REALIZING REFUGEES' RIGHT TO WORK IN KENYA

Legal and Policy Reform Options

A Joint Publication of the Refugee Access to Work and Inclusion- Eastern Africa (RAWI-EA) Coalition, under the convening of Kituo Cha Sheria.

RAWI-EA
Refugee Access to Work and Inclusion - Eastern Africa

KITUO CHA SHERIA
LEGAL ADVICE CENTRE
we care for justice

HEINRICH BÖLL STIFTUNG
HORN OF AFRICA
Ethiopia | Sudan | Somalia/Somaliland

PUBLISHED BY:
Kituo Cha Sheria, Legal Advice Centre
Secretariat, Refugee Access to Work and Inclusion – Eastern Africa (RAWI-EA) Coalition
P.O. Box 49110 - 00100, Nairobi, Kenya
Email: info@kituochasheria.or.ke
Website: www.kituochasheria.or.ke

SUPPORTED BY:
Heinrich Böll Stiftung (HBS) Horn of Africa

© 2026 Kituo Cha Sheria & RAWI-EA Coalition

ACKNOWLEDGEMENTS & TECHNICAL CONTRIBUTORS:
Kituo Cha Sheria gratefully acknowledges the invaluable technical insights, statutory analysis, and expert contributions provided during the drafting and review processes by representatives from the following institutional partners and individual experts:

Kenya Law Reform Commission (KLRC): Ms Tabitha Kimotho
International Rescue Committee (IRC): Ms. Irene Shiundu (IRC)
Law Society of Kenya (LSK): Ms. Dorothy Omboto (LSK)
Kenya National Commission on Human Rights (KNCHR): Mr. Osman Abdikadir.
Advocate of the High Court of Kenya, & Lived Experience Advisor: Mr. Ajak Jok Ajak
Ms. Rosa Ajwang (Advocate & Independent Researcher).
Kituo Cha Sheria: Ms. Margaret Kemuma, Ms. Faith N. Claudi, Ms. Whitney Oliech, Mr. Rony Alal, Mr. Teddy Odhiambo, Mr. Richard Musyoki.
Forced Migration and Displacement Research Hub, Strathmore University: Ms. Thelma Ato.

CITING THIS DOCUMENT:
Extracts from this publication may be reproduced for non-commercial, educational, and policy advocacy purposes with full acknowledgment of the source.

Recommended Citation:
Kituo Cha Sheria & RAWI-EA Coalition (2026), Realizing Refugees' Right to Work in Kenya-Issues Paper (Phase I): Legal and Policy Reform Options.

DISCLAIMER:
This publication was produced with the support of the Heinrich Böll Stiftung, Horn of Africa Office. The views and legislative recommendations expressed herein represent the joint technical outputs of the working group and do not necessarily reflect the official positions of individual contributing institutions or the funder.

TABLE OF CONTENTS

TABLE OF CONTENTS 03
ABOUT THIS PAPER 05
EXECUTIVE SUMMARY 06

1. INTRODUCTION 07
1.1 Background....07
1.2 Origins of the paper....08
1.3 Objective and research question....08
1.4 Scope and method....08
1.5 Structure of the paper....09

2. BACKGROUND 10

3. LEGAL AND POLICY FRAMEWORK 11
3.1 The Constitution....11
3.2 The Refugees Act 2021 and the Refugees (General) Regulations....11
3.3 The Kenya Citizenship and Immigration Act 2011....12
3.4 Employment and labour legislation....12
3.5 Business, financial and professional recognition....13
3.6 County-level licensing....13
3.7 The Shirika Plan (2025)....13

4. COMPARATIVE PERSPECTIVES 14

5. ANALYSIS OF THE GAPS 15
5.1 Where the gaps lie....15
5.2 Three foundational issues....15
5.3 Work Authorisation....15
5.4 Movement passes and designated areas....17
5.5 Identification and institutional coordination....17
5.6 Employment law and labour institutions....18
5.7 Incentive-worker arrangements....19
5.8 Business law and interoperability....19
5.9 Finance, social protection and qualifications....20

TABLE OF CONTENTS

6. REFORM OPTIONS 22

6.1 Short term: circulars, directives and administrative action....22

6.2 Medium term: statutory and regulatory amendment....23

6.3 Long term and open questions....24

7. CONCLUSION 25

ANNEX A: SUMMARY OF POSITIONS 26

ANNEX B: INSTRUMENTS REVIEWED 28

ABOUT THIS PAPER

This Issues Paper (Part 1) is published under the Refugee Access to Work and Inclusion-Eastern Africa (RAWI-EA) Coalition, an advocacy platform bringing together refugee-led organizations, civil society organizations, development partners and government stakeholders working on refugees' access to lawful work in Kenya. Kituo Cha Sheria, through its Migration Justice and Governance Programme and with the support of the Heinrich Böll Stiftung, Horn of Africa, convenes RAWI-EA and serves as its Secretariat.

The paper builds on two prior pieces of work. The first is a legal and policy analysis of refugees' right to work in Kenya, completed in 2025[1], which set out the applicable legal framework and identified where it fails to give practical effect to the right to work. The second is a working process carried out through RAWI-EA's Policy and Legal Advocacy Sub-Committee, which tested the 2025 findings, sorted the reforms they suggested into those needing legislation and those that do not, and agreed on the structure of this paper. The barriers, positions and recommendations set out below were identified and agreed through that process.

The working group that carried out this process brought together Kituo Cha Sheria, the International Rescue Committee (IRC), the Kenya National Commission on Human Rights (KNCHR), the Kenya Law Reform Commission (KLRC), representatives of the refugee community, and the researchers who wrote the 2025 legal and policy review[2]. Taking part in the working group does not mean that an organization endorses every position in this paper. The paper reflects the positions the working group reached together. Where the group did not reach a position, the paper says so and records the question as open.

The paper follows a structure recommended by the Kenya Law Reform Commission for issues papers. This is Part 1, covering the introduction, background, legal and policy framework, gap analysis, reform options, conclusion, recommendations and key takeaways. The comparative section (Part 2 of that structure) needs dedicated research into other jurisdictions and will be published as Part 2. The findings in this paper have not yet been validated with refugee communities; that consultation will follow. This should be read as an interim document.

[1] https://kituochasheria.or.ke/wp-content/uploads/2026/09/REFUGEE-RIGHT-TO-WORK-FRAMEWORK-POLICY.pdf

[2] *Contributors- Ms. Tabitha Kimotho (KLRC), Ms. Irene Shiundu (IRC), Ms. Dorothy Omboto (LSK), Mr. Osman Abdikadir (KNCHR), Ajak Jok (Advocate) Ms. Rosa Ajwang (Independent Researcher), & Ms. Margaret Kemuma, Ms. Faith Nyiva, Ms. Whitney Oliech, Mr. Teddy Odhiabo, Mr. Rony Alal, Mr. Richard Musyoki all of Kituo Cha Sheria.*

EXECUTIVE SUMMARY

Kenya's law already recognizes refugees' right to work. Article 41(1) of the Constitution guarantees fair labour practices to every person[3], and section 28(5) of the Refugees Act, 2021 gives a recognized refugee the right to engage in gainful employment or enterprise, or to practice a profession or trade, where their qualifications are recognized[4]. In practice, most refugees who are entitled to work remain in informal or exploitative arrangements. This paper, developed through RAWI-EA's Policy and Legal Advocacy Sub-Committee, examines why, and what needs to change.

The main finding is that the problem is mostly one of implementation, not of legal gaps . Read on its own, the Refugees Act does not place heavy restrictions on refugees' work. The barriers come mainly from the Kenya Citizenship and Immigration Act, 2011 and the way it is administered, and from the failure to put some parts of the Refugees Act into operation.

Two issues need legislative or regulatory change. The first is the work permit requirement in sections 40 and 41 of the Kenya Citizenship and Immigration Act[5], which still treats refugees as foreign nationals who must obtain a Class M permit before they can work. The second is the movement pass and designated-area regime under the Refugees (General) Regulations, 2024[6], which has no clear criteria, timelines or safeguards such as the right to fair administrative action or the right to appeal decisions. Most of the other barriers, in business registration, banking, professional licensing, labour institutions and public services, come from gaps in administration, coordination, and system interoperability. These can be dealt with through circulars, regulatory clarification, agreements between institutions and technical integration, without new statutes.

The paper therefore separates the reforms that need Parliament from those that do not, because they call for different routes and different institutions. It also records the questions that are not settled: where work permits should be administered, how to deal with incentive-worker arrangements, whether refugees can act as local representatives of foreign companies, and whether banks must accept refugee identification. These are set out as open questions and not as recommendations.

[3] *Constitution of Kenya 2010, art 41(1).* https://new.kenyalaw.org/akn/ke/act/2010/constitution/eng@2010-09-03

[4] *Refugees Act 2021 (No. 10 of 2021), s 28(5).* https://new.kenyalaw.org/akn/ke/act/2021/10/eng@2022-12-31

[5] *Kenya Citizenship and Immigration Act 2011 (No. 12 of 2011), ss 40, 41(2).* https://new.kenyalaw.org/akn/ke/act/2011/12/eng@2022-12-31

[6] *Refugees (General) Regulations 2024 (Legal Notice No. 39 of 2024).*

1. INTRODUCTION

1.1 Background

The Constitution of Kenya, 2010 provides that every person has the right to fair labour practices[7], and that every person is equal before the law and has the right to equal protection and equal benefit of the law[8]. The Refugees Act, 2021 (No. 10 of 2021), which repealed and replaced the Refugee Act, 2006 (No. 13 of 2006)[9] provides in section 28(5) that, subject to the laws applicable and taking into special consideration the special circumstances of refugees, a refugee recognized under the Act has the right to engage individually or in a group in gainful employment or enterprise, or to practice a profession or trade, where they hold qualifications recognized by competent authorities in Kenya[10]. Section 28(6) gives refugees and asylum seekers a right to identification and civil registration documents, sufficient to identify them for the purpose of accessing rights and services under the Act and any other applicable law[11]. Section 28(7) gives the Refugee Identity Card, at a minimum, a similar status to the Foreign National Registration Certificate issued under section 56(2) of the Kenya Citizenship and Immigration Act, 2011[12], a noticeably weaker formulation than "equivalent", and, as discussed in Part 3, a recurring source of inconsistent recognition by employers, banks and government agencies.

In practice, access to work sits at the intersection of the Refugees Act and the immigration and work-permit regime. Under the Kenya Citizenship and Immigration Act, 2011, a person who is not a citizen or an asylum seeker may not remain in Kenya without a valid permit or pass[13]; permits are issued under section 40 in classes prescribed by regulation[14]; and the holder of a Class M permit may engage in any occupation, trade, business or profession, subject to any other written law[15]. Employers may not employ a foreign national whose status does not authorize employment[16], and a non-citizen who engages in employment, trade, business or a profession without a work permit commits an offence, punishable on conviction by a fine not exceeding five hundred thousand shillings or imprisonment not exceeding three years, or both[17]. Permit applications are made under regulation 19 of the Kenya Citizenship and Immigration Regulations, 2012, which refers to the classes in the Seventh Schedule and the fees in the Ninth Schedule[18]. This immigration framework has not been fully reconciled with the Refugees Act, 2021. The Immigration Act's text still refers in places to the repealed Refugee Act, 2006, and its permit structure was built around an earlier premise that refugees were foreign nationals with no entitlement to work. This has since been overtaken by the 2021 Act.

[7] *Constitution of Kenya 2010, art 41(1).* https://new.kenyalaw.org/akn/ke/act/2010/constitution/eng@2010-09-03
[8] *Constitution of Kenya 2010, art 27(1).* https://new.kenyalaw.org/akn/ke/act/2010/constitution/eng@2010-09-03
[9] *Refugees Act 2021, s 62 (repeal and savings).*
[10] *Refugees Act 2021, s 28(5).* https://new.kenyalaw.org/akn/ke/act/2021/10/eng@2022-12-31
[11] *Refugees Act 2021, s 28(6).* https://new.kenyalaw.org/akn/ke/act/2021/10/eng@2022-12-31
[12] *Refugees Act 2021, s 28(7); Kenya Citizenship and Immigration Act 2011, s 56(2).* https://new.kenyalaw.org/akn/ke/act/2011/12/eng@2022-12-31
[13] *Kenya Citizenship and Immigration Act 2011, s 34(1).* https://new.kenyalaw.org/akn/ke/act/2011/12/eng@2022-12-31
[14] *Kenya Citizenship and Immigration Act 2011, ss 36(1), 40.* https://new.kenyalaw.org/akn/ke/act/2011/12/eng@2022-12-31
[15] *Kenya Citizenship and Immigration Act 2011, s 41(2).* https://new.kenyalaw.org/akn/ke/act/2011/12/eng@2022-12-31
[16] *Kenya Citizenship and Immigration Act 2011, s 45(1).* https://new.kenyalaw.org/akn/ke/act/2011/12/eng@2022-12-31
[17] *Kenya Citizenship and Immigration Act 2011, ss 53(1)(m), 53(2).* https://new.kenyalaw.org/akn/ke/act/2011/12/eng@2022-12-31
[18] *Kenya Citizenship and Immigration Regulations 2012 (Legal Notice No. 64 of 2012), reg 19 and Seventh and Ninth Schedules.* https://new.kenyalaw.org/akn/ke/act/ln/2012/64/eng@2025-05-30

1.2 Origins of the paper

The paper builds on the 2025 legal and policy analysis on refugees' right to work in Kenya[19]. That analysis sets out the applicable legal framework and identifies the points at which it fails to give practical effect to the right to work. This paper takes those findings further, through the Policy and Legal Advocacy Sub-Committee of the Refugee Access to Work and Inclusion- Eastern Africa (RAWI-EA) Coalition, whose members undertook a working process to move from the 2025 findings to specific, actionable reform proposals: what needs to change, in which instrument, and whether that change requires legislation or can be achieved administratively.

1.3 Objective and research question

The 2025 analysis addressed what the law provides and where it falls short. This paper addresses a different, and narrower, question: which of the barriers identified require legislative or regulatory amendment, which can be resolved through administrative action, institutional coordination or practice, and, where amendment is needed, what is the least intrusive and most practical amendment available? Its objective is to identify barriers and to sort them by the kind of intervention each one calls for, so that legislative effort and advocacy effort can be directed accordingly.

1.4 Scope and Method

The paper uses doctrinal legal analysis as its primary method. Each barrier identified through the 2025 review and the subsequent working process was read against the text of the Constitution, the relevant Acts and their subsidiary regulations. These were tested against three questions, what is the barrier, and which law or policy creates it; can it be resolved through administrative action, institutional practice, regulation or standard procedure, or does it need an amendment to an Act. Finally, where an amendment is needed, what is the least intrusive and most practical amendment that would solve the problem.

That doctrinal reading was tested against, and in several places corrected by, the working group's own field experience. The member organizations that make up RAWI-EA's Policy and Legal Advocacy Sub-Committee provide direct legal aid and advice to refugees on exactly these issues, including work permit applications, movement passes, business registration and documentation disputes, as part of their ordinary casework. Where the statutory text and the working group's practical experience of administering or seeking to enforce it pointed in different directions, this paper says so and notes both. This grounding in frontline legal practice is what allowed the paper to move from identifying legal gaps to assessing which of them are, in practice, the ones actually obstructing refugees from accessing work, and to propose reforms that are realistic rather than purely theoretical.

The paper deals with the domestic legal framework only. Comparative research on other jurisdictions is reserved for Part 2.

[19] *Constitution of Kenya 2010, art 41(1). https://new.kenyalaw.org/akn/ke/act/2010/constitution/eng@2010-09-03*

1.5 Structure of the Paper

Part 1 of the Issues Paper sets out the background, the legal and policy framework, the analysis of gaps, and the proposed short-, medium- and long-term reforms. Part 2 will entail the comparative section, drawing on dedicated research into other jurisdictions, and will follow validation of Part 1's findings with refugee communities.

2. BACKGROUND

Kenya hosts one of the largest refugee populations in the region. The total registered refugee and asylum-seeker population stood at 871,568 individuals as of 31 August 2026[20]. The vast majority of this population resides in camp environments. The Dadaab complex in Garissa County hosts 429,352 individuals, while the Kakuma-Kalobeyei settlement in Turkana County holds 321,089 individuals (comprising 234,542 in Kakuma Camp and 86,547 in Kalobeyei). An estimated 118,554 registered individuals live in urban areas, primarily concentrated in Nairobi and Mombasa.

The Class M work permit remains one of the most visible barriers to economic inclusion for refugees in Kenya. Official data on the number of work permits successfully issued to refugees remains limited and opaque, making tracking and structural advocacy difficult[21]. Even with the introduction of progressive legal frameworks such as the Refugees Act, independent case work undertaken by organizations studies show that the application pathway is characterized by bottlenecks such as slow processing timelines and unpredictable "no merit" rejections. Because of these central processing barriers, refugees who have completed their education within Kenya's own schooling system encounter the same systemic bottleneck as those who arrived with qualifications from elsewhere.

Documentation causes further difficulty. Under section 28(7) of the Refugees Act, the Refugee Identity Card has, at a minimum, a similar status to the Foreign National Registration Certificate issued under section 56(2) of the Kenya Citizenship and Immigration Act[22]. Employers, banks and government offices do not apply that consistently. Refugees who find work are often engaged by humanitarian organizations as "incentive workers", at pay below the statutory minimum wage.

The Shirika Plan, launched in March 2025, is the government's most ambitious commitment so far to move from encampment towards a development-oriented, self-reliance model[23]. Its commitments on documentation, employment and social protection, however, remain largely declaratory until they are turned into legislation, regulation, and practice.

---

[20] *UNHCR, Kenya Statistics Package – 31 August 2026, cited as supplied; compare UNHCR Operational Data Portal, Kenya, recording approximately 865,000 as at 31 July 2026.* https://data.unhcr.org/en/country/ken

[21] *Refugees International, Removing Red Tape to Get Kenya's Refugee Act Right (Washington, D.C.: Refugees International, 2025), refugeesinternational.org.*

[22] *Refugees Act 2021, s 28(7); Kenya Citizenship and Immigration Act 2011, s 56(2). (view source)*

[23] *Republic of Kenya, Ministry of Interior and National Administration, State Department for Immigration and Citizen Services, Department of Refugee Services, The Shirika Plan for Refugees and Host Communities: A Multi-Year Plan for Socioeconomic Inclusion and Integrated Settlements (Nairobi: Department of Refugee Services, March 2025), Shirika Plan Document.*

3. LEGAL AND POLICY FRAMEWORK

3.1 The Constitution

Article 41 gives every person the right to fair labour practices[24]. Read with article 27 on equality[25] and article 43 on social security, which is also framed around every person, the Constitution supports treating the right to work as universal and not dependent on citizenship. Article 47 on fair administrative action applies directly to how work permit applications are processed and decided. Article 24 requires any limitation of a right, including encampment or movement restrictions, to satisfy a proportionality test. Articles 2(5) and 2(6) make the general rules of international law and the treaties Kenya has ratified, including the Convention Relating to the Status of Refugees, part of the law of Kenya[26].

3.2 The Refugees Act 2021 and the Refugees (General) Regulations

Section 28(5) of the Refugees Act gives a recognized refugee the right to engage in gainful employment or enterprise, or to practice a profession or trade where they hold qualifications recognized by the competent authorities[27]. The right is subject to the laws applicable and to the special circumstances of refugees. The Act does not specify which laws are referred to or what the special circumstances are, and the meaning and reach of that qualifier need further legal analysis and clarity.

Section 28(6) gives refugees and asylum seekers the right to identification and civil registration documents[28]. Under Section 28(7), the Refugee Identity Card has, at a minimum, a similar status to the Foreign National Registration Certificate[29]. That wording is deliberately weaker than "equivalent", and it is a recurring source of inconsistent recognition by employers, banks and government agencies.

Part II of the Refugees Act, 2021 sets out the Act's administrative architecture. Section 6 lists the three statutory bodies it establishes; section 7 establishes the Department of Refugee Services; section 8 provides for the appointment of the Commissioner for Refugee Affairs; section 9 establishes the Refugee Advisory Committee; and section 11 establishes the Refugee Status Appeals Committee (RSAC)[30]. Together, these bodies are intended to move Kenya's refugee management from an ad hoc humanitarian response towards a centralized, policy-driven and government-led one.

[24] *Constitution of Kenya 2010, art 41(1). (view source)*

[25] *Constitution of Kenya 2010, art 27(1), 27(4). (view source)*

[26] *Constitution of Kenya 2010, arts 2(5)–2(6); Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137. https://new.kenyalaw.org/akn/ke/act/2010/constitution/eng@2010-09-03*

[27] *Refugees Act 2021, s 28(5). https://new.kenyalaw.org/akn/ke/act/2021/10/eng@2022-12-31*

[28] *Refugees Act 2021, s 28(6). https://new.kenyalaw.org/akn/ke/act/2021/10/eng@2022-12-31*

[29] *Refugees Act 2021, s 28(7). https://new.kenyalaw.org/akn/ke/act/2021/10/eng@2022-12-31*

[30] *Refugees Act 2021, ss 6, 7, 8, 9, 11. https://new.kenyalaw.org/akn/ke/act/2021/10/eng@2022-12-31*

A primary operational gap within the national refugee management framework is the long-standing delay in operationalizing the RSAC. This critical committee has yet to be formally constituted since the law was passed five years ago. In its absence, the former Refugee Appeals Board (RAB) continues to handle pending appeals under temporary transitional provisions. Because the RAB's legal mandate is functionally confined to reviewing status determination decisions[31], it lacks the broader jurisdiction required to address the new administrative guidelines governing local documentation standards and regional movement permits introduced by the Refugees (General) Regulations, 2024. Specifically, local documentation rules under Part IV govern how identity formats interface with public financial systems, while the regional movement permit track under Part IX regulates the administrative clearance required to travel outside designated hubs for business purposes. Because these updated systems lack published, standardized processing timelines, persons who may want to travel out of the camps for business and other reasons may face an administrative vacuum leaving no accessible internal avenue for appeal.

3.3 The Kenya Citizenship and Immigration Act 2011

Section 40 of the Kenya Citizenship and Immigration Act governs the issuance of work permits, and refugees are treated as foreign nationals for this purpose[32]. That creates a circular barrier. A refugee needs a confirmed job offer to obtain a permit and needs work authorization before an employer will make an offer. The permit requirement was framed against the earlier Refugee Act, 2006, which treated refugees as foreign nationals with no entitlement to work without a work permit. It has not been reconciled with the current Act, which recognizes the right to work for refugees.

3.4 Employment and Labour Legislation

The Employment Act, 2007 deals with discrimination in employment, including on the ground of nationality[33]. The working group considered that this ground can already be read to cover refugees, and that article 27 of the Constitution supports that reading. This, however, remains a progressive legal interpretation that has not yet been formally tested in court. The Act separately permits the preferential employment of citizens in accordance with national employment policy, and the policy in question, Sessional Paper No. 4 of 2013 on Employment Policy and Strategy for Kenya[34], makes no specific mention of refugees. The National Employment Authority Act, 2016 does not explicitly treat refugees as a designated category of jobseekers, focusing its mandate instead on citizen youth, minorities and marginalized groups. The Labour Relations Act, 2007 and the Labour Institutions Act, 2007 similarly omit any mention of refugees, and do not address the specific structural barriers this population faces in dealing with labour administration and dispute-resolution channels.

---

[31] *Under Section 19 of the repealed Refugees Act, 2006 (No. 13 of 2006), the Refugee Appeals Board (RAB) was established with a singular statutory mandate to hear and determine appeals against the decisions of the Commissioner regarding Refugee Status Determination (RSD). Although Section 11 of the current Refugees Act, 2021 (No. 10 of 2021) establishes the new Refugee Status Appeals Committee (RSAC) with expanded operational oversight, the committee has yet to be fully constituted. Consequently, pursuant to the savings and transitional provisions in Section 43 of the 2021 Act, the former RAB remains active but operates strictly within its original, narrow statutory jurisdiction to review status rejections, leaving a regulatory vacuum regarding broader administrative appeals under the current framework.*

[32] *Kenya Citizenship and Immigration Act 2011, s 40. https://new.kenyalaw.org/akn/ke/act/2011/12/eng@2022-12-31*

[33] *Employment Act 2007 (No. 11 of 2007), s 5.*

[34] *Republic of Kenya, Ministry of Labour, Social Security and Services, Sessional Paper No. 4 of 2013 on Employment Policy and Strategy for Kenya (Nairobi: Government Printer, 2013), KIPPRA Repository.*

3.5 Business, Financial and Professional Recognition

Refugees' right to enterprise under section 28(5) of the Refugees Act has to operate within ordinary business, tax and financial regulation, none of which was originally designed around refugee documentation. Section 979 of the Companies Act, 2015 requires a foreign company to have a local representative[35], creating a structural bottleneck for refugee entrepreneurs trying to scale or formalize their businesses. Banks apply Know-Your-Customer obligations under the Proceeds of Crime and Anti-Money Laundering Act, 2009[36], and the result is inconsistent acceptance of refugee documentation across financial institutions.

Legal Notice No. 143 of 2023, issued under section 28(7) of the Refugees Act read with section 56(2) of the Kenya Citizenship and Immigration Act, designates specific documents as Refugee Identification Documents, but its text expressly limits their recognition to "purposes of acquiring services provided by the Government of Kenya"[37]. This leaves private-sector compliance regimes unreached. The scope of the Notice, and whether it extends to private-sector services, is understood to be before the courts, and the working group takes no position on that litigation. The Kenya National Qualifications Authority has a Recognition of Prior Learning pathway under the Kenya National Qualifications Framework Act, 2014[38], but it is not yet operating at a nationwide scale.

3.6 County-Level Licensing

Devolved licensing adds further inconsistency. Turkana County allows refugees within its jurisdiction to obtain a Single Business Permit without a national Class M permit, though it provides no refugee-specific fee reduction[39]. Nairobi City County's Unified Business Permit process requires documentation but has no public directive on whether a Refugee Identity Card is accepted.

3.7 The Shirika Plan (2025)

The Shirika Plan commits to documentation reform, access to formal and self-employment, extended social security and health coverage, integration of technical and vocational training, and fewer barriers to business registration. It does not specify the legal form of refugee identification, how that identification will work with national identity systems, or the future of the work permit and movement pass regimes. That matters, because freedom of movement remains a practical precondition for most of the Plan's other commitments.

---

[35] *Companies Act 2015 (No. 17 of 2015), s 979(1). https://new.kenyalaw.org/akn/ke/act/2015/17/eng@2015-09-18*

[36] *Proceeds of Crime and Anti-Money Laundering Act, 2009 (Cap. 59A). https://new.kenyalaw.org/akn/ke/act/2009/9/eng@2025-11-04*

[37] *The Refugee Identification Documents, Legal Notice No. 143 of 2023. https://new.kenyalaw.org/akn/ke/act/ln/2023/143/eng@2023-10-27*

[38] *Kenya National Qualifications Framework Act, No. 22 of 2014, § 8(1)(k), Republic of Kenya, Framework Act Document*

[39] *Turkana County Government, Turkana County Finance Act, 2025 (Lodwar: Governor's Press Service, January 2025), see also Turkana County Government Fiscal Strategy Paper 2025, Revenue Stream Item: "Single Business Permit - Refugees"*

4. COMPARATIVE PERSPECTIVES

This part will be published as Part 2. It will draw on dedicated research into how benchmark jurisdictions, including Ethiopia, Uganda and Rwanda, regulate refugees' access to work, the legal status they give to refugee identification documents, and how they handle freedom of movement. It will also inform the question left open in this paper, of how far to press for a stronger legal status for the Refugee Identity Card.

5. ANALYSIS OF THE GAPS

5.1 Where the Gaps Lie

Each issue was classified by the kind of gap it presents: the absence or inadequacy of a legal provision, weak coordination between institutions, deficiencies in administrative implementation, policy, capacity or awareness gaps, and systemic or digital barriers. On that classification, the framework in Part 3 shows that the right to work is, for the most part, not undermined by a lack of legal recognition. The Constitution, the Refugees Act and the Employment Act each recognize it in principle.

Genuine legislative gaps are limited to two: the work permit requirement in section 40 of the Kenya Citizenship and Immigration Act, and the lack of statutory safeguards in the movement pass and designated-area regime. Most other barriers are administrative or come from systems that do not talk to each other. A smaller group, mainly incentive-worker arrangements, is institutional and needs targeted advocacy.

The reform agenda was also tested with a plain question: would refugees' employment outcomes improve if every relevant Act were amended tomorrow? The answer was no, unless legislative reform of the two foundational issues is paired with sustained administrative and institutional reform in the other areas.

5.2 Three Foundational Issues

Three issues sit underneath most of the others: the work permit regime, the movement pass and designated-area regime, and the interoperability of identification systems. If these are resolved, business registration, banking, professional licensing and social protection should become considerably easier without separate reform in each sector. Work permits and movement passes need legislative or regulatory change; interoperability is a purely administrative matter.

This ordering rests on an untested assumption that removing formal identity and authorization barriers will lead downstream institutional and behavioral barriers to recede on their own. It was nonetheless judged as the most defensible sequence of effort, given limited time and political capital. Improvements on incentive-worker practices should proceed immediately in parallel, rather than waiting to observe the effect of the foundational reforms.

5.3 Work Authorization

The Refugees Act recognizes the right to work, but section 40 of the Kenya Citizenship and Immigration Act still requires a work permit before employment, and refugees are categorized under the Class M permit[40]. The working group considered that this requirement operates more as a control measure rather than as a technical necessity. A right given by one statute is made conditional by another, and this was viewed as the central problem.

[40] *Kenya Citizenship and Immigration Act 2011, ss 40, 41(2). https://new.kenyalaw.org/akn/ke/act/2011/12/eng@2022-12-31*

Three reform routes were considered and evaluated. The first retains the existing Class M permit while reforming its administration. The second leverages the Class R permit, an immigration track that would treat qualifying refugees as citizens of an East African Community partner state for employment and commercial purposes. This route is anchored in section 28(8) of the Refugees Act, which allows a recognized refugee from an EAC partner state to voluntarily opt out of refugee status to claim benefits under the Protocol on the Establishment of the East African Community Common Market[41]. The third is to amend the Kenya Citizenship and Immigration Act so that a recognized refugee does not need a Class M permit, with the Refugee Identity Card treated as sufficient work authorization. The third route, amending sections 40 and 41, was preferred.

The Class R route was not adopted as a near-term recommendation. Its implementation depends on protection by an EAC partner state, so a refugee would have to give up the claim to protection from their country of origin before EAC citizenship is confirmed, with a real risk of statelessness in between. The EAC framework also has no principle of reciprocity requiring partner states to accept such transfers, and the route would mainly suit economic migrants, leaving refugees who fled political persecution largely unable to use it. If it is pursued at all, it belongs to EAC-level regulation and diplomatic engagement, and not to domestic legislation.

Whichever mechanism is used, the governing regulations should clearly define the composition of the vetting committee; prescribe timelines for decisions; require written reasons for refusal, so decisions can be meaningfully appealed; provide for issuance without fees, since even modest costs would reproduce the existing access barrier, and remove the "special skills" requirement, which is unreasonable to demand of refugees and contravenes international standards. Section 53(1)(m) of the Kenya Citizenship and Immigration Act should also be amended to exempt refugees from the associated five hundred thousand shilling penalty[42], because the offence was not designed with refugees' economic circumstances in mind, including the bureaucratic barriers encountered in the work permit application process.

Whether work permit administration should transition to the Department of Refugee Services under the Refugees Act or remain with the Directorate of Immigration Services under dedicated refugee regulations, remains an open institutional question. Section 44 of the Refugees Act establishes the Cabinet Secretary's general regulation-making power[43], but no final structural decision has been made. Moving the function to the Department would align it with the institution that already issues refugee documents, reducing the current circularity; but it needs legislative amendment and substantial new administrative capacity. Keeping the function with Immigration is narrower and faster but leaves the circularity in place unless Immigration institutionalizes refugee-specific procedures. Either is workable if the regulations contain the safeguards described above.

[41] *East African Community, Protocol on the Establishment of the East African Community Common Market, 20 November 2009, in force 1 July 2010, EAC Common Market Protocol.*

[42] *Kenya Citizenship and Immigration Act 2011, ss 53(1)(m), 53(2). https://new.kenyalaw.org/akn/ke/act/2011/12/eng@2022-12-31*

[43] *Refugees Act 2021, s 44. https://new.kenyalaw.org/akn/ke/act/2021/10/eng@2022-12-31*

5.4 Movement Passes and Designated Areas

Refugees who reside within government-designated areas require a movement pass or exemption to travel for employment, education or protection. Regulation 46 of the Refugees (General) Regulations, 2024, in Part IX, allows the Commissioner to exempt a person from residing in a designated area on defined grounds of family reunification, medical grounds, education, employment, business, protection, sports, or other aspects promoting social and economic wellbeing but the Regulations do not prescribe processing timelines or a right of appeal[44]. In practice, refugees report that the processing timeline is discretionary. Refugees also report delays in securing Convention Travel Documents, with costs including missed visa interviews, and loss of education and employment opportunities. Three options were considered. Abolishing the pass and designated-area system. Keeping it but reforming how exemptions and passes are issued, and treating the Refugee Identity Card as sufficient for domestic movement for recognized refugees while retaining some form of oversight for asylum seekers whose status is still pending. The working group did not favor abolition at this stage. Humanitarian aid is declining and Kenya is moving towards self-reliance. The state has a legitimate interest in knowing where refugees are during that transition, so outright abolition was seen as unlikely to be politically acceptable.

It favored combining the other two: decentralizing and reforming issuance, with prescribed timelines, written reasons for refusal and digital applications, and pursuing an intermediate reform that distinguishes refugees from asylum seekers on the basis of the Identity Card and the Convention Travel Document, to reduce reliance on discretionary exemptions over time. How the Travel Document would interact with that distinction, and whether it would meet the state's security rationale, still has to be worked out.

The Regulations also carry forward references and scheduled forms from the repealed Refugees Act, 2006. Any such legacy references should be corrected by the National Council for Law Reporting to reflect the current Act. If Class M work permits are eventually scrapped or simplified, the movement pass and designated-area provisions should be amended at the same time, so that a refugee holding a valid identity card is not still nominally required to carry a separate pass.

5.5 Identification and Institutional Coordination

Three approaches were considered for the wording of section 28(7)[45]: amend it so that the Refugee Identity Card has a status equivalent to the national identity card; leave the card's status unspecified and rely on general non-discrimination guarantees; or leave section 28(7) as it stands and address work authorization directly by amending sections 40 and 41 of the Kenya Citizenship and Immigration Act.

---

[44] *Refugees (General) Regulations 2024, reg 46. A separate provision, regulation 32 (Part IV), governs a distinct "relocation order" process by which a refugee applies to a settlement officer, using Form 10, to relocate between designated areas under section 31 of the Act; the two provisions should not be conflated.* https://new.kenyalaw.org/akn/ke/act/ln/2024/39/eng@2024-02-09

[45] *Refugees Act 2021, s 28(7).* https://new.kenyalaw.org/akn/ke/act/2021/10/eng@2022-12-31

Leaving the status unspecified was rejected, because there is no free-standing constitutional guarantee of refugees' documentary status, and silence would leave inconsistent practice unaddressed. Equivalence with the national identity card was judged politically difficult, its implications reaching well beyond work — most sensitively, to voting rights — and several participants thought it unrealistic in the current environment. The third approach was preferred as the primary route. It avoids reopening the general status of the card while dealing with the most consequential problem, access to work. The cost is that documentary ambiguity remains for other purposes, such as banking and business registration, so some interoperability problems will persist after the Kenya Citizenship and Immigration Act is amended. Comparative research on the legal status of refugee identification in other jurisdictions should therefore come first, to inform whether and how far to press the equivalence question later.

A related question is whether section 28(5) itself needs amendment, given that under the earlier Refugee Act, the related provisions had to be read together with the immigration legislation. The working group did not reach a conclusion and flagged it for further legal analysis.

On institutional coordination, section 9 of the Refugees Act establishes the Refugee Advisory Committee to support and advise the Commissioner for Refugee Affairs appointed under section 8[46]. There is also no statutory framework cross-linking the Department with the broader institutions responsible for labour, immigration, business registration, taxation, professional recognition and social protection. Amending the establishing provisions to compel cross-agency coordination was considered, but the Committee already exists in law, and a further legislative instruction would not cure non-implementation. The gap is therefore treated as administrative. The first step is engagement with the Department to confirm the Committee's operational status and support its work, including whether its members are adequately trained and resourced.Implementation of the Refugees Act is already governed by article 10 of the Constitution[47], so constitutional principles do not need to be restated in the reform recommendations.

5.6 Employment Law and Labour Institutions

No amendment to the Employment Act's non-discrimination provision is presently recommended. The provision is not closed to refugees on its current wording, and the constitutional guarantee to every person reinforces that. Legislative capital is better kept for the two issues that genuinely need amendment. This leaves open whether the Act should expressly group refugees with persons with disabilities and other vulnerable categories for equal-terms employment, and it relies on an interpretation that has not been tested.

For trade unions, the gap is one of practice, not law. Article 41 of the Constitution is sufficiently clear, and the recommended route is advocacy with the Central Organization of Trade Unions. The gaps under the Labour Institutions Act are administrative, because there is limited integration between labour administration

[46] *Refugees Act 2021, ss 8, 9.* https://new.kenyalaw.org/akn/ke/act/2021/10/eng@2022-12-31

[47] *Constitution of Kenya 2010, art 10.* https://new.kenyalaw.org/akn/ke/act/2010/constitution/eng@2010-09-03

and refugee-protection institutions, and can be addressed through memoranda of understanding and officer training. On the National Employment Authority Act, whether the omission of refugees is significant enough to need express inclusion was contested. The recommendation is joint advocacy involving the National Employment Authority, the Kenya National Qualifications Authority, the National Industrial Training Authority, the Department of Labour and Social Protection, and technical and vocational education and training institutions, so that recognition of qualifications is dealt with alongside access to employment services and not left as a separate reform.

5.7 Incentive-Worker Arrangements

Refugees engaged by international non-governmental organizations and other humanitarian entities, in camp settings and in urban centers such as Nairobi, are often paid below the statutory minimum wage under the designation of "incentive workers." This has been justified on the grounds that refugees are not formally registered as tax-paying employees, or that their qualifications lack formal recognition within Kenya's domestic labour regulatory system. In practice, the "incentive" label is also sometimes used to bypass the work permit requirement altogether.

Three responses were considered: legal action, advocacy and sensitization aimed at camp-based and international organizations, and treating the practice as something that will fall away once the permit reform is done. Legal action could set precedent and give direct redress, but it risks refugees being dismissed instead of regularized, and it does not deal with the root causes, which are unrecognized qualifications and the permit circularity. Advocacy carries less risk of dismissal but is slower and depends on voluntary compliance by organizations that have kept the practice for some time. Waiting for the permit reform fits the paper's wider finding that the foundational reforms should cascade, but it assumes a link between formal work authorization and the end of the incentive label that has not been tested.

The approach favored is to decide issue by issue what needs legislative reform and what needs administrative sensitization, starting with stakeholder engagement. The practice is institutional and not narrowly administrative, and advocacy should proceed in parallel with the permit reform. Whether legal action will have a role, and whether resolving the permit question will reduce the practice, are left open. No final position was reached.

5.8 Business Law and Interoperability

Section 979 of the Companies Act requires a foreign company to have a local representative[48]. Three options were considered: amend the definition of local representative to include refugees themselves; take a two-stage approach. First securing recognition of the Refugee Identity Card at the standard of a foreign national certificate, and pursuing equivalence to the national identity card as a longer-term goal; or address the cost

[48] *Companies Act 2015, s 979(1).* https://new.kenyalaw.org/akn/ke/act/2015/17/eng@2015-09-18

directly, by capping or prescribing fees for local representative services, through a circular or a dedicated agent scheme run with the Business Registration Service.

The first option was not adopted. Refugees are treated as foreigners for constitutional purposes, the Constitution does not define refugees as a distinct category, and the card is equated only to a foreign national certificate. Therefore, extending local representative status to refugees is legally awkward and likely to meet resistance. The two-stage approach is favored as the principled long-term direction. A prescribed fee or agent scheme is a practical interim measure, but it needs costing and consultation with the Business Registration Service before it can be recommended, and it does not address the underlying exclusion from self-representation.

On coordination between the Business Registration Service and the Department of Refugee Services, the underlying problem is system interoperability and not the absence of a formal agreement. It is also reported to affect Kenyan citizens' documentation, not only refugees'. A memorandum of understanding was therefore not considered sufficient or necessary, and the recommended focus is technical integration between the two electronic systems. Whether a refugee identity number should be verified before or after issuance, in the way national identity cards are authenticated, was raised and not resolved.

Under the Registration of Business Names Act Cap 99, there is no legislative gap. Existing documentation, where issued, is sufficient, and the remaining barrier is the phased inclusion of refugee identity cards in the Integrated Population Registration System, which is expected to resolve itself for third-generation cards while older-format cards continue to face verification problems for a transitional period. Whether refugees should be able to use state-backed micro-lending products such as the Hustler Fund or Nyota[49] was raised and not resolved, and may need to be considered complementary to existing private guarantee and de-risking models.

5.9 Finance, Social Protection and Qualifications

Refugees can now obtain Kenya Revenue Authority personal identification numbers and, in principle, open bank accounts. Reports persist, however, that some banks decline asylum-seeker passes as identification, citing Know-Your-Customer obligations and Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) safeguards to combat money laundering, terrorism financing, and proliferation financing. Whether that is governed by section 28(7) of the Refugees Act or by Legal Notice No. 143 of 2023[50] is a live point of legal uncertainty, and the matter is understood to be before the courts. This paper takes no position on it and will follow the outcome.

[49] *Public Finance Management (Financial Inclusion Fund) Regulations, 2022 (Legal Notice No. 213) .& Ministry of Youth Affairs, NYOTA Project Stakeholder Engagement Plan (June 2024), which explicitly integrates 10,000 refugee youth into its economic empowerment pipeline.*

[50] *Republic of Kenya, Ministry of Interior and National Administration, Legal Notice No. 143: The Refugees (Official Identification Documents) Notice, 2023, Kenya Gazette Supplement No. 154 (Legislative Supplement No. 59), 19 September 2023 (Nairobi: Government Printer, 2023).*

In the meantime, the recommended approach is continued engagement with financial institutions on de-risking. The same approach applies under the National Payment Systems Act, where holders of older-generation identity cards face the same barrier in accessing mobile money and digital payment platforms.

The National Social Security Fund's Haba Haba scheme is a working example of affirmative action for people who cannot afford standard contribution tiers, and refugees in camp settings are already registered under it[51]. No amendment is recommended; the scheme is a model to build on.

On qualifications, a structured assessment programme for refugees exists in principle, coordinated by the Kenya National Qualifications Authority in partnership with the Department of Refugee Services and humanitarian agencies, anchored in the national Recognition of Prior Learning policy[52]. While core guidelines and pilot curricula have been launched, the mechanism has not been rolled out at a comprehensive national scale, and should be broadened beyond the currently prioritized professions of doctors and nurses to include areas such as digital skills and others. Exclusion from vocational training and apprenticeship under the Industrial Training Act is a matter of programme design and access, not a statutory bar. For education, the National Education Management Information System accepts proof-of-registration numbers, which do not change, so the lack of a birth certificate is not a barrier in practice.

[51] *International Labour Organization, Kenya Extends Haba Haba Savings Scheme to Refugees and Hosts (October 2024), detailed further by the Department of Refugee Services regarding localized registration onboarding inside the Kakuma and Kalobeyei settlements.*

[52] *Ministry of Education. (2024, March). Recognition of Prior Learning (RPL) Policy Framework in Kenya. Republic of Kenya; Government Printer. Kenya National Qualifications Authority.*

6. REFORM OPTIONS

6.1 Short term: circulars, directives and administrative action

To rapidly resolve the primary documentation bottlenecks and operational barriers hindering refugee economic inclusion, it is recommended that relevant state agencies prioritize the execution of the following immediate administrative actions:

1. Issue a Joint Circular on Private-Sector Document Recognition: The Department of Refugee Services (DRS) and the Office of the Attorney-General are encouraged to jointly issue an official administrative circular explicitly directing formal employers, financial entities, and corporate bodies to recognize the Refugee Identity Card as a valid, self-sufficient credential for all employment-related and commercial transactions. This directive will effectively bridge the enforcement gaps left by Legal Notice No. 143 of 2023, expanding document utility beyond government services into private-sector services.

2. Formally Operationalize and Leverage the Refugee Advisory Committee (RAC): Strategic action should be taken to fully activate the newly gazetted RAC, clarifying its operational workflows and budgetary allocations. Rather than pursuing redundant legislative drafting, the Ministry of Interior can actively utilize this statutory body to drive inter-ministerial policy alignment and coordinate macro-level economic integration strategy.

3. Decentralize and Digitize Movement Pass Infrastructure: The process of reviewing and granting movement passes under Regulation 32 would ideally be fully digitized and integrated into existing online service portals. The Department of Refugee Services is advised to formally publish clear application criteria, institute a strict maximum processing timeline (reversing the discretionary 10-day field practice), and mandate the issuance of detailed written reasons for any refusal to protect the applicant's statutory right to appeal.

4. Implement Direct Inter-Agency API Systems Integration: Moving past slow, paper-based Memoranda of Understanding (MoUs), the framework proposes establishing direct backend Application Programming Interface (API) data-sharing integrations. Linking the DRS digital database directly with the platforms administered by the Business Registration Service (eCitizen), the Kenya Revenue Authority (iTax), and the National Social Security Fund (NSSF) will automatically validate refugee identity credentials. This directly removes the technical validation barriers that prevent refugees from registering businesses, securing KRA PINs, or accessing formal social protection networks.

5. Scale up the KNQA Recognition of Prior Learning Pathway: The operational roll-out of the Kenya National Qualifications Authority (KNQA) and DRS joint assessment framework requires continued scaling nationwide. Expanding the program significantly beyond the limited pilot profiles currently prioritized in camp jurisdictions will open formal certification paths to highly educated, skilled refugees currently underutilized in informal or "incentive worker" arrangements.

6.2 Medium term: statutory and regulatory amendment

To secure lasting structural improvements, it is recommended that the relevant legislative and line ministries pursue targeted statutory and regulatory amendments. Executing these changes will formalize long-term protections and align Kenya's broader economic frameworks with the inclusive spirit of the Refugees Act, 2021:

1. Refine the Work Authorization Framework: Parliament is encouraged to amend Sections 40 and 41 of the Kenya Citizenship and Immigration Act (Cap. 172) to explicitly exempt recognized refugees from the standard Class M work permit requirement, or alternatively, to legally recognize a valid Refugee Identity Card as a self-sufficient work authorization. This statutory amendment would permanently resolve the persistent administrative backlogs and systemic circularity that currently prevent refugees from accessing formal employment.

2. Exempt Refugees from Prohibited Immigrant Penalties: A critical legislative adjustment includes amending Section 53(1)(m) of the Kenya Citizenship and Immigration Act to explicitly exempt recognized refugees from the associated five hundred thousand shilling penalty. Because this punitive offense mechanism was never designed to account for the unique and precarious documentation circumstances of displaced populations, an explicit exemption is necessary to protect refugees from unintended legal jeopardy.

3. Establish Procedural Safeguards for Movement Passes: The Ministry of Interior is advised to amend Part IV of the Refugees (General) Regulations, 2024 to formally prescribe clear processing timelines, specific grounds for refusal, and a transparent administrative review mechanism for movement passes under Regulation 32. Crucially, these updates should introduce a clear operational distinction between the travel permissions required for asylum seekers versus those granted to recognized refugees, ensuring freedom of movement functions as a practical precondition for the Shirika Plan.

4. Rectify Legacy Forms and Scheduled Templates: The Department of Refugee Services, in coordination with the National Council for Law Reporting (Kenya Law), is urged to update all forms scheduled to the Refugees (General) Regulations, 2024 (such as Form 1 under Regulation 2). Replacing all legacy, obsolete references to the repealed Refugees Act, 2006 with the current statutory markers of the 2021 Act will eliminate administrative confusion and ensure technical compliance across all processing portals.

Whether these amendments should be made piecemeal or as an omnibus amendment needs further technical input from the Kenya Law Reform Commission once the priority provisions are confirmed.

6.3 Long term and open questions

1. Resolve the Institutional Placement of Work Permit Administration: A primary structural decision remains open regarding whether work permit administration should transition entirely to the Department of Refugee Services (DRS) under the explicit authority of the Refugees Act, 2021, or remain under the jurisdiction of the Directorate of Immigration Services through dedicated refugee regulations. While moving administration to the DRS reduces documentation circularity, it demands a significant regulatory restructuring. On the other hand, keeping it with Immigration is narrower but leaves systemic bottlenecks intact unless refugee-specific procedures are fully institutionalized.

2. Formulate a Regional Approach to Class R Permits: Strategic consideration is required to determine whether and how to pursue the Class R permit framework to align refugee management with the Protocol on the Establishment of the East African Community Common Market. Because Section 28(8) of the Refugees Act, 2021 requires refugees from an EAC partner state to voluntarily renounce their asylum status to claim these regional market privileges, this pathway introduces a severe practical risk of de facto statelessness. Consequently, it is recommended that this track be advanced through EAC-level regional frameworks and high-level diplomatic channels rather than standalone domestic legislation.

3. Evaluate the Requirement for Legal Intervention on Incentive-Worker Practices: Line ministries and labor stakeholders are encouraged to assess whether resolving the widespread, below-minimum-wage compensation of "incentive workers" requires formal statutory intervention or if it can be successfully mitigated through targeted policy advocacy. Determining whether to codify strict wage floors for humanitarian volunteer frameworks remains an essential step to protecting skilled refugee labor.

4. Address Enterprise Bottlenecks under the Companies Act: Following a comprehensive costing exercise and technical discussions with the Business Registration Service (BRS), partners may consider recommending a regulated fee structure or a standardized, state-vetted agent scheme for local representatives under Section 979 of the Companies Act, 2015. This mechanism would protect refugee entrepreneurs from exploitative private arrangements while satisfying national corporate governance mandates.

5. Define the Optimal Legal Trajectory for the Refugee Identity Card: Drawing upon the comparative regional research detailed in Part 2 of this paper, stakeholders will need to determine how far to press for a stronger, universally binding legal status for the Refugee Identity Card. The long-term objective is to elevate its recognition so that it automatically commands the same rights and systemic trust within private-sector and banking compliance architectures as a national identity card.

6. Clarify the Boundaries of Statutory Commitments under Section 28(5): Further legal analysis is advised to evaluate whether Section 28(5) of the Refugees Act, 2021 itself requires a formal legislative amendment, or whether the current statutory qualifier "subject to the laws applicable" provides sufficient flexibility. Disentangling what this qualifier permits is crucial to determining if existing business and financial laws can be adapted administratively or if they pose an absolute barrier to the right to enterprise.

7. CONCLUSION

Kenya's legal framework already recognizes refugees' right to work as a human right[53]. The evidence gathered through the 2025 legal and policy review, and the working process behind this paper, indicates that the main obstacle is not the absence of that right in law. It is the survival of a permit-and-encampment architecture, inherited from an earlier immigration-control approach that did not anticipate the protracted nature of displacement in the region, and that has not yet been fully reconciled with the Refugees Act, 2021 or with the self-reliance aims of the Shirika Plan. An incremental, carefully targeted number of foundational reforms would resolve most of the downstream barriers, provided they are paired with the administrative and institutional reforms described above.

[53] *Constitution of Kenya 2010, art 41(1); Refugees Act 2021, s 28(5).* https://new.kenyalaw.org/akn/ke/act/2021/10/eng@2022-12-31

ANNEX A: SUMMARY OF POSITIONS

The table draws together each issue for which more than one option was considered. Where a position is marked "unresolved", that is a deliberate signal that the question needs further legal, empirical or comparative research, or stakeholder input, before the paper is finalized.

Issue	Options considered	Position reached	Status
Refugee Advisory Committee	Amend the Act; operationalize the existing Committee	Operationalize first and confirm operational status	Administrative
Refugee identity card status (s 28(7))	Equivalence to national ID; leave unspecified; amend Immigration Act ss 40–41 instead	Amend Immigration Act ss 40–41 and leave s 28(7) for now, pending comparative research	Legislative (Immigration Act route)
Work permits: Class M and Class R	Reform Class M; pursue the Class R (EAC) route	Reform Class M; Class R left to EAC-level engagement	Class M: legislative/regulatory. Class R: unresolved
Movement passes and designated areas	Abolish; decentralize and reform; Refugee ID sufficient for refugees	Decentralize and reform, combined with the ID-based distinction	Regulatory and administrative
Administration of work permits	Move to the Department; keep with Immigration under dedicated regulations	Either acceptable if the regulations meet the content requirements	Unresolved
Employment Act non-discrimination	Express amendment; rely on existing grounds and art 27	No amendment presently recommended	Interpretive and administrative
Incentive-worker arrangements	Legal action; advocacy and sensitization; wait for permit reform	Advocacy in parallel with permit reform; no final position	Unresolved

Issue	Options considered	Position reached	Status
Local representative (Companies Act s 979)	Include refugees; two-stage approach; fee cap or agent scheme	Two-stage approach favored; fee or agent option needs costing	Long-term legislative goal; interim option pending
BRS and DRS interoperability	Memorandum of understanding; technical integration	Technical integration preferred	Administrative
Work permits: Class M and Class R	Rely on s 28(7); rely on Legal Notice No. 143 of 2023	No position taken; matter before the courts	Unresolved

ANNEX B: INSTRUMENTS REVIEWED

No.	Instrument	Type	Institution for engagement
1.	Refugees Act 2021	Act	Department of Refugee Services; Commissioner for Refugee Affairs
2.	Refugees (General) Regulations 2024	Subsidiary legislation	Cabinet Secretary; Department of Refugee Services
3.	Kenya Citizenship and Immigration Act 2011	Act	Directorate of Immigration Services
4.	Employment Act 2007	Act	Ministry of Labour and Social Protection
5.	Labour Relations Act 2007	Act	Ministry of Labour and Social Protection
6.	Labour Institutions Act 2007	Act	Ministry of Labour and Social Protection
	National Employment Authority Act 2016	Act	National Employment Authority
7.	Companies Act 2015; Registration of Business Names Act; Business Registration Service Act	Acts	Business Registration Service
8.	National Social Security Fund Act; Social Health Insurance Act	Acts	National Social Security Fund; Social Health Authority
9.	Kenya National Qualifications Framework Act 2014	Act	Kenya National Qualifications Authority
10.	Income Tax Act; Proceeds of Crime and Anti-Money Laundering Act 2009; National Payment Systems Act	Acts	Kenya Revenue Authority; Central Bank of Kenya
11.	Legal Notice No. 143 of 2023	Legal notice	Cabinet Secretary
12.	Sessional Paper No. 4 of 2013 on Employment Policy	Sessional paper	Ministry responsible for labour
13.	Shirika Plan (2025)	National policy	Government of Kenya