2) The Refugee Advisory Board shall be composed of—</p> <p>(a) persons from the private sector;</p> <p>(b) an officer from the Ministry of Foreign Affairs;</p> <p>(c) an officer from the Ministry of Interior and coordination of national government;</p>		
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			(k) one person representing the Council of Governors.			
41.	Clause 9(1)	LWFWF Francis Njoroge		Insert the following paragraphs immediately after paragraph (k)— a) one person from Kenya National Commission on Human rights; b) one person from national gender and equality commission; c) one person representing ministry of labour; d) one person representing Ministry responsible for social protection	There is need to promote proactively refugees human rights. this should form a key component of the function of the committee. Amend to include membership of professionals with experience and knowledge because as is the composition of the memebers have limited knowledge of international refugee law. This may create a risk of misapplication of the law.	
42.	Clause 9(1)	Amnesty International		By deleting paragraphs (a) and (b) and substituting therefor the following— (a) the principal Secretary or their representative in writing from the Ministry responsible for refugee affairs who shall be the chairperson; (b) the Commissioner who shall provide secretariat services to the committee	The Commissioner cannot stand in as chair and provide secretarial services to the Committee at the same time.	
43.	Clause 9(1)	Garissa County	one person representing the Council of Governors.	Amend as follows; One person representing each of	Having a member from the ministry of devolution	

			the county governments with host communities	and a person representing council of governors is not sufficient. There is need to recognize county government hosting refugees.	
44.	Clause 9(2)	RCK (Refugee Consortium Kenya)	The Refugee Advisory Committee (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.	Amend section 9 by amending section 9(2)) as follows: Section 9(2) The Committee shall include a representative from each of the designated counties and one member from the civil society and may coopt any other person to attend the meeting of the Committee and advise it on performance of its duties.	The section does not include a representative from the designated counties and civil society as was the case in section 8(5) of the Refugees Act, 2006.
		Amnesty International UNHCR			
45.	Clause 10(a) and (b):	RCK (Refugee Consortium Kenya) UNHCR	Functions of the Committee (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;	Amend the section as follows: (a) advise the Cabinet Secretary on formulation of national policies on matters relating to refugees and asylum seekers in accordance with international standards; (b) advise the Cabinet Secretary on matters relating to refugees and asylum seekers;	We recommended to include asylum seekers. This is more so given the recommendation to remove asylum-seekers from the definition of "refugee". There is also a capitalization error.
46.	Clause 10	LWF WS	(a) advise the Cabinet secretary on formulation of national policies on matters relating to refugees in accordance with international standards;	Amend the section as follows: Overall advising on the development of favourable and enabling policy, legal and institutional that promote, protect	The functions are heavy on management.

		n)			functions and supplement the ordinary courts in the administration of justice.	
50.	Clause 11(2):	RCK (Refugee Consortium Kenya) UNHCR	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.	Amend section 11(2) as follows: (2)The Cabinet secretary shall, by notice in the Gazette appoint the following persons to serve in the Appeals Committee— (a) a chairperson who is an advocate of not less than ten years standing appointed by the Cabinet Secretary; (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) two other persons with knowledge and experience in refugee matters.	With the current change of the composition of the Refugee Status Appeals Committee, this second instance is no longer an independent decision-making body. In order for a remedy to be effective, the appeal should be considered by an authority different from and independent of that making the initial decision. We also propose that the number of members be reduced from seven to six.	
51.	Clause 11(2)	R.R.D.O (Relief, Reconstruction and	UNHCR	Insert a new subsection immediately after subsection (2)-(2A)The Appeals Committee shall be independent in the exercise of its functions under this Act Amend by deleting subsection 11(2) and substitute the following—	The intention of the Bill is to have the Appeals committee/tribunal independent therefore	

		Development Organisation)	(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.	11(2) The Cabinet Secretary shall, by notice in the gazette appoint the following persons to serve in the appeals committee— (a) A chairperson nominated from legal practitioners of seven years standing as an Advocate of the High court of Kenya in the private practice; and (b) four other members possessing knowledge and experience in refugee affairs who are not in public service	the bill in its current form and design of the Appeals committee grossly defeats this intention	
52.	Clause 11(2)	Amnesty international Mr. Ekai Nabenyio		Amend by deleting subsection 11(2) and substitute the following— 11(2) The Cabinet Secretary shall, by notice in the gazette appoint the following persons to serve in the appeals committee— (a) A chairperson nominated by Judicial Service Commission and qualified for appointment as a Judge of the High Court; and (b) four other members possessing knowledge and experience in refugee affairs who are not in public service	The intention of the Bill is to have the Appeals committee/tribunal independent therefore the bill in its current form and design of the Appeals committee grossly defeats this intention	
53.	Clause 11(3):	RCK (Refugee Consortium	Refugee Status Appeals Committee (3) The quorum for a meeting of the Appeal Board shall be three members.	Amend section 11 by making the changes in bold and italics: (3) A member of the Appeal	The amendment are meant to do the following: • Make provision of	

		Kenya UNHCR (Clause 11(4))	<p>(4) The function of the Appeal Board 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 and termination of refugee status. (5) 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. (6) 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. (7) A person who is aggrieved by the decision of the Appeals Committee may appeal to the High Court within thirty days of being notified.</p>	<p>Committee shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.</p> <p>(4) The quorum for a meeting of the Appeal Committee shall be three members and shall include at least one member under section 11(2) (e).</p> <p>(5) Each member of the Committee shall have one vote but in case of a tie in votes, the Chairperson shall have a casting vote.</p> <p>(6) The function of the Appeal Committee shall be to hear and determine appeals against any decision of the Commissioner with regard to —</p> <p>(a) the rejection of any individual application for refugee status; and</p> <p>(b) the cancellation, revocation and termination of refugee status.</p> <p>(7) The Appeal Committee shall be independent in the exercise of its functions under this Act.</p> <p>(8) The Government shall provide the Appeal Committee with a Secretariat for the purposes of discharging its mandate.</p>	<p>decision making for the Committee;</p> <p>Provide a mandatory provision for inclusion of experts to form quorum;</p> <ul style="list-style-type: none"> • Provide a secretariat and independence of the Committee. <p>Provide a mandatory provision for inclusion of experts to form quorum;</p> <p>Provide a secretariat and independence of the Committee.</p>	
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				(9) 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.		
				(10) 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.		
54.	Clause 11(4)	UNHCR	(4) The function of the Appeal Board shall be to hear and determine appeals against any decision of the Commissioner with regard to — (b) the cancellation and termination of refugee status.	Amend in paragraph (b) by deleting the word “termination” and substituting therefor the word “revocation and termination”	The section needs to be amended to include that one of the functions of the appeals committee is to hear and determine appeals against revocation and cessation decisions. The word termination refers to a umbrella term covering all types of termination	
55.	Clause 11	UNHCR		New subclause The Government shall provide the appeals committee with a secretariat for the purposes of discharging its mandate	To ensure that the appeals committee will be an effective second instance body.	
56.	Clause 11(7):	RCK (Refugee Consortium Kenya)	Refugee Status Appeals Committee (7) A person who is aggrieved by the decision of the Appeals Committee may appeal to the High Court within thirty days of being notified.	Amend by deleting the sub section from this section and taking the same to section 14(2)	Reference to appeal to the High Court. It is similar with section 14(2) and therefore we recommend it be used to replace the current section 14(2).	

57.	Clause 12 (4)	LWF WS	Application for Refugee Status (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.	Insert 4 (A) The department shall liaise with the state legal aid system to provide representation for a refugee where such refugee cannot afford a legal practitioner	There should be provisions for legal aid for a refugee who cannot afford legal services.	
58.	Clause 12(5)	RCK (Refugee Consortium Kenya)	Granting of refugee status (5) The decision of the Commissioner to grant or not to grant refugee status shall be notified to the applicant in writing and where the application is refused, the Commissioner shall give reasons for the refusal.	Granting of "refugee status" – not application - is more appropriate wording; also consistent with 12(7).		
59.	Clause 12(6)	Francis Njoroge	Refugee Status Determination Refugee officers exercising delegated authority under 12(6) (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.	Amend by inserting a new subclause immediately after (6) (6a) the Commissioner shall delegate authority contemplated under subsection (6) to persons who have qualifications, experience and knowledge of refugee matters.	This delegation is key to the functioning of the asylum process and as such delegation may only be done to refugees status determination officers.	
60.	Clause 13(3)	LWF WS	Establishment of Refugee Status Eligibility Panel (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.	Amend by deleting the word "may" and substitute with "shall"	In order to not leave co-opting of UNHCR or other agencies at the discretion of the eligibility panel through the commissioner.	
61.	Clause 14(2)	RCK (Refugee)	Appeals (2) A person aggrieved by the decision	Amend this section by replacing it with the current section 11(7) as	See explanation in 31	

		Consortium Kenya)	of the Appeals Committee may within thirty days of such decision appeal to the High Court.	follows: (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.	above.	
62.	Clause 14(3):	RCK (Refugee Consortium Kenya)	Appeals (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.	Amend section 14(3) by deleting 'within sixty days' and inserting 'within ninety days' therefor as follows: (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 ninety 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.	This change is proposed for the sake of consistency with section 22(1) (c) and section 22(2).	
63.	Clause 14 (3) and (4)	LWFWS	(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.	Amend by inserting the words "in accordance with written law on immigration and always under humanitarian consideration to their human dignity."		
64.	Clause 16	RCK	Medical screening	Amend by inserting subsection (2)	This provision appears to	

		(Refugee Consortium Kenya)	16. 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 for purposes of detecting and containing the spread of contagious diseases.	into section 27 as follows: 27. (1) 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 proliferation of arms and other contraband items. (2) 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 for purposes of detecting and containing the spread of contagious diseases.	be misplaced. It fits better under Part IV Reception for Refugees and Asylum Seekers where a similar provision on security screening is placed (Section 27) Therefore, it is recommended that this Section be moved from Part III Application for Refugee Status of the Bill to Part IV Reception for Refugees and Asylum Seekers.	
65.	Clause 16	LWF WS	Medical screening	Insert the following words "and for the immediate medical support or treatment for refugees.	Medical screening should not only be used for the purpose of detecting and containing the spread of contagious diseases.	
66.	Clause 16	Mr. Ekai Nabengo	16. 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 for purposes of detecting and containing the spread of contagious diseases.	Amend by deleting section 16 and substituting therefor the following new section 16. Refugees and asylum seekers who are from countries suspected to be from a country with an outbreak of contagious disease,	Mandatory health screening for asylum seekers and refugees entering Kenya should be reworded to specify only those that come from a country suspected to have an outbreak	

			shall be subjected to health screening upon entry in accordance with the provisions of the Public Health Act for purposes of detecting and containing the spread of contagious diseases.		
67.	Clause 17 (6)	UNHCR	Cancellation of Refugee Status (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.	By inserting the words "or upon final determination on appeal" immediately after the word "Commissioner"	It is important to ensure that the cancellation decision shall only be applicable to the main applicant and family members with derivative status after the exhaustion of all available appeal mechanisms
68.	Clause 17(6)	Abdulahi Ali		By deleting subclause (7) Despite subsection 6 the expiration period after notification of cancellation, shall be thirty days for persons with disability, children and vulnerable persons recognized under the act	
69.	Clause 18	RCK (Refugee Consortium Kenya)	Revocation of refugee status 18. (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	Amend as follows: 18. (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	The amendments were made because: • There was a missing section 18(3); • Section 18(5) repeats a provision already made under section 17(5).

			<p>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.</p> <p>(4) 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.</p> <p>(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.</p>	<p>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.</p> <p>(3) Any person whose refugee status has been revoked and does not appeal or has exhausted the available appeal mechanisms, shall leave the country within thirty days of notification of the final order relating to the revocation, failing which the Cabinet Secretary shall remove such person immediately.</p>		
70.	Clause 18	UNHCR		<p>Amend as follows</p> <p>The Commissioner may revoke the status of any refugee if there are serious reasons for considering that a refugee has committed a crime against peace, a war or a crime against humanity, as defined in the international instruments drawn up to make provision for such crimes, or has been guilty of acts contrary to the purposes and principles of the United Nations and the African</p>	<p>It is important to ensure that the revocation decision shall only be applicable to the main applicant and family of derivative status after exhaustion of all available appeal mechanisms</p>	

				<p>Union.</p> <p>(2) Where refugee status under this part has been revoked and all appeal mechanisms have been exhausted, that person shall cease to be a refugee under this Act on the expiration of seven days after the date on having received the final decision that his or her recognition has been revoked.</p> <p>(3)*remains as is*</p> <p>(4)Any person whose refugee status has been revoked and does not appeal or has exhausted the available appeal mechanisms, shall leave the country within thirty days of notification of the final order relating to the revocation, failing which the Cabinet Secretary shall remove such person immediately/</p>		
71.	Clause 19 (1)	RCK (Refugee Consortium Kenya)	<p>Expulsion of refugees or members of their families</p> <p>19. (1) Subject to section 30, 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.</p>	<p>Amend by deleting 'section 30' as it appears on Section 19(1) and replace it with 'section 29' as follows:</p> <p>19. (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.</p>	<p>Section 30 of the Bill concerns designated areas whereas Section 29 deals with the principle of non-refoulement. It is clear that Section 19(1) intended to cite Section 29 as it is more relevant to its purposes.</p>	

72.	Clause 19 (1)	R.R.D.O (Relief, Reconstruction and Development Organisation)	Expulsion of refugees or members of their families 9. (1) Subject to section 30, 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.	Amend by deleting the words "Cabinet Secretary" and substituting therefor the words "Refugee Advisory Board"	This should be a reserve of the proposed Refugee Advisory Board.	
73.	Clause 19 (2)	RCK (Refugee Consortium Kenya) Kituo Chasheria (Coast region) UNHCR IRC Garissa County	Expulsion of refugees or members of their families 19. (1) Subject to section 30, 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 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 subsection (1) of this section, the Cabinet Secretary shall act in accordance with the due process of law	Amend by deleting the subsection(2) and renumbering as follows: 19. (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) Before ordering the expulsion from Kenya of any refugee or member of his family in terms of subsection (1) of this section, the Cabinet Secretary shall act in accordance with the due process of law.	Section 19(2) is superfluous. An expulsion provision is granted under section 19(1) and section 29(2). Expulsion based on morality would be in contravention to the principle of non-refoulment. It is enough to expel them based on issues of national security which is captured by clause 19(1). The aspect of public morality here as a ground for expulsion may be conceived to target minority groups such as LGBTI.	The provision does not provide for any due

		Francis Njoroge		Section 19 and Section 29(2) of the Bill be revised to include procedural and administrative safeguards enshrined in the Bill of rights prior to any expulsion	process rights of refugees and their family members before being expelled on grounds of national security or public order	
74.	CLAUSE 20	DRC	20. (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.	20(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 admission into and stay in Kenya	Clause 20 (1) qualifies the benefits of the protection in designated areas. The safeguards provided by this provision should apply irrespective of where the subjects of this protection are located in Kenya.	Definition of "designated area" provides for any reception area, transit point or settlement area
75.	Clause 20	RCK (Refugee Consortium)	Refugee women and children 20. (1) The Commissioner shall ensure that specific measures are taken to	Amend section 20(1) by deleting 'during their stay in designated areas' and replacing it with 'during	Section 20(1) ensures measures for the protection of women and	Clause 28 A26 of 1951 convention, host country shall allow refugees the "right to choose their place of residence to move freely within its territory",

		Kenya) Refugee leader for Nakuru County	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.	admission into and stay in Kenya' as follows: 20. (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 admission into and stay in Kenya.	children in designated areas but not if they reside outside. It is recommended that Section 20(1) be expanded to ensure protection for women and girls who are exempted from living in designated areas; this is then also consistent with wording of section (21).	
76.	Clause 21	DRC	Care for persons with disability and persons who have suffered trauma 21. The Commissioner shall ensure that appropriate measures are taken to ensure the safety of asylum seekers and refugees who suffer from 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 Kenya.	The Commissioner shall ensure that appropriate measures are taken to ensure the safety of asylum seekers and refugees who suffer from disability, trauma or are of old age or otherwise require special protection at all times during admission into and stay in Kenya.	To expressly provide for the inclusion of the elderly in express terms	
77.	Clause 21	RCK (Refugee Consortium Kenya) UNHCR	21. The Commissioner shall ensure that appropriate measures are taken to ensure the safety of asylum seekers and refugees who suffer from 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 Kenya.	Amend the section by replacing the phrase 'suffer from disability and persons or groups of persons who have been traumatized' with '...suffer from disability, trauma and older persons' as follows: 21. The Commissioner shall ensure that appropriate measures are taken to ensure the safety of asylum seekers and refugees who	Recommendation to include persons of old age and specify the support to be provided to all three groups in the Regulation.	

			suffer from disability, trauma or are of old age or otherwise require special protection at all times during admission into and stay in Kenya.		
78.	Clause 22(1) (c) & 22(2)	RCK (Refugee Consortium Kenya) Refugee Leaders in Nakuru	Right to remain in Kenya during status determination (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.	Amend by deleting the phrase 'not exceeding sixty days..' as it appears on section 22(1)(c) and replacing it with 'not exceeding ninety days' as follows: (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 ninety days to seek admission to a country of his or her choice.	There is an inconsistency at the time allowed for an asylum seeker whose claim has been rejected to seek admission to another country of his/her choice. A 90 day period is recommended as provided in the current Refugees Act, 2006.
79.	Clause 23(5)	RCK (Refugee Consortium Kenya) Mr. Ekai Nabenyio	Applicant to be issued with an asylum seeker's pass (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, failure to which the Commissioner shall have powers to strike them out of the asylum process and advice the	Amend section 23 by section 23(5) and substituting it with two new subsections as follows: (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.	The manner in which Section 23(5) has been framed opens an interpretation wherein a misdemeanor could be used to expel a refugee or asylum seeker. Moreover, provisions under section 19(1) and 29(2) are sufficient.

		UNHCR Refugee Leaders in Nakuru County	Cabinet Secretary to remove them from Kenya subject to the applicable immigration laws.	(6) A person who contravenes subsection (5) above commits an offence.	
80.	Clause 24	RCK (Refugee Consortium Kenya) UNHCR	Entry into Kenya by refugees 24. 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.	Amend section 24 as follows: 24. (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) In the 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 of this Act, 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) 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 the	Section 11(2) of the Refugees Act, 2006 expressly provided for asylum seekers that are in Kenya legally and for reasons provided under the provisions that define refugees are unable or unwilling to return to their countries of origin. This allowed them to apply for the status before the expiry of their lawful stay. This is the justification for proposing a section 24(2) Proposed section 24(3) has been moved from 29(3); see justifications for section 24(3).

			<p>representatives of the United Nations High Commissioner for Refugees advise the Cabinet Secretary on emergency measures to be taken including-</p> <p>(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;</p> <p>(b) provision of adequate and appropriate facilities and services necessary for the group of persons affected by the influx with particular reference to women and children; and</p> <p>(c) ensuring the civilian and humanitarian character of areas designated for refugees and the sensitization of the local population for their reception.</p>		
81.	Clause 25	RCK (Refugee Consortium Kenya)	<p>Designation of refugee reception officers</p> <p>(3) Subject to subsection (2) asylum seekers may be temporarily accommodated at the reception holding areas as they await further processing by the Department.</p> <p>(4) Asylum seekers who enter the country through places, other than gazetted entry points, shall</p>	<p>Amend to include a new subsection (4) and renumber the current subsection (4) as follows:</p> <p>(3) Subject to subsection (2) asylum seekers may be temporarily accommodated at the reception holding areas as they await further processing by the Department.</p> <p>(4) Asylum seekers at transit</p>	<p>Asylum seekers should not be held ad infinitum in transit centres.</p>

			immediately report to the nearest government administrative office for further assistance.	centres shall be processed and released within 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.		
82.	Clause 26(1)	LWF WS	Duty of reception officers	Insert the following subsection (2) Reception officers shall serve asylum seekers respecting the principle of gender.	There must be a provision that states male and female reception officers should be available so the refugee has the option to choose who to talk to.	
83.	Clause 27	Refugee leaders from Nakuru County	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 proliferation of arms and other contraband items.	Insert the words "in the presence of a humanitarian officer," immediately after the words "screening in"	To prevent officer planting contraband or illegal things on asylum seekers that may jeopardize their application status	
84.	Clause 28	RCK (Refugee Consortium Kenya) Kituo cha sheria	Rights and obligations of refugees 28. (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	Amend section 28 as follows: 28. (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	The section as is currently framed does not offer a clear provision on the benefits of holding refugee documents. The proposed amendment is meant to address this gap. It also does not spell out	

	<p>UNHCR</p> <p>30 Refugee Representatives</p> <p>Garissa County</p>	<p>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.</p>	<p>(b) all the laws in force in Kenya.</p> <p>(2) Without prejudice to the generality of section 28(1) above:</p> <p>(a) Every refugee has the right to identification documents, travel documents, social protection, access to education and health services, as well as engagement in livelihood activities and shall be under an obligation to contribute to the national and local economy through taxation; and</p> <p>(b) Every asylum-seeker has the right to documentation and access to essential services, including food, shelter, education, health, water and sanitation services, and where relevant, social protection.</p> <p>(3) The Cabinet Secretary may, by notice in the Gazette and in consultation with the relevant county governments, designate specific counties to host refugees purposes of accommodating of refugees who require essential services.</p> <p>(4)The Cabinet Secretary may, by notice in the Gazette, designate places and areas in Kenya to be transit centres for purposes of</p>	<p>the rights in a clear manner. Also section 40(1)(m) provides an offence but there is no corresponding duty that underpins the offence.</p>	
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		Abdulahi Ali 30 Refugee Representatives		temporarily accommodating refugees for security and medical screening. (5) 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. (6) The refugee and asylum seeker identification shall be adequate to the rights provided by law.	
85.	Clause 28(2)	LWF WS	Rights of and obligations of refugees	Insert a new subclause Documentation under subsection (2) shall be valid for a period of five years.	
				Amend in subclause (2) by deleting the word "may" and substituting therefore the word "shall"	The use of the word may provides a loophole for misinterpretation.
86.	Clause 28 (2)	UNHCR	(2) The Cabinet Secretary may, by notice in the Gazette and in consultation with the relevant county	Amend by inserting the words " for the purposes of accommodating asylum seekers	Newly arriving asylum seekers may not be self- sufficient and will require

			governments, designate specific counties to host refugees.	and refugees who require essential services" immediately after the words "to host refugees"	essential services to have their basic needs met. Therefore it is proposed that refugees should only be required to reside in designated areas if they are in need of essential services.	
87.	Clause 28(3)	Garissa County	(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.	Provide in regulation section Transit and settlement centres or Declaration of designated areas	The law should provide that transit centres should be constructed as soon as possible and be constructed at a reasonable distance from the border in order to protect asylum seekers.	
88.	Clause 28(4)	LWF WS		Insert a new subclause (5) (5) The government shall develop policy and legislative frameworks to enable access to jobs, livelihoods and self-reliance options that includes expanded access to labour markets as well as freedom of movement.	To align the commitments made within the kampala declaration on jobs, livelihoods and self-reliance for refugees, returnees and host communities.	
89.	CLAUSE 28(4)	Host Communities living in Nairobi	(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	(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 such as MPESA and Bank accounts, at both levels of Government	Recommend that the law explicitly spells out that refugee documentation would be sufficient to access services such as MPESA and bank accounts. This will allow them to contribute to the economy	It's too descriptive.
90.	Clause 28	Mr. Ekai	Freedom of movement	(1) Subject to subsection (2) of this	Refugee hosting countries	

		Nabenyro Abdulahi Ali 30 Refugee Representatives Garissa County	New Clause	section, a recognised refugee is entitled to free movement in Kenya (2) The free movement of a recognised refugees in kenya is subject to reasonable restrictions specified in the laws of Kenya, or directions issued by the Commissioner, which apply to foreigners generally in the same circumstances, especially on grounds of national security, public order, public health, public morals or the protection of the rights and freedoms of others.	have recognized the need to allow refugees the freedom of movement.	
91.	Clause 28	Mr. Ekai Nabenyro	New Clause Right to work	A refugee recognized under this Act shall, subject to this Act, have the right to have access to employment opportunities and engage in gainful employment.	Clause40 (1) (m) provides for an offence of a refugee who works and does not pay tax. The law should therefore explicitly state that a refugee has a right to work.	
92.	Clause 28(4) and 28(1) (b)	Equity Bank			The enactment of the tax procedure act, 2015 provides that it is mandatory for customers to produce KRA personal identification numbers to open or activate a bank account. Provide explicit rights that allow refugees due to their status to have specified allocation of	

					funds to be issued to refugee by government for the following projects 1. financial literacy for refugees by national and county governments; 2. Allocation of funds for entrepreneurship education	
93.	Clause 28 (4)	IRC		Amend by deleting subsection (4) and substituting therefor the following new subsection (4) subject to this Act, the government shall issue required documentation at both levels of government to facilitate local integration of refugees to enable them to contribute to the economic and social development of Kenya	The definition of local integration is not applied anywhere in the bill. Section 28(4) refers to local integration and should be adjusted to make express reference by including the term local integration	
94.	Clause 29(2)	Mr. Ekai Nabenyio	(2) The benefit of the 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 or public order of Kenya.	Amend by deleting the word "or public order"	Clause 29(2) appears to negate the non-refoulement principle as it empowers government to refouler back to their country individuals considered a threat to public order. The inclusion of public order as a ground needs to be reconsidered.	
95.	Clause 29(3)	RCK (Refugee Consortium)	Non-refoulement (3) Where there is a large-scale influx of persons claiming to fall within the	Amend section 29 by deleting subsection (3) and moving it to Section 24.	The affected subsection is misplaced in the current section.	

		Kenya)	<p>meaning of refugees under section 3, the Commissioner shall, in consultation with the representatives of the United Nations High Commissioner for Refugees advise the Cabinet Secretary on emergency measures to be taken including-</p> <p>(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;</p> <p>(b) provision of adequate and appropriate facilities and services necessary for the group of persons affected by the influx with particular reference to women and children; and</p> <p>(c) ensuring the civilian and humanitarian character of areas designated for refugees and the sensitization of the local population for their reception.</p>	<p>Amend by inserting the words in bold</p> <p>(b) provision of adequate and appropriate facilities and services necessary for the group of persons affected by the influx with particular reference to women and children and other vulnerable groups; and</p>		
96.	Clause 29	LWF WS	Non-refoulement	Insert the following provision	Approximately 13,000	

				immediately after (2) A refugee who voluntarily avails himself or herself to return to his or her country of origin, but upon return to his country of origin encounters that the environment that circumstances in the country of origin have not changes or other factors create an unconducive environment requiring him or her to seek asylum again, should be granted asylum with all basic services guaranteed.	undocumented refugee/ asylum seekers who returned from Somali to dadaab face this predicament	
97.	Clause 31(1)	RCK (Refugee Consortium Kenya)	Requirement to reside in a designated area 31. The Commissioner may require any refugee is within a designated areas to move to or reside in any other designated area.	Amend the section as follows: 31. (1) The Commissioner may require any refugee who is in need of essential services and is within a designated areas to move to or reside in any other designated area.	The revision is meant to make the section clearer.	
98.	CLAUSE 31(1)	DRC	31. (1) The Commissioner may require any refugee is within a designated areas to move to or reside in any other designated area.	The Commissioner may require any refugee who is in need of essential services and is within a designated area to move to or reside in any other designated area.	Clause 31 (1) provides that refugees will be required to live in a designated area which currently are Dadaab Refugee Camp and Kakuma. The Bill should provide for designated areas for short term purposes including delivery of humanitarian assistance and essential services.	Clause 30 (4) provides that a refugee or asylum seeker may change his or her place of residence to notify the Commissioner in the prescribed manner. 43 (h) (i).

99.	CLAUSE 31(1)	Host Communities living in Nairobi	31. (1) The Commissioner may require any refugee is within a designated areas to move to or reside in any other designated area	Insert a new subsection (1) (a) Despite subsection (1), a refugee may give compelling reasons to the Commissioner on why they can or cannot relocate to the specified designated area	There is need to revise this power in order to afford a refugee an opportunity to explain him or herself on reasons as to why he or she may not adhere to an order.	
		Kituo cha Sheria		Despite subsection (1), the commissioner shall consider a refugee's protection and safety before making such order.	To include the condition that safety and protection of the refugee is ensured and prioritised before they are moved.	
		UNHCR		The Commissioner may require refugees and asylum-seekers in need of essential services to be within a designated area, to move to or reside in any other designated area.	Newly arriving asylum seekers may not be self-sufficient and will require essential services to have their basic needs met. Therefore it is proposed that refugees should only be required to reside in designated areas if they are in need of essential services.	
100	Clause 32	RCK (Refugee Consortium Kenya)	Control of Designated Areas 32. 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	Amend the section as follows: 32. The Commissioner 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	We recommend the changes to make the section read better.	

			<p>matters—</p> <p>(a) the organization, safety and discipline and administration of a designated area;</p> <p>(b) the reception, transfer, settlement, treatment, health and well-being of refugees;</p> <p>(c) the manner of inquiring into disciplinary offences and the payment of the fine and other (penalties); or</p> <p>(d) the powers of settlement officers and the delegation of such powers</p>	<p>any of the following matters—</p> <p>(a) the organization, safety and discipline and administration of a designated area;</p> <p>(b) the reception, transfer, settlement, treatment, health and well-being of refugees;</p> <p>(c) the manner of inquiring into any offence committed under this Act; or</p> <p>(d) the powers of settlement officers and the delegation of such powers.</p>		
101	Clause 33	<p>RCK (Refugee Consortium Kenya)</p> <p>UNHCR</p>	<p>Restriction of Persons Entering a Designated Area</p> <p>33(1) No person 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.</p> <p>(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.</p> <p>(3) 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.</p>	<p>Amend section 33 as follows:</p> <p>33(1) No person 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.</p> <p>(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.</p> <p>(3) The Commissioner shall review such request as made under section 33(2) and issue a decision in writing without undue delay.</p> <p>(4) The Commissioner may authorize entry, upon request, of the UNHCR, other UN agencies,</p>	<p>Section 33(2) of the Bill does not provide a clear timeline within which this decision is to be made. It also does not provide an avenue for appeal in the case on is dissatisfied with the decision of the Commissioner. Finally it does not speak to organizations that have worked and work in the designated areas that exists that would need to be authorized.</p>	

				public benefit organizations and other organisations that seek to offer services to refugees in these areas. (5) 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.	
102	Clause 33 (1)	Kituo cha sheria Refugee leaders in Nakuru County	Restriction of Persons Entering a Designated Area. 33. (1) No person 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.	Delete section 33	This section restricts entrance to a designated area by persons other than refugees and those authorized by commissioner. This provision is a hindrance to the local integration of the refugees and host communities.
103	Clause 33 (1)	LWF WS	Restriction of Persons Entering a Designated Area.	Insert a new subsection (1a) Despite subsection (1) persons working in humanitarian organisations mandated to operate in these areas, shall have unfettered access to a designated area	Possibility of the clause being misinterpreted and consequently hindering essential service delivery and human rights protection for refugees.
104	Clause 33			Provide regulations Authorized persons in a designated area	The provision is necessary in order to ensure that the civilian and humanitarian

				character of the designated area is maintained. Clause 2 lists settlements among designated areas. Trade activities are envisioned in such settlements to enhance integration between refugees and host communities		
105	Clause 34 (1)	RCK (Refugee Consortium Kenya)	Integration of refugees into communities 34. (1) The Commissioner shall ensure that there is shared use of common social amenities between the refugees and the host communities.	Amend the section by replacing the words 'social amenities' and replacing therefor with "public institutions, facilities and spaces" as follows: 34. (1) The Commissioner shall ensure that there is shared use of public institutions, facilities and spaces between the refugees and the host communities.	The term social amenities was ambiguous and thus the proposed rephrasing.	
106	Clause 34(1)	Mr. Ekai Nabenyio		Amend the section by inserting the words " sharing of economic and other benefits" immediately after the words " social amenities"	This is to meaningfully integrate refugees into the local communities. This is also in order to clearly show how the host communities will benefit.	
107	CLAUSE 35	DRC RCK (Refugee Consortium Kenya)	35. The Commissioner shall liaise with the national and county governments for the purposes of ensuring that refugee concerns are taken into consideration in the initiation and formulation of sustainable development and environmental plans.	Amend the section as follows: 35 (1) The National Government in liason with the Commissioner shall take into consideration refugee matters in sustainable development and environmental protection planning. (2) County governments in liason	The clause will be improved and by extension enhance socio economic integration. By considering refugee populations in the formulation of development plans	Subclause 2 should be tied to the specific counties hosting refugees.

				with the Commissioner shall take into consideration refugee matters in the development of the County Integrated Development Plans, spatial plans and other plans as mandated by law.	including CIDP, there will be better use of shared resources and amenities envisioned in clause 34 (1).	
108	Clause 36	RCK (Refugee Consortium Kenya)	Affirmative action for women, children and persons with disabilities 36. 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 and persons with disabilities.	Amend the section as follows: 36. In the integration of refugees in the host communities, the Commissioner shall, in cooperation with the United Nations High Commissioner for Refugees, relevant County Governments and the other organizations involved in the assistance of refugees, ensure that special attention is given to women, children persons with disabilities, older persons and other vulnerable groups.	Proposal to include reference to County governments in light of devolved services and reference to older persons.	
109	Clause 38(2)	RCK (Refugee Consortium Kenya)	Resettlement of refugees residing in Kenya (2) The Commissioner in liaison with the Ministry of Foreign Affairs shall seek for more resettlement quarters in addition to the ones allocated through other agencies.	Amend the section by deleting the word "quarters" and replacing therefor with the word "quotas" as follows: (2) The Commissioner in liaison with the Ministry of Foreign Affairs shall seek for more resettlement quotas in addition to the ones allocated through other agencies.	To correct "quarters" to "quotas"	
110	NEW CLAUSE 39A	RCK (Refugee Consortium)	Confidentiality 39. (1) The Department shall keep and maintain a register of all persons who	Amend the Bill by inserting a new section 40 after the current section 39 and amend the later as	Retain the confidentiality provisions under section 24 of the Refugees Act,	

		Kenya)	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.	follows as follows: 39A. (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 (1) shall disclose or publish the information. (3) A person who contravenes any provision of this 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.	2006. The section provides for confidentiality in handling asylum seeker and refugee information. Noting that article 31 Constitution of Kenya 2010 provides for the right to privacy and data protection, it is not clear why the provision was dropped in the Bill.	
111	Clause 40 (1) (c)	RCK (Refugee Consortium Kenya) Mr. Ekai Nabenyio LWF WS	Offences and penalties	Amend the current Section 40(1)(c) as follows: (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 to recognition as a refugee;	Offence applicable if asylum-seeker does not show good reason.	
112	Clause 40 (1) (m)	RCK (Refugee Consortium	Offences and penalties (m) being a refugee, works or is engaged in gainful employment	Amend the section by deleting section 40(1)(m)	Current Section 40 to be renumbered – now 41. In addition, offence is	

		Kenya)	without the payment of tax.		justified if the Government facilitates access to work permits. Otherwise, proposal to delete this provision	
113	Clause 40(3)	Garissa County	(3) A person commits an offence of 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	Insert a new subclause(4) (4) this section shall not act retrogressively.	A number of Kenyans who are currently registered as refugees. The committee should inquire from the ministry on the status and progress of re-registration of those affected.	
114	Clause 42 (2) and (3)	RCK (Refugee Consortium Kenya)	(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 Board and Committee shall be deemed to be vested, imposed or enforceable against the former Board and Committee. (3) Any reference in any written law	Amend the section as follows: (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	The phrasing of the current sections are confusing. We recommend the amendments to address this.	

			or in any document or instrument to the former Board and Committee shall, on and after the commencement day, be construed to be a reference to the former Board and Committee.	be deemed to be vested, imposed or enforceable against the current Department for Refugee Services Refugee Status Appeal Committee and Refugee Advisory Committee. (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.,		
115	Clause 42(8)	RCK (Refugee Consortium Kenya)	Transitional provisions (8) 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.	Amend the section as follows: (8) 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 newly appointed Committee Chairperson for use by the Refugee Status Appeal Committee.	Rationale for handing over the assets to the Commissioner and not to the next Committee Chair is not clear	
116	Clause 43(1)	RCK (Refugee)	Regulations 43. (1) The Cabinet Secretary shall,	Amend the section as follows: 43. (1) The Cabinet Secretary shall,	Recommend that a time limit to set for the	

		Consortium Kenya) UNHCR	make regulations generally for giving effect to this Act, and for prescribing anything required or necessary to be prescribed by or under this Act.	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 6 months of the commencement of this Act.	enactment of the regulations for the proper administration of the law.	
117	Clause 43 (2) (k)	RCK (Refugee Consortium Kenya)	Regulations (k) the protection of women, children, unaccompanied minors, persons with disabilities and other vulnerable groups;	Amend the section by including the words 'separated children' as follows: (k) the protection of women, children, unaccompanied minors, separated children , persons with disabilities and other vulnerable groups;	There is a difference between unaccompanied minors and separated children thus the need for their protection.	
118	Section 43(2)(c)			Provision to be moved to after Section 43(2)(l)	The change is proposed to make the section be read better.	
119	Section 43 (2)	Abdulahi Ali 30 Refugee Representatives Garissa County	Regulations	New paragraphs a) Facilitation of local integration; b) On access to employment and affirmative action for refugees with respect to employment;	There is need for specific regulations on sharing of resources e.g as firewood with local community. Refugees need quotas of jobs and access to similar job opportunities Local integration especially where there is intermarriage between locals and refugees	

New clauses

Confidentiality

(1) No officer of the Secretariat, 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.

(refugees and asylum seekers are persons at risk owing to the circumstances in their home countries and as such the protection of their data of key importance to their safety and protection)

Preferential Treatment for Refugees Origination from EAC member states

To give special treatment to refugees from EAC countries and further be exempted from refugee status.

Provisions on land acquisition for setting up refugee holding areas/designated areas

(1) The Commissioner may, in accordance with the Constitution and any other law, by notice published in the Gazette, designate places or areas on public land to be transit centres or refugee settlements for the purposes of—

- (a) temporarily accommodating persons who have applied for grant of refugee status pending the processing and consideration of their applications by the Committee; and
- (b) local settlement and integration of refugees whose applications for refugee status have been granted.

(the acquisition of community land should be done in accordance to the laws specifically laws dealing with public participation. This is to enable such decisions be a win for both refugees and local communities)

Family Re-union

(1) A recognised refugee may apply to the Status Eligibility Committee for permission for a member of his or her family to enter and reside in Kenya for purposes of reunion.

(2) Regulations made under this Act shall prescribe the procedure for applying for a family reunion under subsection (1) of this section, taking into account the principle of family unity.

Amnesty International – the are no financial provisions for the established authorities in the Bill as is the practice in other acts of Parliament. The Act should expressly provide for the remuneration of the Commissioner and staff of the Department of Refugee Services that will guarantee functional independence of the Commissioner and the Tribunal