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PROSPECTS

► REVIEW OF NATIONAL
POLICY FRAMEWORKS
AND PRACTICE



► **Review of national policy,
legislative and regulatory
frameworks and practice
in Kenya**

A baseline study on the right to work
and rights at work for refugees



Kingdom of the Netherlands

▶ **Review of national policy, legislative and regulatory frameworks and practice in Kenya**

A baseline study on the right to work and rights at work for refugees

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► Foreword

Kenya is the one of the biggest refugee-hosting countries in Africa, experiencing both protracted and ongoing refugee situations. The country is currently hosting around 560,000 refugees and asylum seekers. The majority (84 per cent) are living in the refugee camps of Dadaab and Kakuma, while 16 per cent are urban refugees residing mainly in Nairobi. The majority of these refugees and asylum seekers originate from Somalia (53 per cent), South Sudan (25 per cent), the Democratic Republic of the Congo (9 per cent), and Ethiopia (6 per cent), with the remainder mostly comprising refugees from Burundi, Sudan, Uganda, Eritrea and Rwanda.

The refugee camps and settlements in Kenya are situated in relatively underdeveloped and underserved counties, characterized by food insecurity, limited access to basic social services and economic infrastructure, and limited livelihood opportunities. The two host counties, Garissa and Turkana, are largely arid and the inhabitants, the majority of whom are engaged in livestock keeping, are regularly affected by recurrent droughts. Both refugee and host communities struggle to find a sustainable route out of poverty. While the government has maintained an open-door policy with regard to the asylum of new arrivals, including those from non-neighbouring countries, the encampment policy remains in effect, with all asylum seekers and refugees required to live within the designated camps.

Against this background, the PROSPECTS Partnership, which includes the ILO, the United Nations International Children's Emergency Fund (UNICEF), the United Nations High Commissioner for Refugees (UNHCR), the International Finance Corporation (IFC) and the World Bank, contributes to the realization of the government's commitments to promote greater self-reliance for refugees and to expand socio-economic opportunities for host communities, as set out in the Nairobi Action Plan, the Global Compact for Refugees and the Comprehensive Refugee Response Framework.

Within this Partnership, the ILO plays a key role in the promotion of decent work and focuses on strengthening local economic development and improving employability by equipping refugees and host communities with better and relevant skills to enter local labour markets and to access enterprise development opportunities.

This report, "Review of national policy, legislative and regulatory frameworks, and practice in Kenya: a baseline study on the right to work and rights at work for refugees," is undertaken as part of a global exercise in conjunction with similar reviews drawn up in Jordan, Lebanon, Sudan, Egypt, Iraq, Uganda and Ethiopia under the PROSPECTS Partnership. It aims to provide an understanding of the current policy, legislative and regulatory frameworks and practice in relation to the access of refugees to the labour markets, employment, livelihood and training opportunities, including self-employment and business development, the rights at work, including social protection and freedom of association. This provides PROSPECTS with a clear understanding of the current status of these frameworks and how they are being applied or not. The analytical framework for this assessment was jointly developed by IMPACT Initiatives and ILO PROSPECTS through the contributions of a number of key technical specialists from various ILO technical departments.

The report reviewed national legislature, policy documents, datasets and grey literature to establish the legal basis for refugees' and IDPs' access to work and their rights at work. Findings from the literature review were verified and triangulated with fieldwork to establish how the laws are understood and implemented in practice. Key informant interviews and focus group discussions were conducted with authorities, refugees and host community members in Nairobi and in the two target counties.

I would like to thank the Kingdom of the Netherlands for their generous support of this assessment and the production of this report, undertaken in the context of the PROSPECTS Partnership. I would also like to thank Consilient Research for their work in conducting the assessment, ILO PROSPECTS colleagues in HQ and Kenya for their technical backstopping of this exercise, and the UNHCR colleagues for their review, valuable input and continuous collaboration with the ILO. We hope that this report would inform policy dialogue on the access to refugees to the labour markets, and that its recommendations would feed into the design of integrated interventions that promote decent work for refugees and host communities in Kenya.



Wellington Chibebe

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► Abbreviations

AfDB	African Development Bank	NHIF	National Hospital Insurance Fund
CRRF	Comprehensive Refugee Response Framework	NITA	National Industrial Training Authority
DRC	Danish Refugee Council	NRC	Norwegian Refugee Council
DRC	Democratic Republic of the Congo	NSSF	National Social Security Fund
DRS	Department of Refugee Services	OAU	Organisation of African Unity
EAC	East African Community	PIN	Personal identification number
FGD	Focus group discussion	PROSPECTS	Partnership for improving prospects for forcibly displaced persons and host communities
FKE	Federation of Kenya Employers	RAS	Refugee Affairs Secretariat
GoK	Government of Kenya	RPL	Recognition of prior learning
IDP	Internally displaced person	RSD	Refugee status determination
IFC	International Finance Corporation	SACCO	Savings and Credit Cooperative Organization
IGAD	Intergovernmental Authority on Development	SIM	Subscriber Identification Module
IHRC	International Human Rights Clinic at Harvard Law School	TVET	Technical and Vocational Education and Training
ILO	International Labour Organization	TVETA	Technical and Vocational Education and Training Authority
IRC	International Rescue Committee	UN	United Nations
KII	Key informant interview	UNESCO	United Nations Educational, Scientific and Cultural Organization
KISEDIP	Kalobeyei Integrated Social and Economic Development Programme	UNEVOC	International Centre for Technical and Vocational Education and Training
KNBS	Kenya National Bureau of Statistics	UNHCR	United Nations High Commissioner for Refugees
KNQA	Kenya National Qualifications Authority	UNICEF	United Nations Children's Fund
KRA	Kenya Revenue Authority	US	United States
KSh	Kenyan shilling	WB	World Bank
MSEA	Micro and Small Enterprises Authority		
NEA	National Employment Authority		
NGO	Non-governmental Organization		

► Definition of terms

Act	A statutory plan passed by parliament or any legislature which is a “bill” until it is enacted and becomes law.
Asylum	The protection granted by a state to someone who has left their home country as a political refugee.
Asylum seeker	A person who leaves their country of residence, enters another country and applies for asylum in this other country.
Bill	A formal statement of a planned new law that is discussed before being voted on.
Convention (or Treaty)	An agreement between different countries that is legally binding to the contracting states. A convention becomes legally binding to a particular state when that state ratifies it.
Cooperative	An autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise (ILO).
Decent work	Employment that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration (CESCR). <i>or</i> Work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives, and equality of opportunity and treatment for all women and men (ILO).
Declaration	Something formally or confidently stated or a document containing such a statement. UN Declarations are generally not legally binding; however, they represent the dynamic development of international legal norms and reflect the commitment of states to move in certain directions, abiding by certain principles.
Durable solutions	Voluntary repatriation to the country of origin in safety and dignity, resettlement to a third country or local integration in the country of asylum.
Formal sector	The formal economy includes enterprises operating within the official legal framework for businesses; this generally involves registration at the national level under the form of a company, partnership, sole proprietorship or group. Generally these enterprises must pay taxes legally and adhere to legislation regarding labour rights and conditions.

Informal sector	The informal sector is defined as consisting of units engaged in the production of goods or services with the primary objective of generating employment and incomes to the persons concerned. Informal sector enterprises are owned by individual household members or several members of the same or different households; they are not constituted as separate legal entities independently of their owners (OECD/ILO, 2019).
Internally displaced people	People or groups of people who have had to flee or leave their homes or places of habitual residence but have not crossed an internationally recognized state border.
Key informant	A person with whom an interview about a particular organisation, social programme, problem or interest group is conducted.
Loan	<p>A form of debt incurred by an individual or other entity. The lender – usually a corporation, financial institution or government – advances a sum of money to the borrower. In return, the borrower agrees to a certain set of terms including any finance charges, interest, repayment date and other conditions.</p> <p>NB. Loans and credits are different finance mechanisms. While a loan provides all the money requested in one go at the time it is issued, in the case of a credit, the bank provides the customer with an amount of money, which can be used as required, using the entire amount borrowed, part of it or none at all.</p>
Micro enterprise	In the specific context of Kenya, micro enterprises are defined as those having an annual turnover not exceeding 500,000 shillings, fewer than 10 employees, and whose total assets and financial investments do not exceed 10 million shillings (in manufacturing) or 5 million shillings (in agriculture or services)
Microfinance or microcredit	Activity or business of providing financial services, such as small loans, to poor people or new businesses that cannot use traditional banking services, usually in developing countries.
Migrant	A person who moves from one place to another, especially in order to find work or better living conditions.
Protracted displacement	Displacement for five years or more (UNHCR).
Refugee	Someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion (1951 Refugee Convention).
Refugee camp	<p>Temporary facilities built to provide immediate protection and assistance to people who have been forced to flee their homes owing to war, persecution or violence. While camps are not established to provide permanent solutions, they offer a safe haven for refugees and meet their most basic needs – such as food, water, shelter, medical treatment and other basic services – during emergencies.</p> <p>In situations of long-term displacement, the services provided in camps are expanded to include educational and livelihood opportunities as well as materials to construct more permanent homes to help people rebuild their lives. These services are also offered to host communities.</p>

Refugee status determination (RSD)	<p>Legal and/or administrative process by which governments receiving asylum seekers determine whether persons seeking protection meet the international legal definition of a refugee, thus qualifying for protection and assistance under international, regional or national law. The process could take anything between a few months to a few years.</p> <p>During the RSD process, asylum seekers who have applied for recognition as refugees to the governments of the country in which they are seeking protection are immune from prosecution for unlawful presence.</p>
Resettlement	Transfer of refugees from an asylum country to another state that has agreed to admit them and ultimately grant them permanent residence.
SACCO	A member-owned financial cooperative whose primary objectives are to mobilize savings and afford access to loans (productive and provident) on competitive terms as a way of enhancing members' socio-economic well-being.
Small enterprise	In the specific context of Kenya, small enterprises are defined as those having an annual turnover between 500,000 shillings and 5 million shillings, between 10 and 50 employees, and whose total assets and financial investments are between 10 million shillings and 50 million shillings (in manufacturing) or between 5 million shillings and 20 million shillings (in agriculture or services).
Voluntary repatriation	Return to home, not merely return to country of origin. While the country of origin is a simple, geopolitical concept, the home that the refugees are supposed to return to is more than a territorial place that is associated with a political entity.

► Executive summary

Kenya currently hosts around 540,000 refugees who reside primarily in the gazetted camps in Turkana (Kakuma and Kalobeyei) and Garissa counties (Dadaab) and, to a lesser extent, Nairobi and other urban areas. These refugees have few opportunities to participate in formal labour markets or economic activities outside of camps for a variety of reasons, including Kenya's policy of encampment, lack of access to identification documents, low education and skill levels, and weak labour markets in the refugee-hosting counties. Kenya's lack of a clear policy for integration of refugees into the labour market exacerbates these issues. Strengthening labour market access for refugees can help to empower them, reduce their reliance on humanitarian aid, and allow them to contribute to Kenya's economy and development.

Within this context, the Partnership for improving prospects for forcibly displaced persons and host communities (PROSPECTS) programme was established, led by the Government of the Netherlands and bringing together the International Finance Corporation, the International Labour Organization, the UN High Commissioner for Refugees, the UN Children's Fund, and the World Bank. The programme seeks to foster an enabling environment for socio-economic inclusion and, in Kenya, address barriers that are limiting the ability of refugees and host communities to maximize their productive potential and explore local economic development opportunities, among other goals. To inform this programme, this study aims to assess relevant policy, legislative and regulatory frameworks and current practices in relation to the access of refugees to labour markets, livelihoods and training opportunities. The study is based on a review of secondary sources, including the Kenyan and international legislative framework for refugee labour market participation and relevant academic literature, as well as 36 key informant interviews and focus group discussions held with a variety of key stakeholders and refugees.

Legislative framework

The new Refugees Act 2021 came into force in February 2022, replacing the Refugees Act 2006. This act includes substantial details on processes for refugee status determination, documentation and freedom of movement, but there are few specific provisions regarding refugees' participation in the labour market or rights to partake in economic activities. However, the act also states that all refugees and asylum seekers in Kenya are entitled to the rights bestowed upon them by all laws and subject to all laws in force in Kenya; this includes laws regarding, for example, the right to work, rights at work, access to justice and freedom of association. It is noted, however, that provisions within the act also limit refugees' access to rights otherwise conferred by law to residents of Kenya – most notably the right to freedom of movement, discussed further below. Other important sources of legislation relevant to refugees include a variety of international laws and regional policy frameworks regarding refugees which have been domesticated by Kenya, including the Kampala Declaration on Jobs, Livelihoods and Self-Reliance for Refugees, Returnees and Host Communities in IGAD Region, the 1951 Convention relating to the Status of Refugees, the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, and the East African Community Refugee Management Policy.

Refugee status determination and registration

Under the Refugees Act 2021, the Commissioner for Refugee Affairs is assigned responsibility to receive and process applications for refugee status. Applicants provide oral evidence to support their claim, and decisions are made by a Refugee Status Eligibility Panel within 90 days. Prior to receiving decisions, applicants receive temporary identification passes. Upon conferral of refugee status, refugees are to be issued identification documents called Refugee Identity Cards (formerly Alien ID cards); the Refugees Act provides refugees with an explicit legal right to these documents. However, the process for provision of refugee identification documents is not specified in current legislation.

Access to the labour market

The Employment Act 2019 provides for the right to work in Kenya for all legal residents, while the Refugees Act of 2021 further states specifically that refugees have the right to work. However, refugees must hold work permits in order to work legally. Refugees can apply for and receive Class M work permits; applications, while free, include documentation requirements (including a national passport and a Tax Compliance Certificate) that may be challenging for refugees, and require attestation from a Kenyan employer to justify hiring of a refugee over a Kenyan national, as non-Kenyans may not hold any job that Kenyan citizens have the capacity to do.

The Refugees Act provides refugees with the right to engage in self-employment, but no specific legislation exists regarding registration or ownership of refugee businesses. Similarly, no legislation exists specifically defining the rights (or lack thereof) of refugees to own or rent land, to access cooperatives or to access employment services. In all of these cases, however, provisions in the Refugees Act state that the laws of Kenya apply to refugees, and thereby suggest that relevant laws which apply to foreign nationals also apply to refugees, such as the Employment Act (2007, revised 2012), the Labour Relations Act (2007, revised 2012), the Micro and Small Enterprises Act (2012), several laws governing land ownership and leasing, and the Co-operative Societies Act (2005, revised 2012).

Refugees are permitted to own bank accounts and SIM cards and to access loans, but requirements for applicants to possess permanent identity documents – for which a refugee ID card is not sufficient – generally prove to be substantial barriers to access. As a result, refugees often fail to meet Know Your Customer requirements.

Rights at work

The Constitution of Kenya and Employment Act explicitly provides for the rights of workers, including fair labour practices, fair remuneration and reasonable working conditions. The Constitution additionally states that every person has the right to institute court proceedings claiming that a right in the Bill of Rights has been violated. For labour-related cases, injured parties may take cases to the Employment and Labour Relations Court. While these laws do not specifically reference refugees, the wording – along with the relevant provision in the Refugees Act – suggests that refugees are included.

While the Constitution states that every person has the right to freedom of movement, the Refugees Act includes substantial restrictions on movement for refugees. Refugees are confined to designated camps (except those with exemptions) and must obtain a movement pass if they wish to travel outside these areas. The Commissioner for Refugee Affairs is responsible for issuing these passes, but no guidance is provided in the legislation on the legal process or criteria for issuance of these passes.

While the legislation does not explicitly provide for refugee access to social security schemes, it also does not preclude access. All formal employers in Kenya must register with and contribute to the National Social Security Fund (NSSF) on behalf of their employees (potentially including refugees); there is also no restriction limiting voluntary contribution to this fund to Kenyan citizens. Refugees who possess a SIM card also have access to the Haba Haba scheme, run by the NSSF to provide social security for informal sector workers. Refugees also have legal access to the National Hospital Insurance Fund.

The Labour Relations Act provides every person with the right to freedom of association. Membership is not legally limited to Kenyan citizens.

Access to training and education

The State Department for Technical and Vocational Education and Training (TVET), the TVET Authority, and the National Industrial Training Authority all have responsibility for TVET. No legislation explicitly mentions refugees in the context of TVET, nor do any of these institutions have a mandate specifically for refugees. However, in regional conferences, the Kenyan government has committed to ensuring refugee access to education, including vocational education, although progress to date has been limited. Despite these limitations, TVET institutions exist which serve refugees, although TVET programmes are not legally free.

For refugees with prior qualifications, the Kenya National Qualifications Authority and the TVET Authority are mandated to recognize and equate these qualifications.¹ However, refugees must provide documents in English proving their qualifications. For refugees without documentation, the Recognition of Prior Learning Policy Framework 2021 provides the opportunity for refugees to have training recognized without formal documentation.

Naturalization pathways

Non-citizens may be naturalized by lawful residence, marriage, or adoption, with certain restrictions. Children born in Kenya are not automatically granted citizenship unless they have a Kenyan parent.

Current practice and implementation of legislative framework

Refugee status determination and registration

In practice, refugees submit applications for status determination to the Department for Refugee Services (formerly the Refugee Affairs Secretariat). There was a large backlog of cases (around 60,000 outstanding applications as of January 2022) (Graham and Miller 2021). As a result, it can take refugees anything from three months to three years to complete the status determination process. Refugees also report receiving conflicting and unclear information about the process. Refugee identification documents are provided upon completion of the status determination process; as such, many refugees do not have ID cards. This poses a significant challenge to refugees' labour market access.

Access to the labour market

Refugees are able to work informally and as low-paid "incentive workers" with non-governmental organizations within camps, but for those who seek to work outside camps or in formal jobs, lack of documentation and unclear and bureaucratic processes to obtain work permits make accessing employment difficult. In practice, work permits are rarely granted, particularly to refugees in camps. Refugees are, however, able to start businesses, and can receive business licences from county governments. However, the need for a permanent address, documentation and payment of fees to complete applications for business licensing can be prohibitive.

In practice, refugees are not allowed to own land in or outside camps. As a result, a black market for land exists within the camps in order to allow entrepreneurs access to desirable plots near market centres.

¹ In practice, equation of qualifications is handled only by the Kenya National Qualifications Authority.

Refugees collaborate with each other within small cooperatives, and the government is now providing refugees with the opportunity to register these self-help groups to help improve access to finance. Access to financial services is a major constraint for refugees, especially entrepreneurs; many cannot open bank accounts, access loans or start mobile money accounts because of their lack of documentation. In Dadaab, for example, only around 3 per cent of refugees have bank accounts.² As with finance, refugees may also struggle to access SIM cards owing to a lack of identity documents needed to satisfy Know Your Customer requirements. However, despite these challenges, mobile connectivity is prevalent among refugees, who often ask friends or family to purchase SIM cards on their behalf.

There are few employment services for refugees, although the National Industrial Training Authority provides training to refugees on getting employment, including through the provision of apprenticeships.

Rights at work

Refugees have little awareness of their rights at work and face wage discrimination and issues related to overtime and leave. Several obstacles prevent refugees' de facto access to courts to protect their rights at work, including the need to hire a lawyer for representation (at substantial cost for most refugees) and a low level of awareness of legal processes.

Restrictions on freedom of movement present one of the primary barriers to refugees' labour market participation outside camps, as well as their ability to run profitable businesses. The process to receive movement passes is bureaucratic, the criteria for issuance are unclear, and the application process can be difficult for refugees to complete. Movement passes are also rarely issued for business reasons.

International financing provides the basis for refugees' de facto inclusion in social protection systems. More than 8,000 refugees are registered with the National Hospital Insurance Fund, subsidized by the UNHCR. The UNHCR also runs cash assistance programmes for refugees, with grants for shelter, core relief items (soap and sanitary materials), energy and education. While there are no special protection programmes run by the government for refugees, the UNHCR is working closely with the State Department of Social Protection to further refugee inclusion in the National Safety Net programme.

While refugees are allowed to form trade unions, in practice, most of them do not belong to a union. Refugees also rarely join national unions because of the need for documentation and low levels of participation in formal employment.

Access to training and education

Refugees have access to TVET centres in camps, county- and NGO-managed TVET centres outside the camps, and national TVET centres. However, a lack of funding for TVET programmes, low awareness of TVET institutions and language barriers all can reduce refugee access to quality vocational training.

Because many refugees lack documentation of their qualifications (or have obtained skills through work experience, rather than education), it is difficult for them to go through the standard qualification recognition process. Systems for recognition of prior learning are currently being piloted and will allow refugees to showcase their skills practically for assessment and certification.

Naturalization pathways

It is very difficult for refugees to gain citizenship or permanent residency. Refugees who do gain citizenship are usually wealthy, with substantial business investment in Kenya.

² KII with a representative from UNHCR Dadaab in Garissa.

Recommendations

To improve refugee labour market participation, rights in the workplace and access to education and training, both the legislative framework and the practice of this framework must be strengthened. Key recommendations to strengthen legislation include the following:

- ▶ clarify processes for obtaining refugee identification documents;
- ▶ clarify applicability of laws regarding access to the labour market and rights at work to refugees;
- ▶ advocate for changes in Kenya's encampment policy which limit refugees' abilities to participate in the labour market;
- ▶ clarify processes for obtaining movement passes; and
- ▶ continue enshrining commitments to refugee education in legislation.

Key recommendations related to practice include the following:

- ▶ streamline processes for refugee status determination and ID provision;
- ▶ adjust and shorten processes for refugees to obtain work permits;
- ▶ establish processes for refugees to start businesses on land near market centres in camps;
- ▶ improve refugee access to finance and SIM cards;
- ▶ improve refugee awareness of rights at work; and
- ▶ continue strengthening processes for recognition of prior learning.

▶ 1

Introduction

Kenya currently hosts around 540,000 refugees. The majority of refugees in Kenya – over 85 per cent – come from South Sudan and Somalia, with the remainder primarily comprising refugees from the Democratic Republic of the Congo, Ethiopia, Burundi, Sudan, Uganda, Eritrea and Rwanda. Refugees in Kenya mainly reside in the gazetted camps in Turkana (Kakuma and Kalobeyei) and Garissa counties (Dadaab); over 220,000 refugees reside in Kakuma and Kalobeyei, while more than 230,000 refugees reside in Dadaab. Around 90,000 refugees also reside in Nairobi and, to a lesser extent, other urban centres (UNHCR 2021a).

The two major refugee-hosting counties are among the most underdeveloped in Kenya, with limited reach of social services and low levels of economic development. Low education levels combined with harsh agro-climatic conditions and weak market linkages mean that sustainable livelihood opportunities for both refugees and host communities are weak.

Improving livelihood opportunities by strengthening labour market access for refugees can help empower refugees, reduce their reliance on humanitarian aid, and allow them to contribute their skills and knowledge to strengthen the economy of their host community (Refugees International 2022). Along these lines, the 1951 UN Refugee Convention states that signatories should permit access to “wage-earning employment” for refugees, as well as freedom of movement. However, in many countries – including Kenya – refugee access to labour markets is limited, and refugees are largely confined to designated camps or areas. This often results in unfair competition for unprotected jobs in the informal economy (ILO 2022).

Within this context, there is a need to strengthen the legislative framework that provides refugees with labour market access, as well as with access to other services such as technical and vocational training, rights in the workplace, social security and freedom of association, among other aspects. In Kenya, the new Refugees Act (2021), which came into force on 23 February 2022, contains detailed stipulations about refugee status determination, refugee identification documents and freedom of movement. The act also includes a limited number of provisions about refugee participation in the labour market; however, in this act and in other legislation analysed in this paper, there is little legal guidance provided specifically for refugees’ rights to work or rights at work.

Against this backdrop, the Partnership for improving prospects for forcibly displaced persons and host communities (PROSPECTS) was formed, led by the Government of the Netherlands and bringing together the International Finance Corporation (IFC), the International Labour Organization (ILO), the UNHCR, the UN Children's Fund (UNICEF), and the World Bank (WB). This four-year programme (2019–2023) seeks specifically to transform the way that stakeholders respond to forced displacement crises by:

- ▶ fostering an enabling environment for socio-economic inclusion;
- ▶ improving access to education and protection for vulnerable children on the move; and
- ▶ strengthening the resilience of host communities.

In Kenya,³ the programme specifically strives to address barriers that are limiting the ability of refugees and host communities to maximize their productive potential and explore local economic development opportunities in the target counties of Garissa and Turkana.

In order to inform this programme, this study, entitled “Review of national policy, legislative and regulatory frameworks, and practice in Kenya”, aims to establish a baseline assessment of (1) relevant policy, legislative and regulatory frameworks and (2) current practice in terms of implementation in relation to the access of refugees to labour markets, employment (including through self-employment and business development), livelihoods, and training opportunities.

Importantly, this study provides a comparison between national policies and legislation and what actually happens in practice, examining in detail the roles and responsibilities of government ministries, institutions, social partners, and non-governmental actors to enact and implement policies and legislation. This line of analysis will inform further capacity-strengthening interventions and policy analysis, reform and development for partners involved in issues related to refugee access to labour markets and durable solutions, among other key areas.

The paper proceeds as follows. Section 2 describes the methodology for the research, including documents reviewed and key informants interviewed. Section 3 provides background on Kenya's refugee and labour market context. Section 4 discusses the legislative, policy and regulatory framework for refugee status determination and registration, access to the labour market, rights at work, access to training and education, and naturalization. Section 5 then discusses the current practice and implementation of the legislative framework described in the previous section. Section 6 provides recommendations and conclusions.

3 PROSPECTS also targets forced displacement situations in the following countries, in addition to Kenya: Egypt, Ethiopia, Iraq, Jordan, Lebanon, Sudan and Uganda.

▶ 2

Methodology

This baseline study, qualitative in nature, is based on a review of secondary sources relevant to refugees' access to the labour market in Kenya, as well as data from key informant interviews (KIIs) and focus group discussions (FGDs) conducted in Nairobi and in the two target counties, Garissa and Turkana. The final structure of this report is based on the IMPACT Initiatives' Global Methodology developed for this baseline study.

An extensive literature review was conducted for the study, including the following indicative areas:

- ▶ global and regional frameworks for refugees;
- ▶ global and regional frameworks for labour rights;
- ▶ Kenyan legislation for refugees, including the Refugees Act 2021;
- ▶ Kenyan legislation for immigration and citizenship;
- ▶ Kenyan legislation related to the labour market and rights at work including social protection;
- ▶ Kenyan legislation related to technical and vocational education;
- ▶ Kenyan policies for refugee socioeconomic inclusion and integration;
- ▶ datasets from the ILO, World Bank, the Kenya Labour Force Survey, the Kenya Census, UNHCR, and the Kenya National Bureau of Statistics, among others;
- ▶ ILO PROSPECTS Kenya programmatic documents;
- ▶ academic and grey literature on refugees in Kenya, refugee access to the labour market, and Kenyan refugee camps, among other topics.

Additionally, KIIs and FGDs were held from August to October 2021. Key informants in government, UN agencies, NGOs and other bodies were selected on the basis of their respective positions and relevance of their portfolios for the study. Focus groups participants were selected from the refugee or host community members in Garissa and Turkana. They were identified with assistance of Refugee Affairs Secretariat (RAS) Camp Managers in Dadaab and Kakuma and local UNHCR teams, as well as other humanitarian actors, often working with PROSPECTS or ILO partners, within the camps. The final selection of KII and FGD participants was finalized and agreed in the inception phase, in cooperation with ILO PROSPECTS Kenya team.

In total, 22 KIIs⁴ and 14 FGDs were conducted (see table 1).

► **Table 1. Profile of FGD and KII participants**

Respondent	Interview type	# of interviews
Unemployed refugees (Dadaab)	FGD	3
Employed refugees (Dadaab)	FGD	3
Host community members (Dadaab)	FGD	1
Unemployed refugees (Kakuma)	FGD	3
Employed refugees (Kakuma)	FGD	4
Total		14
Female business owners (refugees)	KII	2
Employed refugee	KII	1
Member of local Chamber of Commerce	KII	1
Kakuma Camp Manager	KII	1
Representatives from UNHCR in Dadaab	KII	3
Representative from Kenya National Qualifications Authority	KII	1
Representative from Danish Refugee Council in Dadaab	KII	1
Representative from Micro and Small Enterprises Authority	KII	1
Academic expert on labour economics in Kenya	KII	1
Representative from National Employment Authority	KII	1
Representative from Kenya National Chamber of Commerce and Industries	KII	1
Judge on Employment and Labour Relations Court	KII	1
Representative of Kenya National Chamber of Commerce – Garissa	KII	1
Representative from Turkana County Government	KII	1
Representative from State Department for Social Protection	KII	1
Representative from National Industrial Training Authority	KII	1
Representatives from UNHCR	KII	2
Representative from State Department for TVET	KII	1
Total		22

4 In addition to the informants listed in table 1, interview requests were sent to representatives of workers' and employers' organizations. However, these interviews did not take place as these representatives did not respond to the request.

▶ 3

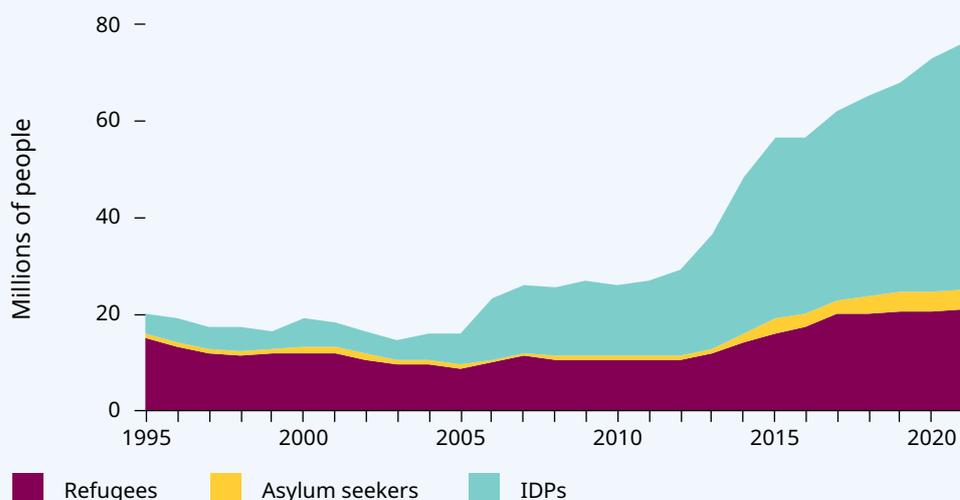
Background

▶ 3.1 Refugee context

Over the past decade, displacement has steadily increased in both scale and complexity. According to the UNHCR, the number of people forcibly displaced by conflict, violence, persecution, and human rights abuses rose for the ninth year in a row to exceed 84 million by the middle of 2021 (UNHCR, 2021b) (see Figure 1). This steady increase has occurred despite COVID-19 making it harder for those fleeing to seek safety abroad (UNHCR, 2021c). COVID-19 has also opened a new dimension of health and socioeconomic vulnerability for those who have been forced to flee from their homes. For many displaced persons already living in difficult and vulnerable situations, especially those in refugee camps, lack of access to national health or social services, vital for mitigating the risks and impact of the pandemic, further aggravated vulnerable situations and made the impact of COVID-19 more acute. These dynamics have complicated the task of protecting and assisting refugees and helping them to get home again, or start over.

This is all happening in a context where displacement has become more protracted. Some two-thirds of displaced persons in the world today are trapped in protracted displacement – situations characterized by long periods of exile and separation from home. When people remain displaced for a long period, their needs may no longer be urgent but can be just as acute. For them, as for those assisting or hosting them, there is an inevitable tension between planning sensibly for the long term and yet not creating a long-term situation that precludes their return home (Couldrey and Herson 2009).

► **Figure 1. Number of refugees, asylum seekers and IDPs of concern to UNHCR by year.**



Source: UNHCR 2021c.

3.1.1 Kenya

Kenya is experiencing both protracted and ongoing refugee situations. The country is currently hosting around 540,000 refugees and asylum seekers,⁵ the majority of them originating from Somalia (53 per cent), South Sudan (25 per cent), the Democratic Republic of the Congo (9 per cent) and Ethiopia (6 per cent), with the remainder mostly from Burundi, Sudan, Uganda, Eritrea and Rwanda (around 7 per cent total).⁶ Around 52 per cent of registered refugees and asylum seekers are male and 48 per cent female, and more than half (52 per cent) are children aged 0 to 17 (UNHCR 2021a).

Refugees in Kenya reside in the gazetted camps in Turkana (Kakuma and Kalobeyei) and Garissa counties (Dadaab), discussed in detail below. A smaller number of refugees – about 90,000 – reside in urban centres across the country, with the majority in the capital Nairobi. The two refugee hosting counties are among the most underdeveloped in Kenya, with limited access to social services, low levels of education and economic development, weak market linkages and harsh agroclimatic conditions. As a result, refugees rely heavily on humanitarian assistance, and access to sustainable livelihood opportunities is low among both refugees and host communities.

3.1.2 Dadaab refugee complex

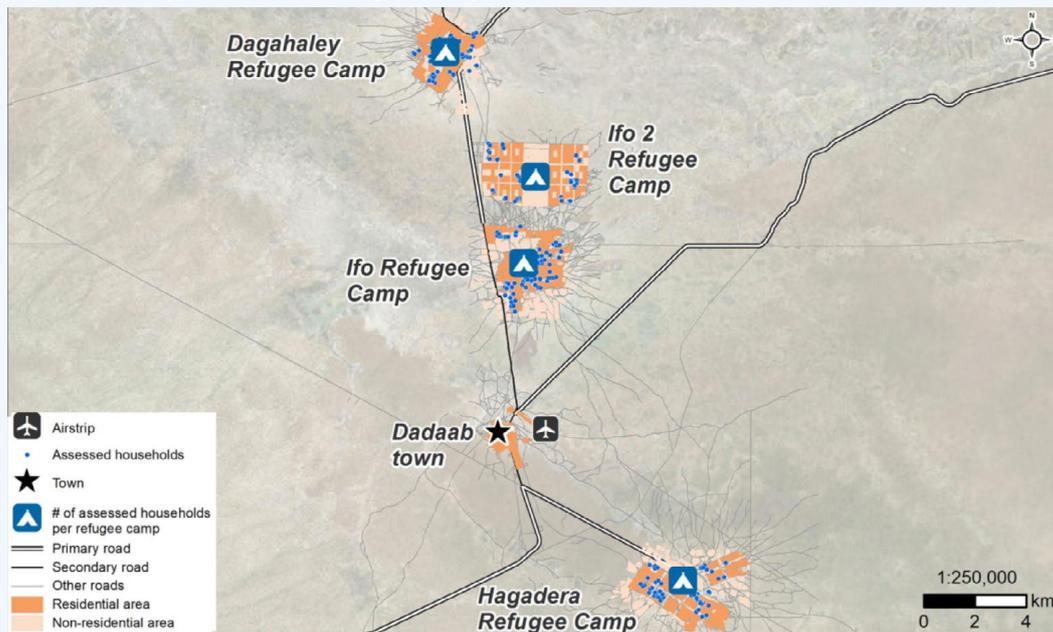
The Dadaab refugee complex is one of the largest in the world, with a population, as of the end of March 2022, of over 234,000 registered refugees and asylum seekers, most of whom are from Somalia.⁷ The Dadaab refugee complex consists of three camps: Dagahaley and Ifo, both located in Lagdera (Dadaab) sub-county, and Hagadera, located in Fafi sub-county (see figure 2).

5 547,884 as of 31 March 2022, according to UNHCR, 481,058 of whom are refugees and 59,010 are asylum seekers. Source: <https://data2.unhcr.org/en/country/ken>.

6 See <https://data2.unhcr.org/en/country/ken>.

7 See <https://data2.unhcr.org/en/country/ken>.

► **Figure 2. Camps of Dadaab refugee complex**



Source: REACH Initiative, 2018.

The Dadaab refugee complex was first established in 1991, when refugees fleeing the civil war in Somalia started to cross the border into Kenya. A second large influx occurred in 2011, when some 130,000 refugees arrived, fleeing drought and famine in southern Somalia. During this influx, additional camps (Ifo 2 and Kambioos) were established; they have since been closed after a reduction in the numbers of refugees housed in Dadaab as a result of the voluntary return programme (UNHCR 2022a).

Refugee camps in Dadaab have developed into commercial hubs connecting northeastern Kenya and southern Somalia. The Dadaab refugee complex is so vast that it has been compared to a city, with urban features such as high population density, economic activity and concentration of infrastructure (Perouse de Montclos and Kagwanja 2000). Like a typical urban area, Dadaab contains public service buildings such as schools and hospitals. However, the camps are crowded and can be difficult to navigate (Odiwuor 2011).

While information on the socio-economic and demographic profiles of refugees in Dadaab is limited, data from the UNHCR shows that the majority of registered refugees in the camp have no formal education (65 per cent have no education or informal education only). More than half of the refugees for whom data exists report having no occupation; for those who do have an occupation, the primary sectors are domestic work, farming, transportation and livestock production, although none of these occupations are highly prevalent (UNHCR and ILO 2019).

Many refugees in Dadaab arrived in the 1990s and have children and grandchildren born in the camps. Although many of the refugees have voluntarily repatriated, the camps are still overcrowded and exceed their intended capacity.

3.1.3 Kakuma Refugee Camp and Kalobeyei Integrated Settlement

Kakuma Refugee Camp and Kalobeyei Integrated Settlement, located in Turkana county in northwestern Kenya, have a population of over 227,000 registered refugees and asylum seekers.⁸ The Kakuma camp was established in 1992, following the arrival of the “Lost Boys of Sudan” (IRC 2021). During that year, large groups of Ethiopian refugees also fled their country following the fall of the Ethiopian government. Somalia also experienced high insecurity and civil strife, causing people to flee to Kenya, among other countries (UNHCR 2022b).

With an influx of new arrivals in 2014, Kakuma Refugee Camp surpassed its capacity by more than 58,000 individuals, leading to congestion. Following negotiations between the UNHCR, the Government of Kenya (GoK), the County Government of Turkana and the host community, land for a new settlement was identified in Kalobeyei, 20 kilometers from Kakuma town. This settlement has eventually been developed to promote the self-reliance of refugees and host communities by providing them with better livelihood opportunities and enhanced service delivery.

Kakuma Camp is divided into four sub-camps, Kakuma 1, 2, 3, and 4, while Kalobeyei Settlement is comprised of 3 villages, Village 1, 2, and 3 (see figure 3).

► **Figure 3. Kakuma and Kalobeyei camps**



Source: MacPherson and Sterck, 2019.

8 As of the end of March 2022; see <https://data2.unhcr.org/en/country/ken>.

Studies conducted by the UNHCR have found high levels of poverty and exclusion from labour markets among refugees in Kakuma and Kalobeyei. A 2019 socio-economic survey found that 68 per cent of refugees in Kakuma were poor,⁹ only 20 per cent were employed, and 78 per cent were outside the labour force. Among the refugees who were outside the labour force or unemployed, the primary challenges to employment that were reported were a lack of skills and a lack of opportunities. Moreover, only 11 per cent of refugee households owned a regular bank account, showing low levels of access to formal financial institutions (UNHCR and World Bank 2019).

The UNHCR, in collaboration with the World Bank and the Turkana County Government, established the Kalobeyei Integrated Social and Economic Development Programme (KISED) in 2018 (UNHCR 2018), a multi-agency collaboration to develop the local economy and service delivery at Kalobeyei.¹⁰ The overall objective of this initiative is to re-orient the refugee assistance programme to contribute towards improving the socio-economic conditions of refugees and host communities, to better prepare the host community to take advantage of emerging economic opportunities, to reduce over-dependence on humanitarian aid, and to help refugees to achieve durable solutions.

3.1.4 Durable solutions

Kenya's refugee dynamics reinforce the need for durable solutions, including paths to resettlement, refugee return and integration. For refugees who may be integrated into Kenyan communities, there is a need to strengthen access to work, labour markets, business ownership, education and training, as well as to ensure that refugees have clear pathways to legal residency and, eventually, naturalization.

Currently, the UNHCR is in talks with the GoK, including the UNHCR's main government counterpart, the Ministry of Interior and Coordination of National Government, about the implementation of durable solutions.¹¹ These solutions will take place under the repatriation road map agreed to by the UNHCR and the GoK in April 2021, now referred to as the Marshall plan. This road map includes "provisions for voluntary safe return of refugees to their home nations, departures to third countries under various arrangements, and alternative stay options in Kenya for refugees from the East African Community (EAC) member states" (President of the Republic of Kenya 2021). In other words, the road map includes options for refugee return, resettlement and integration (specifically of refugees from EAC member states).

An exercise held by the UNHCR, in which refugees were asked if they were prepared to return home as a result of the GoK pronouncement, found that 85 per cent of refugees said they would not be prepared to go back to their country of origin out of fear for their lives. While refugees are generally in favour of resettlement and integration, however, the GoK's preferred solution is based on the return of refugees.¹²

9 That is, had incomes below the international poverty line of US\$1.90 (2011 purchasing power parity) per day.

10 KISED is a 15-year comprehensive multi-sectoral and multi-stakeholder initiative to benefit the refugee and host community populations of Turkana West, implemented by the county government, the UNHCR, and other partner organizations, with initial financial support from the European Union. Phase One of KISED runs from 2018 to 2022, while Phase Two will run from 2023 to 2027 and Phase Three from 2028 to 2030. The current Phase One focuses on provision of accessible basic social services and protection for refugees and host communities, strengthening the humanitarian-development nexus, scaling up innovative delivery modalities such as cash-based interventions, enhancing technical and institutional capacities, and promoting inclusive national service delivery systems to improve resilience and sustainability (UNHCR 2018).

11 KII with INGO representative, Dadaab, 7 September 2021.

12 KII with INGO representative, Dadaab, 7 September 2021.

▶ 3.2 Labour market context

The Kenyan labour market is characterized by high levels of informality, declining purchasing power of workers, growth in non-wage jobs, and high levels of youth unemployment. Around 83 per cent of the workforce operates in the informal economy;¹³ these workers are more likely to face non-compliance with labour regulations, including minimum wages. The majority of informal sector workers are in micro-sized enterprises according to the Federation of Kenya Employers (FKE), 2021.¹⁴ For those employed in the formal economy,¹⁵ employment predominantly occurs in the private sector (around 70 per cent of formal sector workers), rather than the public sector, according to the Kenya National Bureau of Statistics (KNBS 2021).

The bulk of formal sector employees (including both private and public employees) are engaged in education (22 per cent), followed by manufacturing (13 per cent), agriculture, forestry and fishing (13 per cent), public administration and defense (9 per cent) and wholesale and retail trade (9 per cent). In the informal economy, not including workers in small-scale agriculture, employment occurs predominantly in the wholesale and retail trade, hotels and restaurants (60 per cent), manufacturing (20 per cent) and community, social, and personal services (10 per cent). Additionally, a large portion of the population is engaged in small-scale agriculture (including pastoralism) (KNBS 2021).

Within the informal economy, there are low levels of social security coverage and unionization. Average monthly wages also fall below statutory minimum wages of 13,572 Kenyan shillings (FKE 2021). Within the formal economy, however, industrial relations are generally well organized. In 2020, for example, 172 collective bargaining agreements were registered by the Industrial Court, with more than 16,000 unionizable employees covered by these agreements (KNBS 2021).

Kenya has insufficient absorptive capacity in the labour market, causing high levels of unemployment.¹⁶ Of particular concern, however, is youth unemployment, especially given the high percentage of young people in Kenya's population, as well as among refugees. Estimates from the ILO shows that around 20 per cent of Kenya's youth aged 15 to 24 are not in employment, education or training.¹⁷ Additionally, underemployment and working poverty are prevalent (World Bank 2016); this mix of unemployment, underemployment, inactivity and poor-quality jobs disproportionately affects youth (Samuel Hall 2017).

Skills shortages have a detrimental effect on job creation and labour market outcomes; a study by Sanchez Puerta et al. (2018) found that employers had concerns with the level and relevance of skills among job applicants and recently hired workers. These skills constraints affected firms' competitiveness and productivity. Furthermore, this study found that in many cases, workers were not being matched with the right jobs; in other words, the existing skillsets of workers were poorly utilized.

Kenya's economy and labour force has been severely affected by COVID-19, which has impacted both incomes and employment, especially in the service and manufacturing sectors. As a result of the pandemic, nearly 2 million people in Kenya are estimated to have fallen into poverty, and nearly 900,000 to have lost their jobs. However, Kenya's economic growth outlook is positive, contingent on a rebound after reopening the economy and implementing economic recovery policies (AfDB 2021).

13 The informal sector is defined as consisting of units engaged in the production of goods or services with the primary objective of generating employment and incomes to the persons concerned. Informal sector enterprises are owned by individual household members or several members of the same or different households; they are not constituted as separate legal entities independently of their owners (OECD/ILO 2019).

14 Enterprises employing fewer than 10 people.

15 The formal economy includes enterprises operating within the official legal framework for businesses; this generally involves registration at the national level under the form of a company, partnership, sole proprietorship or group. These enterprises must generally pay taxes legally and adhere to legislation regarding labour rights and conditions.

16 According to KNBS, approximately 7 million Kenyans are unemployed out of a total of 25 million who fall in the working age group (15 to 61 years of age).

17 See <https://ilostat.ilo.org/topics/youth>.



Start and Improve Your Business training participants in Kakuma refugee camp. © ILO

► 3.3 Refugees and the labour market

Refugees in Kenya face many barriers to economic inclusion which limit their participation in the labour market. The GoK's encampment policy, which requires most refugees to live in the designated camps described above, limits refugees' access to national labour markets. Furthermore, limited access to work permits and identification documents forces most refugees to work informally (whether inside or outside camps). Other barriers include limited job opportunities in the counties hosting refugee camps, a low level of education and skills, as well as skills mismatches among refugees and limited access to financial resources. As a result of these barriers, on average, refugees earn lower incomes, face higher rates of poverty, and have much lower rates of employment than Kenyan citizens (Graham and Miller 2021).

Given these dynamics, there is a need to strengthen a wide range of policies and practices to improve refugees' inclusion in the labour market. These include addressing issues that limit refugees' abilities to access work, such as work permits and freedom of movement; issues that affect refugees' rights at work; and issues that limit refugees' ability to work productively, such as access to technical and vocational education. In the sections below, we discuss the legislative framework for these issues, followed by implementation of this framework and its impact on refugees' labour market participation.



▶ 4

Legislative, policy and regulatory frameworks

In this section, the legislative, policy and regulatory frameworks affecting refugee participation in the labour market are reviewed. The section starts with a brief overview of the main legislation, policies and regulations applying to refugees, followed by those for the labour market. It then analyses specific provisions within this legal framework (and other relevant legal documents) for: (1) refugee status determination and registration, including provision of identification documents; (2) access to the labour market, including the right to work, the right to establish a business, the right to own or rent land, access to cooperatives, access to finance and financial services, and access to other relevant input (such as employment services and SIM cards); (3) rights at work, including access to justice to protect workers' rights, freedom of movement, access to social security benefits and freedom of association; and (4) naturalization. For each of these four areas, key gaps in the legal framework for refugees are also analysed.

▶ 4.1 Overview of legislation, policies and regulations for refugees

The main sources of refugee law in Kenya include the 1951 Convention relating to the Status of Refugees, the 1967 Protocol (adjacent to the 1951 Convention) and the 1969 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa. Kenya acceded the 1951 Convention and the 1967 protocol on 16 May 1966 and 13 November 1981 respectively and ratified the 1969 OAU Convention on 23 June 1992. These instruments were later domesticated by the Kenyan Parliament through the Refugees Act 2006. Regional frameworks for refugee law to which Kenya is a signatory include the Kampala Declaration on Jobs, Livelihoods and Self-Reliance for Refugees, Returnees and Host Communities in IGAD Region.

Additionally, the new Refugees Act 2021 has been passed by Parliament and approved by the President, and came into force on 23 February 2022, replacing the Refugees Act 2006.¹⁸ This act – relevant provisions of which will be discussed in substantial detail in further sections – includes articles stipulating administrative provisions for the management of refugee affairs; processes by which individuals and families may apply for refugee status; procedures for receiving refugees and asylum seekers; the rights and duties of refugees in Kenya; and control of designated areas for refugees, including aspects related to freedom of movement. Notably, as will be discussed below, although this act includes substantial detail on processes for refugee status determination, documentation and freedom of movement, there are few specific provisions regarding refugees’ participation in the labour market or rights to partake in economic activities. However, importantly, this act also states in article 28 that all refugees and asylum seekers in Kenya are entitled to the rights and subject to all laws in force in Kenya.

The Refugees Act 2021 establishes three bodies for refugee affairs: the Department of Refugee Services, the Refugee Advisory Committee, and the Refugee Status Appeals Committee. The Department is legally responsible for all administrative matters concerning asylum seekers and refugees in Kenya, for the coordination of programmes related to refugees, and for handling all operational aspects of protection and assistance of refugees (Refugees Act 2021, article 7.2a–c). The Refugee Advisory Committee, headed by the Commissioner for Refugee Affairs, has a wide range of responsibilities, including those related to refugee status determination and identification, freedom of movement, protection and durable solutions, as will be discussed below (Refugees Act 2021, article 8.2a–x). The committee is also given responsibility for advising the cabinet secretary¹⁹ on refugee policy (Refugees Act 2021, article 10a–d). Lastly, the Refugee Status Appeals Committee has responsibility for determining appeals against any decisions regarding applications for refugee status (Refugees Act 2021, article 11.4a–b).

► 4.2 Overview of legislation, policies and regulations for the labour market

The Constitution of Kenya includes a number of provisions for labour rights within the Bill of Rights. These include provisions against slavery and forced labour (article 30) and provisions for freedom of association (article 36), freedom of movement (article 39), labour relations (article 41), and access to justice (articles 48–51), discussed in more detail below.

Outside the Constitution, the main laws governing labour markets and employment are the Employment Act Revised Edition 2012 (2007) and the Labour Relations Act Revised Edition 2012 (2007). The Employment Act contains provisions for employer–employee relations, protection of wages, rights and duties of employment (including minimum conditions of employment), termination and dismissal, protection of children, and foreign contracts of service, among others. The Labour Relations Act includes provisions for freedom of association, the establishment and registration of trade unions and employers’ organizations, the operations of trade unions, and recognition of trade unions and collective agreements, among others. In addition, Kenya is a signatory to the East African Community Common Market Protocol, which establishes protocols for the free movement of persons and workers and the harmonization of labour policies, among other issues. These acts, as well as other acts of interest, where relevant, will be discussed in more detail below.

18 Specifically, the Refugees Act 2021 in Part VIII, Article 42 states that “the Refugees Act, No. 13 of 2006 is repealed.”

19 Within the act, this is specified only as the “Cabinet Secretary responsible for matters relating to refugee affairs”.

▶ 4.3 Refugee status determination and registration

4.3.1 Refugee status determination

Refugee status determination (RSD) is the legal or administrative process by which governments or other bodies determine whether a person seeking international protection is considered a refugee (or asylum seeker) under international, regional or national law. The RSD process determines whether an individual may reside legally in a country as a refugee, and thus underpins access to all rights regarding refugee labour market participation discussed below.

In Kenya, RSD is currently conducted by the RAS under the Refugees Act 2006.²⁰ However, this process is changing under the Refugees Act 2021, under which the Commissioner for Refugee Affairs is assigned the responsibility to “receive and process applications for refugee status” (Refugees Act 2021, article 8.2c). Furthermore, the Refugee Status Appeals Committee is assigned the responsibility to hear appeals in the case of rejection or revocation of refugee status (see Refugees Act 2021, article 11.4).

The Refugees Act 2021 includes a number of specific provisions regarding the RSD process, summarized here. Part III of the act concerns applications for refugee status and states that applications shall be made to the Commissioner or through an authorized officer. Applicants shall then provide oral evidence before the Commissioner to support their claim for refugee status, and may be accompanied by a legal practitioner, at their own cost. Applications are referred to a Refugee Status Eligibility Panel, who make recommendations on refugee status. All applicants shall receive a decision within 90 days (although extensions are permitted). Prior to receiving a decision, applicants and their families receive temporary identification passes entitling them to remain in Kenya until decision is made.

Additionally, it is noted that the Refugees Act 2021 allows refugees from a partner state of the EAC to voluntarily give up their refugee status to enjoy benefits under the EAC Common Market Protocol, including the right of residence within an EAC country. This provides an alternative legal stay option for refugees from countries within the EAC (UNHCR 2022c).

4.3.2 Refugee identification cards

After refugee status is determined, obtaining legal identification documents enables refugees to hold other rights under the law, including access to basic services such as health and education. For refugees in Kenya, legal identity is also important because it enables them to access humanitarian assistance.

The Refugees Act 2021 states that “a refugee and an asylum seeker shall have the right to identification and civil registration documents and such documents shall be sufficient to identify a refugee or asylum seeker for the purposes of access to rights and services under this Act and any other applicable law” (article 28.6). Article 28.4 similarly states that refugees “shall be enabled to contribute to the economic and social development of Kenya by facilitating access to, and issuance of, the required documentation”. Access to IDs is also prioritized under KISED P to promote a favourable regulatory environment to optimize engagement of refugees in labour markets.²¹

20 Registration and documentation was handed over to the RAS in 2016 by the UNHCR, although the UNHCR provides technical assistance.

21 Specifically, under sub-component 7.8.1 of Component Eight: Private Sector and Entrepreneurship, KISED P reads as follows: “To seek concrete solutions to address the challenges in freedom of movement and obtaining legal documentation that grant refugees the right to engage in economic activities, a One-Stop-Shop – Huduma/Biashara Center will be set up in Kakuma-Kalobeyei area with the goal to strengthen synergies between relevant institutions and ease registration procedures and access to documentation.”

Within the Refugees Act 2021, article 28.7 further states that the Refugee Identity Card shall, at minimum, have “similar status” to the Foreign National Registration Certificate issued under the Kenya Citizenship and Immigration Act. As will be discussed further below, the conferment of this status comes with requirements for work permits and employment, restrictions on access to learning institutions, and restrictions on freedom of movement in some cases.

Under the Refugees Act 2021, in addition to the responsibility for RSD, the Commissioner for Refugee Affairs is given responsibility to “issue refugee identification documents and facilitate issuance of civil registration and other relevant documentation by other government agencies” (article 8.2d). The process for receiving a refugee identification document, however, is not specifically described in this act; rather, article 44.2 states that further regulations may be enacted regarding refugee identification (and travel) documents, including the method of issuance and the rights conferred by documents. While the Refugees Act 2021 invalidates the previous Refugees Act 2006, provisions for obtaining refugee identification documents in the previous act likely remain indicative until further regulations are enacted. This 2006 act, however, provided a few specific procedures for the issuance of identification documents. Accordingly, identification cards are issued when the refugee status is granted; refugees and asylum seekers must comply with fingerprinting and photographing requirements upon application for refugee status; and identity documents shall be issued free of charge and without discrimination.

It is also noted that the specific identification document provided to refugees has changed, because the institution responsible for issuing ID documents has changed. When they were issued by the UNHCR, refugees received a “mandate certificate” valid for two years. Under the RAS, refugees were granted an “Alien ID card” valid for five years. This card was referred to variously as a “refugee identity card”, “refugee certificate”, “refugee certification” or “alien certificate”. However, since 2006, these cards have been referred to as “refugee identity cards” in legislation (including the Refugees Act 2021) (NRC and IHRC 2017). These variations in the name and type of documentation issued may result in legal ambiguities that make it unclear whether certain documents are sufficient to qualify a refugee to receive a service.

4.3.3 Key gaps in legislative, policy and regulatory framework

While the Refugees Act 2021 contains stipulations for RSD, further regulations are needed to describe the processes for obtaining refugee identification documents. It is likely that processes (as explained above) will remain similar to those under the Refugees Act 2006. However, further clarity on legally prescribed procedures for refugee identification is needed, given that procedures in the 2006 Act are also generally non-specific.

▶ 4.4 Access to the labour market

4.4.1 Right to work

The Employment Act provides for the right to work in Kenya for all legal residents and prohibits discrimination based on race, language, religion, nationality or ethnic or social origin, among other protected classes. While the act does not directly reference refugees, as confirmed by key informants, those with legal work status are considered to be covered under the act.

However, article 5.4c of the act also states that it is not discrimination to preferentially employ a citizen of Kenya in accordance with national employment policy. This policy – Sessional Paper No. 4 of 2013 on Employment Policy and Strategy for Kenya – makes no specific mention of refugees or of a national right to work but only contains stipulations for effective management of labour migration.

Nevertheless, the Refugees Act 2021 stipulates that refugees have the right to work. Article 28.6 states that a refugee “shall have the right to engage individually or in a group, in gainful employment or enterprise or to practice a profession or trade where he holds qualifications recognized by competent authorities in Kenya”. The latter half of this statement is noteworthy as it implies a need for refugees to receive either GoK verification of any previously obtained vocational, educational or professional qualifications, or new qualifications through education or training in order to practice a profession or trade. This means that the functional right to work of refugees hinges on their ability to obtain recognition of qualifications; these issues will be discussed further below. Article 8.2v of this act additionally notes that the Commissioner of Refugee Affairs must “ensure that refugees’ economic and productive activities do not have a negative impact on host communities, natural resources or the local environment”; this may further restrict the refugees’ right to work.

Under the EAC Common Market Protocol (which the Refugees Act 2021 states that refugees from EAC countries might be subject to, provided that they first give up their refugee status), workers from EAC partner states may accept employment within other EAC countries and cannot be discriminated against on the basis of their nationality. However, EAC partner states have only committed to accepting high-skilled workers, including (depending on the country) professionals, managers, technicians and associate professionals, and craft and related trade workers (EAC 2022).²² As such, this framework is also restrictive and applicable only to skilled refugees.

Lastly, the Citizenship and Immigration Act (2011, revised 2012) states that “no person shall employ ... a foreign national whose status does not authorize him or her to engage in employment” (Section 45.1b). This stipulation emphasizes the need for refugees to access identification documents and work permits.

4.4.2 Access to work permits

Access to a work permit is vital for refugees to participate in the formal labour market;²³ both the Citizenship and Immigration Act and Sessional Paper No. 4 emphasize that work permits are required for foreign nationals to work in Kenya (a group which includes refugees). The Department of Immigration Services explicitly provides for refugees to access Class M work permits.²⁴ The Citizenship and Immigration Act provides broad guidelines for the issuance of permits in article 40, and, notably, states that holders of Class M permits may engage in any occupation, trade, business or profession (article 41.1c).

The application for a Class M permit, while free, includes some documentation requirements that may prove challenging for refugees. First among these is a copy of the applicant’s national passport, which – depending on the circumstances under which they left their country of origin – refugees may lack. The application also requires a signed cover letter from the employer, a valid Tax Compliance Certificate, and a recommendation from the Refugee Affairs Secretariat (now the Department of Refugee Services), all of which mean that the refugee has to have a job offer lined up prior to the work permit application. These requirements may be difficult if the refugee does not have the freedom to move or sufficient access to the internet or phone services in order to apply for jobs or contact employers.

The application also requires submission of Form 25, as defined in the Citizenship and Immigration Act. Form 25 requires employers who wish to hire a refugee (or migrant worker) to confirm that there is no local worker available with the skills and qualifications sought for the position, and also to state the steps that have been or will be taken to engage a Kenyan trainee – a requirement for hiring non-national workers. Moreover, the form requires applicants to attach qualifications to support their application, including their available capital and academic or technical qualifications.

22 Defined as in ILO classifications.

23 Although not necessary for participation in the informal labour market.

24 Refugees may apply for other classes of work permits as well, such as the Class C permit for those in professions such as medicine, law, engineering and accounting. The process for application, however, is similar to that for a Class M permit, or even more restrictive, and these permits are applicable to a small number of refugees; hence the process is not discussed here.

Overall, these restrictions functionally limit access to Class M work permits to refugees who have access to documentation (identification and verified academic or technical qualifications),²⁵ a high skills level, and an established offer from an employer willing to sponsor the application for a permit and further invest in a Kenyan trainee as a requirement for employment of a non-national worker. Moreover, refugees with Class M permits are not permitted to change employers,²⁶ and permits must be renewed every two years.

4.4.3 Permission to start, improve and register own business

Article 28.6 of the Refugees Act 2021, discussed above, provides refugees with the right to engage in enterprise; however no further stipulations about starting or registering a business are included. Given that no specific legal frameworks exist defining separate procedures for refugees to start businesses, the business registration process applying to non-citizens of Kenya applies also to refugees. Under this process, refugees may register their business as a limited liability company or a single business name with the national registrar and receive a business permit. However, this process requires documentation including a passport and registration with the Revenue Authority, National Hospital Insurance Fund and National Social Security Fund, as well as for refugees to fill out an online form.²⁷ It may be functionally difficult for refugees to comply with these processes for reasons similar to those listed above in section 4.4.2.

In addition, the Micro and Small Enterprises Act No. 55 (2012) provides specific legal guidelines for the registration of micro and small enterprises.²⁸ Within this act, there are no specific references to non-citizens.

Business registration under this Act is somewhat simpler than the general business registration process, and requires applicants to send the Registrar of Micro and Small Enterprises a copy of the constitutive document of their business, the names and addresses of founders, the address of the principal place of doing business, any other information needed to verify that the business qualifies under the act, and a fee for registration (these fees are established in the Micro and Small Enterprises (Association) Regulations of 2019). Sessional Paper No. 5 of 2020 on Kenya Micro and Small Enterprises Policy states that despite the enactment of the Micro and Small Enterprises Act, policy interventions envisioned under the act were weakened owing to delayed operationalization, and many activities – such as the establishment of the Registrar – were unachieved as of 2020. As such, this regulatory framework may not currently be functionally in force.

4.4.4 Permission to own or rent land

The main laws governing land ownership for non-citizens in Kenya – the Land Act (2012), the Land Registration Act (2012), the Land Control Act (2010, revised 2012) – state that non-citizens, ostensibly including refugees, can acquire and lease land in their own name in Kenya, subject to certain limitations. The main limitation is defined in article 65.1 of the Constitution, which states that non-citizens may hold land but on the basis of leasehold tenure only, with a maximum lease length of 99 years. The Land Control Act further stipulates that transactions affecting “controlled land”²⁹ are not permitted for non-citizens of Kenya.

25 While not technically a strict legal requirement, given the need for employers to justify that the desired skill set does not exist among Kenyan workers, it is highly unlikely that an applicant will qualify for a Class M permit without documented qualifications.

26 Article 41 of the Citizenship and Immigration Act states that where a permit has been issued to a person, and that person engages in any employment other than the employment referred to in the permit, the permit shall cease to be valid and the presence of that person in Kenya shall be unlawful.

27 See <https://eregulations.invest.go.ke/>.

28 Micro enterprises are defined as those having an annual turnover not exceeding 500,000 shillings, fewer than 10 employees, and whose total assets and financial investments do not exceed 10 million shillings (in manufacturing) or 5 million shillings (in agriculture or services). Small enterprises are defined as those having an annual turnover between 500,000 and 5 million shillings, between 10 and 50 employees, and whose total assets and financial investments are between 10 million and 50 million shillings (in manufacturing) or between 5 million and 20 million shillings (in agriculture or services).

29 Including agricultural land and other land which may be gazetted by the Ministry of Lands.

The process for purchasing land includes: first, conducting an official land search to establish ownership of the property; second, obtaining land transfer documents, which requires provision of valid identification and a Kenya Revenue Authority PIN; third, obtaining valuation of the property for stamp duties (as defined in the Stamp Duty Act, revised 2012); fourth, payment of the stamp duty; and last, registering land (as defined in the Land Registration Act).³⁰ As in the sections above, it is noted that while this process is accessible to refugees, from a legal perspective, requirements for documentation and registration with the Kenya Revenue Authority may make the process functionally difficult. Furthermore, rights to ownership of land may be of little use to refugees with limited freedom of movement. This issue is discussed further below.

4.4.5 Access to cooperatives

Cooperatives are formed of voluntarily organized individuals who seek to share goods and services for mutual benefit (for example, by leveraging their larger size in order to gain access to bulk inputs with lower per-item costs). Cooperatives also often provide education and training to their members and may open bank accounts. Membership in a cooperative can thus provide a range of economic and social benefits. The main law governing access to cooperatives in Kenya is the Co-operative Societies Act (2005, revised 2012); cooperative membership is not mentioned in the Refugees Act 2021, the Employment Act or other legislation mentioned above. The Co-operative Societies Act does not specifically mention or exclude refugees, and stipulates that individuals are qualified for membership in a cooperative if their occupation falls within the category of those for which the cooperative was formed and if they are resident within, or occupy land within, the cooperative society's area of operation. This suggests that refugees legally residing within the area of operation of a cooperative and with a relevant occupation would qualify for membership in that cooperative if the cooperative accepts their registration documents. Notably, this act includes no written requirement that cooperative members operate within the formal labour market or hold work permits to engage in the cooperatives.

Additionally, this act does not stipulate any citizenship requirements for registration of a cooperative. Section 5 states simply that for a primary society to be registered under the act, it must consist of at least ten *persons* (not citizens) who are qualified for membership in the society. Given that there is no citizenship qualification for membership, this wording suggests that groups of refugees satisfying the basic requirements above would legally qualify to register as a cooperative society.

4.4.6 Access to finance and financial services

Accessing finance and financial services – whether formally through a bank or for services such as mobile money – is vital for refugees to obtain the capital needed to start or expand businesses. Refugees are permitted to open a bank account, but Know Your Customer requirements, as stipulated in article 45 of the Proceeds of Crime and Anti-money Laundering Act (2009) (“Obligation to verify customer identity”), require financial service providers in Kenya to verify the identity of customers. As such, refugee identification documents are required for refugees to access financial services.³¹ While legally, the process by which refugees obtain identification documents is simple, in practice, as will be discussed further below, many refugees lack documentation. This can be a substantial barrier for refugees to access formal financial services which, along with other barriers such as accessibility of banks, can limit their functional access to financial services.

30 See eregulations.invest.go.ke for procedures for transfer of land.

31 For example, in order for refugees to register with M-Pesa, an Alien ID card is required. These ID documents are no longer issued.

4.4.7 Access to employment services

Employment services, as defined by the ILO, are services which match jobseekers with job opportunities; these services are crucial for a well functioning labour market and may be provided by the government or private agencies (ILO 2021). The main government body for employment services³² in Kenya is the National Employment Authority (NEA) established under the National Employment Authority Act No. 3 (2016). It has the function of maintaining a database of all *persons* seeking employment in Kenya, facilitating the employment of jobseekers in formal or informal employment, circulating advertised job vacancies to jobseekers throughout Kenya, and providing counselling to the unemployed to promote employment, among other functions. The Kenyan government does not have any employment services or programmes specifically for refugees,³³ but this does not legally preclude refugees from accessing these services, as the mandate of the NEA is not restricted to citizens of Kenya and broadly applies, at least as written, to all jobseekers in the country. In other words, legally, refugees may be integrated into existing employment services programmes.

4.4.8 Access to SIM cards

Before a telecommunications company sells a SIM card, the Kenya Information and Communications Act (1998, revised 2020) states that the company must obtain the purchaser's full name, identity card number, date of birth, gender, and address (article 27A). The supplementary Registration of SIM Cards Regulations (2015) states specifically that for a foreign national, a national passport or "alien card" are required.³⁴ Given that refugees are formally issued "refugee identity documents" – not alien cards – and that many refugees may not have passports, these regulations may preclude refugees from accessing SIM cards, and thus mobile money services, because of Know Your Customer requirements.

4.4.9 Key gaps in legislative, policy and regulatory framework

The above review of legislation and policies related to refugees' access to the labour market shows that Kenyan legislation does not tend to specify whether refugees are included or excluded, apart from some legislation stipulating the right of refugees to work and a substantial amount of legislation related to refugee work permits. While the Refugees Act 2021 states that refugees are entitled and subject to all laws in force in Kenya – meaning that legislation that is not specific to refugees is still applicable to refugees – further legal clarification of the applicability of current laws to refugees may help establish clear guidelines and strengthen their labour market access.

Along these lines, it is worth emphasizing that while much of the above legislation applies to both foreign nationals and refugees, these two groups have substantially different levels of access to identification documents, access to financial services and freedom of movement, among other concerns. As a result, legislation which may be relatively unrestrictive for foreign nationals – such as legislation for starting and registering a business – may be far more difficult for refugees to comply with. As such, it may be worth exploring avenues for the adoption of new legislation or amendments to current legislation stipulating new rules for refugees, in light of their special status in the country. Secondary legislation bringing into effect the provisions of the Refugees Act 2021 is expected to be adopted within six months after the adoption of the act; this presents an opportunity.

32 It is noted that the Labour Institutions Act (2007) provides for the regulation of private employment agencies. This act requires that employment agencies register with the Director of Employment under the Ministry of Labour and includes a number of provisions to ensure that employment agencies do not charge undue fees, keep appropriate records, and do not misrepresent employers or employees.

33 Confirmed in conversation with representatives of Kenya's National Employment Authority.

34 For East African residents, the regulations require either a national identity card, a national passport, an East African passport, or other valid registration documents accepted as national identification in the country of domicile.

For refugees' right to work, the Refugees Act 2021 specifically states that refugees have this right; this statement is unambiguous and refugee-specific. Similarly, for access to work permits, a specific category of work permit (Class M) pertains to refugees, and the requirements for this work permit are clearly described (though restrictive).

Regarding the right of refugees to start and register a business, the Refugees Act 2021 provides refugees with the right to engage in enterprises, but no other legislation exists specific to refugees. Business registration guidelines for non-nationals of Kenya are clear, but legal clarification of their applicability to refugees may be helpful in light of the Refugees Act 2021, which states that all refugees and asylum seekers in Kenya are entitled to the rights and subject to all laws in force in Kenya. This is particularly true for the Micro and Small Enterprises Act, which makes no specific reference to non-citizens.

Similarly, there are no refugee-specific laws regarding refugees' permission to own or rent land. While laws regarding non-citizens' land ownership technically apply to refugees, given the refugees' limited freedom of movement, and the policy within camps that refugees should not own land (but rather be provided with land for free), in practice – as will be discussed extensively below – refugees have little ability to own or lease land. Further legal clarification regarding refugee ownership or leasing of land inside and outside camps would be helpful.

Refugees' access to cooperatives is also not specified in legislation, although legislation does not explicitly exclude refugees from membership. As above, the applicability of current legislation to refugees should be clarified.

Refugees are permitted to open bank accounts and access finance and financial services, but it can be difficult for them to satisfy Know Your Customer requirements. To address this issue, it may be helpful to further legally clarify that refugee identity documents are sufficient to satisfy KYC requirements, as well as to sensitize financial institutions to the needs of refugees.

As with starting businesses, owning land, and joining cooperatives, there is no refugee-specific legislation on access to employment services, but refugees are also not explicitly precluded from accessing these services. It may be helpful to legally clarify that the NEA's mandate includes refugees.

Lastly, to access SIM cards (and thus mobile money), legislation requires the applicant to provide an "alien card" or national passport; refugees, however, are formally issued with "refugee identity documents" by the Department of Refugee Services. Although, in practice, these documents are accepted to access a SIM card (discussed further below), there is a need to codify this access by amending the wording of the Kenya Information and Communications Act to allow for the legal acceptance of these refugee identification documents.

▶ 4.5 Rights at work

4.5.1 General protection in the labour market

The Constitution of Kenya explicitly provides for the rights of workers in article 41, including the right to fair labour practices, fair remuneration, reasonable working conditions, to join a trade union, and to go on strike. Additionally, this article provides rights for trade unions and employers' organizations to self-administer, organize, form and join a federation, and engage in collective bargaining.

The Employment Act additionally contains a large number of provisions for workers' protection in the labour market, including prohibitions against forced labour, discrimination and sexual harassment; protocols for employer–employee relationships, including contracts for services; protection of wages; basic minimum conditions for employment, including work hours and rights to leave (sick, vacation, and parental); protocols for termination and dismissal; and protocols for the protection of children, among others.

Apart from these two acts, the Labour Institutions Act (2007) establishes a general wages council and an agricultural wages council, responsible for making recommendations on minimum wage levels and for investigating the remuneration and conditions of employment in any sector. Wages orders are published in the Gazette and set minimum rates of remuneration, rules for deductions, rules for task-based, casual, and contract work, and minimum standards for sanitation for employees residing on the premises of their employer. Minimum wages are set by sector (agriculture and non-agriculture), occupation,³⁵ and location.³⁶

4.5.2 Access to justice and legal systems

The Refugees Act 2021 does not specifically provide refugees with a right to access Kenya's justice and legal system to uphold their rights at work.³⁷ The Constitution, however, states that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been violated or is threatened (article 22.1), including rights to protection in the labour market discussed above. The Constitution also stipulates that the state shall ensure access to justice for all persons at a reasonable cost (one that does not impede access).

The Employment Act provides further guidance on access to justice for labour rights. Under Part XII, the Disputes Settlement Procedure, the act states that in cases in which an employer or employee fails to fulfil their contract, a dispute arises regarding the rights or liability of either party, or any misconduct or injury occurs under contract of service, the aggrieved party may complain to the labour office or take the case to the Industrial Court.³⁸ In accordance with the Employment and Labour Relations Court Act (2012, revised 2014), the Industrial Court has been replaced with the Employment and Labour Relations Court; this is now the relevant judicial body.

This Court has, as stipulated in the Employment and Labour Relations Court Act, exclusive original and appellate jurisdiction to hear and determine disputes related to employment and labour relations, including those related to disputes between employers and employees and between employers and trade unions, among other categories. Article 29 of the act further states that the court shall ensure reasonable, equitable and progressive access to judicial services in all counties; however, no specific mention is made of refugees, non-citizens (or citizens) or migrant workers.

4.5.3 Freedom of movement

While article 39(1) of the Constitution of Kenya states that every person has the right to freedom of movement, the Refugees Act 2021 includes substantial restrictions on movement for refugees. Refugees are confined to designated areas³⁹ (a continuation of the policy of encampment established in the Refugees Act 2006, and enforced by the police) and must obtain a travel document or movement pass if they wish to travel outside these areas within Kenya. Responsibility for issuing these passes is delegated to the Commissioner for Refugee Affairs. The Commissioner may additionally require refugees residing within designated areas to move to another designated area based on safety and protection considerations; any refugee who refuses to do so is guilty of an offence under the Act.

35 For example, the Regulation of Wages (General) (Amendment) Order (2018) sets minimum monthly wages for occupations such as general labourers, tailors, machine operators, clerks, drivers of various types of vehicles and artisans of various skill levels, among many others.

36 Highest in Nairobi, Mombasa and Kisumu cities, followed by all former municipalities and town councils of Mavoko, Ruiru and Limuru, followed by all other areas.

37 Or any other rights, with the exception of stipulating the refugees may appeal to the High Court as part of the process of refugee status determination.

38 Established originally in the Labour Institutions Act.

39 That is, to Kakuma/Kalobeyei and Dadaab.

While the Refugees Act 2021 provides for the issuance of movement passes, it does not provide any guidance on the process or criteria for issuance of these passes,⁴⁰ simply stating that movement passes can be issued to those who “wish” to travel outside of designated areas. No further regulatory documents exist stipulating these processes or criteria. As such, a variety of de facto practices for issuance of passes have emerged, which will be discussed further below.

It is also worth noting that work permits granted to refugees do not formally grant freedom of movement. As a result, many refugees with work permits living outside designated areas are doing so without legal permission, and may therefore be subject to harassment even when they have the legal right to work (Graham and Miller 2021).

Apart from movement passes, the Commissioner may also exempt asylum seekers and refugees from residing in designated areas “where there are compelling reasons to do so” (article 8.2p). However, as with movement passes, there is no official guidance on the legal process or criteria for refugees to apply for an exemption. In general, as will be discussed below, the UNHCR advocates with RAS (now Department of Refugee Services (DRS)) to allow individual refugees (usually with protection concerns) to live outside designated areas; the legal mechanism for these exceptions, however, is unclear.⁴¹

The Refugees Act 2021 requires all refugees or asylum seekers residing outside a designated area at the commencement of the act (23 February 2022) to notify the Commissioner of their situation so that the Commissioner “shall make such orders as may be necessary in the circumstances”. As a result, all refugees residing outside Kakuma and Dadaab – including the large refugee population in Nairobi and other urban areas – may face an upcoming review of the reasons for their place of residence, and could, in theory, legally be ordered to move to a designated camp.

While this review focuses on national policy in the context of freedom of movement, it is worth noting that Kenya’s policy of encampment is at odds with several international laws and frameworks to which it has committed. This includes the Comprehensive Refugee Response Framework (CRRF) for which, in 2017, Kenya agreed to be a pilot country; it emphasizes the integration of refugees into host countries, thus requiring freedom of movement (UNHCR and ILO 2019). Overall, besides conflicting with international frameworks, legal restrictions on freedom of movement present a substantial barrier to the labour market access of refugees. Indeed, KISED’s private sector and entrepreneurship component emphasizes the need to address challenges in freedom of movement in order to better protect the right to work of refugees and to promote self-reliance.

4.5.4 Access to social security benefits

Article 43.1 of the Constitution of Kenya states that “every person has the right ... to social security” and that the State shall provide appropriate social security to those who are unable to support themselves and their dependents. The main policy establishing Kenya’s social security system is the National Social Protection Policy (2012), which establishes three pillars for the national social security system: social assistance, social security, and health insurance. This policy’s definition of social security, notably, does not fully align with the Constitution, as social security is limited to contributory schemes but not guaranteed as a right to all Kenyan citizens (Kidd et al. 2017).⁴²

40 The Refugees Act 2006 (revised 2012) provided for the issuance of a “pupil’s pass” to refugees who are students in Kenya. A similar provision was *not* included in the 2021 Act.

41 Norwegian Refugee Council and International Human Rights Clinic, *Supporting Kakuma’s Refugees: The Importance of Freedom of Movement*, 2018.

42 It is noted that the draft 2019 Kenya Social Protection Policy, which has not yet been adopted, reflects an intention to move towards a life cycle approach to social protection. Along these lines, this policy refers to social protection as “a set of policies, programmes, interventions, and legislative measures aimed at (i) cushioning all Kenyans against poverty, vulnerability, exclusion, risks, contingencies and shocks throughout their lifecycles, (ii) at promoting social and economic inclusion and (iii) at supporting the realisation of economic and social rights” (Gardner et al. 2020).

The focus here is on social security and health insurance schemes, as these are of most relevance to refugee participation in the labour market.⁴³ These include the National Social Security Fund (NSSF) and National Hospital Insurance Fund (NHIF), both of which are contributory schemes. Policies and procedures for the NSSF are stipulated in the NSSF Act (2013). Section 19 of this act states that all employers with at least one employee shall register with and contribute to the fund.⁴⁴ Additionally, individuals may voluntarily contribute to the fund (section 23). These stipulations suggest: first, that refugees employed in the formal labour market with Kenyan companies are included under the fund; and second, that refugees may voluntarily contribute to the fund as there is no restriction on membership based on Kenyan citizenship. In a KII, a source from the NSSF further confirmed that in principle, refugees may participate in NSSF schemes.

Besides formal sector workers and voluntary contributions, the Haba Haba scheme,⁴⁵ run by the NSSF, provides social security for informal sector workers. Registration with this scheme only requires access to a mobile phone, and no specific provisions exist restricting participation to Kenyan citizens only. However, given the constraints on refugee access to SIM cards discussed above, it may be difficult for refugees to access this scheme.

The NHIF, created as a health insurance system for workers in the formal sector, meets the cost of healthcare treatment (with restrictions based on whether healthcare providers are in-scheme or out-of-scheme, and with cost limits) for contributing members.⁴⁶ It is also accessible to individuals not in the formal sector through a contribution of 500 shillings per month (around US\$5). Refugees have access to the NHIF. Currently, over 8,000 refugees residing in Nairobi are members of this fund, with access subsidized by the UNHCR (UNHCR 2021d), and access is being expanded to around 12,500 refugees and 1,500 host community members in Kalobeyei. However, there are no national health services available in the vicinity of camps.

4.5.5 Freedom of association

Article 36 of the Constitution states that every person has the right to freedom of association, including the right to form, join or participate in the activities of an association, and that no person shall be compelled to join an association. This article further stipulates that any legislation requiring registration of an association shall not allow for registration to be withheld or withdrawn unreasonably, and that there shall be a right to have a fair hearing before registration is cancelled.

The central law dealing with the freedom of association is the Labour Relations Act. Among other stipulations related to employees, it says that “every employee⁴⁷ has the right to participate in forming a trade union or federation of trade unions; join a trade union; or leave a trade union”. The act further states that employees shall not be discriminated against for exercising any rights related to freedom of association, and provides further detail on the rights of associations and methods for establishing an association, among other areas.

Notably, Part IV of the act regarding membership of associations does not limit membership in an association to Kenyan citizens only. Rather, article 33 simply states that voting members must be employed in the sector for which the trade union is registered.

43 Social assistance schemes include cash transfers for orphans and vulnerable children, persons with disabilities, and the elderly; school feeding programmes; and cash and food assistance.

44 Both employer’s and employee’s contributions are set at 6 per cent of the employee’s monthly pensionable earnings. Employers may opt out of the fund if they are registered with a private social security scheme.

45 Haba Haba is an informal sector product by NSSF which aims to empower small and medium enterprises. Members in the targeted group are able to save upwards of 0.25 shillings per day and withdraw 50 per cent of their savings after consistently contributing for 5 years.

46 The NHIF is also implementing a new maternity income benefit, to which refugees should also have access.

47 “Employee” is defined as a person employed for wages or a salary, including an apprentice or indentured learner, and is thus restricted to formal sector employees.

4.5.6 Key gaps in legislative, policy and regulatory framework

While workers' rights to general protection in the labour market are well established in Kenya's Constitution, the Employment Act and the Labour Institutions Act, these documents do not specifically refer to refugees. The Refugees Act 2021 makes it clear that refugees are entitled to all rights provided by Kenyan legislation; however, further clarification of refugees' specific rights at work may help strengthen their labour market protections. Similarly, the legislative framework provides for workers' access to justice, but does not specifically stipulate that these rights extend to refugees.

The main gaps in legislation for rights at work relate to refugees' freedom of movement. As noted above, there are no formal regulations for the issuance of movement passes to refugees or on the criteria for refugees to apply for an exemption from residing in designated areas. As such, a variety of ad hoc processes have been established; however, because these processes are not codified, they may be applied unequally to refugees. Furthermore, refugees who qualify for movement passes or exemption from residing in designated areas may be vulnerable to harassment, questioning or sudden changes in status, because the legal framework for this qualification is unclear, creating room for the police or other officials to challenge the legality of refugees' movement or living arrangements.

Indeed, this challenge could potentially affect refugees currently living outside designated areas under the new Refugees Act 2021, which states that all refugees residing outside designated areas at the time of commencement of the act must notify the Commissioner, who "shall make such orders as may be necessary". It is unclear exactly what "orders" fall under this responsibility — that is, whether this review of the status of refugees living outside designated areas may result in orders for refugees to relocate to camps. Furthermore, the process by which the Commissioner may arrive at any "orders" is also unclear. If refugees are, potentially, to be ordered to return to camps, there must be a clearly stipulated legal process by which this decision is made.

Regarding access to social security benefits, legislation is again not refugee-specific, but also does not exclude refugees from participation in social protection schemes. It is noted, however, that it is difficult for refugees to access the Haba Haba scheme because of difficulties obtaining SIM cards registered in their own names, as discussed above.

Lastly, Kenya's legislative framework clearly provides for freedom of association. As with access to social security, refugees are neither explicitly mentioned nor excluded; clarifying the applicability of these rights to refugees may help strengthen the framework for refugees' rights at work.

▶ 4.6 Access to training and education

The major TVET documents in Kenya are Vision 2030, the related Medium Term Plans (currently in their third generation), the TVET Act 2013, the Technical and Vocational Education and Training Authority Strategic Plan 2018–2022, the National Industrial Training and Attachment Policy, the Industrial Training Act of 2011, the Kenya National Qualifications Framework Act No. 22 of 2014, and the new TVET policy 2020 (which was drafted and validated within the Ministry but not yet approved or tabled in parliament).

The State Department for Vocational and Technical Training in the Ministry of Education is the central unit in charge of supervision and coordination with regard to TVET policy formulation and implementation in the country, as well as of both public and non-governmental TVET institutions (primarily to harmonize training programmes). Its responsibilities include development of policies for legislative and regulatory frameworks in the TVET sector, supervision of TVET implementation, improvement of access and equity (including through infrastructure development), and equipping TVET institutions, among others. In addition, the State Department for Post Training and Skills Development in the Ministry of Education is responsible for developing and implementing strategies to improve the skills of the Kenyan workforce, linking industry skills development and training, and managing the national apprenticeship policy,



Start and Improve Your Business training participants in Kakuma refugee camp. © ILO

among others. Outside these government bodies, the TVET Authority (TVETA) is a regulatory body responsible for quality assurance and maintenance of the training sector, proper organization and governance structures. For example, TVETA steers the TVET Curriculum Development Assessment and Certification Council, a qualification awarding institution.⁴⁸

One other important institution is the National Industrial Training Authority (NITA) – a state corporation under the Ministry of Labour which has both regulatory and qualification awarding roles. NITA's mandate is to ensure the catalyzation of skills development for workers by absorbing and sustaining them in the labour market. NITA's focus is on skills development through industrial training. It was inceptioned by an act of parliament called the Industrial Training Act CAP 237, revised 2012. NITA partners with TVETA and vice-versa: TVET institutions that wish to undertake industrial training programmes are accredited by NITA; likewise, NITA institutions that wish to undertake TVET programmes are accredited by TVETA.

4.6.1 Access to skills development, TVET, apprenticeships and career counselling

None of the aforementioned documents explicitly mention refugees in the context of TVET; the TVET Act 2013, for example, has not envisioned the inclusion of refugees or grant facilities that would support the integration of refugees. Moreover, the Refugees Act 2021 does not include any mention of TVET, skills development or other relevant programmes. In general, however, these documents do not stipulate requirements for individuals to access TVET institutions or other skills development programmes. They rather set requirements for the establishment of TVET institutions themselves, as well as for the quality and structure of the education and training provided.

⁴⁸ See <https://www.tvetcdacc.go.ke>.

During the regional conference on refugee education in IGAD member states in Djibouti in 2017, the Kenyan government committed to “take collective responsibility to ensure that every refugee... [has] access to quality education”, to integrate refugees into national education policies and strategies, and to adopt and implement an Action Plan for refugee education. This Action Plan includes, among other provisions, to integrate refugees into Education Sector Plans by 2020; to ensure the protection of refugees in national education systems; to recognize and respond to the distinct learning needs of refugees; to strengthen frameworks to promote inclusion and development of refugee teachers; to identify community college-type programmes for expansion and development; to support increased refugee access to secondary education; to develop minimum education standards for refugees; to determine demand for skills training of refugees; to form a TVET expert group to develop mechanisms for linking TVET institutions across IGAD countries and identify options to harmonize skills development programmes; and to mobilize financing to implement refugee education plans. Additionally, the Kampala Declaration on Jobs, Livelihoods and Self-Reliance for Refugees, Returnees and Host Communities in IGAD Region, of which Kenya is a signatory, declares that action shall be taken to provide refugee access to quality and continuous training and skills development programmes.

However, the only result so far in this regard has been that the harmonization and training in skills and services across the country has helped prevent a parallel system of education for refugee learners.⁴⁹ This means that host community students are able to learn side by side with their refugee counterparts in refugee settings. They share financial and non-financial resources and ensure non-discriminatory equitable access to education and training system at that level. It further ensures that refugees get access to accredited learning institutions.

TVET is not legally free (UNESCO and UNEVOC 2018), and currently there are no formal government grants or allowances that would support refugees in their access to TVET; the only grants provided are through development partners. The grants available for skills and training in Kenya are available through the Higher Education Loans Board, which are provided for Kenyan citizens only.

There is, however, a system in place to help refugees access information about TVET institutions, as well as to expand the reach of TVET services. The TVET management information system (service portal), launched by TVETA, allows TVET institutions to register for accreditation and provides a harmonized source of information on TVET. The system is also linked to some other government systems or institutions, such as E-citizen, the Kenya Universities and Colleges Central Placement Service, the Kenya National Examinations Council, and the Labour Market Information Systems. Using these systems, refugees can access all relevant information related to TVET institutions.

In addition, it is important to note that there are formal TVET institutions, organized at the national level by the State Department for TVET and at the county level, and informal TVET systems, including on-the-job training, apprenticeships and government trade tests. The formal TVET system has admission requirements which include (for various types of training) a Kenya Certificate of Primary Education, graduation from lower secondary education and a passed examination for the Foundation Industrial Education, or a Kenya Certificate of Secondary Education with sufficient marks in relevant subjects (UNESCO and UNEVOC 2018). Refugees who did not attend Kenyan schools would be precluded from accessing these institutions, as they would not have Kenyan certificates of graduation unless they go through a process of equation of qualification.⁵⁰ However, on-the-job training organized by the Micro and Small Enterprises Authority (MSEA), government trade tests organized by NITA, and apprenticeships organized by NITA and the Kenya National Chamber of Commerce and Industry, do not have stringent admission requirements and are thus more accessible to refugees.

County governments also manage vocational education and training, as stipulated in the County Vocational Education and Training Bill (2020). This bill gives county governments the responsibility of putting in place systems for vocational education and training, formulating and implementing county-specific TVET programmes, providing funding for TVET centres and ensuring availability and accessibility of vocational training, among other duties.

49 Talk with a source from NITA, 24 August 2021.

50 It is noted, however, that EAC countries have harmonized their qualifications frameworks for higher education. Refugees from EAC countries may thus find it relatively easier to qualify for TVET training thanks to similarities in certificates and qualifications awarded.

4.6.2 Recognition of education, vocational, academic and professional qualifications and prior learning

The Kenya National Qualifications Authority (KNQA) is one of the government agencies under the State Department for vocational and technical training at the Ministry of Education. Established in 2015, it is a relatively new institution. The laws governing its work are the Kenya National Qualifications Framework Act No. 22 of 2014, KNQA Act 2018 and TVET Act 2013.

KNQA is mandated by the law to recognize local and foreign qualifications and equate them. TVETA is also mandated by the law to recognize certificate and diploma levels of education. KNQA oversees what TVETA and the Commission for Universities Education do in regard to equation of qualifications. However, given the obvious duplication of mandates, there is a need to revise them.

The process followed is that the applicant must provide certified copies, and for foreigners, the copies should be certified by the advocate or a public notary. All non-English certifications and transcripts must be translated into English before they are forwarded to the authorities, and candidates must provide their identification documents (passports, work permits, photos and/or visas). Submission can be completed online as of August 2021. KNQA maintains the Kenya Recognition Equation and Verification Portal where a candidate can register online.

After submission, the documents for which Kenyan recognition is sought are subjected to a rigorous process. Where possible, key technical people scrutinize the documents by making contact with the institutions where the foreigners studied, to make sure that the institution is fully accredited.

Regarding the recognition and equation of TVET qualifications from the refugees' countries of origin (DRC, Ethiopia, South Sudan and Somalia) that are recognized in Kenya, an interview with KNQA indicated that TVETA and KNQA have specific standards and guidelines which enable them to make the process of recognition easier and quicker. However, while TVETA's recognition is limited to certificate and diploma levels, KNQA can recognize qualifications at all assessed levels of the Kenya National Qualification Framework.

In cases where refugees lack the necessary documentation, it becomes difficult to subject them to what has been established as the standard process. However, recognition of the prior learning (RPL) process, managed by KNQA, provides refugees (an explicit target group for RPL) with the opportunity to have their prior training officially recognized in lieu of formal documentation. Processes for RPL are managed under the RPL Policy Framework (validated in 2021, and to be officially launched at the time of writing) and its accompanied guidelines. Applicants are asked to prepare an evidence portfolio, including documents such as a current résumé, reference letters, work examples, photos or videos, certificates and transcripts, and overseas qualifications and learning experiences. RPL assessors then go through this portfolio before contacting applicants for a competency conversation and a practical observation, if needed. If applicants are unsatisfied with the verdict of their RPL assessment, they can appeal. The cost of the RPL process varies, based on the needs of applicants, and the process – according to the KNQA – takes about six weeks (KNQA n.d.).

4.6.3 Key gaps in legislative, policy and regulatory framework

Many commitments the Kenyan government made under the Djibouti Declaration on Refugee Education and the Kampala Declaration on Jobs, Livelihoods and Self-Reliance for Refugees, Returnees and Host Communities in IGAD Region have not yet been enshrined in legislation. This includes, among other commitments, integrating refugees into Education Sector Plans, strengthening frameworks to promote inclusion and development of refugee teachers, identifying community college-type programmes for expansion and development, supporting increased refugee access to secondary education, determining demand for skills training of refugees, and mobilizing finance to implement refugee education plans.

In addition, there is no framework for allowing refugees to access formal TVET institutions which require certificates of completion from Kenyan schools (primary or secondary) or passing Kenyan exams in order to qualify for admittance. It may be helpful to allow for alternative forms of admittance for refugees, or, alternatively, to establish a simple method for recognizing and equivocating refugees' education to allow

for admittance to formal TVET institutions. However, the absence of government grants available for refugees to access TVET services may prevent refugees from accessing these institutions, given that TVET institutions are not free. Further establishing policies by which refugees can obtain funding to attend TVET institutions may help improve access.

Lastly, it is noted that there is an overlap in the mandates of the KNQA and the TVETA that should be clarified. Currently, both of these institutions have responsibility for recognizing and equating foreign qualifications.

▶ 4.7 Naturalization pathways

The Refugees Act 2021 includes no provisions for refugees to become citizens of Kenya.⁵¹ The Citizenship and Immigration Act, however, includes a number of provisions detailing means by which a non-citizen may be naturalized.⁵² One such means is by lawful residence. Adults who have lawfully resided in Kenya continuously for at least seven years may become citizens. However, to do so, they must have been a resident under the authority of a valid permit, have an adequate knowledge of Kenya and the rights and duties of citizens, be able to speak Kiswahili or a local dialect, intend to live in Kenya after naturalization and, notably, be judged as being able to make a substantive contribution to the progress or advancement of national development in Kenya. For this last qualification, the Citizenship and Immigration Act provides that this shall be determined “through an objective criteria”.

Furthermore, refugees may be eligible to become citizens of Kenya if they have been married to a Kenyan citizen for at least seven years, if they are a child who is adopted by a citizen, if they are a stateless person who has lived in Kenya continuously since 1963 and who satisfies other eligibility requirements,⁵³ or if they are a migrant who has been continuously living in Kenya since 1963 and who satisfies other eligibility requirements.⁵⁴ Applicants by marriage or adoption are specifically entitled to registration upon application, which is not the case for those who apply by claiming lawful residence.

Children born in Kenya are not automatically granted citizenship; rather, article 14 of the Constitution states that a person is a citizen by birth if their mother or their father is a citizen, regardless of whether the person was born in Kenya. As such, children of refugees born in refugee camps in Kenya are not citizens of Kenya.

The Kenya Immigration Service charges fees for citizenship applications. The highest of these fees is for those seeking to naturalize through lawful residency, at 200,000 shillings, about US\$1,750. Fees are lower for citizenship by marriage (30,000 shillings, about US\$260, for non-East Africans and 5,000 shillings, about US\$45, for East Africans).

4.7.1 Key gaps in legislative, policy and regulatory framework

The Citizenship and Immigration Act does not clearly stipulate the “objective criteria” by which applicants for citizenship shall be determined to have made a substantial contribution to the progress or advancement of national development in Kenya. As such, the full criteria by which a refugee (or other foreign national) may qualify for citizenship are not clear.

51 It is noted that Kenya has taken substantial steps to reduce statelessness in recent years, while this is not directly related to the issue of refugee naturalization. This includes committing to complete legal reforms to address and remedy statelessness in Kenya, to validate and implement the draft National Action Plan to eradicate statelessness, and to accede to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness by 2023 (UNHCR 2022d). In line with these commitments, Kenya has granted citizenship to several groups of stateless people in recent years, including 1,670 Shona people and 1,300 persons of Rwandan descent in 2020 (UNHCR 2020a).

52 The Constitution reinforces this act, stating that persons who have been married to a citizen for at least seven years, who have lawfully resided in Kenya for at least seven years, or who are adopted children may become citizens subject to processes stipulated in other legislation.

53 Such as speaking Kiswahili or a local dialect and understanding the rights and duties of a citizen.

54 Such as not holding a passport of another country, speaking Kiswahili or a local dialect, and understanding the rights and duties of a citizen.

▶ 5

Current practice and implementation of legislative framework

The above legislative framework for refugee labour market participation has substantial gaps, particularly in that little legislation exists that is specific to refugees. However, as a representative from UNHCR noted, both the legislative framework and the enabling environment – in other words, current practices regarding refugees – hinder access to labour market opportunities for refugees in Kenya.⁵⁵

In this regard, even where the legislative framework is relatively strong, a lack of adherence to laws and policies or their implementation can mean, in practice, that refugees do not have the full rights conferred upon them by law. In contrast, where the legislative framework is weak, de facto practices may exist which fill the gaps in laws and policies but which are not codified. In both of these cases, there may be misalignment between de jure and de facto refugee labour market participation.

Given these considerations, this section now analyses current practices regarding refugee labour market participation and rights, as well as the implementation of the above-described legislative framework. Any significant deviations occurring from the legislative framework, including areas where the de jure framework exceeds de facto rights and vice versa, are noted below.

⁵⁵ Talk with UNHCR representative for Dadaab in Garissa, 5 August 2021.

► 5.1 Refugee status determination and registration

5.1.1 Refugee status determination

The process for RSD generally adheres to that stipulated in legislation, but it has not been updated in accordance with the new Refugees Act 2021 as of April 2022, with refugees currently submitting applications to the RAS. However, in practice, there is a large backlog of cases for RSD. As of the end of January 2022, close to 60,000 asylum seekers were waiting to complete the RSD process, the majority of whom were located in Kakuma camp or urban areas. Because of this backlog and the lack of capacity within RAS (and previously the UNHCR) to handle the large number of new cases every year, one study found that it can take refugees two to three years to complete the RSD process (Graham and Miller 2021). This can far exceed the period stipulated by law.

There is also a lack of clarity among refugees about the procedures for RSD or status renewal, caused in part by the handover from the UNHCR to the RAS, during which procedures were changed. In a study by Graham and Miller (2021), refugees in Nairobi reported that they had received “conflicting, unclear, and/or incomplete information about their legal status and how to complete the RSD process”. While some local partners offer consultation services to refugees who wish to be guided in the presentation of their claims to the UNHCR, given the large number of refugees awaiting RSD, it is unlikely that there is sufficient capacity to assist all refugees.

For refugees in Nairobi, the cost of travelling to the RAS (now DRS offices in Nairobi to undergo the RSD process) may be prohibitive. Moreover, since 2012, the government has intermittently made RSD unavailable to refugees living in Nairobi. Similarly, in Dadaab, new registrations were halted as of late 2015 (with the exception of children born in camps) (Graham and Miller 2021). As a result, many new arrivals do not have documentation.

5.1.2 Refugee identification cards

In practice, refugee identification documents are provided to refugees upon completion of the RSD process.⁵⁶ Because of this, the delays in RSD processing – resulting in delays in the issuance of ID cards – are problematic, as the legal status of refugees is mainly anchored on documentation. RSD is thus an important first step for refugees, because without registration, refugees do not have a legal identity and cannot get identification documents.⁵⁷

Furthermore, ID cards generally expire after five years, after which time refugees must renew their documentation (at which point they will receive a different ID number). As with RSD, there are bottlenecks in the renewal process related to the system for processing applications and the large number of applicants. This has led to a backlog of applications and delays in the issuance of ID cards. Refugees also report a lack of clear information from the RAS (now DRS) or the UNHCR about the steps needed to renew an ID card (Manji and de Berry 2019).

Lack of documentation can pose a significant challenge for refugees, particularly those who wish to participate in labour markets or travel outside camps. Refugees can encounter harassment and resistance from police and other government officials for documentation.⁵⁸ Host community members in an FGD also noted that lack of ID cards hindered refugees’ access to employment.⁵⁹ As such, a commerce chamber

56 Refugees also generally receive a proof of registration document, referred to as a “manifest” for refugees living in camps (NRC and IHRC 2017). This document is distinct from an ID card.

57 KII with a representative from UNHCR Dadaab in Garissa.

58 KII with a representative from the Kenya National Chamber of Commerce and Industries for Turkana County; see also Graham and Miller 2021.

59 FGD with host community members in Dadaab.

representative stated that there was a need for improved processes for the provision of identity cards.⁶⁰ These issues, as well as the impact of lack of documentation on other aspects of refugees' abilities to work, are examined below.

▶ 5.2 Access to the labour market

5.2.1 Right to work

Respondents to the KIIs and FGDs generally stated that refugees are not prevented from working – particularly within the camps, although one respondent noted that refugees were not limited to working in camps⁶¹ – but faced some restrictions to do so. These restrictions were primarily related to documentation.⁶² To work, refugees need documents such as ID cards and work permits, which can be difficult to access (as will be discussed throughout this section). Additionally, one respondent emphasized that there is no explicit mandate for refugees to gain formal or informal employment.⁶³

For formal employment in Kenya, refugees can only access jobs if there are no Kenyans who can perform the job.⁶⁴ As a result, in practice, refugees are mainly entrepreneurs or work in the informal sector; some may also work with organizations in the camps, or, if they have recognized skills, may work as teachers, medical staff or in a technical field.⁶⁵

5.2.2 Access to work permits

Although refugees have the legal right to apply for work permits, very few permits are granted in practice.⁶⁶ According to one estimate from 2015, only about 2 per cent of refugees in Nairobi had permits (O'Callaghan and Sturge 2018). Particularly within camps, most refugees do not even attempt to obtain a work permit, which are more sought after by urban refugees.⁶⁷

Obtaining the documents needed to acquire a work permit⁶⁸ is difficult for most refugees. For many, the application process is also unclear, with many unknown requirements and a high level of bureaucracy. Indeed, in the research team's interviews with refugees, very few were aware of the existing policies and procedures. Moreover, even refugees who did complete the work permit process usually find it long and drawn out. Although refugees can initiate the application process from camps, they have to be present in Nairobi for interviews and appointments to complete it (Graham and Miller 2021), requiring a movement pass that may be difficult to obtain. Using the online system for work permit applications may also be challenging, owing to limited access to computers and the internet in camps. Finally, because of the requirement that jobs cannot be adequately filled by a Kenyan before a foreign worker may be hired, Class M permits are typically granted only to highly educated refugees (Graham and Miller 2021), and

60 KII with a representative from the Kenya National Chamber of Commerce and Industries for Turkana County.

61 KII with a representative from the Kenya National Chamber of Commerce and Industries for Turkana County.

62 Mentioned, for example, in KII with a representative from NEA.

63 KII with a representative from the Turkana County Government.

64 KII with a judge on the employment and labour relations court.

65 KII with a representative from the Turkana County Government.

66 In 2013, only 70 Class M permits were granted to refugees, while 30,000 aliens were granted work permits (Zetter and Ruaudel 2016).

67 Talk with an INGO representative in Dadaab, 7 September 2021.

68 Including a letter from the RAS confirming their documented status, a recommendation from a potential employer, a certificate of good conduct from the Department of Criminal Investigation, and proof that the job they are applying for cannot be adequately filled by a Kenyan (Graham and Miller 2021).

require attestation from an employer to justify employment of a non-Kenyan refugee.⁶⁹ As a result, most respondents in this study, instead of trying to explain what is needed for the work permit, have simply stated that “refugees have no right to work in Kenya”, which indicates a lack of clear information.

5.2.3 Permission to start, improve, and register own business

In a study on the economy in Dadaab camp, a government official stated that “refugees are free like a Kenyan citizen to start and run any legal business” (UNHCR and ILO 2019). Likewise, in a KII, a respondent from the UNHCR in Garissa stated that “getting a trade licence or permit is not a problem”.⁷⁰ Business licences are indeed granted to refugees in camps and in Nairobi, with county governments in charge of issuing them (Graham and Miller 2021). A study by NRC and IHRC (2018) found high demand for business licences among refugees. Refugees interviewed for the study stated that obtaining a business permit allowed them to comply with Kenyan law, conferred economic benefits (such as access to loans or movement passes for business reasons) and gave them a sense of security against their business being closed.

However, despite the relative prevalence of obtaining a business licence as opposed to a work permit, challenges remain. Refugees seeking to obtain a licence must have a permanent address for their business and documentation. They must pay fees⁷¹ which may be prohibitive. Requirements for business registration are also unclear to many refugees. Furthermore, it is difficult for refugees to use online systems for business licensing because they lack the same documents as Kenyan nationals, for which the online system is tailored (NRC and IHRC 2018a).

A representative from UNHCR Garissa stated that in order to register their business, refugees had to have a Kenyan Revenue Authority (KRA) PIN, which could be difficult to obtain. To receive a KRA PIN, refugees must first complete an online form with copies of their valid refugee ID card. If the refugee has current income from either employment or business ownership, they must also provide their employers’ details or their business registration certificate.⁷² Once the form is sent, refugees receive an immediate acknowledgment receipt which they must bring to the KRA office in Nairobi, along with a letter of introduction from the DRS, their refugee ID card, and either a letter from their employer (if employed) or a business registration certificate (if the applicant receives income from a business), and a Class M work permit.⁷³ Without the PIN, the government may not recognize the business, and the business is unable to pay taxes.⁷⁴ Because of these challenges, it can be difficult for refugees to register their businesses formally, and many may resort to informal businesses.⁷⁵

Regarding support for micro and small enterprises, the Micro and Small Enterprises Authority (MSEA), established under the Micro and Small Enterprises Act, does not have any programmes specifically targeting refugee businesses. However, the MSEA is active in refugee-hosting counties, including among host communities. A respondent from the MSEA stated that she was not sure if programmes were accessible to refugees, but if refugees were integrated into host communities, they should be able to access them.⁷⁶

69 KII with a representative from NITA.

70 KII with a representative from UNHCR Dadaab in Garissa.

71 Around US\$30 according to Graham and Miller (2021); according to Manji and de Berry (2019), fees vary by type of business, location, and number of licences needed (which varies based on business type), and range from US\$5 to US\$62 for a single business permit. Similarly, according to NRC and IHRC (2018b), in Turkana County, fees for businesses are lower in poorer areas of the county.

72 See <https://itax.kra.go.ke/KRA-Portal>.

73 See <https://www.kra.go.ke/individual/individual-pin-registration/learn-about-pin/requirements-for-kra-pin-registration>.

74 KII with a representative from UNHCR Dadaab in Garissa.

75 KII with a representative from DRC.

76 KII with a representative from MSEA.

5.2.4 Permission to own or rent land

In the research, all respondents questioned about refugee land ownership – including refugees, host community members, and representatives from the government and NGOs – stated that refugees were not allowed to own land inside or outside camps.⁷⁷ Refugees in camps are provided with land on which to settle, but they do not own it, or have any choice in its location. A representative from the Turkana County Government provided the following explanation for this: “[refugees] are only allowed the space to build a house on the assumption that one day [they] will return to their country of origin and the land will be given back to the county government”.⁷⁸

Because refugees within camps cannot, in practice, own land or choose the location of the land allotted to them, an informal market exists for them to rent shelters from others (especially those allotted land near markets, where greater business opportunities exist) in order to run businesses. Because there is no formal means for refugees based in camps to acquire a place to do business, this informal market is the only option for entrepreneurs. While the informal system allows refugees to run businesses more easily, it can also result in disputes and corruption; for example, refugees who move out of camps to Nairobi may pay informal fees to the RAS (now DRS) to maintain their shelter registration, for which they receive rent from a business owner (Rodgers 2017).

It is worth noting that most land in the areas outside but around refugee camps is community land⁷⁹ that does not have individual owners (whether host community members or refugees). The exception to this is Kalobeyei, where some 400 ha of the settlement’s land was set aside for agricultural activities. However, even this land is allocated informally through a consultative process involving host community members and refugees with government guidance, rather than subject to formal, individual ownership. As such, in practice, there is little opportunity for refugees to own land near camps.

5.2.5 Access to cooperatives

In both camps and cities, refugees collaborate with others within small cooperatives to do business. For example, in Kakuma, female refugees are reported to collaborate with each other to group food rations in order to sell in bulk at a fixed price. In Nairobi, female street hawkers group together as a protection strategy (Betts et al. 2018).

According to the DRS, the government is now providing refugees with an opportunity to register these types of self-help groups that bring together members around an economic goal, although these groups are smaller savings and credit cooperatives (SACCOs) rather than larger scale cooperatives. The registration requires the group to have a memorandum of association and a resolution. Once registered, refugees may have improved access to finance (UNHCR and ILO 2019). A respondent from the Kenya National Chamber of Commerce and Industry in Turkana County stated that further creation of cooperatives should be prioritized for refugees, as this would continue to improve access to finance.⁸⁰

77 KII with a representative from the Turkana County Government, KII with a representative from NITA, KII with a representative from UNHCR Dadaab in Garissa, FGD with unemployed refugees in Ifo, FGD with host community members in Dadaab.

78 KII with a representative from the Turkana County Government.

79 Land held by communities identified on the basis of ethnicity, culture or similar community of interest, including land registered under the name of a group of representatives or transferred to a specific community and land held in trust by county governments.

80 KII with a representative from the Kenya National Chamber of Commerce and Industries for Turkana County.

5.2.6 Access to finance and financial services

Many refugees lack access to financial services owing to a lack of documentation, which makes it difficult for them to open bank accounts or access loans.⁸¹ According to a representative from the UNHCR, in Dadaab, approximately 6,000 refugees – only around 3 per cent of the population of Dadaab camp – have bank accounts, which they accessed using Alien ID cards.⁸² Refugee ID cards (the documentation currently issued to refugees) are, however, not sufficient to open a bank account, according to a representative from the Chamber of Commerce.⁸³

Lack of documentation prevents refugees from opening bank accounts or getting loans because of the Know Your Customer requirements stipulated in the legislative framework. Refugees must also have a PIN from the Kenya Revenue Authority (KRA) to open a bank account (or a mobile money account), which can be difficult for them to obtain, as it can only be granted by the KRA.⁸⁴

Expired documents also pose challenges. If delayed processes prevent refugees from renewing documentation in time, refugees' bank accounts, M-Pesa accounts and KRA PINs may be blocked or deactivated. Additionally, the number listed on refugee ID documents generally changes upon renewal. Many financial institutions are not aware of this process, which makes it difficult for refugees to update their documentation numbers with financial institutions and puts them at risk of having their account blocked (NRC and IHRC 2017).

Outside formal banks, Dadaab camp also has a private company which provides loans to refugees.⁸⁵ Refugees can also receive grants from organizations, and, as mentioned above, refugees form SACCOs to improve their access to finance.⁸⁶ In Kakuma, refugees may access competitive grants through the Kakuma-Kalobeyei Challenge Fund, run through the International Finance Corporation, among other organizations.⁸⁷

In the research team's conversations with refugees, lack of access to finance was described as a major constraint on refugees' ability to start and run businesses. For example, in an FGD, a respondent stated that he had started a mobile kiosk business but had been forced to close it because he did not have access to finance. He stated that while NGOs in the refugee camps provided training on entrepreneurship, there was little help for refugees seeking to access capital to start or sustain businesses. As such, many refugees could not use the skills acquired in these trainings.⁸⁸ In general, in most FGDs, when asked if they had attempted to start their own business, refugees emphasized that lack of access to finance made this very difficult.⁸⁹

When asked about the process for opening bank accounts and getting loans, a refugee stated in an FGD that he had requested a loan from a bank in Dadaab, but had been told that because he was a refugee, he could not get a loan unless it was guaranteed by a Kenyan. Another respondent added that most banks do not trust refugees and will not provide loans because their length of stay is uncertain.⁹⁰ Along these lines, another refugee stated that many refugees were forced to use others' bank accounts as they could not open their own.⁹¹

81 KII with a representative from the Kenya National Chamber of Commerce and Industries for Turkana County, KII with a representative from the Kenya National Chamber of Commerce and Industries for Garissa.

82 KII with a representative from UNHCR Dadaab in Garissa.

83 KII with a representative from the Kenya National Chamber of Commerce and Industries for Garissa.

84 KII with a representative from UNHCR Dadaab in Garissa, KII with a representative from NITA.

85 KII with a representative from UNHCR Dadaab in Garissa.

86 KII with a representative from the Kenya National Chamber of Commerce and Industries for Garissa.

87 KII with a representative from the Turkana County Government.

88 FGD with unemployed male refugees in Dagahley.

89 For example, FGD with unemployed male refugees in Dagahley, FGD with unemployed refugees in Ifo.

90 FGD with unemployed male refugees in Dagahley.

91 FGD with unemployed female refugees in Dagahley.

Further limiting access to finance, respondents in an FGD also stated that refugees did not have access to mobile money services.⁹² This is not strictly true: mobile banking via M-Pesa is available to refugees with documentation, although once the documentation expires (or is up for renewal), the refugees' mobile money account also expires (UNHCR and ILO 2019). However, this sentiment reflects the difficulties that refugees face in practice to access mobile money accounts.

5.2.7 Access to employment services

In practice, refugees seem to have little access to employment services. In an FGD, for example, refugees stated that there were no structured services in camps to assist refugees with finding employment.⁹³ However, a representative from NITA stated that NITA provides training to urban refugees on getting employment and putting their skills to use, including by providing apprenticeships.⁹⁴ A representative from UNHCR in Garissa further noted that online platforms for matching employers to potential employees (including simple job boards or more formal employment services) could be helpful to refugees, as the encampment policy made it difficult for refugees to find employment.⁹⁵

5.2.8 Access to SIM cards

As with mobile money, refugees can face difficulties accessing SIM cards because of a lack of documentation (Graham and Miller 2021), as providing proof of identity is a legal requirement to access a SIM card. To overcome proof of identity requirements, refugees may ask friends or family to purchase SIM cards (or receive money through mobile money services) on their behalf (NRC and IHRC 2017).

Despite these challenges, mobile connectivity is prevalent among refugees; in Dadaab, for example, a large percentage of refugees own and use smartphones (UNHCR and ILO 2019). As of 2018, in Kakuma, around 83 per cent of Somali refugees, 74 per cent of Congolese refugees and 47 per cent of South Sudanese refugees had a mobile phone, while in Nairobi, almost 90 per cent of refugees had a mobile phone (Betts et al. 2018).

► 5.3 Rights at work

5.3.1 General protection in the labour market

In FGDs with refugees, it emerged that many refugees are not aware of what rights they have in the labour market and thus do not exercise those rights. However, refugees had several specific complaints about discrimination, salaries, overtime and leave in the workplace, especially for incentive workers.⁹⁶ Many respondents stated that refugees faced discrimination in the workplace, as employers were reluctant to hire them. Discrimination could also result in lower salaries or worse working conditions. For example, a refugee stated that there is preferential treatment in the payment of teachers' salaries between refugee

92 FGD with unemployed refugees in Ifo.

93 FGD with unemployed refugees in Ifo

94 KII with a representative from NITA

95 KII with a representative from UNHCR Dadaab in Garissa

96 Refugees who do not hold work permits which allow them to earn salaries are receiving "incentives" as compensation instead. Incentives may take the form of cash, vouchers, or in-kind goods, and are generally lower than wages, intended to acknowledge the worker's effort but not provide full compensation. Incentive workers are engaged in a variety of tasks, including teaching, translating, community outreach, cleaning and office work (Morris and Voon 2014).

teachers and Kenyan teachers, and that Kenyan teachers are paid overtime but refugees are not.⁹⁷ In another FGD, a refugee stated that refugees in general receive lower salaries than Kenyan workers and are not given overtime, particularly those working as incentive workers with NGOs.⁹⁸ Along these lines, many respondents mentioned that refugees were generally only employed in the formal economy as “incentive workers” with different organizations working with refugees in the camps – workers who were paid less than their Kenyan counterparts.⁹⁹ Moreover, a refugee stated in an FGD that refugees were not entitled to leave or were given very few leave days, while their Kenyan counterparts went on leave regularly.¹⁰⁰ Lastly, research in camps has also suggested that children engage in commercial work, particularly in Kakuma, where they may sell goods as labourers (Manji and de Berry 2019). These issues suggest that refugees, in practice, do not always benefit from the rights at work provided to workers in Kenya through the law.

5.3.2 Access to justice and legal systems

While refugees have a legal right to access the justice system if their rights at work are violated, in practice, several obstacles may prevent their access to justice. First, courts in Kenya rarely allow for self-representation. Refugees must, therefore, hire a registered lawyer to represent them, but legal services in Kenya can be expensive and difficult to access for refugees confined to camps. In theory, refugees have access to the Legal Aid Fund and National Legal Aid Service, but in practice, there are not sufficient financial resources available to meet the legal bills of refugees (or Kenyans) who need these services. Legal aid NGOs provide an alternative to private legal representation, but there are few legal aid NGOs in Kenya who offer court representation, and even fewer who specialize in issues related to refugees (Imbosa and Maina 2020).

Furthermore, as mentioned above, there is a low level of awareness about Kenyan law among refugees, and many are unaware of the rights they have at work. Refugees from Somalia and South Sudan, in particular, may also be unfamiliar with the more general concept of rights at work, owing to the lack of established governance or legal systems in these countries. As such, refugees may be unaware when their rights are violated or may not know what legal options are available to them.

5.3.3 Freedom of movement

Restrictions on refugees’ freedom of movement present one of the primary barriers to their labour market participation outside camps and affect their abilities to do business inside camps. Refugees must apply for and receive a movement pass if they wish to leave camps. To obtain a movement pass, refugees apply at the DRS office, and must state in an application form their reason for travel, the location of travel, and the duration of the requested stay. Applications are vetted by a committee, with internal criteria developed by the RAS (now DRS).

Nevertheless, the process involved in receiving these passes is bureaucratic and opaque to many refugees. Information on movement passes is limited and generally informal. Practices for issuing movement passes often appear unpredictable and arbitrary to refugees, who are unaware of the criteria required. In part, this is because there is no regulation or policy guidance to provide details on the criteria under which passes can be granted, the application procedure or the length of validity (NRC and IHRC 2018a). Around 200 to 300 passes are issued each month, mostly on medical and educational grounds. The RAS (now DRS) rarely issues movement passes for business reasons, although these are available, technically. There is no appeal process for unsuccessful applicants, but neither is there a limit on the number of movement passes for which a refugee can apply (NRC and IHRC 2018a).

97 FGD with unemployed male refugees in Dagahley.

98 FGD with self-employed women in Hagadera.

99 FGD with self-employed women in Hagadera.

100 FGD with unemployed female refugees in Dagahley.

The movement pass form is only available in English, making it difficult for non-English-speakers to apply. Additionally, in Kakuma, the DRS office is located on the far end of the camp; it can take refugees from the opposite side of camp two to three hours to walk there, while Kalobeyei residents must take a 2-km motorcycle ride costing around US\$2. Refugees may also encounter delays at the DRS office, forcing them to visit several times (NRC and IHRC 2018a).

It is worth noting that a refugee mentioned in an FGD that “getting a travel document is [reserved for] the rich; an ordinary refugee will not get travel documents from refugee affairs.” He further stated that it cost US\$150 to be granted a two-day travel permit.¹⁰¹ While this information was not echoed in other FGDs, past research shows similar findings, with refugees saying that movement passes are, at least to some extent, “for sale” (Refugee Consortium of Kenya 2012). While it does not appear that the sale of movement passes is highly prevalent, nor is it a (formally or informally) codified process, findings suggest that this does indeed occur at least occasionally.

The duration of movement passes varies according to the decisions of the DRS. Refugees are occasionally given passes of insufficient duration to complete the tasks for which a pass was issued. If refugees need more time on their movement pass, they must return to the DRS office in their camp (rather than accessing a DRS office in Nairobi or elsewhere). Furthermore, movement passes only permit movement to a specified place (NRC and IHRC 2018a). Travelling without a pass puts refugees at risk of arrest, detention and criminal punishment.

As a result of these issues, refugees’ abilities to leave camps with permission can be very limited. The COVID-19 pandemic placed further restrictions on freedom of movement. In March 2020, the GoK announced that in order to prevent the spread of COVID-19, issuance of movement passes would be suspended by the RAS (now DRS) (UNHCR 2020b).

Lack of freedom of movement makes it difficult for refugees to find employment opportunities or contact employers. Given that refugees must have sponsorship from an employer in order to apply for a work permit, this means that their access to formal job opportunities is very limited. Refugees also often face delays before they can get documents to travel, which may prevent them from attending job interviews or meetings.¹⁰²

Furthermore, encampment policies also affect access to markets. On the demand side, refugees may have goods and services that they wish to sell to people living outside camps, but they are unable to do so (although it is worth noting that refugees have the ability to do business with host communities through a common market).¹⁰³ On the supply side, prohibitions on leaving camp mean that refugees must rely on middlemen to purchase goods for their businesses. The costs faced by these businesses – and therefore the prices they charge – are thus higher than elsewhere in Kenya (NRC and IHRC 2018a). Along these lines, a respondent stated in an FGD that restrictions on movement affected refugees’ abilities to start a business. For example, refugees were unable to travel to buy goods for their businesses and could face arrest if they did so. Instead, they were forced to use middlemen to buy goods to sell, which reduced their profits.¹⁰⁴ This issue was echoed by respondents in other FGDs.¹⁰⁵

101 FGD with unemployed male refugees in Dagahley.

102 KII with a representative from UNHCR Dadaab in Garissa.

103 KII with a representative from the Turkana County Government.

104 FGD with unemployed male refugees in Dagahley.

105 For example, FGD with unemployed refugees in Ifo.

5.3.4 Access to social security benefits

When it comes to social protection, refugees who were interviewed were unaware of the very concept, especially as something that they would be entitled to. Instead, most of them considered humanitarian aid provided by foreign donors to be a form of social protection.¹⁰⁶

In Kenya, international financing provides a basis for refugees' de facto inclusion in social protection systems. Despite a lack of full legal recognition for refugee access to social security, humanitarian financing targeting refugees and UNHCR support have facilitated inclusion of refugees in government social protection programmes. For example, the UNHCR is currently working to provide the same pension benefit to refugees as is provided to Kenyans through government systems. The ILO is supporting the NHIF to develop a new universal maternity income benefit to provide an income replacement for all women in Kenya, including pregnant refugees enrolled in the NHIF.

The UNHCR also has cash assistance programmes for refugees, which initially focused on urban refugees (UNHCR 2021d). These programmes provide cash for shelter (in Kalobeyei only), core relief items (soap and sanitary materials), energy and education (for selected students on a Secondary Education Scholarship) (UNHCR 2021e).

Outside this limited access to the NHIF and cash assistance, in interviews with the representatives of the State Department for Social Protection, as well as the NSSF, it was confirmed that GoK does not have special protection programmes for refugees. However, respondents stated that such programmes could be devised and offered to refugees. Additionally, because most refugees do not work in the formal economy (that is, in jobs that may enrol them automatically in social security schemes), access to these schemes is limited. Even refugees in the formal economy may have limited access. For example, in an FGD with refugees, respondents stated that there was no health insurance coverage for refugee teachers.¹⁰⁷

While there are no special protection programmes run by the government for refugees, the UNHCR is working closely with the State Department of Social Protection to further refugee inclusion. This has included engagement with policy development processes and active membership of sector groups with development partners. The UNHCR is currently partnering with the GoK to develop an urban refugee 70+ cash transfer aligned with the *Inua Jamii* National Safety Net Programme and is exploring routes to include refugees in the Enhanced Single Registry (a de facto social registry).

5.3.5 Freedom of association

There are few platforms for refugees to engage with county and national governments on policies, legislation and institutional frameworks that would support economic growth and development of both the formal and informal economy. In the words of an interviewed university professor, for refugees, "there is not much going on in the collective bargaining field in either the formal or informal sector".¹⁰⁸ Along these lines, informal sector workers in both Dadaab and Kakuma/Kalobeyei lack unions to protect refugee workers.¹⁰⁹

For Kenyans, in practice, the Labour Relations Act works very well; workers in both the formal and informal sector are free to join and participate in a union. A judge on the employment and labour relations court stated that if refugees are employed in a sector where there is a union, they can join this union; refugees may also start their own unions.¹¹⁰

106 It is important to note that this perception is probably not unique to refugees but may be found among Kenyans as well, particularly those living in poor and marginalized areas. As such, this perception reflects in part the general perception about social security in Kenya.

107 FGD with unemployed refugees in Ifo.

108 KII with a Kenyan labour economist.

109 Talk with a representative of the Chamber of Commerce in Turkana, 9 August 2021.

110 KII with a judge on the employment and labour relations court.

In another interview with refugees, a small business owner stated that refugees were allowed to form grassroots unions, but that refugees mostly did not belong to unions. He also stated that refugees could not join trade unions in Kenya.¹¹¹ This statement is not strictly true according to other respondents to the research; however, it may reflect that in practice, refugees rarely join trade unions because of restrictions on documentation (including work permits) which pose major limits to their access.

► 5.4 Access to training and education

5.4.1 Access to skills development, TVET, apprenticeships and career counseling

Refugees have access to TVET centres in camps, and most trainings offered are accredited national certifications. In Dadaab, there are five such centres managed by DRC and NRC and funded by these organizations and their partners; these organizations also run TVET centres in Kakuma.¹¹² Refugees also have access to county- and NGO-managed TVET centres, although access to the national technical training institutions, which have better funding and infrastructure, is limited.

NITA also develops skills programmes customized to the needs of refugees and sends instructors to support local instructors accredited within refugee programmes. NITA's programmes are demanded by the development partners who support the camps. Areas in particular demand include masonry, hairdressing and beauty services, mechanics, tailoring and plumbing. After completion of a programme, refugees are enrolled to take the national trade test, which can allow them to be certified officially.¹¹³

There are significant overlaps and duplications in TVET training provided by various organizations. In a 2019 study, for example, a refugee stated that he had been to several trainings, but “the trainings [he] got were all just like the first one” (UNHCR and ILO 2019). Refugees also reported barriers to accessing vocational training. These included high qualification requirements relative to the skills and education levels of refugees, weak communication about available courses, age limits on access to trainings (Kamau and Fox 2013), and language barriers (that is, the provision of training in English only) (Kimetrica 2016).

Along these lines, a representative from the State Department for Vocational and Technical Training described five main challenges facing TVET access for refugees. First, a lack of funding limits refugee access to training. This representative stated that costs can be too high even for Kenyans; while students were often given support from government programmes of around 30,000 shillings (around US\$260) per year to cover tuition, this only covers around half the cost. The remainder must be paid from grants, scholarships or personal funding. Lack of funding also affects the quality of TVET infrastructure and equipment, as well as the number of institutions and students they are able to serve.¹¹⁴

Second, there is a need for greater awareness-raising on TVET institutions and the benefits of vocational training, as the representative stated that low levels of awareness reduced refugee enrolment in programmes. Along these lines, to ensure that refugees do indeed benefit from training, there is a need to guarantee that they can use the skills learned in TVET centres by equipping them with the necessary materials or access to finance to start businesses or find jobs.¹¹⁵ This issue was echoed in an FGD, in which a refugee stated that she had attended a five-day entrepreneurship training hosted by an NGO.

111 KII with a female small business owner.

112 See <https://kakumayouth.com/education-opportunities/>.

113 KII with a representative from NITA.

114 KII SD TVET.

115 KII SD TVET.

Following the training, however, the participants were told to form groups and start businesses but were not given any support (such as access to finance or materials) to do so. As a result, it was difficult for her to use the skills she had gained during training.¹¹⁶

Third, the respondent from the State Department for TVET emphasized the language barrier mentioned above. Because trainings are provided in English, refugees from non-English speaking countries have difficulties participating.¹¹⁷

Fourth, the representative stated that the varying levels of prior learning of refugees made it difficult to place refugee learners into appropriate programmes. This challenge relates to recognition of prior learning and assessment of refugees' qualifications, which will be discussed further below.¹¹⁸

Fifth, the representative emphasized the need to train trainers specifically to provide vocational training to refugees. Refugees have unique challenges and experiences, and as such have different learning needs. There is thus a need to tailor learning and teaching specifically to refugee experiences and skills.¹¹⁹

Apart from these challenges, it should be noted that refugees who complete TVET programmes often have difficulty finding jobs that utilize their new skills. As a representative from DRC in Dadaab mentioned, the market in the Dadaab camp is not very well-developed and may not be able to absorb graduates with the skills they have acquired.¹²⁰ As mentioned above, lack of access to finance also prevents refugees from starting businesses using their skills. Therefore, while TVET programmes may provide a useful basis for refugees' future labour market participation, they are insufficient to expand refugee employment.

5.4.2 Recognition of education, vocational, academic and professional qualifications

In practice, the processes established in legislation for recognition of qualifications by the KNQA and TVETA are adhered to. Applicants must provide English-language certified copies of qualification-related documents and identification materials; these documents are scrutinized by technical experts. A representative from KNQA stated that the agency has been able to process a total of 1,318 qualifications from a variety of institutions.¹²¹

However, because many refugees lack documentation (including prior education or training and identification documents), it is difficult for them to go successfully through the standard qualification recognition and equation process. Furthermore, many refugees may have little formal education but strong technical and vocational skills developed through years of experience. As a result, systems for RPL are currently being developed and piloted by the KNQA, TVET CDACC and NITA, including through the launch of the online Kenya Recognition Equation and Verification Portal and the RPL Policy Framework and Implementation Guidelines.¹²² With the pilot RPL programme, refugees without proof of formal education or training will be allowed to showcase their skills practically, and will be assessed over several days.¹²³ Additional methods may be used to further verify refugees' skills and prior learning, including employer references, written or oral examinations, interviews, essays, portfolio reviews and letters of recommendation (Mukhwana 2021).

116 FGD with unemployed refugees in Ifo.

117 KII with a representative from the State Department for TVET.

118 KII with a representative from the State Department for TVET.

119 KII with a representative from the State Department for TVET.

120 KII with a representative from DRC.

121 KII with a representative from KNQA.

122 KII with a representative from DRC, KII with a representative from KNQA.

123 KII with a representative from KNQA.

In FGDs, respondents emphasized the challenges they had faced in obtaining recognition of their qualifications, which emphasized the need for processes that do not rely on documentation. For example, one refugee stated that he came to Kenya with a certificate of education, but the certificate was written in Arabic and Somali. When he presented it to the authorities, they said that they could not read it and thus it could not be validated. Without recognition of his qualifications, he was forced to work as a casual labourer.¹²⁴ Another refugee explained that she had undergone medical training to become a midwife in Somali, but her certificate of education had been burned during the civil war, and she could now not find a relevant job because of her lack of documentation. She said that she was currently volunteering as a birth attendant, but that it was difficult to find formal opportunities because she had no way of having her past experience validated.¹²⁵ A third refugee emphasized that refugees could not continue their education using testimonials about their previous education in their home country. He had a diploma in mathematics but was unable to continue his education in Kenya as a refugee.¹²⁶

Lastly, it is worth noting that a respondent from the Kenya National Chamber of Commerce and Industry in Turkana stated that while the government did not accept qualifications from refugees' home countries, organizations working in the camps did.¹²⁷ This may provide limited access to skilled jobs for refugees who are qualified but who have not had their qualifications formally assessed; however, this labour market is limited.

► 5.5 Naturalization pathways

In the research, respondents generally suggested that processes for naturalization were in line with those stipulated in law. However, in practice, it is very difficult for refugees to gain citizenship (or even permanent residency). In FGDs, for example, refugees agreed that though some had tried to get permanent residency in Kenya, "it was impossible".¹²⁸ There is no special policy or practice in place to allow for the acquisition of citizenship by refugees regardless of their length of stay, nor for children of refugees born in Kenya (Hassan 2002).

A representative from the UNHCR in Dadaab mentioned that acquisition of citizenship through marriage between a Kenyan and refugee did occur. He said there had been around 1,000 such marriages. However, this path to citizenship was not well known among local populations and refugees, the registration process was long and tedious, and often, lawyers were required to expedite the process.¹²⁹

The few refugees that have managed to get Kenyan citizenship are often a select group that have resources and significant business investment in the country or are well connected politically, or both. In any case, such a refugee usually gets citizenship after payment of a substantial amount of registration fees, in addition to the statutory requirement of the renunciation of his or her previous nationality (Hassan 2002).

124 FGD with unemployed male refugees in Dagahley.

125 FGD with unemployed female refugees in Dagahley.

126 FGD with male refugees in Ifo.

127 KII with a representative from the Kenya National Chamber of Commerce and Industries for Garissa.

128 FGD with unemployed male refugees in Dagahley.

129 KII with a representative from UNHCR Dadaab in Garissa.

▶ 6

Recommendations and conclusion

While Kenya's legislative framework contains provisions for rights to work, rights at work, and access to education and training for Kenyan nationals, few of these laws specifically address the legal rights or needs of refugees. Even laws and regulations which explicitly address refugees – such as those for refugee status determination, documentation and work permits – have considerable gaps. While the new Refugees Act, which came into force in February 2022, fills some of these gaps, secondary legislation is needed. Some key gaps include the following.

Processes for obtaining refugee identification documents are unclear. While in practice, refugees receive identification documents upon conferral of refugee status, this process is not stipulated in legislation. As a result, there is a lack of clarity among refugees about the procedures for RSD or obtaining documentation. Refugees have reported receiving conflicting and unclear information about how to complete these processes (Graham and Miller 2021). As secondary legislation is expected to be adopted within six months of the adoption of the new Refugees Act 2021 (that is, by late 2022), legislation clarifying processes for providing refugee ID documents needs to be prioritized. This legislative process could be supported by the UNHCR, given this organization's extensive prior experience managing RSD and the provision of refugee ID cards in Kenya, although the DRS and Commissioner for Refugee Affairs are now the primary bodies responsible for RSD and issuing IDs. The DRS and UNHCR should then endeavour to sensitize officials involved in RSD and ID issuance to the new procedures and distribute information to refugees. The distribution of information could take place through engagement with community leaders, radio programmes or posting information throughout the camps.

There is a need for clarification on the applicability of laws regarding access to the labour market for refugees. While the Refugees Act 2021 states that refugees are entitled and subject to all laws in force in Kenya, further legal clarification of the applicability of current laws to refugees is necessary through secondary legislation, in particular the laws related to starting or registering a business (including micro and small enterprises), owning or renting land, and starting or joining cooperative societies, and may help strengthen refugees' labour market access. Amendments could be enacted for each individual law to specify their applicability to refugees (for example, the Micro and Small Enterprises Act, the Land Act and the Co-operative Societies Act, among others discussed above), or for the Refugees Act 2021 and its secondary legislation, to state how specific laws will address the needs of refugees and whether there are any exceptions.

Given that adopting legislative amendments through parliament may be a lengthy process and, furthermore, that the Refugees Act 2021 already states that refugees are subject to all laws in force in Kenya, in the short term it may be more effective to clarify the applicability of laws through non-legislative means. This could include, for example, standard operation procedures (SOPs) by such as the Registrar for Micro and Small Enterprises or the National Employment Authority clarifying refugees' entitlement to rights and processes stipulated in relevant laws. Widespread distribution of these SOPs would be vital in order to ensure that refugees, government officials and other relevant stakeholders are aware of the applicability of various laws to refugees and can thus support their access to their rights.

Kenya's encampment policy is a barrier to refugee labour market participation and, along with issues related to documentation, is one of the primary factors affecting refugees' abilities to exercise their right to work. For example, the encampment policy limits the abilities of refugees to contact potential employers or attend job interviews. Because refugees must have sponsorship from an employer to obtain a work permit, this restriction means that it is difficult for them to qualify for work permits. This policy also runs counter to commitments made under international agreements, including the CRRF. While the encampment policy is unlikely to change in the short term, the UNHCR and other organizations assisting refugees should continue to advocate for a change in this policy, while also supporting initiatives to mitigate the negative impact of the policy, such as improved provision of movement passes, which will be discussed now.

Processes for obtaining movement passes are unclear. There are no codified regulations for the issuance of movement passes to refugees or on the criteria for refugees to apply for an exemption from residing in designated areas. As such, a variety of de facto processes have been established, such as internal criteria for the vetting of applications by the RAS (now DRS). These processes, however, are unclear to refugees, and can result in arbitrary and confusing decisions. Furthermore, refugees who qualify for movement passes or exemption from residing in designated areas may be vulnerable to questioning or sudden changes in status because the legal framework is unclear. As a result, as with RSD and refugee IDs, legislation regarding the issuance of movement passes should be prioritized during the adoption of amendments to the Refugees Act 2021, following which, efforts should be made by the DRS to sensitize officials and refugees to the official procedures.

Many commitments made by the Kenyan government to integrate refugees into education systems have not yet been enshrined in legislation. These include commitments made under the Djibouti Declaration on Refugee Education and the Kampala Declaration on Jobs, Livelihoods and Self-Reliance for Refugees, Returnees and Host Communities in IGAD Region to integrate refugees into Education Sector Plans, for example, or to strengthen frameworks to promote inclusion and development of refugee teachers, identify community college-type programmes for refugees for expansion and development, determine demand for skills training of refugees, and mobilize finance to implement refugee education plans. Parliament, with support from government bodies such as the Ministry of Education and non-governmental bodies such as workers' and employers' organizations, the UNHCR, UNICEF and ILO should prioritize adoption of this legislation.

Besides these gaps in the legislative framework, there is also a need to strengthen actual practices which affect refugees' labour market participation. Key areas for improvement include the following.

RSD processes should be streamlined. There is a substantial backlog of RSD applications of around 60,000 applicants as of January 2022. Various estimates find that the RSD process can take anywhere from three months to three years to complete (Graham and Miller 2021; Zetter and Ruauudel 2016). Access to documentation is vital for refugees to participate in labour markets and access education and vocational training opportunities. Lack of access to documentation also makes refugees vulnerable to harassment and resistance from police and other government officials. As such, these substantial delays in conferral of refugee status, and thus in refugees' abilities to receive formal documentation, severely limit refugee employment in the formal economy and pose protection risks. The adoption of new legislation regarding RSD and ID card processes may help improve the situation; however, there may also be a need to hire additional staff in order to reduce the backlog of applications. The DRS (in contrast to the RAS before it) will be able to defend its own budget before parliament (UNHCR 2022c) and should thus advocate for additional resources to enable RSD processes. This funding could be supplemented by resources from the UNHCR or other donors.

Processes to obtain work permits should be adjusted and shortened. Currently, to obtain a Class M work permit, refugees must have attestation from an employer to justify employment of a non-Kenyan refugee. Given the policy of encampment, it is not easy for refugees to fill this requirement in practice, as it is difficult for them to contact employers and interview for jobs. Furthermore, this policy limits provision of permits to highly educated refugees. Refugees also describe the process to apply for a work permit as drawn-out and bureaucratic. As a result of these drawbacks and the documentation issues described above, work permits are rarely granted in practice, and most refugees (particularly in camps) do not even attempt to apply. Adjusting processes to account for the limited freedom of movement of refugees and to expedite the provision of permits would help improve access. This will probably necessitate social dialogue among different stakeholders, including the government, workers' and employers' organizations, the UNHCR, the ILO and other bodies. Additionally, many refugees also expressed a lack of clarity over the process for applying for a work permit; this process should be publicized. Lastly, to obtain a work permit, refugees must go to Nairobi for interviews and appointments, requiring a movement pass that is difficult to obtain. Additional offices dealing with work permits should be established in Dadaab and Kakuma/Kalobeyei in order to decentralize this process and improve accessibility to refugees.

Formal processes for refugees to establish businesses near market centres should be established. Currently, in practice, refugees are not allowed to own land inside or outside camps. Because of this restriction, an informal market exists for refugee entrepreneurs to rent shelters near market centres in camps, which provide greater business opportunities. This informal system can result in disputes. While establishing a formal market for land in camps would run counter to the UNHCR's policy that refugees have free access to shelter, it is likely to have an overall beneficial effect by reducing the black market for land.

Refugee access to finance is a major constraint to entrepreneurship, and is in large part due to issues around documentation. Refugee ID cards are, for example, not sufficient to open a bank account; refugees must also have a PIN from the Kenya Revenue Authority, which can be difficult to obtain. When their documents expire or need renewal, refugees may face cancellation or blockage of their bank or mobile money accounts. Many refugees expressed that access to finance is one of their most urgent needs; as such, work should be done to explore alternative means by which refugees can open bank or mobile money accounts, and to facilitate current processes for financial inclusion. In particular, there is a need to establish refugee ID cards as a sufficient unique identifier to satisfy KYC requirements. Given that refugee ID cards expire after five years, this may require sensitization of banks and telecom or mobile money companies, as well as adjustment of current processes which require a permanent, non-changing ID number. This process should be led by the Central Bank of Kenya. Alternatively, a new ID that does not expire could be provided to refugees in order to enable financial access. However, given existing challenges with provision of current refugee ID cards, it may not be advisable to further expand refugee documentation needs.

Refugees have little awareness of their rights at work, and may face lower wages and fewer benefits than Kenyan workers. In part, this is because one of the few sources of formal employment for refugees is as "incentive workers" with the UN or NGOs – jobs for which refugees receive lower salaries than their Kenyan counterparts. However, refugees also expressed that they did not get paid for overtime and did not receive sufficient leave. There is a need to strengthen refugees' rights at work, as well as their access to the justice system to enforce these rights. The latter of these issues could be addressed in part through provision of support to legal aid NGOs as well as support to Refugee Consortium of Kenya legal aid clinics within camps. The UNHCR should also advocate for increased refugee rights at work by starting a dialogue process targeted at ensuring the rights of "incentive workers" are upheld.

There is a need to continue strengthening RPL. Many refugees do not have documentation of their previous educational or technical qualifications, owing to the manner in which they left their home country. Refugees may also not have formal training, but may have significant skills built up from years of experience. However, without formal documentation (or formal education), it is difficult for refugees to have their skills and prior learning verified. The current progress towards RPL involving practical demonstrations and assessments is a positive step; further support should be provided to the KNQA, TVET CDACC, and NITA to strengthen this process.

In order to achieve some of the above recommendations, it may be helpful to **leverage funding and initiatives under KISED P related to the private sector and entrepreneurship**. The One Stop Shop – Huduma/Biashara Centre in Kakuma/Kalobeyei, for example, is intended to “strengthen synergies between relevant institutions and ease registration procedures and access to documentation” by providing access to policy information (UNHCR 2018). Further supporting or expanding this initiative could help address challenges related to refugees’ access to information discussed above. Similarly, sub-component 7.8.1 of KISED P seeks to “promote a more favourable regulatory environment” for refugees’ labour market participation, particularly by “seek[ing] concrete solutions to address the challenges in freedom of movement and obtaining legal documentation that grant refugees the right to engage in economic activities” (UNHCR 2018). Future interventions should leverage current policy advocacy work started or accomplished under this component.

Overall, these recommendations show that a number of significant gaps remain which limit refugees’ access to decent work, in camps, in host communities or in Kenya as a whole. Addressing these issues will require not just technical advice or better enforcement of policies but also the political will to allow refugees to participate in Kenya’s labour market. The issue of refugee employment must not be viewed as a threat to Kenyans – whether in host communities or elsewhere – but as an opportunity to create employment for both refugees and Kenyans through the establishment of new businesses by refugee entrepreneurs, to utilize the skills of refugees to strengthen Kenya’s economy and support the country’s development, and to establish a more inclusive and diverse labour force.

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