REPUBLIC OF KENYA

TWELFTH PARLIAMENT (FIFTH SESSION)

THE NATIONAL ASSEMBLY

MESSAGES

MESSAGE FROM THE PRESIDENT

____ (No. 007 of 2021) ____

REFERRAL BY H.E. THE PRESIDENT OF THE REFUGEES BILL 2019

Honourable Members,

You may recall that the National Assembly passed the **Refugee Bill (National Assembly Bill No. 62 of 2019)**. The Bill was sponsored by the Leader of the Majority Party. Following its passage, I did present the Bill for Assent to H.E. the President in accordance with the provisions of the Constitution and our Standing Orders. However, in exercise of the powers conferred under Article 115(1) (b) of the Constitution, H.E. the President, by way of a Memorandum dated 11th August, 2021, has referred the Bill back to the National Assembly for reconsideration.

Honourable Members, in his Memorandum, H.E. the President has expressed reservations on following clauses of the Bill-

1) **Clause 2 of the Bill**, which defines the term, "transit centre". H.E. the President recommends that the definition of "transit centre" be amended to also include a prison, immigration detention centre, police station, remand home or any other similar place that may be designated as a transit centre.

Amongst the reasons for his reservations, H.E. the President notes that the effect of the omission of the proposed definition is in conflict with section 4 and 12(3)(g) of the Persons Deprived of Liberty Act of 2014 which provides that detention facilities may be used as holding centres for refugees and asylum seekers where there is need for humanitarian assistance.

2) **Clause 8 of the Bill,** which provides for the establishment and functions of the Commissioner for Refugee Affairs. H.E. the President observes that the proposal does not provide for the empowerment of the Commissioner for Refugee Affairs to promote, in as far as possible and where applicable, the procurement or purchase of local products and services in support of refugee intervention and support programmes. This leaves room for importation of goods that would otherwise be locally available therefore failing to benefit the local economy.

3) **Clause 18 of the Bill,** which proposes that the Commissioner for Refugee Affairs may revoke the status of a refugee at any time after recognition as a refugee if the refugee has committed a war crime or a crime against humanity. In his reservations, H. E. the President observes that the clause when read together with clause 17 of the Bill causes confusion as the revocation of refugee status is materially the same as the cancellation of refugee status.

4) **Clause 28 of the Bill**, which provides for Rights of and obligations of Refugees, does not take into account the Government's policy in which refugees from Partner States of the East African Community can benefit from an alternative immigration status which may allow them to obtain work permits.

The new policy is intended to facilitate the full implementation of the 2010 East African Community Common Market Protocol and substantially reduce the refugee population in Kenya while simultaneously operating as a durable and more practical solution to the protracted refugee situations.

5) **Clause 31 of the Bill**, which provides for the requirement for refugees to reside in designated areas, authorizes the Commissioner for Refugee Affairs to require any refugee in one designated area to move to another designated area. H.E the President observes that the clause fails to make any reference to refugees who may be residing outside designated areas and does not make any provisions regarding the Commissioner's control over them.

Honourable Members, having made his reservations which are explained in more detail in his Memorandum to the House, H.E. the President now requests the National Assembly to reconsider the Bill in accordance with the provisions of Article 115(2) (a) of the Constitution.

Honourable Members, Standing Order 154(2) of the National Assembly Standing Orders requires the House to consider the President's Reservations **within twenty one (21) days** of the date when the House next meets upon receipt of the Memorandum. In this regard, H.E the President's Reservations, as contained in his Memorandum, now stand committed to the Departmental Committee on Administration and National Security for consideration. The Committee should table its report soonest to allow the House to consider the President's Reservations within the set timelines.

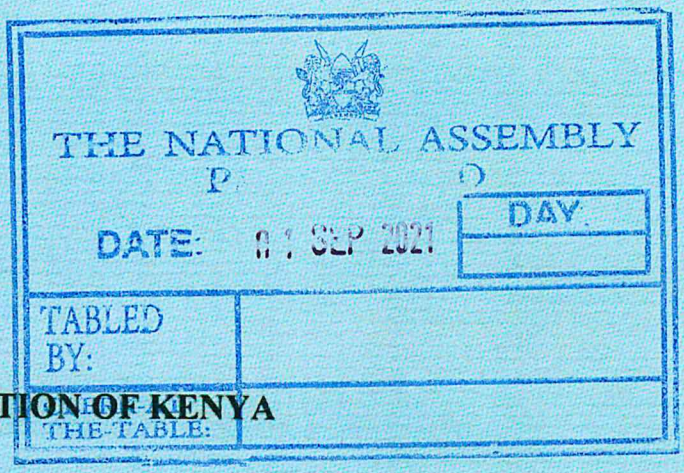
Honourable Members, may I at this early stage, remind the House of the *Speaker's Communication* of July 28, 2015 concerning the consideration of the President's reservations to a Bill and amendments thereto. I particularly draw your attention to my guidance, that the voting threshold for the passage of amendments proposed by a Committee or an individual Member that have the effect of **fully accommodating** the President's reservations is **a simple majority** as contemplated under Article 122(1) of the Constitution as read together with Article 115(2)(a).

On the other hand, an amendment that **does not fully accommodate** the President's reservations, or indeed one that has the effect of a total override of the President's reservations, including negating his proposed text, would require a **two-thirds voting** threshold to be passed in keeping with the provisions of Article 115(4) of the Constitution.

Honourable Members, I wish to further remind the House and the Committee that only **Clauses (2), (8), (18), (28) and (31) of the Bill** will be considered. I therefore direct the Clerk to circulate the Memorandum of H.E. the President to all Members so that they familiarize themselves with its contents.

I thank you!

THE HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY
Wednesday, September 01, 2021



THE CONSTITUTION OF KENYA

REFERRAL OF THE REFUGEES BILL, 2019 FOR RECONSIDERATION BY THE NATIONAL ASSEMBLY

MEMORANDUM

By His Excellency the Honourable Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces.

Submitted to the Speaker of the National Assembly.

WHEREAS a Bill entitled "An Act of Parliament to provide for the recognition, protection and management of refugees; to give effect to the 1951 United Nations Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees and the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa and for connected purposes", the short title of which is "The Refugees Bill, 2019" was passed by the National Assembly on the 2nd March, 2021;

AND WHEREAS the Refugees Bill, 2019, was presented to me for assent in accordance with the provisions of the Constitution, on the 5th August, 2021;

NOW THEREFORE, in exercise of the powers conferred on me by Article 115 (1) (b) of the Constitution, I refuse to assent to the Refugees Bill, 2019, for the reasons set out hereunder:

CLAUSE 2

Clause 2 of the Bill proposes to insert the definition of "transit centre". The proposed definition does not take into account that a transit centre may also include a prison, immigration detention centre, police station, remand home or any other similar place that may be designated as a transit centre.

The effect of this omission is that the proposed definition is in conflict with sections 4 and 12(3)(g) of the Persons Deprived of Liberty Act, 2014, which provides that detention facilities may be used as holding centres for refugees and asylum seekers where there is need for humanitarian assistance. If the proposed definition is enacted in its current form, this may lead to a situation where the Government may be compelled to build parallel facilities for the housing of refugees rather than investing in the improvement of the capacity of existing centres which can serve the same purpose.

RECOMMENDATION:

In view of the foregoing, I recommend that clause 2 of the Bill be amended, in the definition of "transit centre", by adding the words "and includes a prison, immigration detention centre, police station, remand home or any other similar place that may be designated as a transit centre" after the words "security screening".

CLAUSE 8

Clause 8 of the Bill fails to include a provision empowering the Commissioner to promote, in as far as is possible and where applicable, the procurement or purchase of local products and services in support of refugee intervention and support programmes.

The effect of the failure is that it leaves room for the importation of goods that would otherwise be locally available thereby failing to benefit the local economy.

RECOMMENDATION:

In view of the foregoing, I recommend that clause 8 of the Bill be amended in subclause (2) by adding the following new paragraph immediately after paragraph (w)—

(x) promote, insofar as is practicable, the procurement or purchase of local products and services in support of refugee intervention and support programmes.

CLAUSE 18

Clause 18 of the Bill provides that the Commissioner for Refugee Affairs may revoke the status of a refugee at any time after recognition as a refugee if the refugee has committed a war crime or a crime against humanity. The clause, when read together with clause 17 of the Bill, causes confusion as the revocation of refugee status is materially the same as the cancellation of refugee status. Furthermore, the manner in which the clause is drafted suggests that the revocation is only in relation to facts that emerge after recognition which is in contravention of the provisions of Article 1(F) of the 1951 United Nations Convention Relating to the Status of Refugees.

RECOMMENDATION:

In view of the foregoing, I recommend that clause 18 of the Bill be amended by inserting the following new subclause immediately after subclause (4)—

(4A) The provisions of section 17 (2), (3), (4) and (5) shall, with the necessary modifications, apply to the revocation of refugee status by the Commissioner.

CLAUSE 28

Clause 28 of the Bill, which provides for the rights and obligations of refugees, does not take into account the Government's policy in which refugees from Partner States of the East African Community can benefit from an alternative immigration status which may allow them to obtain work permits. The new policy is intended to facilitate the full implementation of the 2010 East African Community Common Market Protocol and substantially reduce the refugee population in Kenya while simultaneously operating as a durable and more practical solution to protracted refugee situations.

RECOMMENDATION:

In view of the foregoing, I recommend that clause 28 of the Bill be amended by adding the following new subclause immediately after subclause (7)—

(8) A person from a Partner State of the East African Community who has been recognised as a refugee under this Act may opt to voluntarily give up his or her refugee status for the purposes of enjoying any of the benefits due to him or her under the Treaty for the Establishment of the East African Community, the Protocol for the

Establishment of the East African Community Common Market, and any other relevant written law.

CLAUSE 31

Clause 31 of the Bill, which provides that refugees shall reside in designated areas, authorises the Commissioner for Refugee Affairs to require any refugee in one designated area to move to another designated area. The clause fails to make any reference to refugees who may be residing outside designated areas and does not make any provisions regarding the Commissioner's control over them.

RECOMMENDATION:

In view of the foregoing, I recommend that clauses 31 of the Bill be amended by adding the following new sub clause immediately after sub clause (4)—

(5) Any refugee or asylum seeker residing outside a designated area at the commencement of this Act shall, as soon as is practicable after the commencement, notify the Commissioner in the prescribed manner of his or her situation and the Commissioner shall make such orders as may be necessary in the circumstances.

Dated the ..11th August....., 2021.

UHURU KENYATTA,
President.