

ACCESS TO LABOUR MARKET FOR REFUGEES AND ASYLUM SEEKERS IN KENYA

POPULAR VERSION



Acknowledgements

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This report is the result of a collaborative effort involving various actors, to whom Refugee Consortium of Kenya (RCK) owes its immense gratitude. We thank our internal team led by the Executive Director who provided technical, logistical and administrative support for the research. We thank Asylum Access and IKEA Foundation for the financial and technical support for this project. We are grateful to all the various individuals, refugees and asylum seekers, institutions and partners who agreed to take part in this study as respondents despite the difficult circumstances brought about by the Covid 19 pandemic and the ensuing containment measures. Finally, we thank Mr. Omolo Joseph for his invaluable input, feedback and support.

We believe that the outcomes of this study will play a role in expanding the discourse on how best to protect refugees and asylum seekers in Kenya, more so, opening avenues for expanded access to the labour market in Kenya. Further, the findings provide a platform for various stakeholders to design interventions aimed at the wholesome empowerment of refugees and asylum seekers in Kenya. We thank you all, once more.

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A. Contextual Analysis

Starting from 1960s, Kenya has hosted varying numbers of refugees and asylum seekers.¹ Such persons in need of international protection have originated from a number of countries which include: Uganda, Somalia, Ethiopia, Sudan, South Sudan, Democratic Republic of Congo, Rwanda, Burundi and Eritrea. These have been people displaced by military coups, persecution, civil wars, natural calamities,² international armed conflicts and poor economic conditions.³

Although viewed as a temporary situation, the world has become well-accustomed to protracted refugee situations. The United Nations High Commission for Refugees (UNHCR) in 2004 adopted a working definition for a 'protracted refugee situation' as 'one in which refugees find themselves

in a long-lasting and intractable state of limbo [where]... [t]heir lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile.'⁴ The UNHCR elaborated further that persons who find themselves in this situation are 'often unable to break free from enforced reliance on external assistance.'⁵ At this time, the UNHCR seems to have regarded displacement lasting five years and above as protracted. On average, refugees remain displaced for a period of 17 years.⁶ Protracted refugee situations place considerable stress on the international framework for the protection of refugees and, in the words of the UNHCR, lead to 'wasted lives, squandered resources and increased threats to security.'⁷

¹Edwin Odhiambo Abuya, 'Past Reflections, Future Insights: African Asylum Law and Policy in Historical Perspective' (2007) 19 Int'l J. Refugee L. 51; Jecinta Anomat Ali et al, 'The Refugee Crisis in Kenya: Exploring Refugee-Host Community Causes of Tensions and Conflicts in Kakuma Refugee Camp' *Journal of International Relations and Foreign Policy*, Vol. 5 (2), December 2017.

²Jecinta Anomat Ali et al, 'The Refugee Crisis in Kenya: Exploring Refugee-Host Community Causes of Tensions and Conflicts in Kakuma Refugee Camp' *Journal of International Relations and Foreign Policy*, Vol. 5 (2), December 2017.

³See Wendy Williams, 'Shifting Borders: Africa's Displacement Crisis and its Security Implications' *Africa Center for Strategic Studies Research Paper No. 8*, October, 2019.

⁴UNHCR, 'Protracted Refugee Situations', Executive Committee of the High Commissioner's Programme, Standing Committee, 30th Meeting, UN Doc. EC/54/SC/CRP.14, 10 June 2004, p. 1.

⁵UNHCR, 'Protracted Refugee Situations', Executive Committee of the High Commissioner's Programme, Standing Committee, 30th Meeting, UN Doc. EC/54/SC/CRP.14, 10 June 2004, p. 1.

⁶ILO, *The access of refugees and other forcibly displaced persons to the labour market*, 2016.

⁷UNHCR, 'Protracted Refugee Situations', Executive Committee of the High Commissioner's Programme, Standing Committee, 30th Meeting, UN Doc. EC/54/SC/CRP.14, 10 June 2004, p. 2.

According to the latest census results, Kenya has a total population of 47,564,296.⁸ Out of this number, 27,486,975 are economically active, that is, they fall within the working age population of 15-64 years.⁹ According to the latest statistics by the Kenya National Bureau of Statistics (KNBS), the unemployment rate in Kenya increased to 10.4% in the second quarter of 2020 from 5.2% recorded in the first quarter.¹⁰ In 2019, the unemployment rate averaged at 2.64%.¹¹ In the same year, the informal sector accounted for 83.6% of total employment.¹² This dominance of the informal sector over the formal sector is characteristic of the trend in the sub-Saharan region.¹³

On 19th September, 2016 the United Nations General Assembly adopted the New York Declaration for Refugees and Migrants as a political declaration to deal with the question of large movements of refugees and migrants. Annex I of the Declaration called upon the Office of the UNHCR to initiate

and develop a comprehensive refugee response framework by 2018. Consultative initiatives by the UNHCR in this regard culminated in the development of the Global Compact on Refugees (GCR) in 2018. The GCR contains the following four objectives: (i) to ease pressures on host countries; (ii) to enhance refugee self-reliance; (iii) to expand access to third country solutions; and (iv) to support conditions in countries of origin for return in safety and dignity.¹⁴ Neither the New York Declaration nor the Global Compact on Refugees is legally binding upon States. However, they reaffirm the political commitment of States to respect their international obligations for the protection and promotion of human rights and the rights of refugees.¹⁵

At present, there are approximately 499,219 refugees and asylum seekers in Kenya.¹⁶ Kenya's refugee situation is often cited as an example of protracted refugee situations.¹⁷

⁸KNBS, *2019 Kenya Population and Housing Census: Volume I*, p.5.

⁹KNBS, *Quarterly Labour Force Report, Quarter 2, April-June, 2020*.

¹⁰KNBS, *Quarterly Labour Force Report, Quarter 2, April-June, 2020*.

¹¹Kenya: Unemployment Rate, available at <https://www.theglobaleconomy.com/Kenya/unemployment_rate/> accessed on 28th October, 2020.

¹²KNBS, *Economic Survey*, 2019, p.39.

¹³Danish Trade Union Development Agency *Kenya Labour Market Profile 2020*, p.19

¹⁴UN, *Report of the United Nations High Commissioner for Refugees*, A/73/12 (Part II).

¹⁵Jane McAdam, *The Global Compacts on Refugees and Migration: A New Era for International Protection?* *International Journal of Refugee Law*, Volume 30, Issue 4, December 2018, pages 571–574, <https://doi.org/10.1093/ijrl/eez004>.

¹⁶Refugee Affairs Secretariat, 'Operation Statistics at a Glance' available at <<https://refugee.go.ke/>> accessed on 20th October, 2020. In terms of place of residence, this number is distributed as follows: 221,102 in Dadaab Refugee Camp, 197,341 in Kakuma Refugee Camp and 80,776 in urban areas.

¹⁷UNHCR, 'Kenya Refugee Comprehensive Refugee Programme' 2015.

Protracted refugee situations represent failure to achieve durable solutions by the country of origin (voluntary repatriation), the host country (local integration) and the international community (resettlement) and can, ironically, place refugees and asylum seekers in the same conditions that they ran away from in their countries of origin. With the reality of Kenya's protracted refugee situation, this study, seeks to explore ways in which the protection of refugees and asylum seekers in Kenya could be enhanced through access to the labour market. In this regard, this study which was commissioned by the Refugee Consortium of Kenya (RCK) with financial and technical support from Asylum Access (AA) interrogates two critical questions:

- 1 What is the status of access to equitable labour market and labour rights for refugees and asylum seekers in Kenya?
- 2 What opportunities exist for civil society actors to participate in advancing access to the labour market in Kenya through legal empowerment, information dissemination and policy development/ change?



B. Methodology

This study employed non-probability sampling methods to identify a sample size and individual respondents. The sample included refugees who are currently either self-employed or employed. The lack of a comprehensive register of refugees working or running businesses in Kenya meant that the study could not find an acceptable sampling frame from which to apply a probability sampling method. Respondents were identified through a twin purposive and snowballing technique. A total of 65 refugees were interviewed for this study; 34 were camp based (Dadaab and Kakuma), 30 based in Nairobi while 1 did not disclose their location. The interviews with refugees were conducted over the telephone and took a semi-structured format. This approach was used instead of in-person interviews in compliance with the Government of Kenya's protocols on preventing the spread of COVID-19. Table 1 below shows the distribution of the respondents by nationality and gender.

NATIONALITY	FEMALE	MALE	OTHER	TOTAL
BURUNDIAN	7	3		10
ETHIOPIAN		1		1
NOT STATED	21	21	1	35
RWANDESE	2	1		3
SOMALI	3	6		9
SOUTH SUDANESE	2	5		7
TOTAL	27	37	1	65

Table 1: Distribution of respondents by nationality and gender

Data collected from refugees was augmented by key respondent interviews. The key respondents included non-governmental organizations working on access to labour issues; relevant government entities such as the Refugee Affairs Secretariat, Registrar of Companies; insurance firms and agents, banks, mobile money agents and telecommunication companies. Further information has been obtained by way of reviewing various laws relating to refugees.

C. Legal Frameworks Governing Refugee Protection and Access to Labour Market



Access to labour rights is contained in a number of international instruments to which Kenya is a signatory. This section discusses a number of them.

● Universal Declaration on Human Rights

Article 23 and 24 of the Universal Declaration on Human Rights (UDHR) provide for the right to work. The former provides for the right to work: free choice of employment; just and favourable working conditions; protection against unemployment; protection from discrimination; equal pay for equal work; just and favourable remuneration; and the right to form or enter trade unions for the protection of their interests. Article 24 provides for the right to rest and leisure including reasonable limitations of working hours and periodic holidays with pay.

● International Covenant on Economic, Social and Cultural Rights (ICESCR)

Articles 6, 7 and 10 of the ICESCR create obligations for state parties to promote access to labour rights. Kenya is bound by this instrument, with a minor declaration on article 10(2).¹⁸ The declaration has the effect of acknowledging the principles set out in article 10(2) but stating that ‘the present circumstances obtaining in Kenya do not render necessary or expedient the imposition of those principles by legislation’.¹⁹ Article 10(2) provides protections for mothers before and after childbirth that includes paid leave. ICESCR has been interpreted to require that ‘the labour market must be open to everyone under the jurisdiction of States parties’.²⁰

● African Charter on Human and Peoples’ Rights (Banjul Charter)

Basic human rights in Africa are codified in the Banjul Charter. Article 15 of the Charter provides for the right to work under equitable and satisfactory conditions. Furthermore, article 29 of the Charter creates an obligation for right holders ‘to work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society.’ This provision infers that the duty bearer must provide conditions that are necessary for the right holder to fully comply with this duty.

● United Nations Convention Relating to the Status of Refugees (1951 Convention)

The 1951 Convention is the primary international legal instrument that codifies refugee rights. Signatories to the Convention are obligated to accord refugees the right to engage in wage-earning employment, self-employment and to practice liberal professions.²¹ They are required to ensure that refugees have, in respect of wage-earning employment, the most favourable treatment accorded to nationals of a foreign country in the same circumstances.²²

¹⁸United Nations Treaty Series, *Status of Signatories to the International Covenant on Economic, Social and Cultural Rights*, accessed at https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en on 16th November, 2020.

¹⁹United Nations Treaty Series, *Declarations and Reservations*, accessed at https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en#EndDec on 16th November, 2020

²⁰UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: *The Right to Work* (Art. 6 of the Covenant), 6 February 2006, E/C.12/GC/18, available at: <https://www.refworld.org/docid/4415453b4.html> [accessed 26 October 2020].

²¹Articles 17, 18 and 19, 1951 Convention Relating to the Status of Refugees.

²²Article 6 of the Convention Relating to the Status of Refugees defines what “in the same circumstances” means. It states thus: ‘For the purposes of this Convention, the term “in the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.’

● Migration for Employment Convention (Revised)

Migration for Employment Convention is an international legal instrument that protects migrant workers. A migrant worker is defined as ‘a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker.’²³ Refugees cannot be reasonably considered to migrate with a view of being employed because the primary reason they migrate is to seek asylum. Therefore, this definition, on the face of it, precludes refugees and asylum seekers suggesting that they cannot benefit from the Convention. However, as discussed above under the 1951 Convention, refugees have the right to be accorded the most favourable treatment as possible but not less favourable than that accorded to foreign nationals. Therefore, since Kenya is a signatory to this convention²⁴ and thus guarantees the rights provided under the Convention to foreign nationals within its territory, it is bound by the 1951 Convention to provide similar treatment to refugees with regard to access to the labour markets.

● Migrant Workers (Supplementary Provisions) Convention

This convention also protects the rights of migrant workers. Article 10 of this Convention guarantees migrant workers freedom from discrimination. Specifically, migrant workers have the right to ‘[...] equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms [...]’ These rights are consistent with those provided under general human rights law as discussed above.

²³ Article 11, Migration for Employment Convention (Revised), 1949 (No.97) accessed at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312242:NO on 18th November, 2020

²⁴ Kenya acceded to the Convention on 30th November, 1965. It has excluded the provisions of Annex I-III as part of its obligations thereunder. See International Labour Organization, Ratifications for Kenya, accessed at https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103315 on 18th November, 2020

D. Access to Labour Market in Practice

This section of the report details the legal and administrative impacts on refugee access to the labour market in Kenya.

● Favourable Access

Kenyan law does not afford refugees favourable access to the labour market. Favourable access is measured here by refugees and asylum seekers having the opportunity to make a living by working and freely choosing an economic activity. Whereas the Constitution of Kenya, 2010 guarantees the right of refugees to work in Kenya by adopting international conventions and treaties that Kenya is a signatory to into Kenyan law²⁵ and incorporating the same into the Bill of Rights,²⁶ asylum law in Kenya still contains barriers that hinder effective access of refugees to the labour market.

Section 16 of the Refugees Act, 2006 expressly provides for the right to work for refugees. However, this right is limited to ‘recognized refugees’ for ‘wage earning’ employment ‘subject to the same restrictions...imposed on persons who are not citizens of Kenya.’²⁷ This section excludes asylum seekers from the protection of this provision of the law. This finding is significant because it underscores the imperative nature of an efficient refugee status determination (RSD) process. Section 16 also limits the scope of employment to wage earning employment whereas the 1951 Convention includes self-employment and liberal professions among the choices for employment for refugees. This provision of the law goes against the concept of freedom of choice in selecting an economic activity which constitutes the concept of favourable access to labour markets. The effect of this provision can be observed in the survey data. Of the 59 respondents that had a refugee identity document, none reported having a work permit.

Like other foreigners, refugees require a work permit to legally work in Kenya. It is an offence for a foreigner work without a permit.²⁸ Where such a national is charged and convicted for this offence they face the penalty of Kes.500,000 fine (approximately US\$.5000) or a prison sentence not exceeding three years or both.

²⁵Article 2(6), Constitution of Kenya, 2010.

²⁶Article 19(3)(b), Constitution of Kenya, 2010.

²⁷Section 16(4), Refugees Act, 2006

²⁸Section 53(1)(m), Kenya Citizenship and Immigration Act, 2011

Applications for work permits are considered by the Director of Immigration Services under the Kenya Citizenship and Immigration Act, 2011 and its 2012 regulations. Refugees are entitled to Class M Work Permit which allows the holder 'to take up employment or engage in a specific occupation, trade, business or profession'.²⁹ Refugees can access this permit free of charge, which terms are better than those afforded to other foreign nationals. Other foreign nationals are required to pay a non-refundable processing and annual issuance fees of between Kes.10,000 (approximately US\$.100) and Kes.250,000 (approximately US\$.2,500). Under the law, all applicants for work permits are required to submit their applications before entry into Kenya.³⁰ This poses a challenge for refugees. Further, negative decisions on work permit applications do not disclose their justifications thus making it difficult to seek court intervention as well as hindering efforts by civil society actors to disseminate information to refugees on how best to compile their applications.

Furthermore, the encampment policy currently implemented in Kenya adds another hurdle for refugees to apply for work permits. The Refugees Act stipulates that refugees and asylum seekers reside in designated areas (refugee camps) and are not allowed to leave there without permission from the Refugee Camp Officer.³¹ Grounds necessary to allow refugees to move out of the camps are not formally detailed in the policy and legal framework.

The impact of legislative and institutional barriers in accessing work permits can be observed in the survey data. Whereas 35 percent of the respondents reported that they had ever applied for a work permit, only 9 percent reported to have a work permit. Ignorance about the process of application further aggravates the situation. Over 50 percent of the respondents who responded to the question on whether they had ever applied for one stated that they either had no knowledge that they needed one or little knowledge on how to acquire it.

There are no barriers for refugees to register and run organizations where they have a work permit. A review of the legal provisions governing the registration of for-profit and not-for-profit organizations at the national level reveals that these laws are neutral. Additionally, county governments issue business operating licenses to refugees and asylum seekers so long as they can pay the prescribed fees.³²

²⁹Seventh Schedule, Kenya Citizenship and Immigration Regulations, 2012

³⁰Section 40(3)(a), Kenya Citizenship and Immigration Act, 2011.

³¹Section 14(c), Refugees Act, 2006.

³²Interview with Turkana County Revenue Officer.

This means that foreign nationals can register and operate businesses (companies or partnerships), non-governmental organizations and even societies. These laws offer freedom of choice for a refugee that wants to engage in an economic activity that has for-profit or non-profit objectives; or otherwise, to be self-employed.

In spite of the lack of barriers in the registration and operation of businesses and not for profit organizations, there are serious barriers that would affect their ability to continue doing business. Having a business requires access to financial institutions that provide access to credit for business capital. Should this option not be available for refugees, then it means that their option to freely choose an economic activity is stunted.

The banking sector is mainly regulated by the Banking Act and the Central Bank of Kenya Act. These two Acts are supported by numerous regulations one of which is relevant for the purposes of this study: The Money Remittance Regulations, 2013 meant to govern remittances. These regulations specifically recognize refugee and UNHCR cards issued to refugees in Kenya as valid documents with which to transact. However, this is not the case with respect to opening bank accounts. Respondents from banks said that they did not recognize the following documents as valid identification documents for refugees applying to open bank accounts: Refugee Identification Certificate; Convention Travel Document; and Class M Work Permits. On loans, refugees are required by some banks to provide a work permit and credit rating from their country of origin. In addition to this, refugees would require a Kenya Revenue Authority (KRA) personal identification number (PIN) to open and operate these accounts. To acquire a KRA PIN, refugees need a valid work permit.

In the telecommunication sector, similar barriers relating to recognition of refugee documentation exist. Access to a registered mobile phone subscriber identification module (SIM) is governed by the Kenya Information and Communication (Registration of Subscribers of Telecommunication Services) Regulations 2014. These regulations only recognize passports and alien cards which were later transformed into Foreign National Certificates in 2011. Before the promulgation of these regulations, refugees were able to register a SIM card with refugee documentation issued by the government. However, after the regulations that do not recognize some of their documents came into effect, refugees have been effectively locked out of a service that support mobile money services.

This limits the options of business owners as customers – cautious of the COVID-19 situation in Kenya – prefer using cashless payment systems to pay for goods and services.

Evidence of the impact of the regulatory framework on refugee access to these services can be found in the survey data. Twenty-three of the 65 respondents reported to have had an operational personal bank account. Thirty-two of the 42 respondents that reported to be self-employed did not have an operational business account. Interestingly, 80 percent of the respondents reported to have had a SIM card. However, only 40 percent of these had registered the SIM card using their own identity documents. The rest used identification documents belonging to friends and relatives raising security concerns. The main issue cited by the respondents was the lack of recognition of documentation.

Moreover, the validity of refugee identification documents is time-bound. This poses a challenge for refugees who have to keep supplying new documents to service providers every so often and sometimes there are delays in the renewal process.

● Just and Favourable Conditions and Remunerations

The Employment Act, 2007 lays down minimum standards applicable to employment. These include: contracts of service for periods longer than three months must be in writing;³³ a minimum of 21 leave annual days;³⁴ 3 months maternity leave;³⁵ 2 weeks paternity leave;³⁶ 14 days sick leave annually;³⁷ and medical attention.³⁸ The Act does not distinguish between nationals and non- nationals. This means that both categories have equal benefit of the law.

Evidence from survey responses shows a mixed implementation of this provision among refugee respondents. The table below shows a summary of the responses. The data indicates that refugees do not fully enjoy access to paid leave across all the categories provided for under the law. There is therefore need to engage with the relevant institutions such as the Ministry of Labour and Social Services, the Federation of Kenyan Employers (FKE) and the Central Organization of Trade Unions (COTU) to address this situation.

³³ Section 9 of the Employment Act.

³⁴ Section 28 of the Employment Act.

³⁵ Section 29 of the Employment Act.

³⁶ Section 29 of the Employment Act.

³⁷ Section 30 of the Employment Act.

³⁸ Section 34 of the Employment Act.

# OF EMPLOYED RESPONDENTS WITH ACCESS TO PAID LEAVE					
	Annual	Maternity	Paternity	Compassionate	Sick
YES	10	11	9	14	15
NO	12	11	13	8	7

In respect of social security, the National Social Security Fund (NSSF) Act, 2013 requires all employers to register their employees with the Fund.³⁹ This Act creates a state-run fund that allows employees to contribute funds towards their retirement. There are no distinctions between nationals and foreign nationals. The same is the case with the National Hospital Insurance Fund Act (NHIF), 1998 that caters for hospital insurance which employees contribute to. Data from the survey shows a limited uptake of these benefits as only one respondent and six respondents reported to have registered for NSSF and NHIF respectively. However, this low uptake was in relation to limited knowledge on the benefits than statutory or institutional barriers.

● Freedom of Association

This report finds that there are no legislative barriers to freedom of association. Article 41 of the Constitution guarantees the right for every employee and employer to form trade unions and participate in their activities. The Labour Relations Act, 2007 does not distinguish between national and foreign nationals and therefore the latter (which includes refugees) have equal protection of the law. Even so, this too has little uptake among the respondents in the survey with only 1 employee and 3 employers reporting that they were part of a trade union.

● Access to labour market legal assistance

Refugees and asylum seekers have limited access to labour market legal assistance. RCK interviewed key livelihood service providers to understand where LMA gaps lie. The common livelihood assistance provided by the organisations that responded to the questions was skills training; provision of cash grants / business start-up kits; and technical/ vocational training. Others include financial literacy and numeracy training; business management and mentorship/ apprenticeship programmes.

³⁹Section 19 of the National Social Security Fund Act.

These organisations recognise the challenges refugees face in accessing work permits especially those that work in the informal sector. From the responses, three of four of the organisations indicated that they support refugees in need of work permits by referring them to legal partners and Refugee Affairs Secretariat for assistance. They further added that they do not offer support either because it is not their mandate or the refugees have to follow up for themselves.

Additionally, four of the seven organizations that responded to the question on access to NHIF card indicated that their refugee beneficiaries have access to NHIF cards. However, only two of them had an idea of the process of acquiring the cards. The others indicated that there was no legal framework for refugees to own NHIF cards; it was the preserve of Kenyan nationals and that camp-based refugees received health services for free and as such it was not important for them. From the foregoing, it could be deduced that there is need to disseminate information to organisations providing services to refugees on benefits refugees can enjoy following advocacy from different stakeholders.

All the respondents indicated that refugee beneficiaries receiving services from them do not have access to NSSF. They indicated some of the reasons as being the lack of a legal framework or their perception that it is only a right enjoyed by Kenyan citizens. Five of the seven organizations that responded to this question indicated that they help refugees access some of the documents either through referrals or by giving the refugees information on requirements.

On wage earning, six of the seven organizations that responded to this question selected 'strongly disagreed' and 'disagreed' that refugees are paid similar wage rates as Kenyans or other foreigners. Reasons for this included: lack of documentation, exploitation because of their status or limited opportunities; working in informal employment sectors and regulation of their wage rates by UNHCR and other agencies. Responses from refugees on how much they earn showed that they earned between Kshs. 3,000 to Kshs. 15,000 per month. According to Legal Notice No. 2 of 2019, the minimum monthly wage falls between Kshs. 13,572.90 for labourers such as gardeners, cleaners, messengers etc to Kshs. 30,627.45 for artisans. This shows that most refugees receive pay that is below the minimum wage.

E. Findings and Recommendations

This study set out to evaluate the legal, institutional and practical barriers to equitable labour market access for refugees and asylum seekers. Evidently, the refugee situation in Kenya is a protracted one. This, necessarily, calls for actors to design ways to respond to the unique protection needs of refugees. These needs go beyond basic life-saving services and call for enhanced promotion of livelihoods and wealth creation ventures. From the foregoing discussion, the following conclusions can be drawn.

- 1 The right to access the labour market in Kenya for refugees is partially guaranteed under the laws of Kenya. Section 16 of the Refugees Act 2006 limits their access to wage-earning employment only which is contrary to the provisions of articles 17, 18 and 19 of the 1951 UN Convention which provides for self-employment and liberal professions.
- 2 Certain provisions of the Kenya Citizenship and Immigration Act, 2011 impede labour market access (LMA) for refugees in Kenya. The law requires refugees like all other foreign nationals to apply for a work permit before they enter Kenya which is impractical for refugees considering their circumstances.
- 3 Decisions communicating rejection for applications for class M work permits are not accompanied by reasons for their basis. This impedes provision of legal aid and support in the application process.
- 4 In practice, refugees and asylum seekers are able to work in Kenya even without work permits. However, this opens them up for prosecution and harassment by law enforcement officers since it is an offence for a foreign national to work in Kenya without a work permit;
- 5 There are legal representation and information gaps relating to LMA in Kenya. All of the organizations working on LMA only offer livelihood skills and do not offer legal assistance on access to the relevant documents needed for refugees to fully and sustainably access Kenya's labour market.

Based on the findings of this study, the following recommendations have been identified.

Recommendation 1:

Seek an amendment to section 40(3)(a) of the Kenya Citizenship and Immigration Act to expressly exempt refugees from the requirement to have their work permit applications submitted before their entry into Kenya

- ~ The direct actors to be targeted are: The Cabinet Secretary, Interior and Coordination of National Government; the Director, Immigration Services; and the Parliamentary Department on Administration and National Security (the National Assembly).

Recommendation 2:

Advise the permits determination committee to always provide written reasons to applicants whenever they decline applications for class M work permits.

- ~ The direct actors to be targeted are: RAS; the Kenya Citizens and Foreign Nationals Management Service; and the Permits Determination Committee.

Recommendation 3:

Promote efforts towards the recognition of the refugee identification card as a valid identification document for refugees in respect of access to financial institutions.

- ~ The direct actors to be targeted are: The Communications Authority; the Central Bank of Kenya; the Insurance Regulatory Authority; the Federation of Kenya Employers; and the Parliamentary Committee on Delegated Legislations

Recommendation 4:

Promote activities towards the relaxation of the encampment policy so as to make Kenya compliant with its commitments under the 1951 UN Convention.

- ~ The direct actors to be targeted are: The Cabinet Secretary, Interior and Coordination of National Government; the Commissioner for Refugee Affairs; and the Parliamentary Department on Administration and National Security (the National Assembly).

Recommendation 5:

Design and implement awareness creation and legal aid programmes on refugee labour rights

- ~ The direct actors to be targeted are: law enforcement officers; public officers; private service providers; regulators in the labour market; refugee-led organisations; refugees and asylum seekers.

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