

**Republic of Kenya**  
**Joint Submission to the UN Universal Periodic Review (UPR)**  
**35<sup>th</sup> Session of the UPR Working Group**  
**20 – 31 January 2020**

**Joint Submission By:<sup>1</sup>**

The Lutheran World Federation (LWF); Refugee Consortium of Kenya; International Rescue Committee and KADANA UPR Refugees Network, Kenya.

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<sup>1</sup> Full contact details and Logos of the submitting organizations are annexed to this report.

## EXECUTIVE SUMMARY

1. This report is a joint submission by three non-governmental organizations and a network of refugees from Kenya's Dadaab and Kakuma Refugee camps and Nairobi Urban refugees, to inform Kenya's third cycle UPR process, specifically in relation to the rights of refugees. The report considers the state's performance on the rights of refugees with regards to its obligations under international human rights and humanitarian law, treaties and conventions, and regional legal bodies that Kenya is a party to as well as the national constitution of Kenya and other domestic legislative and policy frameworks. It highlights key human rights concerns affecting refugees in Kenya. The report is cognizant of the institutional, policy and legislative measures undertaken by Kenya in the period after Kenya's second review in January 2015 under the UPR human rights mechanism.
2. Kenya has been hosting refugees for more than 30 years. As at 31<sup>st</sup> May, 2019, Kenya was host to 473,971 refugees and asylum seekers.<sup>2</sup> For the period under review, the Government of Kenya has had several efforts towards promoting refugee protection but the full realisation of refugee rights remains wanting. The Kenyan government has in the period after the second cycle review, signed various international commitments such as the Nairobi Declaration and Plan of Action on durable solutions for Somali Refugees signed on 25th March 2017,<sup>3</sup> by the IGAD Heads of States<sup>4</sup>.
3. The Government is also a party to the Djibouti Declaration signed in December 2018 and the action plan on quality refugee education<sup>5</sup> as well as the subsequent call for action on IGAD regional technical and vocational education training (TVET) strategy. To this end, Kenya has made efforts to include refugees in the national education system, a reflection of a global shift in the direction of refugee response. Specifically, the Government of Kenya is in the final stages of adopting an Education Policy, which is a guiding document—one of the first globally that will ensure the inclusion of Refugees and Asylum-Seekers in the national education system. Refugees are also mainstreamed in the National Education Sector Strategic Plan (NESSP). Furthermore, the schools in Kakuma refugee camp are registered under the Ministry of Education thus recognized as public educational institutions. Kenya has also set in place Guidelines for Admission of Non-Citizens to Institutions of Basic Education and Training in Kenya in 2018, that enables the enrolment of refugees' and asylum seekers' in schools anywhere in Kenya.
4. The government further signed the Kampala Declaration in March 2019 on Jobs, Livelihoods and Self-Reliance for Refugees, Returnees and Host Communities in the IGAD Region.<sup>6</sup> However, the national policies towards realisation of these commitments remain vague thus yet to contribute meaningfully to enhancement of refugee rights to self-reliance, movement as well as the rollout of inclusivity of refugees in the National

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<sup>2</sup> <https://www.unhcr.org/ke/wp-content/uploads/sites/2/2019/06/Kenya-Statistics-Package-31-May-2019.pdf> accessed on 1st June 2019

<sup>3</sup> <https://igad.int/communique/1519-communique-special-summit-of-the-igad-assembly-of-heads-of-state-and-government-on-durable-solutions-for-somali-refugees> accessed on 11th June, 2019

<sup>4</sup> <https://igad.int/> accessed on 1st June, 2019

<sup>5</sup> <https://igad.int/attachments/article/1725/Djibouti%20Declaration%20on%20Refugee%20Education.pdf> accessed on 1st June, 2019

<sup>6</sup> <https://igad.int/attachments/article/2090/ENGLISH%20DECLARATION%20SIGNED.pdf> accessed on 1st June, 2019

planning and access to basic rights. This report highlights various challenges faced by the refugees in an effort to realise their basic rights and offers recommendations on what the government needs to do to uphold the rights of refugees.

5. This report is based on primary data collected by three NGO members of the civil society UPR coalition tasked with the thematic cluster on the rights of refugees. The data is gathered through consultations and semi-structured interviews with refugee community leaders, and refugees, as well as focus group discussions and participant observation of refugee meetings in urban areas and in the Kakuma and Dadaab refugee camps. The data is supported by desk-based research.
6. During the second UPR working group session for Kenya, and also in the concluding observations of the Committee on the Convention on the Elimination of All Forms Discrimination Against Women (CEDAW), following the review of Kenya in November 2017, the Government of Kenya was commended for the efforts of the State in developing a legislative frame to increase the protection of women and girls' human rights. The following laws have been particularly highlighted: Legal Aid Act, in 2016, which enhanced access to justice for women with limited resources by establishing a legal aid scheme; (b) Protection against Domestic Violence Act, in 2015; (c) Victim Protection Act, in 2013, which provides for comprehensive support for women who are victims of trafficking and; d) Prohibition of Female Genital Mutilation Act, in 2011.

## 1. Refugee Right to Asylum

7. Kenya as at 31<sup>st</sup> April, 2019 was hosting 473, 971 refugees and asylum seekers.<sup>7</sup> However there has been lack of registration of asylum seekers in Dadaab refugee camp with 13,281<sup>8</sup> persons being reported as unregistered as at 28<sup>th</sup> February, 2019.<sup>9</sup> This has been due to lack of political will and constant changes in refugee management policies with threat of refugee camp closure risking involuntary return of asylum seekers.<sup>10</sup>
8. Section 11 (5) of the Refugees Act<sup>11</sup> provides that refugee status determination should be concluded within 90 days. The UNHCR<sup>12</sup> report of 30<sup>th</sup> April 2019 records that there are 61,505 pending applications for asylum and this limits their access to basic services.<sup>13</sup>

## Recommendations to the Government of the Republic of Kenya

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<sup>7</sup> <https://www.unhcr.org/ke/wp-content/uploads/sites/2/2019/05/Kenya-Statistics-Package-30-April-2019.pdf> accessed on 4th June, 2019

<sup>8</sup> <https://www.unhcr.org/ke/wp-content/uploads/sites/2/2019/04/Kenya-Operation-Factsheet-February-2019.pdf> accessed on 1st June, 2019

<sup>9</sup> <https://www.amnesty.org/en/latest/news/2018/02/kenya-failure-to-register-somali-refugees-putting-them-at-risk-of-starvation-and-abuse/> accessed on 4th June, 2019

<sup>10</sup> <https://www.nation.co.ke/news/Kenya-fresh-bid-close-Dadaab-camp-/1056-5090948-829nra/index.html> accessed on 1st June 2019

<sup>11</sup> [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/RefugeeAct\\_No13of2006.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/RefugeeAct_No13of2006.pdf) accessed on 4th June, 2019

<sup>12</sup> United Nations High Commissioner of Refugees

<sup>13</sup> <https://www.unhcr.org/ke/wp-content/uploads/sites/2/2018/05/KENYA-Statistics-Package-April-2018-Resent.pdf> accessed on 4th June, 2019

- a. Comply with the statutory timelines of 90 days for refugee status determination, and ensure asylum seekers in refugee camps are adequately registered.
- b. Develop an asylum policy and strategy to improve the management of refugees and asylum seekers in Kenya.

## **2. Refugee Access to Basic Services and Education**

9. The Kenyan government has made some progress in delivering services to refugees in Kenya. Urban refugees are able to access National Hospital Insurance Fund,<sup>14</sup> while some refugee children are able to access primary education in Kenya. However, there is lack of awareness and recognition of refugee identification documents by government departments and private institutions. As a result of this lack of recognition of refugee documents, refugees and asylum seekers in Kenya are not able to access financial services such as mobile money (MPESA) or opening bank accounts, for example.<sup>15</sup>
10. The elementary and tertiary education system in Kenya does not recognize school certificates of some of the refugee countries, which has stifled refugee access to education. Moreover, there is lack of adequate infrastructure to accommodate the number of school going children in refugee camps with 7,000 eligible primary school learners and 19,000 secondary school learners being out of school in Kakuma refugee camp.<sup>16</sup> Only 621 of 35,840 students eligible for secondary school have been enrolled.<sup>17</sup> In Dadaab over 40% of school-going age children, are not enrolled in any educational facility<sup>18</sup> and just like in Kakuma, early childhood and secondary school going age children are the most affected. Notably, there is a low transition of girls in both Kakuma and Dadaab from primary to secondary level education. While enrolment rate for girls in primary schools is as high as 68%, only 28% transition to secondary schools in the camps.<sup>19</sup>
11. Unfriendly school environment, marked by the lack of gender-sensitive wash rooms and sanitary pads affect refugee girls' continuation of their education. Other aspects include the lack of enough female teachers who could serve as role models and encourage families to support girls' education.
12. Families tend to give priority to boys over girls when it comes to opportunities for education. This trend, combined with the burden of house chores and early marriages of girls play a significant role in the challenges experienced by refugee teenage girls to pursue their education. Early marriage and pregnancies further contribute to school drop out for refugee girls.

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<sup>14</sup> <https://www.unhcr.org/ke/urban-areas> accessed on 1st June, 2019

<sup>15</sup> <https://www.thenewhumanitarian.org/feature/2019/05/01/kenyan-refugee-camp-business-ideas-little-access-credit> accessed on 4th June, 2019

<sup>16</sup> [https://www.ifc.org/wps/wcm/connect/8fb8fab4-af24-4b09-bdff-2109d2c45974/20180427\\_Kakuma-as-a-Marketplace\\_v1.pdf?MOD=AJPERES](https://www.ifc.org/wps/wcm/connect/8fb8fab4-af24-4b09-bdff-2109d2c45974/20180427_Kakuma-as-a-Marketplace_v1.pdf?MOD=AJPERES) page 60 accessed on 4th June, 2019

<sup>17</sup> <https://www.the-star.co.ke/news/big-read/2019-06-10-search-for-education-eludes-children-in-dadaab/> accessed on 11th June, 2019

<sup>18</sup> Dadaab Refugee Camps EMIS March, 2019 report.

<sup>19</sup> Based on the EMIS for Dadaab, 2019 April and <https://data2.unhcr.org/en/documents/details/58493>

## **Recommendations to the Government of the Republic of Kenya**

- a. Adopt a refugee management policy that recognizes the use of refugee identification documents for full access to financial and other basic services in Kenya.
- b. Fully implement the Djibouti Declaration on Refugee Education in IGAD<sup>20</sup> Member States of December 2017 for provision of quality standards of education, and inclusion of refugee education in national systems and accreditation and certification of educational programmes.<sup>21</sup>
- c. Adopt a gender-sensitive approach that also guarantees access of refugee girls to education, increase the recruitment of female teachers to mentor refugee girls, and ensure schools are well equipped with adequate washrooms and sanitary pads for girls.
- d. End child, early, and forced marriages of refugee girls, develop a civic education programme for their parents to ensure they are incentivized to provide access to education to the refugee girl.

## **3. Refugee Right to Work in Kenya**

11. Refugees Act, 2006 Section 16(4)<sup>22</sup> provides the right to wage earning employment for refugees in Kenya upon attainment of a Class M work permit which is issued gratis.<sup>23</sup>
12. However, there is a high threshold for refugees to access work permit as provided for in the Kenya Citizenship and Immigration Act which requires similar requirements as for expatriates.<sup>24</sup>
13. This limits refugees' ability to access employment opportunities and therefore hinders their self-reliance and livelihood in Kenya. A reviewed Refugees Act expanding refugee rights including right to work in Kenya, which was passed by the National Assembly, was unfortunately not assented to by His Excellency the President.<sup>25</sup>

## **Recommendations to the Government of the Republic of Kenya**

- a. Amend and remove the high skill and speciality threshold in the Kenya Citizenship and Immigration Act and Regulations so as to accommodate the unique humanitarian situation of refugees and enable them to obtain a work permit.

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<sup>20</sup> <https://igad.int/> accessed on 4th June, 2019

<sup>21</sup> <https://igad.int/attachments/article/1725/Djibouti%20Declaration%20on%20Refugee%20Education.pdf> accessed on 1st June, 2019

<sup>22</sup> [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/RefugeeAct\\_No13of2006.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/RefugeeAct_No13of2006.pdf)

<sup>23</sup> <https://fns.immigration.go.ke/infopack/permits/classM/>

<sup>24</sup> <http://www.kenyalaw.org/lex//sublegview.xql?subleg=No.%2012%20of%202011>

<sup>25</sup> <https://www.businessdailyafrica.com/economy/Uhuru-rejects-bill-giving-refugees-right-to-jobs-and-land/3946234-4178936-xf36adz/index.html>

- b. Accelerate the implementation of the Kampala Declaration of March 2019 on Jobs, Livelihoods and Self-Reliance for Refugees, Returnees and Host Communities in the IGAD Region.
- c. Enact a refugee law with adequate provisions to safeguard the rights of refugees to employment and work in Kenya.

#### **4. Refugee Right to Freedom of Movement**

- 14. Section 16 (2) of the Refugees Act, 2006 has designated refugee camps where over 85% of refugees reside in Kenya.<sup>26</sup> Contrary to Article 26 of the UN Convention Relating to the Status of Refugees, this regulation curtails the freedom of movement of refugees in Kenya, restricting their ability to leave the camp to seek education and self-reliance opportunities.
- 15. 74, 750 refugees and asylum seekers are registered as urban refugees in Kenya who reside outside the designated refugee camps with no clear government policies, thus exposing them to protection concerns.<sup>27</sup>

#### **Recommendations to the Government of the Republic of Kenya**

- a. Build the capacity of government officials, civil servants, the army, the security and law enforcement agencies to ensure compliance with international human rights and humanitarian law that protects the rights of refugees to freedom of movement.
- b. Establish a policy and legislative framework that allows refugees who are self-reliant to reside outside the refugee camps.

#### **5. Refugee Right to Assimilation and Naturalization in Kenya**

- 16. UNHCR defines a protracted refugee situation as one in which 25,000 or more refugees from the same nationality have been in exile for five consecutive years or more in a given asylum country.<sup>28</sup> For over 20 years, since early 1990s Kenya has been hosting refugees of different nationalities from across the region due to protracted violent conflicts in the refugees' countries of origin.<sup>29</sup>
- 17. Refugees in Kenya are unable to access the local integration options provided in Article 34 of the 1951 Convention in Kenya,<sup>30</sup> and Kenya Citizenship and Immigration Act.<sup>31</sup>

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<sup>26</sup> <http://www.kenyalaw.org/lex/actview.xql?actid=No.%2013%20of%202006> accessed on 4th June, 2019

<sup>27</sup> <https://www.unhcr.org/ke/wp-content/uploads/sites/2/2019/05/Kenya-Statistics-Package-30-April-2019.pdf>

<sup>28</sup> <https://www.unhcr.org/5b27be547.pdf> accessed on 4th June, 2019

<sup>29</sup> <https://www.fmreview.org/25th-anniversary/kiama-karanja>

<sup>30</sup> [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.23\\_convention%20refugees.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.23_convention%20refugees.pdf) accessed on 4th June, 2019

<sup>31</sup> <http://www.kenyalaw.org/lex/actview.xql?actid=No.%2012%20of%202011> accessed on 4th June 2019

## **Recommendations to the Government of the Republic of Kenya**

- a. Fully implement the provisions of the 1951 Refugee Convention and Kenya Citizenship and Immigration Act on local integration.
- b. Immediately put in place a refugee policy with guidelines on integration of refugees in Kenya as articulated in the Bill of Rights of the Constitution of Kenya and the Kenya Citizenship and Immigration Act, to support greater socio-economic inclusion with favorable outcomes for both refugees and host communities.

## **6. Sexual and Gender Based, and Domestic Violence against Women, Girls and Boys**

18. The Government of Kenya received several recommendations on combating sexual and gender based violence against women, girls and boys during Kenya's previous UPR working group sessions. However, there is no demonstrable preventive and prosecutorial measures undertaken by the Government to this effect. According to UNHCRs preliminary statistics of 2015, at least 1,142 individuals comprising 95% female and 5% men were survivors of SGBV<sup>32</sup>.
19. An academic research<sup>33</sup> conducted in 2016, in Dadaab camp, highlighted the fact that SGBV cases have increased, yet most of them go unreported due to multiple justice system representative of the different cultures that are in operation in Dadaab. According to the research findings, the Dadaab refugees, who are predominantly Somali community, prefer the Maslaha Court justice system to settle disputes including those of SGBV nature.
20. Another reason for under-reported cases is the fact that many lack the understanding of what defines an SGBV, with the focus for reporting only confined to cases of rape and defilement, excluding cases such as FGM and child marriages. Additionally, stigma is a causal factor for under-reporting particularly among male SGBV survivors. Yet, there are myriad issues requiring redress in the justice and legal systems within which persons of concern operate<sup>34</sup>.

## **Recommendations to the Government of the Republic of Kenya**

- a. Develop an awareness raising programme to sensitize refugees and other key stakeholders, on all forms of sexual and gender based as well as domestic violence, including on harmful practices such as child, early and forced marriages and Female Genital Mutilation.

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<sup>32</sup> UNHCR Bi-Weekly Update, 01-15, February, 2016




<sup>33</sup> Maryan Hassan, Assessment of Sexual And Gender-Based Violence Reporting Procedures Among Refugees In Camps In Dadaab, Kenya, (MA, University of Nairobi), 2016.

<sup>34</sup> Mirghani Z., Karugaba J., Martin-Archard N., Undie C., and Birungi H. 2017. Community Engagement in SGBV Prevention and Response: A Compendium of Interventions in the East & Horn of Africa and the Great Lakes Region. Nairobi, Kenya: Population Council.

- b. Take concrete measures to enforce the legal provisions prohibiting harmful practices and gender-based violence, including female genital mutilation, child and forced marriages and domestic and sexual violence including marital rape to eradicate all forms of sexual and gender based as well as domestic violence against women, girls and boys in all refugees' camps.
- c. Strengthen the capacity of the judiciary, prosecutors, the police and other law enforcement officials by providing them with the requisite training on women's rights and on gender-sensitive investigation and interrogation procedures in alleged cases of gender-based violence against women, girls, as well as boys.
- d. Increase the prosecution rates of perpetrators of all forms of sexual and gender based as well as domestic violence in competent courts of law to deter future perpetrators of human rights abuses of this nature.



**Annex – 1: List of submitting organizations and their contacts**

NAME OF ORGANISATION	ORGANISATION LOGO	ORGANISATION ADDRESS
REFUGEE CONSORTIUM OF KENYA		<p>Eunice Ndonga Githinji, Executive Director, Refugee Consortium of Kenya, Address: P. O. Box 25340-00603, Nairobi, Kenya <a href="mailto:info@rckkenya.org">info@rckkenya.org</a></p>
INTERNATIONAL RESCUE COMMITTEE		<p>Jamin Kusuania, International Rescue Committee Kenya, Kilimani, Galana Road, Galana Plaza, Nairobi <a href="http://www.rescue.org">www.rescue.org</a></p>
THE LUTHERAN WORLD FEDERATION		<p>Saara Vuorensola- Barnes, Country Representative, LWF World Service Kenya Djibouti Somalia Address:  P. O. Box 40870, 00100, Nairobi</p>
KADANA UPR REFUGEES NETWORK, KENYA	No logo	<p>Said Abukar, KADANA UPR Refugee Network Chairperson, Eastleigh North General Waruinge Road, <a href="mailto:proud2brefugee7@gmail.com">proud2brefugee7@gmail.com</a></p>