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REFUGEE ENTREPRENEURSHIP, BUSINESS OWNERSHIP, AND THE RIGHT TO WORK IN HOST COMMUNITIES: A LEGAL COMPARATIVE ANALYSIS



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With more and more refugees displaced for longer periods of time, businesses have a critical role to play in helping refugees integrate economically in their new host communities. The Tent Partnership for Refugees mobilizes the global business community to improve the lives and livelihoods of 30 million refugees who have been forcibly displaced from their home countries. Founded by Chobani's founder and CEO Hamdi Ulukaya in 2016, we are a network of over 140 major companies committed to including refugees. Tent believes that companies can most sustainably support refugees by leveraging their core business operations - by engaging refugees as potential employees, entrepreneurs and consumers.

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FOREWORD – TRUSTLAW

According to the Global Trends report of the United Nations High Commissioner for Refugees, in 2018 there were 25.9 million refugees globally. That same year, the UN General Assembly adopted the Global Compact on Refugees and several companies pledged to alleviate the global displacement crisis by supporting refugees' hiring and professional development inside and outside of refugee camps. Beyond access to job opportunities, the private sector also emphasized the importance of enabling refugees to have access to entrepreneurship as a path to a sustainable livelihood for themselves and their families.

These commitments from the private sector and supported by the UNHCR – as well as the outstanding efforts which resulted - are a milestone in the global community's response to the refugee crisis. However, to succeed, such efforts must be met by adequate legal frameworks in host countries where asylum seekers and refugees can work, set up businesses and access social benefits and funding.

This comparative study analyzes the laws applicable to refugees' right to work and establish a business in Bangladesh, Ethiopia, Jordan, Kenya, Lebanon, Pakistan, Turkey, and Uganda, where forcibly displaced people arrive on a daily basis from Syria, South Sudan, Afghanistan and other countries torn by war, acute food insecurity and malnutrition. For each country, legal loopholes are identified, and best practices are suggested in order to spur an urgent conversation on the need to foster economic security for refugees – an integral component of the global response to the refugee crisis.

As highlighted by the report, refugee businesses tend to operate in the informal market and thus cannot benefit from local government funding. This lack of access to governmental support has only become more important in the context of the COVID-19 pandemic, with the World Economic Forum recently raising the alarm that with even traditional businesses facing many uncertainties, informal workers have been left without any government assistance. Support for entrepreneurship might therefore be needed more than ever to assist refugees with achieving a better future.

A key component of the work of the Thomson Reuters Foundation is fostering a fair and sustainable economic system, as a bedrock of free, fair, and informed societies. Access to entrepreneurship must be available to all, regardless of geography or refugee status.

The Thomson Reuters Foundation is very proud to support the Tent Partnership for Refugees through this legal report and warmly thanks the law firms that contributed to it, particularly Jones Day, the coordinator of the country reports. We hope that this report will mark an important step in the global discussion towards better economic opportunities for refugees, whose skills and passion are an indisputable value-add to their host countries.

Sincerely,

Carolina Henriquez-Schmitz
Director, TrustLaw
Thomson Reuters Foundation

FOREWORD – THE TENT PARTNERSHIP FOR REFUGEES

Today, there are over 30 million refugees globally – but this population is not distributed evenly around the world. Low- and middle-income countries like Turkey, Bangladesh, Ethiopia and Uganda shoulder the burden, and are currently hosting roughly 85% of all refugees. In many of these countries, refugees still lack full formal access to the labour market as well as restrictions on owning or operating a business. This is a huge missed opportunity – for both refugees, and their host countries. Reducing the barriers for refugees to work and to operate businesses would improve their livelihoods and allow them to better integrate in their new host community. At the same time, the local economy would benefit from refugees' experience, skills, and entrepreneurship.

Restrictions on refugees' ability to participate in the economy are often predicated on the misconception that, if allowed to work, they would take jobs away from members of the host community; that, if allowed to operate businesses, they would outcompete local business owners. It's an understandable fear given that many major host countries face constrained economies. But the reality is that refugees can actually fill labour shortages and complement local skillsets. In fact, studies show that, when refugees are permitted to work and start their own businesses, they stimulate the local economy by spending more on goods and services, generating tax revenue, and creating new jobs for locals and other refugees.

This series of legal briefs focuses on the laws and policies regulating refugees' right to work, own and operate a business in Bangladesh, Ethiopia, Jordan, Kenya, Lebanon, Pakistan, Turkey, and Uganda. At the Tent Partnership for Refugees, our mission is to mobilize the global business community in support of refugees; we focus on facilitating refugees' economic integration, wherever they are in the world, and in doing so we frequently work with major global companies on initiatives to support refugee entrepreneurs. We are pleased to have been a part of this project -- a valuable contribution in service of making entrepreneurship a viable pathway towards economic stability for thousands of refugees.

We are grateful to the TrustLaw program at the Thomson Reuters Foundation, to the leadership team at Jones Day, and to all of the dedicated lawyers across the multiple law firms who supported this project, for their commitment and hard work on this report.

Sincerely,

Gideon Maltz
Executive Director
The Tent Partnership for Refugees

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EXECUTIVE SUMMARY

According to the United Nations High Commissioner for Refugees (UNHCR), approximately 85% of the estimated 26 million refugees are hosted in low and middle-income countries. In many of these countries, refugees face challenges finding work. Refugees also face legal barriers to be entrepreneurs, own and operate businesses, or access business financing. This report provides an introduction to the treatment of refugees under international law while exploring the issues of refugee entrepreneurship, business ownership, and the right to work in eight select countries: Bangladesh, Ethiopia, Jordan, Kenya, Lebanon, Pakistan, Turkey and Uganda. This report provides a country-by-country overview of the following specific refugee entrepreneurship and right to work issues: (1) Refugee Laws and Policies; (2) Enterprise Development; and (3) Informal Business Activities.

Despite the fact that each country analysed in this report has seen an influx in its refugee population in recent years, these countries have widely varying degrees of formal laws, regulations, and policies governing the rights of refugees. For example, at one end of the spectrum, Bangladesh has no refugee-related legal framework, and inconsistent government policies serve as a major obstacle to the economic development and general wellbeing of refugees. In comparison, despite its significant, and increasingly growing refugee population, Uganda has some of the most progressive refugee laws, and has adopted a national framework that focuses on promoting refugee and host community collaboration.

For those countries where relevant laws and refugee protections do exist, as a practical matter, inconsistent application of those regulations and policies serves as an obstacle to refugee economic independence.

Difficulty accessing capital and challenges navigating the local banking and financing systems is a universal challenge in each country. While the barriers range from formalized, legal impediments, to practical challenges such as obtaining the appropriate documentation necessary to utilize the local banking system, this remains an obstacle for refugee entrepreneurship in each country studied.

Given the steady influx of refugees that many countries are continuing to face combined with inadequate sources of humanitarian aid, the research suggests that adopting policies focusing on refugee and host community collaboration will best serve host countries by encouraging refugee self-reliance and promoting positive outcomes for all stakeholders.

The report which follows offers a detailed look at the selected countries. Some of the key insights from each jurisdiction can be summarized in country-by-country highlights as follows.

Bangladesh

- Not a signatory to the 1951 Refugee Convention or the 1967 Protocol
- No national legal instruments or policy framework respecting refugee rights
- No local integration of refugees
- No refugee entrepreneurship opportunities
- No refugee property ownership rights
- No access to capital/credit/financial institutions
- Extensive use of refugee camps
- Ongoing attempts at reform

Ethiopia

- Signatory to the 1951 Refugee Convention and the 1967 Protocol
- Refugee right to access banking services
- Capitalization requirements practically hinder refugee entrepreneurship
- Ongoing statutory reform aimed at expanding access to jobs and refugee right to work
- Government pledge to reserve 30% of jobs in new industrial parks for refugees

Jordan

- Not a signatory to the 1951 Refugee Convention or the 1967 Protocol
- Many refugees live in settlements/camps
- No domestic refugee legislation or policy concretely outlining refugee right to work
- Licensing requirements pose impediments to entrepreneurship
- Limited access to financial and banking systems
- Ongoing attempts at reform

Kenya

- Signatory to the 1951 Refugee Convention and the 1967 Protocol
- Encampment policy limiting factor to refugee enterprise development
- Legislation proposed to expand refugee rights has failed

Lebanon

- Not a signatory to the 1951 Refugee Convention or the 1967 Protocol
- No national laws governing refugees' rights
- Significant under- and un-employment
- Significant engagement in informal economy
- International sanctions impact banking access

Pakistan

- Not a signatory to the 1951 Refugee Convention or the 1967 Protocol
- Lack of legal framework biggest obstacle for refugees
- Refugees cannot hold immovable property or own a business
- Positive trend towards formalization of refugee status and development of laws

Turkey

- Signatory to the 1951 Refugee Convention and the 1967 Protocol
- Only about 2-3% of refugees live in camps
- Refugees may lease or own moveable and personal property

Uganda

- Signatory to the 1951 Refugee Convention and the 1967 Protocol
- Open-border settlement policy
- Refugees provided land to cultivate
- Refugee self-reliance strategy provides right to work and freedom of movement
- Shift to formal economy participation
- Increased access to financial services provided to refugees

By bringing together insights from the selected countries, this report can also provide a legal comparative analysis. The country-by-country comparative chart below offers a snapshot of several of the key comparisons available upon review of the country reports.

| Country | 1951 Refugee Convention Signatory | 1967 Protocol Signatory | National Refugee Laws | Local Community Integration | Ongoing Progressive Reform |
|------------|-----------------------------------|-------------------------|-----------------------|--------------------------------|----------------------------|
| Bangladesh | ✗ | ✗ | ✗ | Mixed Experiences ¹ | ✓ |
| Ethiopia | ✓ | ✓ | ✓ | ✓ | ✓ |
| Jordan | ✗ | ✗ | ✗ | Mixed Experiences ² | ✓ |
| Kenya | ✓ | ✓ | ✓ | ✗ | ✗ |
| Lebanon | ✗ | ✗ | ✗ | Mixed Experiences ³ | ✗ |
| Pakistan | ✗ | ✗ | ✗ | ✗ | ✓ |
| Turkey | ✓ | ✓ | ✓ | ✓ | ✓ |
| Uganda | ✓ | ✓ | ✓ | ✓ | ✓ |

¹ Ongoing encampment policies limit refugee self-reliance and opportunities for local community integration.

² Refugees are legally permitted to rent property outside of refugee camps; however, rent levels generally are very high relative to refugee earning potential, serving as a practical deterrent to local community integration.

³ No formal refugee camps were established in Lebanon in response to the influx of Syrian refugees. As a result, registered Syrian refugees live in villages, cities, and make-shift tent settlements throughout the country. Additionally, Palestinian refugee camps in Lebanon have experienced an influx of Syrians seeking shelter.

INTRODUCTION

The right to work and set up businesses for refugees has been acknowledged as a major component of the response to the current refugee crisis. This report focuses on the legal frameworks and policies pertaining to this right in Bangladesh, Ethiopia, Jordan, Kenya, Lebanon, Pakistan, Turkey and Uganda. In order to understand how these countries are approaching the crisis, one must first have a basic grasp of the underlying international treaties and agreements that deal with refugees, including a working definition of forcibly displaced persons, and the international right to work. This introduction provides a brief background on these major agreements and the principles of international law that underpin them. With a basic understanding of these key agreements and principles, we will be able to turn to the individual country reports, which include case studies and an overview of country-specific refugee policies, and the practical implications of those policies.

The first major international agreement on refugee rights was the 1951 Refugee Convention and the amending 1967 Protocol Relating to the Status of Refugees. Using that foundation, regions and international organizations have added to and modified their laws regarding refugees. This summary discusses the following important agreements and underlying concepts that apply to refugee rights under international laws:

- I) Forcibly Displaced Persons
- II) 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees
- III) 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa
- IV) NY Declaration for Refugees and Migrants
- V) International Right to Work

I. *Forcibly Displaced Persons*

In international legal jargon, refugees are just one subcategory of a larger group known as Forcibly Displaced Persons (“FDPs”). FDPs refers to people who have been forced to leave their locality or home for a number of reasons, including armed conflict, natural disasters, famine, human rights violations, and persecution. The UNHCR defines this group as the sum of all refugees, internally displaced persons (“IDPs”), and asylum-seekers.² The two key elements to this definition are that a person was (i) forced or compelled to leave their home, (ii) for one of a number of listed reasons.

Several groups specializing in refugee issues have elaborated on this concept. For example, the European Commission defines FDPs as people who “are forced to leave their homes (...) because of conflict, violence, human rights violations, persecution, and natural disasters,” and includes refugees, asylum-seekers, and IDPs in its definition, using the same figures and definitions for these categories as the UNHCR.³

Globally, according to UNHCR, there are currently 79.5 million FDPs. This figure includes 45.7 million IDPs, 26 million refugees, and 4.2 million asylum-seekers. There has been a dramatic increase in the number of FDPs over the past decade—well over 28 million—with the number standing at 42.7 million in 2007. This rise has been

driven in large part by the conflicts in Syria, Burundi, the Central African Republic, the Democratic Republic of the Congo, Iraq, Myanmar, South Sudan, Sudan, Ukraine, and Yemen.⁴ The impacts of these conflicts, and how host countries have sought to handle the resulting influx in asylum seekers, are discussed within the individual country reports that follow this introduction.

II. *1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees*

These two agreements are based on Article 14 of the Universal Declaration of Human Rights (1948), which recognizes an individual’s right to seek asylum from persecution in other countries. The United Nations Convention relating to the Status of Refugees, adopted in 1951 (the “1951 Convention” or the “Convention”, after it was amended in 1967), is the centerpiece of international refugee protection today. However, **it is worth noting that neither Bangladesh, Jordan, Lebanon, nor Pakistan has ratified the 1951 Convention or the 1967 Protocol.** This means these countries have not agreed to abide by the principles established in these agreements. The 1951 Convention has only been amended one time—in 1967 in what became known as the 1967 Protocol Relating to the Status of Refugees (the “1967 Protocol”), which removed the geographic and temporal limits of the 1951 Convention.

The 1951 Convention, adopted in the aftermath of World War II, was originally intended to help people fleeing events that took place before January 1, 1951 within Europe (i.e. European refugees displaced by World War II and its immediate aftermath); however, the 1967 Protocol removed these limitations and gave the Convention universal coverage over refugees from any time or place.⁵ Several countries and regions have gone further, providing additional protections and rights for refugees.⁶ The Convention makes clear that refugees are entitled to dignity and rights while in exile. Chapter III of the Convention gives refugees the right to work, including wage-earning employment and self-employment.

The 1951 Convention provides the most comprehensive set of rights for refugees in international law. In contrast to earlier international refugee agreements, which applied to specific groups of refugees (by country or event that caused them to flee their home country), the 1951 Convention provides a single definition of the term “refugee,” which it defines in Article 1. The emphasis of this definition is on the protection of persons from political or other forms of persecution. A refugee,

according to the 1951 Convention, is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.⁷

The 1951 Convention is unique because it provides a definition of “refugee” and sets out rights refugees should have. There are a few fundamental principles in the 1951 Convention, most notably the principles of “non-discrimination,” “non-penalization” and “non-refoulement.” The 1951 Convention’s non-discrimination principle, for example, states that the protections provided to refugees must be applied without discrimination based on race, religion or country of origin. Developments in international human rights law since the 1951 Convention also reinforce the principle that the 1951 Convention be applied without discrimination as to sex, age, disability, sexuality, or other prohibited grounds for discrimination. The 1951 Convention’s principle of

non-penalization says that, subject to specific exceptions, asylum seekers should not be penalized for their illegal entry or stay in another country; recognizing that seeking asylum may require individuals to break immigration rules as they flee violence and discrimination in their home countries. This means that countries hosting asylum seekers should not charge them with immigration or criminal offences relating to seeking asylum, or arbitrarily detain refugees purely on the basis that they are seeking asylum. Related to this idea, the 1951 Convention also contains various safeguards against the removal of refugees, which are captured in the principle of nonrefoulement. The principle of nonrefoulement is so fundamental to the Convention that it cannot be changed or weakened. Nonrefoulement means that no one can expel or return (“refouler”) a refugee against his or her will to a territory where the refugee fears threats to his or her life or freedom.⁸ Finally, the Convention lays out minimum standards for the treatment of refugees but encourages countries to go beyond these minimum



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standards. Such rights include access to the courts, primary education, work, and providing refugees with various important forms of documentation, including a refugee travel document.

There are some exceptions to the 1951 Convention's definition of a refugee. If a person falls under one of these exceptions, then he or she is not eligible to enjoy the rights given to refugees under the 1951 Convention. In particular, the 1951 Convention does not apply to people who have committed war crimes or crimes against humanity, serious non-political crimes, or who are guilty of acts contrary to the purposes and principles of the United Nations. The 1951 Convention also does not apply to refugees who benefit from the protection or assistance of a United Nations agency other than the United Nations High Commissioner for Refugees ("UNHCR"). The 1951 Convention also does not apply to those refugees who have a status equivalent to nationals in their country of asylum.⁹

Apart from expanding the definition of who is a refugee, the 1967 Protocol requires countries to extend the substantive provisions of the 1951 Convention to all persons covered by the refugee definition, without any limitation of date. Although related to the 1951 Convention in this way, the 1967 Protocol is an independent set of guidelines, which countries may agree to follow, separate from participation in the 1951 Convention.¹⁰

The UNHCR plays an important role administering the 1951 Convention and 1967 Protocol. Countries should cooperate with the UNHCR in the exercise of its functions, which include its job to supervise the application of the Convention. By its governing documents, the UNHCR is tasked with, among others, promoting international agreements for the protection of refugees, and supervising their application.¹¹ Today, there are 147 countries that have signed (and thereby agreed to follow) one or both 1951 Convention and/or the 1967 Protocols.¹²

III. 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa

Although the 1951 Convention's definition remains the primary definition of "refugee", regional human rights treaties have since modified that definition in response to displacement crises not covered by the 1951 Convention. The Organization of African Unity (OAU) Convention

Governing the Specific Aspects of Refugee Problems in Africa, (the "1969 Refugee Convention"), is a regional agreement that deals with refugee protection in Africa. It has 15 articles and was enacted in Addis Ababa, Ethiopia on September 10, 1969 and entered into force on June 20, 1974 when the required numbers of countries signed the agreement. The 1969 Refugee Convention builds on the 1951 Convention and the 1967 Protocol. The 1969 Refugee Convention was signed by 41 states and has currently been ratified by 45 of the 54 member states of the African Union (successor to the Organization of African Unity). Relevant here, it has been signed by Ethiopia, Kenya and Uganda, which are focuses of this report. It is a binding, regional legal agreement on refugee issues for the countries that signed it.¹³

The 1969 Refugee Convention expanded the 1951 Convention definition of refugee. The 1969 Refugee Convention includes "external aggression, occupation, foreign domination or events seriously disturbing public order" as reasons refugees may flee.¹⁴ This includes accidental situations that are not based on deliberate state action, *i.e.* the danger does not need to be caused by the state or its agents. For example, this includes refugees fleeing environmental catastrophes like drought or famine. That means that the fear of danger is no longer just linked to the individual's personal subjective reaction but also to external events and situations. This change in the definition has created a presumption that certain groups qualify for refugee status without having to prove their cases individually. While the 1951 Convention uses "country of his nationality" as the geographical unit that a refugee must have fled from, the expanded definition in the 1969 Refugee Convention uses "his place of habitual residence" as a geographical frame of reference.¹⁵ For example, if an environmental or ecological disaster strikes a particular area, it is presumed the people in that region qualify as refugees to the countries that signed the 1969 Refugee Convention and have all the rights associated with refugees.

Additionally, under the 1969 Refugee Convention, discrimination against refugees is prohibited on the grounds of membership of a social group, nationality, or political opinion. These additional categories of discrimination were not included in the 1951 Convention's prohibition on discrimination of refugees. However, any refugee who has "committed a serious non-political crime outside his country of refuge after his admission to that country as a refugee" or who "acts contrary to the



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purposes and principles of the OAU" is excluded from the definition of refugee and therefore, that person no longer enjoys the rights and protections of a refugee under the 1969 Refugee Convention. The 1969 Refugee Convention also contains a restriction that refugees and asylum seekers may not engage in any "subversive activities" against any countries that have signed the agreement.¹⁶

The 1969 Refugee Convention also includes guidelines for burden and responsibility sharing and cooperation between participating countries through regional resettlement and financial support. It de-politicized the concept of asylum and declared that granting

asylum to another country's citizens will no longer be perceived by participating countries as an unfriendly act, while it urges participating countries to grant asylum to those individuals who fall within the refugee definition. While this is an improvement on the 1951 Convention, each country still has discretion in its decision to grant asylum.¹⁷

IV. NY Declaration for Refugees and Migrants

On September 19, 2016, the United Nations General Assembly unanimously adopted the New York Declaration for Refugees and Migrants (the "New York Declaration"). **The New York Declaration reaffirms the importance of the international refugee regime**

and contains a wide range of commitments by participating countries to strengthen and enhance mechanisms to protect refugees and migrants.

In adopting the New York Declaration, countries: (i) expressed profound solidarity with those who are forced to flee their home countries; (ii) reaffirmed their obligations to fully respect the human rights of refugees and migrants; (iii) agreed that protecting refugees and supporting the countries that shelter them are shared international responsibilities and must be borne more equitably and predictably; (iv) pledged robust support to those countries affected by large movements of refugees and migrants; (v) agreed upon the core elements of a [Comprehensive Refugee Response Framework](#); and (vi) agreed to work towards the adoption of a [global compact on refugees](#) and a [global compact for safe, orderly and regular migration](#).¹⁸

The New York Declaration sets out the key elements of a Comprehensive Refugee Response Framework (“CRRF”) to be applied to large-scale movements of refugees and extended refugee situations. The CRRF focuses on the importance of supporting those countries and communities that host large numbers of refugees, recognizing that the burden of hosting refugees does not fall on all countries evenly, promoting the inclusion of refugees in host communities, ensuring the involvement of development actors from an early stage, and developing a “whole-of-society” approach to refugee responses. Its four key objectives are to: (i) ease the pressures on host countries and communities; (ii) enhance refugee self-reliance; (iii) expand third-country solutions; and (iv) support conditions in countries of origin for refugees’ return in safety and dignity.¹⁹

The New York Declaration and CRRF can be thought of as further guidelines that countries and international organizations should use when dealing with refugee situations. It is up to those countries and organizations to act on these principles. Since the New York Declaration was adopted, the UNHCR has been working with countries and other relevant stakeholders to develop and initiate the practical application of the CRRF. As of February 2018, the CRRF had been formally applied in a dozen countries, including two regional contexts in Africa and Central America.²⁰

V. *International Right to Work*

One of the main issues facing refugees is their lack of economic independence and their resulting reliance on international aid. Encouraging the employment of refugees can lessen the burden on host countries and aid organizations. Not only is this sound policy, but FDPs’ right to work is a long-standing concept that is grounded in several international legal frameworks.

One such milestone framework is the **Universal Declaration of Human Rights** (“UDHR”), which the United Nations General Assembly has referred to as a “common standard of achievements for all peoples and all nations” and which was the first document of its kind to lay out fundamental human rights that should be universally protected by all countries.²¹ **Article 23.1 of the UDHR states: “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”** The remainder of Article 23 deals with rights associated with the right to work, including the right to equal pay (23.2), favorable remuneration and necessary social protections (23.3), and the right to join trade unions (23.4).²²

The U.N. General Assembly also adopted another treaty that recognizes the right to work: the **International Covenant on Economic, Social and Cultural Rights** (“ICESCR”). Each of the countries covered in this report has ratified the ICESCR. Part III, **Article 6 provides:**

(1) The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard this right. (2)

The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Part III, Article 7 further describes the “right of everyone to the enjoyment of just and favourable conditions of work,” which includes fair and equal wages without regards to race or gender, safe and healthy working

conditions, equal opportunity for promotion, and the right to rest and leisure.²³

Another international organization, **the International Labour Organization (“ILO”), has issued its own “Guiding Principles on the Access of Refugees and Other Forcibly Displaced Persons to the Labour Market,”** which are self-described as voluntary and non-binding principles that are “flexible in nature.” These guidelines provide many suggestions for how to incorporate refugees into a host country’s labour force. For example, they recommend participating countries should: (i) develop policies to protect and encourage FDPs in the labour market, (ii) make information about laws that apply to entrepreneurship easily available, (iii) develop supportive macroeconomic job creation policies that include FDPs, (iv) support vocational training for FDPs, (v) ensure refugees are covered under labour laws, and (vi) help make work-related entitlements like social security and pensions more portable.²⁴

The ILO guidelines promote equal opportunities of work and the right to join trade unions, and oppose discrimination in both law and practice, as well as forced and child labour. The ILO encourages participating countries to cooperate in fostering a positive work environment for refugees—this includes regional planning, engagement with FDP communities, and development assistance, which it highlights are all critical factors. As discussed in the individual country reports that follow, the frameworks that promote these activities provide the best economic and independence outcomes for refugees. As refugees can return to their countries of origin, those countries will likewise need a framework in place to aid in the reintegration of FDPs into their labour markets.

COUNTRY REPORTS





1. BANGLADESH

I.1 INTRODUCTION

The refugee situation in Bangladesh is alarming, with some 655,000 Rohingya refugees newly arrived since 25 August 2017.²⁵ With this new influx, the total number of refugees in Bangladesh is approximately 900,000, with 55% being children.²⁶

It is also worth noting that, as of October 2012, Bangladesh was host to 227 refugees of various nationalities who were recognized by UNHCR under its mandate, in the absence of a national mechanism to determine refugee status. Unlike the Rohingya, these refugees do not live in camps and are generally self-reliant.²⁷

Bangladesh is not a signatory to the 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees and has not enacted any national legislation on asylum and refugee matters. Consequently, both the legal and economic protections granted to refugees in Bangladesh remain minimal.²⁸

I.2 REFUGEE LAW AND POLICIES

a) General Refugee Status

i. Legal Framework

No legal instruments or policy frameworks aimed specifically at refugees and asylum seekers have been established on a national level. Additionally, Bangladesh is not party to the 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees.²⁹ The Constitution of Bangladesh is also silent on rights specific to refugees and stateless people.

It is worth noting that, notwithstanding the above, Bangladesh is a signatory to the following international treaties which may have indirect bearings on the legal treatment of refugees:

- the Universal Declaration of Human Rights;
- the Geneva Conventions of 1949 and their Protocols I and II of 1977;

- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- the Convention on the Rights of the Child;
- the International Labour Organization C118 – Equality of Treatment (Social Security) Convention;
- the Convention on the Elimination of All Forms of Discrimination Against Women; and
- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In the absence of national legislation with specific provisions for refugees, the government commonly relies on the Foreigners Act (1946) for certain refugee related matters.³⁰

According to the Foreigners Act (1946), the definition of “**foreigners**” means any person other than a citizen of Bangladesh. It may be argued that, since refugees fall within this definition, they may enjoy the protection of certain provisions of the Constitution of Bangladesh which apply to foreigners (including, but not limited to, protection of right to life and personal liberty, safeguards as to arrest and detention, prohibition of forced labour and protection in respect of trial and punishment).

ii. Registered Refugees

The absence of a national policy framework and any legally binding structure to address refugees in Bangladesh has led to arbitrary and discretionary decision making in this sphere. For instance, certain refugees have been “registered” and granted refugee status through an executive order from the government.³¹

The protection of registered refugees relies on constitutional provisions and certain domestic laws that are applicable to any person in the territory (i.e. not limited to citizens). For example, registered refugees in camps theoretically have access to the Bangladeshi

courts for violations of their rights (although, practically speaking, economic limitations make this difficult). The rights granted to them are, however, limited and do not always comply with international standards.³²

Based on current estimates, only 4% of refugees have been granted registered status.³³

iii. Unregistered Refugees

Unregistered or undocumented refugees are not recognized and consequently have no formal access to legal protection. The government of Bangladesh categorizes such individuals as illegal immigrants under the Foreigners Act (1946).³⁴

Because of this illegal immigrant status, unregistered refugees have been subjected to forced repatriations and arrests for illegal entry into Bangladesh. Their status also makes it difficult for them to seek legal redress.³⁵

iv. Government Policy

The government of Bangladesh considers repatriation to be the only acceptable result for refugees (in particular for the Rohingya refugees). It continues to reject local integration and has put restrictions on mixed marriages between Rohingya refugees and Bangladeshi citizens through government orders and letters to the administrative authorities, allegedly to prevent Rohingyas from using marriage certificates to acquire



Reuters/Hannah Mckay

citizenship and passports. Nevertheless, repatriation is currently not a feasible and viable option given the volatile situation in the Rakhine State and lack of political will of the government of Myanmar.³⁶

b) Enterprise Development

- i. *Do refugees have the right to set up a business? Are there any restrictions placed on the sector, location, or size of business? (e.g. home based)*

Refugees registered before 1992 and unregistered refugees have no formal right to work in Bangladesh and are not covered by any Bangladeshi labour laws. Additionally, they are denied access to local markets and from obtaining credit from Bangladesh's financial institutions.³⁷

More generally speaking, refugees are not allowed to be self-employed, engage in trade or own property in Bangladesh.³⁸

Notwithstanding the above, in practice, refugees often receive tacit approval from local community leaders and authorities to access livelihood activities. This engagement in the informal economy makes refugees vulnerable to very low wages and unethical employment practices, leaving them without recourse to legal protection if abused.³⁹

- ii. *What laws or policies are in place regarding export (e.g. rules of origin; export licenses) for refugee-owned businesses or sectors that refugees most likely work in? (e.g. artisanal)*

No such laws or policies are in place.

- iii. *Are refugees legally allowed to lease/own land? Other assets?*

Refugees are not allowed to be self-employed, engage in trade or own property in Bangladesh.

- iv. *Are there laws on forming joint ventures with refugee-owned companies?*

Not applicable as refugees are not permitted to own companies.

- v. *Is legal residency or other identification required to set up or own a business?*

Foreign investors are entitled to a Private Investor (PI) or Business (B) visa to establish business or explore business possibilities and activities in Bangladesh. A PI/B visa with a multiple entry facility can be granted for up to two

years on recommendations issued by the Bangladesh Investment Development Authority (BIDA).⁴⁰

On a connected note, only nationals of countries recognised by Bangladesh are eligible for work permits, and permits are only available for jobs for which local experts/technicians are not available. The expatriate to local employee ratio cannot exceed 1:20 for the industrial sector and 1:5 for the commercial sector.⁴¹

- vi. *Are there any laws restricting access to finance/banks for refugee-owned businesses?*

Refugees are not permitted to own companies and cannot obtain credit from financial institutions in Bangladesh.

c) Informal business activities: Are there legal frameworks in place that seek to regulate or formalize the informal economy or informal business activities?

Although registered refugees have been provided with training opportunities to start up small businesses in the camps, this training has offered limited prospects. Over the years, various UNHCR strategies have been adopted to promote self-reliance but they have never been effectively implemented.⁴²

In 2011, with the exception of rickshaw repair, income-generating activities within refugee camps were banned and the authorities closed the majority of small shops within the camps. These policies, combined with insufficient levels of assistance, have hindered refugees' abilities to develop economically.⁴³

1.3 CONCLUSION

As it stands, a lack of a refugee-related legal framework and inconsistent government policy present a major obstacle for the economic development and general wellbeing of refugees. The very status of refugees is unclear at present, making it impossible for them to set up or conduct business activities.

There have recently been attempts by legal professionals in Bangladesh to address this lack of framework. In September 2017, a Supreme Court lawyer filed a petition with the High Court seeking to formulate a specific law regarding refugees taking shelter in Bangladesh. However, actual benefits of these encouraging developments are yet to materialize.⁴⁴



2. ETHIOPIA

2.1 INTRODUCTION

Ethiopia is a signatory to the 1951 Refugee Convention, the 1967 Protocol Relating to the Status of Refugees, and the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, with reference to each of which Ethiopia's (now repealed) Refugees Proclamation No. 409/2004 (the "**2004 Refugees Proclamation**") was enacted.

Refugee numbers in Ethiopia have increased significantly in recent years, rising from 656,199 registered refugees and asylum-seekers as of 31 December 2014⁴⁵ to over 700,000 as of 30 September 2019⁴⁶, from countries including Eritrea, Somalia, South Sudan, Sudan and Yemen⁴⁷.

The Government of Ethiopia launched the Comprehensive Refugee Response Framework ("**CRRF**") on 28 November 2017⁴⁸ and, on 27 February 2019, Refugees Proclamation No. 1110/2019 (the "**2019 Refugees Proclamation**") came into effect, repealing the 2004 Refugees Proclamation and overhauling the Ethiopian legal regime around refugees and asylum seekers.

The development of the 2019 Refugees Proclamation was led by the Ethiopian Agency for Refugee and Returnee Affairs ("**ARRA**") with participation by the UNHCR and reflects the CRRF and Global Compact on Refugees' focus on enhancing refugee integration and self-reliance. For example, the 2019 Refugees Proclamation expressly sets out a number of rights for refugees in Ethiopia not previously found in the 2004 Refugees Proclamation, including the rights to engage, individually or in group, in agriculture, industry, small and micro enterprise, handicrafts and commerce, and to acquire movable or immovable property, in both cases in the same circumstances as the most favourable treatment accorded to foreign nationals pursuant to Ethiopian law.

2.2 REFUGEE LAW AND POLICIES

a) General Refugee Status

i. The Definition of "refugee" in Ethiopian law

The 2019 Refugees Proclamation recognizes as refugees

those persons fulfilling the criteria set out in its Article 5 or Article 21.

Article 5(1) of the 2019 Refugees Proclamation provides that any person shall be considered as a refugee where:

- owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion he is outside his country of nationality and is unable or, owing to such fear, is unwilling, to avail himself of the protection of that country;
- not having a nationality and being outside the country of his former habitual residence, he is unable, or owing to a well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group or political opinion, he is unwilling to return to it; or
- owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, he is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

Article 21(1) of the 2019 Refugees Proclamation provides that ARRA may declare as refugees any group of persons meeting the criteria set out in Article 5.

In each case, ARRA may cancel or revoke the refugee status of a person in specified circumstances, subject to giving such person prior written notification and an opportunity to explain the issue⁴⁹.

ii. Differentiation from other populations of non-citizens

The 2019 Refugees Proclamation recognises several specific rights in favour of refugees which are expressed to be granted to the same standard as those afforded to Ethiopian nationals, or to non-Ethiopian nationals (see the high-level summary of certain specific rights granted under the 2019 Refugees Proclamation at Schedule 1).

b) Enterprise Development

i. *Do refugees have the right to set up a business? Are there any restrictions placed on the sector, location, or size of business? (e.g. home based)*

✓ **Right to engage in agriculture, industry, small and micro enterprise, handicrafts and commerce**

Article 26(2) of the 2019 Refugees Proclamation provides that every recognized refugee shall have the right to engage, individually or in group, in agriculture, industry, small and micro enterprise, handicrafts and commerce, in the same circumstances as the most favourable treatment accorded to foreign nationals under Ethiopian law.

In addition, Article 26(4) of the 2019 Refugees Proclamation provides that refugees engaged in rural and urban projects jointly designed by the Ethiopian government and the international community to benefit refugees and Ethiopian nationals, including in environmental protection, industry and small and micro enterprises (the “**Projects**”), shall be given equal treatment as accorded to Ethiopian nationals engaged in the same Projects. Under Article 26(6), ARRA may issue a residence permit, subject to renewal every five years, to any refugee selected to engage in such Projects.

✓ **Requirements to set up a business**

The Investment Proclamation No. 280/2002 as amended by Proclamation No. 849/2014 (“**Investment Proclamation**”) requires foreign investors to obtain an investment permit from the Ethiopian Investment Commission before starting a business or acquiring an existing business in Ethiopia. A request for such approval shall be decided within 10 days of receipt of a complete application⁵⁰.

Certain sectors are reserved for the government, joint investment with the government or domestic investors, as set out in Schedule 2. Foreign investors and refugees are permitted to invest in areas other than these reserved sectors⁵¹.

To be permitted to invest pursuant to the Investment Proclamation, a foreign investor is subject to the following minimal investment capital requirements per enterprise:

a) other than in the case of c) below, if investing without a domestic investor, USD100,000;

b) other than in the case of c) below, if investing jointly with a domestic investor, USD60,000; and

if investing in an engineering, architectural, accounting and audit, project studies, business and management consultancy or publishing enterprise, USD50,000 if investing without, and USD25,000 if investing jointly with, a domestic investor⁵².

Therefore, current minimum investment capital requirements under the Investment Proclamation are relatively high compared to the expected means of refugees.

In addition to an investment permit, the Commercial Registration and Business Licensing Proclamation No. 686/2010 (the “**Commercial Registration Proclamation**”) requires an investor to obtain a business license in order to set up a business enterprise. For a foreign investor, the application will require the submission of their residence permit⁵³. The 2019 Refugees Proclamation provides that every recognized refugee has the right to remain in Ethiopia in accordance with the provisions of the Proclamation⁵⁴ and, as noted above, provides that ARRA may issue a residency permit to refugees selected to engage in the Projects, but does not otherwise specifically deal with residency permits for refugees outside of these circumstances. Implementing regulations to the 2019 Refugees Proclamation may, when published, set out the conditions under which residency permits may be extended to refugees.

✓ **Right to work**

Article 26(1) of the 2019 Refugees Proclamation provides that recognized refugees shall have the right to engage in wage-earning employment in the same circumstance as the most favourable treatment accorded to foreign nationals under Ethiopian law.

Under the Labour Proclamation No. 377/2003 (the “**Labour Proclamation**”), foreigners may only be employed where they possess a work permit issued by the Ministry of Labour and Social Affairs. A work permit shall be given for a specific type of work for three years and must be renewed every year. Where the Ministry of Labour and Social Affairs ascertains that a foreign worker is not required for the work, the work permit

may be cancelled⁵⁵. It has been suggested that, in practice, the Ministry of Labour and Social Affairs has not historically granted work permits to refugees⁵⁶ and it remains to be seen whether the coming into effect of the 2019 Refugees Proclamation may lead to refugees being granted a work permit.

The Government of Ethiopia has pledged to reserve 30% of jobs in new industrial parks to refugees⁵⁷.

ii. *What laws or policies are in place regarding export (e.g. rules of origin; export licenses) for refugee-owned businesses or sectors that refugees most likely work in? (e.g. artisanal)*

We did not find any export-related laws or policies applicable solely to refugees or foreign investors. Any investor which exports, or supplies to an exporter, at least 60% of their products or services shall be entitled to income tax exemption for two years⁵⁸.

iii. *Are refugees legally allowed to lease/own land? Other assets?*

Article 29(1) of the 2019 Refugees Proclamation provides that recognized refugees shall be entitled to the most favourable treatment accorded to foreign nationals as regards the acquisition of movable or immovable property, to leases and other contracts relating to property.

Under the Constitution of Ethiopia, only the Ethiopian state and Ethiopian nationals have the right to own freehold interests in rural and urban land and natural resources. Foreign investors may apply to the Ethiopian Investment Commission to acquire land on a leasehold or rental basis.

Article 29(2) of the 2019 Refugees Proclamation provides that recognized refugees shall be treated in the same circumstances as Ethiopian nationals as regards intellectual property rights.

iv. *Are there laws on forming joint ventures with refugee-owned companies?*

We did not find any laws specifically regulating joint ventures between local and refugee or foreign national-owned companies. Under the Investment Proclamation, minimum investment capital requirements for foreign investors are reduced where a foreign investor invests jointly with an Ethiopian national.

v. *Is legal residency or other identification required to set up or own a business?*

As noted above, the Commercial Registration Proclamation requires an investor to obtain a business license in order to set up a business enterprise. For a foreign investor, the application will require the submission of their residence permit⁵⁹. The implementing regulations to the 2019 Refugees Proclamation may, when published, set out the conditions under which residency permits may be extended to refugees.

vi. *Are there any laws restricting access to finance/banks for refugee-owned businesses?*

Article 33 of the 2019 Refugees Proclamation provides that every recognized refugee has the right to open a personal bank account, deposit, transfer or withdraw money and obtain other banking services, using identification documents issued by ARRA.

c) Informal business activities: Are there legal frameworks in place that seek to regulate or formalize the informal economy or informal business activities?

Apart from the 2019 Refugees Proclamation, we did not find any laws specifically seeking to regulate or formalise the informal economy or informal business activities.

2.3 CONCLUSION

The 2019 Refugees Proclamation represents a significant broadening of the specific statutory rights granted to recognized refugees under Ethiopian law. In particular (in the context of the focus of this report), the 2019 Refugees Proclamation expressly sets out a right for recognized refugees to engage, individually or in group, in agriculture, industry, small and micro enterprise, handicrafts and commerce, in the same circumstances as the most favourable treatment accorded to foreign nationals. The enforcement and application in practice of the 2019 Refugees Proclamation remains to be tested, with practical details expected to be clarified in the implementing regulations to the 2019 Refugees Proclamation, when published. Existing minimum investment capital requirements applicable to foreign investors may also pose a challenge to refugees seeking to establish their own enterprise. It remains also to be seen whether the pledge by the Government of Ethiopia to reserve 30% of jobs in new industrial parks for refugees will also lead to opportunities for refugees to set up a business in these industrial parks.



3. JORDAN

3.1 INTRODUCTION

The UNHCR estimates that Jordan has the second highest share of refugees relative to its population in the world. As of June 2018, an estimated 89 refugees per 1,000 inhabitants were thought to be living in Jordan, 126,131 of whom were living in refugee camps and around 50,000 refugees are believed to have active work permits from the Government of Jordan.⁶⁰

As a country, beyond not having ratified the 1951 Convention, Jordan generally lacks refugee legislation and policy that concretely outlines the rights of refugees to work. While Jordan has signed a Memorandum of Understanding with the UNHCR and has furthermore entered into an international agreement known as the “Jordan Compact”⁶¹ to further refugees’ rights to work, the former does not impose a legal obligation on the Jordanian Government and the latter has had limited impact to date.

Although various attempts have been made throughout Jordanian legislation and policy to enhance refugees’ access and rights to work, there is significant divergence between policy and practice and frequently the various requirements imposed present insurmountable obstacles for refugees seeking to formally exercise their right to work.

3.2 REFUGEE LAW AND POLICIES

a) General Refugee Status

As Jordan has not ratified the 1951 Convention, nor the 1967 Protocol, local laws and requirements are needed to regulate the status of refugees. However, it should be noted that it is generally recognized that the principle of non-refoulement has become part of customary international law and would thus apply, even where a country has not ratified the Convention.⁶² In line with this, Article 21 of Jordan’s Constitution prohibits the extradition of political refugees.⁶³

Nonetheless Jordan still lacks domestic refugee legislation and policy which outlines concrete measures and provisions for planning, rights and protections for its refugee population. Additionally, labour law doesn’t

provide rights to refugees who do not hold a work permit, and the national legislation doesn’t define a clear process for obtaining work permits.

In 1998, Jordan signed a memorandum of understanding (“MoU”) with the UNHCR to enhance cooperation on refugees. Article 5 of the MoU states that “[a]sylum should be humanitarian and peaceful and therefore the two parties have agreed that asylum seekers and refugees should receive a treatment as per the international accepted standards”.⁶⁴ However, it should be noted that while the MoU provides parameters for cooperation between the UNHCR and the government of Jordan it is not legally binding.⁶⁵ According to the MoU, the UNHCR has 90 days to determine the refugee status of asylum seekers in Jordan.⁶⁶ Such individuals may remain in Jordan pending status determination, and UNHCR-recognized refugees can remain one year after recognition, during which the UNHCR needs to identify resettlement countries for them.⁶⁷ Jordan does not enforce this provision, and in practice, refugees need to obtain an annual residence permit, which can be obtained upon proof of a secure and legal source of income, or a work permit based on an employment contract certified by the Ministry of Labour. Students admitted to educational institutions or disabled persons or minor children whose only provider legally resides in Jordan are also entitled to residence permits.⁶⁸

Refugees are required to register with the Ministry of the Interior to be issued with a biometric service card. Refugees can also register with the UNHCR.

In summary:

- Jordanian law does possess important prohibitions on ‘refoulement’ in accordance with customary international law, found in its 1952 Constitution.
- Additionally, the 1973 Residency and Foreigners’ Affairs Law, which controls the entry and residence of foreigners in Jordan, also allows exemptions from provisions for special circumstances, including for those who are seeking asylum. Therefore, while Article 18 thereof states that any foreigner is required to obtain a residence permit if they seek to stay or are staying within the country, refugees

may be exempt from such a requirement. Article 30 furthermore creates an exemption from the requirement for Arab nationals.⁶⁹

- The only refugee-specific directive in Jordan is a 1998 MoU between the UNHCR and Jordan, which gives the UNHCR the right to determine the refugee status of asylum seekers in Jordan.
- Based on the 1951 Refugee Convention and its Protocol, the MoU removes any geographic or time limitation and respects the concept of 'non-refoulement'. It also notes religious rights and the freedom to access courts and legal assistance.⁷⁰ Originally designed to cope with Iraqis settling in and transiting through Jordan due to repression and violence at home, the MoU was renewed in 2003 and in 2014.⁷¹

b) Enterprise Development

- Do refugees have the right to set up a business? Are there any restrictions placed on the sector, location, or size of business? (e.g. home based)*

✓ **General restrictions on refugees' right to work**

The range of Jordanian legislation lacks clear guidance on the rights of refugees to work on their own account. A survey of the various pieces of legislation does however give some insight into potential sources of such rights for refugees.

At the most general level, Article 23 of the 1954 Constitution of Jordan reserves the right to work to Jordanian citizens. While the Labour Law No. 8 of 1996 (the "Labour Law") defines the rights and responsibilities for most workers, no reference is made therein specifically to 'refugees'. Reference is however made to non-Jordanian workers. Such foreign workers will be required to obtain approval from the Ministry of Labour, although per article 12(A) of the Labour Law priority will be accorded to Arab workers with particular expertise and skills.⁷²

Moreover, under the 1973 Residency and Foreigners' Affairs Law, foreign entrepreneurs may obtain residence permits if their presence in Jordan is for investment in commercial or industrial ventures. The mechanics of this are further set out in the 1995 Investment Law No. 16 and its 2000 amendments.⁷³

Under Articles 8 and 9 of the MoU, refugees can work on their own account, if permitted under Jordanian law. Furthermore, if degrees are held that are recognised by the authorities, certain liberal professions may be practised.⁷⁴ While there is no list of such 'certain' professions, the Closed Professions List published by the Ministry provides some guidance.⁷⁵ Hereunder several professions continue to be closed to foreign or migrant workers, such as in the educational, medical and business management sectors.⁷⁶

More recently, the Jordan Compact has sought to improve the lives of refugees in Jordan by opening up the labour market. Under the Jordan Compact, the Jordanian government has committed to create over 200,000 job opportunities for refugees from Syria. Yet, it should be noted that the success and hence impact thereof has been limited.⁷⁷

✓ **Restrictions on setting up businesses**

While it may therefore be possible in theory for refugees to set up their own business, significant obstacles in the form of sectoral restrictions and registration conditions make this difficult in practice.

Within refugee settlements, such as the Zaatari camp, the Jordan Compact has sought to remove some of the restrictions which prohibit small economic activities. The general policy of the government of Jordan inside refugee camps is, as of 2018, that small refugee-owned businesses are only allowed to market their products inside the camp.⁷⁸ Outside of such camps, refugee-owned businesses are required to have a Jordanian partner in many sectors.⁷⁹ Nevertheless, beyond this, there is a general lack of a "specific, easy to understand and streamlined regulatory framework for registering" such businesses.⁸⁰

As aforementioned, Jordanian law closes off various sectors and activities to non-Jordanians. While the recent Foreign Investment Regulation No.77 of 2016 (the "2016 Regulations"), has removed some of the previously prohibited sectors, some continue to be restricted, such as the production of material for construction purposes, as well as crafts and handicrafts (Article 6). Article 3 thereof states a "non-Jordanian investor may own any project in any economic activity in whole or in any part thereof or contribute to it in any proportion".⁸¹

THE JORDAN COMPACT

The so-called Jordan Compact, is an international agreement reached at the Syria conference in London in February 2016, between the Jordanian government, the World Bank and the EU. This pledged \$12 billion to aid Syrian nationals in Jordan. The money aimed to support infrastructure projects and grant an exemption from certain EU rules of origin, in return for a pledge by the Jordanian government to generate 200,000 employment opportunities for Syrians in Jordan. Around a quarter of these jobs were to be created in sectors such as agriculture and construction, the rest in the so-called 'Special Economic Zones' in Jordan.

Depending on the nature of the business, registration is required with the Ministry of Industry and Trade and Supply or the Companies Control Department. Per the Ministry of Industry and Trade and Supply's website, in order to, for example, register a corporate entity known as an 'individual establishment', non-Jordanians are required to provide an official ID card or a passport, a copy of a certified rent contract or an ownership deed for the relevant trade outlet (in case of ownership) and have a minimum capital of JD 1,000.⁸² The 2016 Regulations furthermore removed the minimum share capital requirement of JD 50,000 previously in place.⁸³ At a general level, business registration therefore requires some proof of bank collateral, residency and security clearance.⁸⁴

✓ **Home-based businesses**

Due to their relatively low upfront cost, home-based businesses are often an attractive solution for refugees wishing to set up a business.⁸⁵ In 2015, the United States Agency for International Development estimated that approximately a fifth of unregistered businesses in Jordan were home-based businesses. Yet, until recently home-based businesses could not be registered in any municipalities, apart from the Greater Amman Municipality.⁸⁶

However, under the Home-Based Business Regulations implemented in 2017 such registration is now possible, and these regulations seek the formalization of many previously unregistered businesses.⁸⁷

Nevertheless, various obstacles remain. Individuals are required to not only register the business as a formal business entity, but further obtain a vocational license from the local municipality and at times need to obtain approvals from various entities, depending on the type

of business. Further restrictions include: the obligation to only practice the relevant business authorised under the vocational license, percentage ceilings on the amount of space in the home which can be used for the business, and a prohibition on using external facilities for the business, such as garages or shared spaces.⁸⁸

The UNHCR has noted that this is a legal framework which refugees are largely not capable of complying with, as in practice the government continues to prohibit the registration of many businesses based on fears of security and competition. Additionally, businesses that were previously run as part of the informal economy (and thus protected by a legal grey area), are now deemed illegal in light of the regulations and have therefore become a government target. Such individuals may be subject to heavy fines or arrest.⁸⁹

Furthermore, obtaining a vocational license requires consent from the relevant homeowner and landlords have often been found to impose ad-hoc restrictions on their tenants.⁹⁰

However, a Cabinet decision in November 2018 to some extent clarified the position for Syrian refugees, splitting refugees' business rights according to the relevant business' location. Inside of camps, Syrian refugees may now operate home-based businesses in all sectors, including those traditionally closed to non-Jordanians. Outside of camps, Syrian owned home-based businesses are only permitted in the food processing, handicraft and tailoring sectors. Moreover, in these sectors no Jordanian partner will be required, both inside and outside of camps.⁹¹ While this sheds some light on the rights of Syrian refugees to set up businesses, guidance is still sparse on other nationalities. Furthermore, whether this decision will be of significance in practice remains to be seen.



Reuters/Muhammad Hamed

ii. *What laws or policies are in place regarding export (e.g. rules of origin; export licenses) for refugee-owned businesses or sectors that refugees most likely work in? (e.g. artisanal)*

Under the Jordan Compact, Jordanian factories can qualify to export to the EU tariff-free by meeting a Syrian worker quota of 15% on a single production line, a percentage that will increase to 25% in 2019.⁹² However, this only applies to companies within special economic zones, as well as a set group of 52 product groups, such as minerals, furniture and toys. Cottons, carpets, and fabrics are not included.⁹³⁻⁹⁴ Unfortunately, only very few businesses have taken advantage of this.⁹⁵

At a general level, the Jordanian Customs Law of 1998, as amended in 2012, applies to businesses in Jordan and regulates the customs procedures operating in Jordan. According to a World Trade Organisation (“WTO”) report from 2015, various steps must be taken for permission to import or export to be given to a business. Companies are required to register as exporters with the Ministry of Industry, Trade and Supply and obtain a certificate of registration. For such registration to occur, the individuals of the relevant business are required to become members of the Chamber of Commerce or the Chamber of Industry, as well as having had its premises inspected and approved by the relevant municipality. For

each relevant export, bills of lading, certificates of origin, commercial invoices, custom export declarations and a packing lists are required.

Beyond this, export fees apply on a range of products, such as agricultural products. Formally, no product is prohibited from exportation, other than if it would be in contravention of international obligations. No export quotas apply.⁹⁶

iii. *Are refugees legally allowed to lease/own land? Other assets?*

The 2015 WTO trade policy review for Jordan explains that, formally, foreigners are only allowed to own land in Jordan so long as such ownership is related to a business activity. If such land is situated in a so called ‘free zone’ (such as Zarqa, Sahab near Amman, Queen Alia International Airport, Al-Karak, Mouqar, and Al-Karama) foreigners may only lease land.⁹⁷

Conversely, a more recent report by the UNHCR, Sida and Foundation Grameen (2018) argues that refugees are not able to register land ownership, unless such registration is done using a ‘Jordanian front’ i.e. in the name of a Jordanian national.⁹⁸ Refugees can rent property even outside of refugee camps, although rent levels are generally very high relative to their earning potential.⁹⁹

iv. *Are there laws on forming joint ventures with refugee-owned companies?*

As aforementioned, refugee-owned businesses outside of refugee camps formally require a Jordanian business partner, thereby imposing a joint venture requirement.¹⁰⁰

The Companies Law of 1997, under Articles 49 and 50 creates the general concept of Joint Ventures in Jordanian Law. There at present are no specific laws on refugee-owned companies forming joint ventures.

v. *Is legal residency or other identification required to set up or own a business?*

In order to register a business, all refugees, like all foreigners, must register as an investor and demonstrate residency. Residency can be demonstrated by way of passport stamps and residency cards.¹⁰¹

vi. *Are there any laws restricting access to finance/banks for refugee-owned businesses?*

“67% of people in Jordan above the age of 15 years do not have access to the formal financial system in terms of account ownership; 38.0% of adults are excluded from any formal financial services and 24.8% of adults are completely excluded from any formal and informal financial services.”¹⁰²

The main obstacle to refugees obtaining financing are the identification requirements. While the Ministry of the Interior service cards give individuals access to a mobile wallet account, a passport is needed to open an actual account. As no refugees have a national Jordanian ID card, they will, as all foreigners do, need a passport. Depending on the circumstances, additional proof of employment and a minimum deposit may be required. However, even if these requirements are met, the account may be limited to ‘cash-in and cash-out’.¹⁰³

However, under Jordan’s National Financial Inclusion Strategy 2018-2020 the Jordanian government is seeking to increase financial inclusion for various groups, such as refugees.¹⁰⁴ Some progress has been seen recently, with the growing appearance of mobile money wallets, but the microfinance sector is relatively young and the ceilings for amounts transferrable and deposit amounts continue to be relatively low.¹⁰⁵

The 2018 Cabinet decision suggests that Syrian refugees will be able to obtain some financial support from non-governmental organisations for their home-based businesses under the umbrella of the so called ‘Jordan Response Plan’. Yet, this is caveated by a requirement

for at least 70% of such support to benefit Jordanian nationals.¹⁰⁶

c) **Informal business activities: Are there legal frameworks in place that seek to regulate or formalize the informal economy or informal business activities?**

It is estimated that the informal job market involves as much as half of Jordan’s labour force.¹⁰⁷ The previously discussed 2017 regulations around home-based businesses are an example of governmental attempts to formalise the informal economy. Furthermore, the World Bank’s Program For Results has set a target to formalise 950 home-based businesses by the end of 2019.¹⁰⁸

Furthermore, under the ambit of the Jordan Compact, the Jordanian government promised to support Syrian refugees “to formalize their existing businesses and to set up new, tax-generating businesses, including access to investor residencies, in accordance with the existing laws and regulations”.¹⁰⁹

Nevertheless, despite the Jordan Compact having to some extent encouraged the implementation of a legal framework for small to medium-sized enterprises, such rules have been found to not be uniformly applied.¹¹⁰ Frequently government policy in practice diverges from the legal position. Results so far have therefore been said to be ‘discouraging’.¹¹¹ Beyond this, there is a recognition that formalisation of industries which have long operated informally is difficult, as there is a lack of incentive for the main actors. Main actors, such as employers have little motivation to support formalisation, a transformation which would require them to pay for social security and work permits for their employees.¹¹²

3.3 CONCLUSION

Jordan continues to see a high influx of refugees and this is likely to continue in the years to come. Nevertheless, despite the signing of the Jordan Compact, much work remains to be done to ensure that the rights and inclusivity it promises take effect in practice. Organisations such as the UNHCR continue to coordinate the refugee response with the Jordanian government and it is to be hoped that initiatives such as the Jordan Response Plan will affect further positive change in refugees’ rights in the months and years to come.



4. KENYA

4.1 INTRODUCTION

According to UNHCR data, Kenya is now the second largest refugee-hosting country in Africa.¹¹³ Refugees fleeing the conflict in South Sudan arrive in Kakuma in northeastern Kenya, the site of one of the two large refugee camps in Kenya. The other major refugee camp in Kenya is in Dadaab, Garissa County and is among the largest refugee camps in the world. It is located at the Somali border and hosts mainly Somali refugees

While refugees in Kenya generally have the right to work and to run businesses¹¹⁴ most sources we have found suggest that these rights are in practice difficult to exercise.

Although a refugee may apply for a class M work permit which entitles him to take up employment or engage in a specific occupation, trade, business or profession in accordance with the provisions of the Kenya Citizenship and Immigration Act, 2011, such permits are rarely issued.

Secondly, refugee businesses are run informally due to the difficulty with obtaining the relevant business permits. In 2018, the Refugee Consortium of Kenya (RCK) reported that a number of refugee-owned businesses are not registered and do not have the personal identification number (PIN) issued by the Kenya Revenue Authority (KRA).¹¹⁵ According to RCK, there are also administrative challenges which face refugees seeking employment in Kenya.¹¹⁶ Firstly, only refugees that are duly recognized as refugees can work in Kenya. The processing of asylum seeker claims takes an average of three (3) years meaning that such persons are excluded from the labour market during that period. Secondly, work permits applications are processed by the Department of Immigration Services and not the Refugee Affairs Secretariat which reviews asylum claims. In some cases, immigration officials have unfairly and wrongly denied refugees work permits for lack of meeting the qualifications required.

There are cases where some refugee businesses established within the refugee camps have obtained authorization to trade with locals. According to UNHCR, access to capital is another problem facing refugee business owners. Due to the limited financial support from

banks, refugee business owners are relying on funding from Village Loans and Savings Associations (VSLAs) within the refugee camps.¹¹⁷

The “encampment policy” is another obstacle to refugees seeking to set-up businesses or employment. Under this policy, refugees are prohibited from moving freely within Kenya since they are required to remain in their designated refugee camps. Specific authorization is required to travel outside the camp. This is inconsistent with the right to freedom of movement within contracting States provided for under the 1951 Convention.

4.2 REFUGEE LAW AND POLICIES

a) General Refugee Status

Refugees face a very different regulatory environment from host country nationals. Their right to work (including self-employed work) and mobility is restricted. In recent years, Kenya has enacted a strict encampment policy, allowing refugees only to leave refugee camps with an individual movement pass.

i. The Definition of “refugee” in Kenyan law

Kenya recognizes two classes of refugees, namely *prima facie* refugees and statutory refugees.¹¹⁸ According to the Refugee Act, 2006 (the Refugees Act), statutory refugees are persons who, owing to a “well-founded fear of being persecuted for reasons of race, religion, sex, nationality, membership of a particular social group or political opinion”, are outside the country of their nationality (or not having a nationality, outside the country of their former habitual residence), and unable to or owing to such fear, unwilling to avail himself the protection of that country.

Prima facie refugees, on the other hand, are persons who owing to external aggression, occupation, foreign domination or events seriously disturbing public order in any part or the whole of his country of original or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. This is, for example, the case for persons fleeing from civil war in their country.

Pursuant to Regulation 22 of the Refugees (Reception, Registration and Adjudication) Regulations, 2009, asylum seekers bear the burden of proof to establish that they are indeed refugees as defined in the Refugees Act (including evidence that they reasonably fear to be persecuted). In the absence of documentary evidence, the testimony of an asylum seeker and the conditions in the country of origin may suffice to establish such refugee status.

The Cabinet Secretary for the Ministry of Interior and Coordination of the National Government has the discretion to declare classes of persons as *prima facie* refugees, but may also revoke such declaration, Sec. 3 para. 3 of the Act.

In June 2017, the National Assembly of Kenya passed the Refugee Bill 2016 (the Refugee Bill) which was intended to be a replacement of the Refugees Act. However, the Refugee Bill did not receive Presidential assent and was sent back to Parliament by the President to ensure public participation in the review of the Bill in accordance with the Constitution. The Refugee Bill, if passed, will domesticate Kenya's international obligations as regards to the rights and protection of refugees and asylum

seekers and provide refugees with essential rights as regards their right to work and self-employment. For example: persons granted refugee status and holding a valid identity card are to be allowed to engage in gainful or wage-earning employment; refugees residing in a designated refugee settlement or a refugee area will have free access to use the land for the purposes of cultivation or pasturing but they shall not have the right to sell, lease or alienate the land; and refugees residing outside designated refugee camps as tenants may legally acquire or dispose of their occupancy or leasehold interests in land. As at March 2019, the Refugee Bill has not yet been passed into law and is subject to review.

ii. Differentiation from other populations of non-citizens

With respect to the differentiation from other populations of non-citizens, Section 16 para. 4 of the Refugees Act provides as follows:

"Subject to this Act, every refugee and member of his family in Kenya shall, in respect of wage-earning employment, be subject to the same restrictions as are imposed on persons who are not citizens of Kenya."



Reuters/Thomas Mukoya

However, given the strict movement restrictions placed on refugees and asylum seekers by Kenya's encampment policy (see below) this provision means that in practice, refugees are not able to seek wage-earning employment under the same conditions as other aliens.

iii. Encampment policy

After several terrorist attacks, the Kenyan Government started to implement encampment policies, requiring refugees and asylum seekers in cities to relocate to refugee camps. The Refugees Act itself initially did not define an encampment policy but authorized the Minister (now the Cabinet Secretary) to designate places and areas in Kenya as refugee camps (Sec. 16 (2) of the Refugees Act).

In December 2012, the Kenyan government announced an encampment policy directing all asylum seekers and refugees in urban areas to relocate to refugee camps (i.e. to Dadaab with respect to Somali nationals and Kakuma with respect to nationals from other countries) with the plan to repatriate them to their home countries.

The policy was challenged by human rights groups in the High Court of Kenya in Nairobi (the High Court)¹¹⁹. The Court quashed the policy contained in various press releases and Government correspondences on the grounds that the policy threatened the rights and fundamental freedoms of refugees residing in urban areas as enshrined in the Constitution and the non-refoulement principle provided for in the Refugees Act.¹²⁰

A new directive was issued in 2014, ordering urban refugees again to go to and remain in selected camps. This time, the directive was upheld by the High Court.¹²¹

In the wake of more terrorist attacks at the end of 2014, Kenya passed the Security Laws (Amendment) Act, No. 19 of 2014 (the SLAA), which, *inter alia*, amended various sections of the Refugees Act in order to make permanent the encampment policy.¹²²

Section 48 of the SLAA provided that the Refugees Act was amended by inserting section 16A which capped the number of refugees and asylum seekers permitted to stay in Kenya to 150,000. The introduction of section 48, *inter alia*, was challenged in the Constitution and Human Rights Division of the High Court of Kenya in *Petition No. 628 of 2014 consolidated with Petition No. 630 of 2014 and Petition No. 12 of 2015, Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya & 10; others [2015] eKLR*. The High Court held that section 48

to be unconstitutional for violating the principle of non-refoulement as recognized under the 1951 Convention.¹²³

The other sections of the SLAA which introduced amendments to the Refugees Act were not subject to challenge in the afore-mentioned case and therefore were maintained. Amended Section 12 para. 3 of the Refugees Act (rev. 2014) provides as follows:

"Every person who has applied for recognition of his status as a refugee and every member of his family shall remain in the designated refugee camp until the processing of their status is concluded."

Amended Section 14 lit. c of the amended Refugees Act, entitled "Residence in Kenya" stipulates that "[e]very refugee and asylum seeker" shall "not leave the designated refugee camp without the permission of the Refugee Camp Officer".

Section 12 para. 3 of the amended Refugees Act provides that *applicants* for refugee status, and members of their family, shall remain in the refugee camp ("until the processing of their status is concluded"). On the other hand, Section 14 of the Refugees Act requires both asylum seekers (i.e. persons not yet recognized as refugees) as well as recognized refugees to obtain permission before leaving the refugee camps. This suggests that the movement of both applicants/asylum seekers and recognized refugees is generally restricted to designated refugee camps. In practice, recognized refugees require authorization and do not enjoy the freedom of movement in Kenya.

While revised Section 14 lit. c of the revised Refugees Act provides for the possibility of obtaining a permission to leave the designated refugee camps, in practice, there seem to be significant obstacles to receiving such a movement pass. A study published in November 2018 by the International Rescue Committee on Somali refugees in Kenya found the following:

"Several refugees told researchers that the issuance of movement passes is riddled with corruption, which only intensified with the introduction of the [2014] security laws. Several youths interviewed for this research reported having paid bribes to obtain movement passes. Refugees obtaining a pass are not guaranteed safe passage with refugees reporting repeated harassment and extortion at the numerous security checkpoints along the roads from the refugee camps to the cities."¹²⁴

The issuance of a movement pass to leave a designated area is generally discretionary power of a Refugee Camp Officer. Regulation 35 of the Refugees (Reception, Registration and Adjudication) Regulations, 2009 provides that the movement pass should be issued if the refugee or asylum seeker has valid reasons but does not elaborate what constitutes valid reasons. There is a requirement that reasons should be provided in the case of a refusal to issue a movement pass. It is unclear what factors that a Refugee Camp Officer considers in determining whether to issue a movement pass as this is not prescribed in law and is handled on a case-by-case basis.

b) Enterprise Development

- i. *Do refugees have the right to set up a business? Are there any restrictions placed on the sector, location, or size of business? (e.g. home based)*

Refugees in Kenya generally have the right to seek employment or income-generating activities and to set up a business. However, due to several administrative restrictions – in particular the encampment policy – this is practically very hard to do outside the designated refugee camps.

In order to set up a business, refugees need, first, a Class M permit.¹²⁵ A refugee can apply for a Class M permit once he/she has been granted refugee status in Kenya. This is a work permit that covers the engagement in “a specific occupation, trade, business or profession”, see Sec. 41 para. 2 of the Kenya Citizenship and Immigration Act.¹²⁶ In other words, a Class M permit is required for employment (i.e. paid work for an individual, a company or an organization), but also setting up one’s own business.

Some of the requirements for obtaining a Class M permit are, in theory, straightforward: a refugee must fill in and sign an application form (online), provide two copies of a valid national passport, have a recommendation letter from the Refugee Affairs Secretariat and copies of signed cover letter from the employer/self/organization addressed to the Director of Immigration Services. Until a few years ago, obtaining a Class M permit required payment of a fee in the amount of ca. US\$ 700, but the Government of Kenya abolished this requirement a few years ago.¹²⁷

There are several challenges to obtaining a Class M work permit. This includes the fact that refugees may not have at their disposal the required documentation, such as the cover letter from an employer or organization or documents to show their plan to start their own

business. Given the encampment policy, refugees generally cannot leave the refugee camps in order to seek employment, receive an offer of employment or start their own business outside the camp unless they hold a movement pass.

Moreover, the Department of Immigration Services requires a “Recommendation letter from the Refugee Affairs Secretariat”.¹²⁸

It is unclear under what conditions the Refugee Affairs Secretariat considers before issuing a recommendation letter. The sources we have come across suggest that this is not a protracted process as the Secretariat would have already assessed the veracity of an applicant’s asylum seeker’s claims and the only requirement for a work permit is that a person be a recognized refugee. In fact, according to the RCK, the Secretariat should take over the process of issuance of work permits as the permits can be issued immediately as the Secretariat recognizes an asylum seeker as a refugee under Kenyan law.¹²⁹

Thus, while the law seems to generally grant refugees with a formal refugee status a right to set up a business, critics have in the past observed that the government has issued Class M permits to asylum seekers or refugees only in a few isolated cases.¹³⁰ This situation does not seem to have improved since: In the above-referenced study on Somali refugees in Kenya, the International Rescue Committee came to the following conclusions with respect to Class M work permits:

“None of the respondents in this study knew of any Somali refugee who had obtained a work permit. Although procedures for application of a Class M work permit are clearly detailed on the government website, in practice refugees find the application process opaque and difficult to navigate. According to one young Somali college graduate in Hagadera, ‘You know you can apply, but you also know you can’t get it.’”¹³¹

The Class M permit authorizes refugees to set up a business from an immigration law perspective. It does not replace business permits and licenses required to operate the business including the permit issued by the County governments. In other words: the Class M permit only authorizes refugees as foreigners to set up a business.

At the same time, Class M permit holders must apply for all relevant business permits for the type of business they will operate. If feasible, it might be easier to work



Reuters/Thomas Mukoya

with Kenyan partners who might – from a practical perspective – get business licenses easier including the KRA tax pin required to open a business bank account and to pay taxes on behalf of the business.¹³²

However, it has been reported that refugees are indeed able to get business licenses, depending on the respective county government. This seems in conflict with the previous assessment that it is difficult to obtain a work permit.¹³³ However, unlike the work permit, the provision of business licenses falls under the authority of the respective county government. Fees for business licenses are part of a county government’s revenue.¹³⁴

As mentioned earlier, the Kenyan encampment policy is a significant obstacle. Refugees may leave the camp, e.g. to run a business, if they hold a movement pass and Class M permit. Obtaining a movement pass requires a valid reason as stated above.

The High Court at Nairobi held that having business interests is legitimate ground upon which the competent authority “may issue a movement permit”.¹³⁵ This judgment does not significantly strengthen the rights of refugees: first, it is discretionary, meaning that the authority may, but does not have to issue the movement pass. Second, the judgment dealt with a situation where the applicants already had set up a business and where the encampment policy would disrupt an (existing) business. It is not clear to what extent a refugee’s intent to set up a new business would be a valid reason.

It is therefore unclear to what extent such permits are actually granted or what exactly a refugee must do to prove his/her business interest.

- ii. *What laws or policies are in place regarding export (e.g. rules of origin; export licenses) for refugee-owned businesses or sectors that refugees most likely work in? (e.g. artisanal)*

We have not found any laws that apply specifically to the export of goods by refugee-owned businesses. Refugees are subject to the same export control rules and regulations that apply to Kenyan citizens/businesses

One of the most important sectors of the Kenyan economy is the agricultural sector, which seems to be a sector where refugees are likely to work in. There are comprehensive regulations governing the export of agricultural products, such as vegetables, fruits and cut flower products. The Agriculture and Food Authority (AFA) Horticultural Crops Directorate regulates the export of fresh fruits and vegetables. There are comprehensive rules and regulations on export clearance, certificate of origins, and other required permits for various agricultural products. The details of these rules and regulations are available on the Kenyan Government's website.¹³⁶ A detailed discussion of these requirements goes beyond the scope of this memorandum, in particular because none of these rules and regulations seem to apply specifically to refugees but are part of Kenya's general export control law.

iii. Are refugees legally allowed to lease/own land? Other assets?

While we have not found provisions specifically prohibiting refugee land ownership, the Refugee Bill was meant to explicitly allow refugees to use land for business purposes and farming. As stated above, the Kenyan parliament approved the legislative bill in 2017, but it was subsequently vetoed by Kenya's President.¹³⁷ The fact that the law was considered necessary by the Kenyan legislator suggests that there is a need to increase the ease of refugees' ability to own/lease land. Currently, the laws that apply to land ownership and use by foreigners apply to refugees.

iv. Are there laws on forming joint ventures with refugee-owned companies?

We did not find any laws specifically regulating joint ventures between local and refugee-owned companies. To the contrary, one source suggested that it might even be easier for refugees to cooperate with Kenyan business partners who – from a practical perspective – get the required business licenses more easily.¹³⁸

v. Is legal residency or other identification required to set up or own a business?

Besides the required business permits and licenses required to operate businesses, refugees may set up or own a business if they hold a Class M permit. A

requirement to obtain such a permit is that an applicant has been granted refugee status and granted a refugee certificate (see above).

vi. Are there any laws restricting access to finance/banks for refugee-owned businesses?

We did not find any laws specifically restricting access to finance/banks for refugees-owned businesses. Some sources suggest that obtaining financing for businesses is problematic for refugees. In the Kakuma refugee camp a bank named "Equity bank" appears to allow refugees to open bank accounts and cooperates with NGOs and UN agencies to provide loans to refugees.¹³⁹

However, refugees may have difficulties in accessing some financial institutions which require documents such as a passport or a Kenyan national identity card and a KRA PIN certificate as part of the KYC requirements before opening a bank account. These documents may not be readily available to refugees and asylum seekers and as such, this may be an impediment to accessing financial services.

c) Informal business activities: Are there legal frameworks in place that seek to regulate or formalize the informal economy or informal business activities?

Kenyan authorities used to allow refugees and asylum seekers to live in urban areas and, in 2011, the government started to register refugees in urban centers and to issue refugee certificates.¹⁴⁰ As set forth above, a recent effort to expand the rights of refugees by the Kenyan parliament failed after it was vetoed by the Kenyan President.

4.3 CONCLUSION

As it stands, the Kenyan government's encampment policy presents the biggest obstacle to setting up or conducting business for refugees in Kenya. Apart from the encampment policy it is unclear to what extent refugees are actually able to obtain the relevant permits (Class M permit and business licenses) required to set up a business, or if these possibilities exist only in theory for most refugees, but not in practice.



5. LEBANON

5.1 INTRODUCTION

Lebanon's refugee population is mainly constituted of Syrian and Palestinian nationals. In 2018, the Government of Lebanon estimated that Lebanon hosts over 1.5 million refugees: 1.07 million of which are Syrian refugees who have fled the conflict in their home country; 42,000 Palestinian refugees from Syria; 35,000 Lebanese returnees; and a pre-existing population of more than 450,000 Palestine refugees in Lebanon.¹⁴¹

Syrian and Palestinian refugees in Lebanon, live in precarious socio-economic conditions and are limited in their livelihood resources. Half of the working age refugees are economically active but have high unemployment levels – especially women. About 92 percent of economically active Syrians are mainly engaged in low-skilled work, informally, without contracts, “in agriculture or personal and domestic services and, on a smaller scale, in construction”.¹⁴²

From a legislative perspective, although Lebanon is dealing with a large influx of refugees, its legal framework in relation to the refugees' situation reveals a long-standing ambiguous approach. To start with, Lebanon does not have any specific laws that govern the refugees' status or their rights in Lebanon. In the absence of a clear legal framework, numerous stakeholders, including the refugees themselves, lawyers, or even policy makers find it difficult to cope with the legislative framework in Lebanon.

Lebanon is not a party to the 1951 Convention or to its 1967 Protocol.

However, by way of customary international law, Lebanon is bound by general principles of refugee protection such as the principle of *non-refoulement*. The principle of *non-refoulement* is generally considered as the cornerstone of international refugee law. It prohibits refugees from being returned or expelled to places where their lives or freedoms could be threatened.

In addition, Lebanon has ratified the major international human rights instruments, including the Universal Declaration of Human Rights which is embedded in the Preamble of the Lebanese Constitution of 1926 (as amended in 1990) (the “Preamble”). The Preamble

explicitly states that “Lebanon is [...] a founding and active member of the United Nations Organisation and abides by its covenants and by the Universal Declaration of Human Rights”. It moreover asserts that “the Government shall embody these principles in all fields and areas without exception.” Article 14 of the Universal Declaration of Human Rights is of particular interest as it deals with the right to seek asylum.

5.2 REFUGEE LAW AND POLICIES

a) General Refugee Status

From a domestic law perspective, Lebanon does not have any specific legislation relating to refugee status. Immigration laws, which monitor entry and exit, deal with asylum issues and include a reference to refugees. In particular, the 1962 Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country (“Law of Entry and Exit”) sets out six articles relating to asylum. Article 26 states that “[E]very foreigner who is persecuted or sentenced for a political crime outside Lebanon, or whose life or liberty is threatened on account of political activity, may apply for asylum in Lebanon.” Article 31 of the Law of Entry and Exit also provides for the *non-refoulement* of a former political refugee.

On the ground, the UNHCR plays an important role in relation to the determination of refugee status. Generally, UNHCR deals with all refugee-related issues except the ones pertaining to Palestinian refugees who are under the jurisdiction of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (“UNRWA”). More specifically, the role of the UNHCR is to conduct registration, documentation and Refugee Status Determination (“RSD”), and to provide assistance and seek durable solutions for all non-Palestinian refugees.

i. Syrian Refugees

Under its mandate, the UNHCR registered 950,334 Syrian refugees¹⁴³ who obtained full refugee status and were given access to the rights and privileges that UNHCR refugees are entitled to.¹⁴⁴ However, in May 2015, the Lebanese authorities instructed UNHCR to temporarily suspend the registration of Syrian refugees, including individuals already in the country and new

arrivals, except for humanitarian cases approved by the Ministry. The suspension of registration of Syrian refugees is still in place.

Due to the suspension of the registration of Syrian refugees, hundreds of thousands of Syrian citizens, who otherwise could have been registered as refugees, are now deprived of the “refugee” status and the rights and privileges associated with it. However, in the meantime, UNHCR has resorted to “recording” rather than “registering” individual refugees for the purpose of both assistance and protection, including resettlement abroad.

The suspension of refugee registration demonstrates the intent of the Lebanese government to limit the number of Syrian refugees on its territory as it considers that the growing number of Syrian refugees in the country is a serious threat to security, political, economic, and social stability.

The use of “displaced persons” (“nazihoun”) rather than “refugees” (“lajoun”) is a clear indication of the government’s caution as regards the granting of refugee status to Syrian nationals. This term was first enforced by the former Prime Minister Najib Miqati in 2012. Contrary to the use of the term “refugee” with Palestinians, the use

of “displaced” appears suggestive of a less permanent status. Its use could also be seen as an attempt to circumvent any obligations and privileges owed to these individuals by virtue of their refugee status.

ii. Palestinian Refugees

The UNRWA’s services are available to all Palestinians who live in its area of operations and meet the following definition set out by the UNRWA: “any person whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost their home and means of livelihood as a result of the 1948 conflict.”¹⁴⁵ This definition also covers the descendants of persons who became refugees in 1948.

The Palestinian refugees in Lebanon are divided into the following three categories: (i) Refugees registered with UNRWA and the Lebanese authorities; (ii) Palestinian refugees registered with the Lebanese authorities (non-registered Palestinian refugees); and (iii) Non-ID Palestinian refugees.

The status of the third category (i.e., Non-ID Palestinian refugees) is the most critical as these refugees are residing in Lebanon without papers, and thus cannot access education, work, health, or travel.



Reuters/Aziz Tahe

b) Enterprise Development

- i. Do refugees have the right to set up a business? Are there any restrictions placed on the sector, location, or size of business? (e.g. home based)

From an entrepreneurial perspective,¹⁴⁶ there are no specific laws or regulations that apply strictly to refugees. In the absence of a *lex specialis*, the general laws that apply to foreigners apply to refugees as well, except for Palestinian refugees who are subject to certain restrictions.

Restrictions on foreign investments are very few, all economic sectors are open to foreign investments, except those related to weapons and media, and in some cases real estate ownership and some types of activities related to national security. Foreigners have also the right to participate in public tenders without the need for a local partner.

In terms of setting up companies the legal framework that applies to foreigners applies to refugees as well (except for Palestinian refugees – see below). For instance, a Limited Liability Company LLC, can be fully owned by non-Lebanese nationals, except in sectors related to weapons, media and in some cases, real estate ownership and some types of activities related to national security. As for a joint-stock company SAL, the majority of shares could be owned by foreigners, but the majority of the board should be formed by Lebanese nationals (3 to 12). The company can also operate with a direct branch office, which will be managed by a manager who can be either Lebanese or non-Lebanese. In the latter option, the company will be governed by the law of the country of origin.

However, the legal framework described above does not apply to Palestinian refugees who are subject to special restrictions. In fact, in 2005, by virtue of Article 3 of the Ministerial Decision promulgated on a regular basis by the Minister of Labour, Palestinian refugees were granted the right to practice about 70 professions that were previously prohibited to them and restricted to Lebanese nationals only. Other professions remain of restricted access to Palestinian refugees for different reasons such as the necessity of reciprocity in treatment and the precondition of holding Lebanese nationality. The restricted professions apply to all other foreigners and refugees in Lebanon. For a complete list of these professions, see annex sources.

Practically speaking, it is recommended that any refugee/displaced person who is aiming to set up a successful business in Lebanon would have to consider the following three points:

- a) involving a Lebanese partner who would be able to assist with relationship management, especially with banks;
- b) strengthening their social network, which should include lawyers, accountants, or simply influential friends; and
- c) access to information which can be granted through a strong social network or the Lebanese partner who can help them in the process.

- ii. What laws or policies are in place regarding export (e.g. rules of origin; export licenses) for refugee-owned businesses or sectors that refugees most likely work in? (e.g. artisanal)

There are no specific provisions related to export for refugee-owned business in Lebanon.

- iii. Are refugees legally allowed to lease/own land? Other assets?

There are no specific provisions prohibiting refugee land ownership or leasing in Lebanon. In this case, the relevant laws applicable to refugees as regards real estate are the laws and regulations that apply to foreigners in Lebanon, except for Palestinian refugees who are subject to different rules. We set out below the general regime of ownership of land by refugees and the special regime applicable to Palestinians.

Lebanon has a specific law that gives foreigners the right to ownership of land. According to the Law on Acquisition of Real-Estate Rights by Foreigners in Lebanon implemented as per decree no. 11614 of January 4, 1969 (the “Real Estate Law for Foreigners”) the area that may be acquired by a non-Lebanese national varies from a maximum of 3000 square meters in Beirut to a maximum of 5000 square meters in the remaining regions.

In the absence of a *lex specialis* that applies to the refugees in Lebanon, the general rule set out in the Real Estate Law for Foreigners would, in principle, apply to all refugees or “displaced people” in Lebanon, including Syrian and Palestinian refugees/displaced people.

However, the Lebanese parliament issued Law No. 296/2001 on April 3, 2001 (“Amended Real Estate Law for Foreigners”), which contains an amendment to the Real Estate Law for Foreigners. The amended Article 1 stipulates the following:

“No non-Lebanese person, whether natural or legal, and no Lebanese person deemed by this law as foreigner, shall be allowed to acquire, by contract or any other legal act, any real estate right on Lebanese territory or any other of the real rights specified by the present law, before obtaining a prior authorisation issued by the Council of Ministers upon motion of the Minister of Finance. No exceptions shall be made to this law, unless in specific situations explicitly provided for by this law or in a specific text.

All forms of real estate rights are forbidden to any person who is not holding a nationality of a recognised state, or any person in general – should the ownership be nonconforming to the provisions of the Constitution in terms of rejecting permanent settlement (Tawteen)” [unofficial translation].

In short, the Amended Real Estate Law for Foreigners implemented two major changes: (i) first, it imposed on foreigners the obligation to obtain a prior authorisation issued by the Council of Ministers upon motion of the Minister of Finance; and (ii) it forbade ownership to people not holding a nationality of a recognised state, or any person in general if the ownership is nonconforming to the provisions of the Constitution in terms of rejecting permanent settlement.

On the face of it, the Amended Real Estate Law for Foreigners seems to be of general application. However, in practice, the Amended Real Estate Law for Foreigners directly affects Palestinian refugees and constitutes a major pitfall for them. First, the Amended Real Estate Law for Foreigners specifically refers to the necessity of being a national of a “recognised state” – a status that the Palestinian state has not universally acquired yet. Second, the Amended Real Estate Law for Foreigners makes explicit reference to the constitutional rule regarding the rejection of “permanent settlement” in Lebanon – a notion that is closely connected with the Palestinian refugees in Lebanon.

The Legislation and Consultation Committee in Lebanon, which is a judicial committee, has issued a non-binding opinion on June 19, 2001, bearing the number 394/2001, opining that Palestinian refugees do not have any right to own real-estate in Lebanon.

In practice, public notaries have abstained from executing sale agreements and other types of real estate-related contracts for Palestinians refugees in Lebanon.

iv. Are there laws on forming joint ventures with refugee-owned companies?

The general trend has been to impose strict and rigorous requirements on Syrian nationals and entities in relation to setting up bank accounts. Such requirements vary from one bank to another. We have contacted one bank in Lebanon (the “Bank”) to inquire about their requirements and get an indication about what such requirements could be. The Bank confirmed that Syrian nationals in general are “not allowed to open bank accounts with the Bank, unless it is an old client that has a savings account – in which case his or her savings account are maintained”. The Bank also mentioned that Syrian nationals are not allowed to “transfer money overseas or receive money from abroad”. They are also not allowed “to receive credit cards or loans”.

No further laws or policies were reported in place by the chapter authors.

v. Is legal residency or other identification required to set up or own a business?

Only refugees who are legal residents in Lebanon are allowed to set up businesses.

As will be set out below, the legalisation of residency is a major hurdle for Syrian refugees in Lebanon. By 2017, 74 percent of Syrian refugees aged fifteen years old or older did not have a valid residency.¹⁴⁷ We set out below the categories of residents and requirements to access a legal residency. For reference, see annex sources.

The first category of legal residents is constituted of Syrian nationals who are usually considered as “upper class” and reside in Lebanon as property owners and students. This category is subject to the general residency rules that apply to foreigners in Lebanon. To obtain a valid residency title, they must provide proof of ownership or of study to obtain legal residency status.

The second category of legal residents is constituted of Syrian nationals who are not registered with UNHCR but are under the pledge of responsibility of a sponsor (“Kafeel”) (or broker, or commissioner). This category mainly represents the workers who are allowed to work in specific sectors.¹⁴⁸ The Kafeel is legally responsible for the Syrian worker. He or she usually pays the Syrian worker lower or no wage and bars freedom to work for

another employer. The sponsorship system is perceived as hostile in view of the lack of legislation that protects refugees from its volatility.

The above two categories are the only possibilities for refugees and Syrian nationals who wish to obtain legal residency.

In all other cases, such as being a refugee registered with UNHCR, or being in Lebanon temporarily while awaiting resettlement to another country, Syrian nationals would not be eligible for legal residency.

In conclusion, given that the legal residency requirement is intertwined with the possibility of setting up a business: (i) it would be very difficult for Syrian refugees to have access to a legal residency (limited to those who are under a pledge of responsibility); and therefore, (ii) the possibility for Syrian refugees to be able to set up businesses is restricted due to the residency requirement and the difficulty in attaining it.

vi. Are there any laws restricting access to finance/banks for refugee-owned businesses?

There are no specific laws, regulations or Central Bank directives restricting access to finance/banks for refugee owned businesses.

Although it seems that the Association of Lebanese Banks issued a memo in September 2011, urging all banks to limit their relations with Syrian clients, this document is, based on our understanding, not available to the public.

On the ground, banks in Lebanon are generally more cautious when dealing with refugees. This caution is mainly driven by the fear of international sanctions. When the war started in Syria in early 2011, the United States and the international community imposed very strict sanctions on the Syrian government. Part of these sanctions target the banking sector.

From the U.S. side, President Barack Obama issued Executive Order No. 13572 “blocking property of certain persons with respect to human rights abuses in Syria” (“EO No. 13572”).¹⁴⁹ EO No. 13572 targeted a list of designated officials as well as “any person determined by the Secretary of the Treasury, in consultation with the Secretary of State” to be taking part in the repression. Barack Obama then issued four additional Executive Orders taking further steps against the Syrian government and its supporters. The last executive order dated May 2012¹⁵⁰ allows the U.S. Treasury to “prohibit

all transactions or dealings” with the US or any US person by a foreign person who has “facilitated deceptive transactions for or on behalf of any person subject to United States sanctions concerning Syria”.

From the Lebanese banks’ perspective, this means that if they are found to be linked, even remotely, to entities targeted by the sanctions, they will be excluded from the international financial systems – which is a high risk that very few banks would want to take.

Given their fear of international sanctions as set out above, Lebanese banks conduct thorough due diligence when dealing with Syrian nationals in general. They even prefer to avoid such dealings at all.

In view of this, banks have been reluctant to deal with Syrian nationals generally. As set out above, there are no explicit laws or directives in relation to the dealing with refugees, especially Syrian refugees but banks have discretionary powers to decide who and what entities to deal with.

d) Informal business activities: Are there legal frameworks in place that seek to regulate or formalize the informal economy or informal business activities?

We did not find any laws specifically seeking to regulate or formalise the informal economy or informal business activities.

5.3 CONCLUSION

As it stands, in the absence of any specific legal framework that applies to refugees, refugees would be entitled to rely on the laws and regulations that apply to foreigners generally. This is the case in many areas such as the right to ownership and the right to set up a business.

However, the absence of specific legislation addressing the refugees’ unique situation has made them vulnerable to marginalisation within the Lebanese polity, both as individuals and as a community. In practice, in exercising their commercial and economic rights, refugees would face hurdles along the way. This includes difficulties in opening bank accounts, obtaining financing, and legalising their residency titles.



6. PAKISTAN

6.1 INTRODUCTION

According to UNHCR data, Pakistan hosts more than 1.4 million refugees, the vast majority of whom are fleeing war in Afghanistan.¹⁵¹ Geographically, the majority of the refugee camps are based in the north-west frontier of the Pakistan-Afghanistan border.

Pakistan is not party to the 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees and, currently, there is no formal law relating to the protection of refugees in Pakistan. However, with the new government being elected in July 2018, there is a revived intention of solving refugee issues in accordance with international humanitarian laws. The Pakistani government have recently piloted a project to adopt a national refugee law and, in the process, begin formal registrations for all Afghani refugees living in Pakistan. The scheme was first approved by the Federal Cabinet in February 2017 and refugees have started to receive Afghan Citizen cards, providing them legal protections under Pakistan's Foreigner's Act.¹⁵² This symbolises positive development in government policy towards refugees.

6.2 REFUGEE LAW AND POLICIES

a) General Refugee Status

The Foreigners Act of 1946, the Foreigners Order of 1951 (amended in 2000 and in 2016), the Citizenship Act 1951 and the Naturalization Act 1926 are the only legislations addressing the status of noncitizens. However, these laws are limited and contain no provisions relating to the protection of refugees. They prohibit assisting illegal entry and prescribe up to 10 years' imprisonment and a fine of up to 10 thousand rupees (about US\$100) for anyone who knowingly enters Pakistan without valid travel documents.¹⁵³

In the absence of a national legal framework for refugee status determination ("RSD"), the UNHCR conducts RSD under its mandate amid the complexities of a mixed migration context and lack of clear migration management. Individuals recognized as refugees at the outcome of the UNHCR's RSD process and members of

their family are issued Refugee Identity Cards that are valid for 12 months and renewable upon expiry. Like the Proof of Registration ("PoR") card, the Refugee Identity Card offers temporary stay in Pakistan and protects against any forcible return to the country of origin. UNHCR decisions on RSD are generally accepted, and asylum seekers and recognized refugees are allowed to remain in Pakistan pending identification of a durable solution. In October 2018, the Pakistani government decided to extend the PoR card to some 1.4 million Afghan refugees living in Pakistan until 30 June 2019.¹⁵⁴ The UNHCR have publicly spoken out in favour of this policy stating that, given that there is no formal legislative framework in place for refugees at the moment, this step would serve as a relief to those in desperate need. In other recent developments, Pakistani Prime Minister, Imran Khan, has asked authorities to allow legally registered Afghan refugees to open bank accounts and form a part of the formal economy.¹⁵⁵

b) Enterprise Development

- i. *Do refugees have the right to set up a business? Are there any restrictions placed on the sector, location, or size of business? (e.g. home based)*

Article 18 of the Constitution only affords Pakistan's citizens the absolute right to enter into any lawful profession or occupation, and to conduct any lawful trade or business, while Article 17 stipulates that only citizens enjoy the right of association. However, because the Constitution protects inalienable rights of both citizens and foreigners, all relevant policies and labour laws are applicable to foreigners and they have the right to access justice for any employment agreement violation.

The following articles also apply to all persons in Pakistan, without distinction between citizen and noncitizen:

- Article 11 prohibits slavery, forced labour, trafficking in persons, and child labour;
- Under Article 37 (e) the State shall make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations un-

suitable to their age or sex, and ensuring the provision of maternity benefits for women in employment; and

- Article 38 (c) provides for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means. Furthermore, in 2008, Pakistan ratified the International Covenant on Economic, Social and Cultural Rights, which recognizes a general human right to work. The 1946 Foreigners Act, on the other hand, prohibits the hiring of “a person who has no permission to stay in Pakistan.”¹⁵⁶

ii. *What laws or policies are in place regarding export (e.g. rules of origin; export licenses) for refugee-owned businesses or sectors that refugees most likely work in? (e.g. artisanal)*

No such laws or policies are in place.

iii. *Are refugees legally allowed to lease/own land? Other assets?*

Refugees in Pakistan cannot hold immovable property or own a business/share of any business in Pakistan in their own name.¹⁵⁷



Reuters/Fayaz Aziz

iv. *Are there laws on forming joint ventures with refugee-owned companies?*

Refugees in Pakistan cannot hold immovable property or own a business/share of any business in Pakistan in their own name.¹⁵⁸

v. *Is legal residency or other identification required to set up or own a business?*

✓ **Legal Residency**

Companies can be set up and owned/managed by foreign shareholders/directors residing abroad subject to security clearance by the Ministry of Interior or the Securities and Exchange Commission of Pakistan (which will also be a requirement for foreign shareholders setting up/owning a company while residing in Pakistan). Foreign shareholders need to register their ownership of the shares with the State Bank of Pakistan on a repatriable basis so that they can remit disinvestment proceeds/dividend payments outside Pakistan.

✓ **Other Identification**

- If the company/employee does not receive the relevant security clearance from the Ministry of Interior or the Securities and Exchange Commission of Pakistan, a work visa is required unless a visa abolition agreement exists between Pakistan and the employee's country.
- Application is to be submitted to the Board of Investment Pakistan (BOI).
- The visa processing time is around four weeks.
- The visa processing fee is US\$100 for a one-year work visa.
- Pakistan also issues fast track business visas with five years validity to businessmen of 96 countries on the business visa list. This is available at BOI's website (www.pakboi.gov.pk).¹⁵⁹ Since Pakistan is placing greater emphasis on foreign investment with the election of the new government, this list is subject to regular change.

vi. *Are there any laws restricting access to finance/banks for refugee-owned businesses?*

This question is not applicable since refugees are not permitted to own companies.

c) Informal business activities: Are there legal frameworks in place that seek to regulate or formalize the informal economy or informal business activities?

While the Foreigners Act prohibits the hiring of persons with no permission to stay in Pakistan, refugees are often permitted to engage in work in the informal economy by authorities. Despite the ability to engage in the informal economy, refugees report frequent exploitation. Refugee women and children have been found to be particularly vulnerable, accepting underpaid and undesirable positions.¹⁶⁰

6.3 CONCLUSION

As it stands, Pakistan's lack of legal framework has proven to be the biggest obstacle for refugees. However, in light of a new government coming into power, there appears to be a positive trend toward the formalisation of refugee status and development of laws. Looking forward, Pakistani Prime Minister Imran Khan has said that Afghan refugees born in Pakistan will be offered citizenship and the ability to open a bank account – which is a drastic change of policy that is likely to benefit hundreds of thousands of marginalised people.¹⁶¹ This will, in turn, give those children of refugees born in Pakistan legal status and the right to own land and conduct business activities freely.



7. TURKEY

7.1 INTRODUCTION

According to UNHCR data, Turkey is the biggest refugee-hosting country worldwide, with 3.93 million refugees (3.6 million from Syria).¹⁶² With a population of 84.3 million, this means that there are approximately 21 Turkish inhabitants per refugee.

Turkish law recognizes three levels of international protection for refugees, namely: refugees, conditional refugees, and subsidiary protection beneficiaries (see section below for further details). Turkish law also provides temporary protection measures. It is therefore difficult to generalize about their respective rights, but all refugees are entitled to a work permit, under certain conditions, after a set period of time.

Although the situation remains incredibly difficult for refugees in Turkey, the government has had a sophisticated response to the refugee crisis, giving refugees access to basic services, exploring avenues to secure income and formal employment, and engaging with the global community to adequately support this population.

The Emergency Social Safety Net (ESSN) is the biggest humanitarian programme in the history of the European Union, designed to help the most vulnerable refugees pay for their basic needs¹⁶³.

Regarding children, the Conditional Cash Transfers for Education programme, operating since 2003, aims to improve regular school attendance by supporting families with cash assistance and child protection services¹⁶⁴. As a result, at the start of the 2019-2020 school year, 684,253 Syrian children under temporary protection were enrolled in Turkish schools¹⁶⁵.

The Law on Foreigners and International Protection, and the Temporary Protection Regulation, provide a strong legal framework for the legal stay, registration, access to rights and services for Syrians in Turkey. In 2019, a major verification of the registration of Syrians under temporary protection was concluded.

7.2 REFUGEE LAW AND POLICIES

a) General Refugee Status

As previously stated, Turkish law recognizes three levels of international protection for refugees, namely refugees, conditional refugees, and subsidiary protection beneficiaries.¹⁶⁶ Turkish law also provides temporary protection measures for foreigners that have been forced to leave their country, cannot return to their country, or have arrived in Turkey in a mass influx situation seeking immediate and temporary protection.¹⁶⁷ Foreigners who seek international protection are considered “applicants” until a final decision is made with respect to their request.¹⁶⁸ The main legal source for definitions, rights and obligations of refugees and foreigners is the Law on Foreigners and International Protection (LFIP, Law No. 6458).¹⁶⁹

✓ *Categories of refugees and other people seeking international protection*

Only people from European states can become a refugee in the narrow sense.¹⁷⁰ If someone from non-European states seeks protection in Turkey, they become a conditional refugee.¹⁷¹ Conditional refugees are allowed to reside in Turkey temporarily until they are resettled to a third country.¹⁷² Subsidiary protection can be granted to foreigners or stateless persons, who can neither be qualified as a refugee nor as a conditional refugee but cannot return or stay in their country of origin, in particular because of danger to their life or because they would face torture or inhumane treatment or punishment.¹⁷³ Temporary protection can be provided to foreigners who have been forced to leave their country, cannot return to their country, or have arrived at or crossed into Turkish border in a mass influx situation seeking immediate and temporary protection.¹⁷⁴ These temporary protection measures have existed since 2014 and were primarily created due to the influx of Syrian refugees.¹⁷⁵

b) Enterprise Development

- i. *Do refugees have the right to set up a business? Are there any restrictions placed on the sector, location, or size of business? (e.g. home based)*

In general, only persons that have the status of refugee or subsidiary protection in Turkey can work independently or be employed.¹⁷⁶ The identity document serves as a work permit.¹⁷⁷ Their access to the labour market can be restricted for a given period where justified under certain conditions or where sectoral and economic conditions regarding employment - especially in certain sectors and geographical areas - require this.¹⁷⁸ However, these restrictions do not apply to refugees or subsidiary protection beneficiaries who have been residing in Turkey for three years, are married to a Turkish citizen, or have children with a Turkish citizen.¹⁷⁹

Temporary protection beneficiaries with identity documents are eligible for work permits through the Ministry of Labour and Social Security, although the duration of their work permit cannot exceed the duration of their temporary protection status.¹⁸⁰

People with temporary protection status can also work independently; in this case, they must have a legal enterprise established and registered in Turkey, subject to the Turkish Commercial Code.¹⁸¹

Refugees or subsidiary protection beneficiaries may, upon being granted status, work independently or be employed, subject to other legislative or regulatory provisions restricting these rights.¹⁸² Similarly, applicants and conditional refugees can apply for a work permit six months after submitting the international protection claim or after the issuance date of the status preservation.¹⁸³

It should be noted that refugees can only work in the locations where they are registered. If they wish to work in another province, they must report this to the Provincial Directorate of Migration Management so that the registration province is changed.¹⁸⁴



Reuters/Umit Bektas

✓ *Preliminary permission*

The International Workforce Law ("Law No. 6735") regulates, inter alia, the procedures, principles and responsibilities related to work permits and work permit exemptions granted to foreigners.¹⁸⁵

A preliminary permission is needed for some occupations. For example, in accordance with Article 8 of the Law No. 6735,¹⁸⁶ no work permit shall be given without preliminary permission in health and educational fields that require professional competence.¹⁸⁷ Work permits shall not be given without the opinion of the Ministry of Health for health services and the Ministry of National Education for educational services.¹⁸⁸ The Ministry of Labour and Social Security is tasked with monitoring foreigners and employers for compliance with this Law.¹⁸⁹

Preliminary permission is granted by the Higher Education Board for foreign faculty members. A similar decision is made about work permits of Research & Development personnel, in line with the last paragraph of Article 8 by taking view of the Ministry of Science, Industry and Technology.

✓ *Special procedures for specific areas of work*

Applicants, conditional refugees and temporary protection beneficiaries who would like to work as seasonal agricultural workers or in jobs related to animal rearing can apply for an exemption document. This document allows the named groups to work legally.¹⁹⁰

✓ *Establishing a business*

The aim of the Foreign Direct Investment Law (Law No. 4875, or "FDI Law"),¹⁹¹ is to encourage foreign direct investments, protect the rights of the foreign investors and align definitions.¹⁹² Foreign investors are - amongst others - defined as "real persons" who possess foreign nationality.¹⁹³ This means that refugees, whatever protection status they have, can be foreign investors and therefore fall within the scope of the law. Article 3 of the FDI Law guarantees foreign investors the right to make free foreign direct investments in Turkey and that they have the same rights as local investors.

According to the FDI Law, international investors are allowed to establish any form of company set out in the Turkish Commercial Code ("TCC", Law No. 6102). The establishment of companies can only be carried out by Trade Registry Offices that operate in the Chambers

of Commerce. They are designed as "one-stop shop" agencies, so that the business establishment can be completed in one day. Foreigners may establish a Limited Liability Company with minimum capital of 10,000 Turkish Liras ("TL") (approximately \$1400 USD) and an incorporated company with minimum capital of 50,000 TL (approximately \$6750 USD).¹⁹⁴ More details can be found in the TCC and the related legislation.¹⁹⁵

ii. *What laws or policies are in place regarding export (e.g. rules of origin; export licenses) for refugee-owned businesses or sectors that refugees most likely work in? (e.g. artisanal)*

The FDI Law does not distinguish between foreigners, refugees of all statuses and Turkish citizens. Because of this, all multilateral and bilateral agreements also apply to refugee-owned businesses. The most important one is probably the Customs Union Agreement between Turkey and the European Union ("EU").¹⁹⁶ The Customs Union Agreement between Turkey and the EU has been in effect since 1996. This agreement allows trade between Turkey and the EU countries without any customs restrictions. The agreement also provides the possibility to establish a company in Turkey in accordance with local legislation and to do business with the EU within the scope of the agreement. There are also many other free trade agreements within the agreement, but a closer analysis would be beyond the scope of this report.

iii. *Are refugees legally allowed to lease/own land? Other assets?*

✓ *Land*

Only about 2% of all refugees in Turkey live in refugee camps.¹⁹⁷ This is mainly because international protection applicants shall provide their own accommodation by their own means.¹⁹⁸ The International Protection Application Identity Document, which is given to all applicants, is valid for six months and includes a residence permit.¹⁹⁹ Therefore, refugees can reside outside refugee camps and lease or own land. There is no restriction to lease moveable and immovables by International Protection applicants and status holders, as well as Temporary Protection beneficiaries. However, citizens of the Syrian Arab Republic cannot own or purchase immovables in Turkey as per Article 35 Clause 2 of Turkey's Law on Property No. 2644. With regards to purchase of immovables by International Protection applicants and status holders, it is not possible to give a general answer as there is a list of countries (183 countries

currently), determined by the Presidency, whose citizens can purchase immovables in Turkey; however, this list is not publicly available. Thus, specific inquiry should be made with the Director General of Land Registry on a case by case basis for non-Syrian asylum-seekers and refugees.

✓ **General investment options**

Having refugee status alone does not constitute a barrier to invest in Turkey. In determining the conditions for investment in Turkey, the legal basis has been prepared by mostly regulating investment conditions and quality of investment. Apart from this, refugees of all categories are subject to the same supervision and regulations as other foreign investors.²⁰⁰ Revisions have been made, and costs and procedures have been minimized in these processes for foreigners to be able to invest or engage in commercial enterprise in Turkey.

In addition, the aim of the FDI Law is to encourage foreign direct investments, protect the rights of foreign investors, align the definitions of an investor and investment with international standards, transform the approval-based system into a notification-based system for foreign direct investments, and to increase the volume of foreign direct investments through streamlined policies.

Direct foreign capital investments are defined as investments to produce goods and services, which are realized by one or more international investors with their own resources or by partnering with domestic companies.²⁰¹

More detailed legal information can be found in the FDI Law (Law No. 4875)²⁰².

iv. Are there laws on forming joint ventures with refugee-owned companies?

There are no laws relating to joint ventures with refugee-owned companies in Turkey.

v. Is legal residency or other identification required to set up or own a business?

Turkey does not require legal residency to set up or own a business.²⁰³ Foreigners who wish to set up their own business must obtain permission from the Ministry of Family, Labour and Social Services first.²⁰⁴ Particularly, they must obtain a work permit and business license following the completion of certain establishment procedures of the said workplace – such as the publication

of the workplace in the tax registry and obtainment of a tax number. If the Ministry of Family, Labour and Social Services finds the request appropriate and grants a work permit, the prospective business owner will also need to apply to the relevant municipality for a business license. Similarly, those with temporary status are eligible to set up or own a business as long as they follow the same procedures.²⁰⁵ Authorized authorities require that foreigners have a work permit and business license before permitting the commencement of business operations.²⁰⁶

vi. Are there any laws restricting access to finance/banks for refugee-owned businesses?

According to the FDI Law and the TCC, there is no distinction between refugees, foreigners and Turkish citizens. We are thus not aware of any laws directly restricting access of refugee-owned businesses to finance/bank services.

c) Informal business activities: Are there legal frameworks in place that seek to regulate or formalize the informal economy or informal business activities?

In 2015, the international community adopted the Regional Refugee and Resilience Plan for Turkey, a new approach to address the unique challenges faced by host countries.²⁰⁷ Going beyond emergency assistance, the new approach combined humanitarian and development responses to the Syrian crisis into a single coherent plan in line with national plans and priorities, under the co-leadership of the UNHCR and the United Nations Development Programme (UNDP). This Plan was a first step towards supporting the self-reliance and resilience of refugees and host communities.

The “Exit Strategy from the ESSN” released by the Turkish Government in December 2018 marks an additional step towards a policy framework to facilitate refugees’ access to formal employment.²⁰⁸ The purpose of this programme is twofold: to alleviate Syrians under Temporary Protection dependence on social assistance schemes, and to equip them with skills and competencies that the labour market requires. Although this strategy constitutes a strong roadmap for shifting from humanitarian assistance to self-reliance, it does not outline specific actions to be implemented in the near future.

7.3 CONCLUSION

The Turkish response to the refugee crisis has been based on a government-financed approach, which sets itself apart from many refugee hosting countries that usually tend to direct refugees into camps and heavily rely on the support of the humanitarian sector.

Through adequate legislation, Turkey has ensured refugees have access to basic services, and that they can legally work and set up businesses. However, many refugees are still unable to take part in the formal labour market, making it hard for them to attain sustainable livelihoods. The Government’s recent efforts to address this issue demonstrate that Turkey is leading the global policy discussion around refugees’ resilience and paths to a decent life, in collaboration with the United Nations and civil society organizations.



8. UGANDA

8.1 INTRODUCTION

Uganda has a long, rich history of hosting refugees, dating back to its independence in 1962,²⁰⁹ and has been praised for having one of the most progressive and generous refugee policy regimes in the world.

Uganda's past refugee crises²¹⁰ have shaped its citizens' views towards refugees in the present: "Today, it is them, tomorrow, it could be any one of us," Ugandan Prime Minister Ruhakana Rugunda, June 2018.²¹¹ Recently, conflict and civil unrest in the Democratic Republic of Congo and South Sudan have led 1.25 million refugees to flee to Uganda, making it the largest refugee host country in Africa²¹² and the third largest in the world.²¹³ Despite this record-breaking number of refugees, Uganda continues to be recognized for its progressive refugee treatment.

During the June 2017 International Solidarity Summit, which included a tour of refugee settlements in West Nile, Antonio Guterres, the UN Secretary-General remarked:

*"It [sic] important to underline that Uganda, in the past, received these South Sudanese refugees and I had the opportunity when visiting the same area that I visited yesterday, to see that they were not in camps but in so-called settlements that are in reality villages, like villages of the Ugandan people. This allows them to farm the land, allows them to go to the same schools, the same health centers, to have jobs, to allow them to have normal lives, to live in dignity."*²¹⁴

Uganda embraces refugees using an open-border settlement policy known as the Uganda Model, which provides refugees with land to cultivate, allows them to work, start businesses and move freely throughout the country, rather than containing them in barbed wire camps dependent on humanitarian aid.²¹⁵

The international community has praised and supported this approach. Despite its promise, the Uganda Model faces challenges due to lack of funding, the strain it places on the local ecosystem, lack of access to essential infrastructure, reliance on the continued good will of the local population, and the need to combat allegations of

fraud and corruption.²¹⁶ While these challenges must be addressed, the Uganda Model provides a promising approach to solving the global refugee crisis that the international community should carefully consider.

Uganda continues to develop its refugee policies, and while an in-depth review of recent policy developments is beyond the scope of this report, a few illustrative examples are provided. Uganda agreed to implement the CRRF, New York Declaration, discussed *supra* in the introduction.²¹⁷

Uganda's implementation of CRRF focuses on "five mutually reinforcing pillars" including, "admission and rights, emergency response and ongoing needs, resilience and self-reliance, expanded solution and voluntary repatriation,"²¹⁸ and is supported by the Refugee and Host Population Empowerment Strategy ("ReHoPE"), which is a "transformative strategy" intended to "bring together a wide range of stakeholders in a harmonised and cohesive manner to ensure more effective programming."²¹⁹

ReHoPE focuses investments on benefiting both host and refugee communities.²²⁰ The Government also included refugee management and protection within its domestic mid-term planning framework, the second National Development Plan 2015-2020.²²¹

The Refugees Act, 2006 (the "Act")²²² is Uganda's major legislation providing for matters related to refugees. The Act established an Office of Refugees, *inter alia*.²²³

The Act was passed in 2006 and became operational in 2009 when bylaws (the "Refugees Regulations")²²⁴ were passed enabling its enforcement.²²⁵ The Act is widely regarded as "a model for Africa."²²⁶ The Act is progressive because it recognizes the rights of the country's refugees to work and enjoy financial independence as contributors to society, to move freely throughout the country, and to live in settlements, rather than in isolated camps.²²⁷

In 2009, Stefano Severe, the Office of the UNHCR representative in Uganda said, "Asylum seekers have been accorded a very good law, which embodies some of the best regional tenets on refugee law."²²⁸ In 2009, Prime Minister Apolo Nsibambi further added, refugees

“are given opportunity to fend for themselves by growing crops, attain food security and avail themselves of other human basic needs.”²²⁹

As part of a refugee self-reliance strategy, Uganda affords refugees the right to work and freedom of movement, which is exceptional within the spectrum of host country refugee policies.²³⁰ Research on refugee economics concluded: “Uganda’s treatment of refugees (...) has offered an unusually high level of socio-economic freedom to refugees.”²³¹ The following discussion highlights how Uganda’s refugee laws are helping to promote independence and enterprise development among the country’s refugees.²³²

8.2 REFUGEE LAW AND POLICIES

a) General Refugee Status

The Act defines an “asylum seeker” as a person who has applied for refugee status. Applications are submitted to the Refugee Eligibility Committee (the “Committee”),²³³ which reviews and acts on applications for refugee status, advises the Minister responsible for refugees (the “Minister”) on matters relating to refugee status and makes recommendations to the Minister regarding cases of expulsion or extradition, cases of cessation of refugee status and cases where a person requires assistance to find an alternative country of asylum.²³⁴ Section 19 of the Act requires any person who wishes to remain in Uganda as a refugee to submit a written application for refugee status within thirty (30) days of entering the country.²³⁵ A refugee, or recognized refugee, is defined as a person who is qualified to be granted refugee status under the Act and has been granted refugee status by the Committee, or is a member of a class of persons who are declared to be refugees under Section 25 of the Act.²³⁶

Under Section 4 of the Act, a person qualifies to be granted refugee status if one of six conditions is met, including if, a person:

- has a well-founded fear of persecution on the basis on race, sex, religion, nationality, membership of a particular social group or political opinion (each an “Enumerated Reason”), and as a result, is outside his or her country of nationality and is unable, or owing to that fear, is unwilling, to return to or avail him or herself of protection by that country;
- does not have a nationality and is outside the

country of his or her former habitual residence due to a well-founded fear of persecution on the basis of an Enumerated Reason and is unwilling or unable to return to the country of his or her former habitual residence;

- is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin or nationality due to external aggression, occupation, foreign domination or events that seriously disturb public order in his or her country of origin or nationality;
- is compelled to leave his or her place of habitual residence in order to seek refuge in another place due to a well-founded fear of persecution for failing to conform to gender discriminating practices;
- is considered a refugee under any treaty to which Uganda is a party, or any law in force when the Act was enacted; or
- is a member of a class of persons declared to be refugees under Section 25 of the Act.²³⁷

In most instances, refugees are granted similar rights as other aliens.²³⁸ Section 29(1)(d) of the Act accords recognized refugees at least the same treatment and privileges as accorded to aliens under the Constitution and Uganda’s laws, including in matters involving: (i) property and leases; (ii) asset transfers; (iii) education, with the exception of elementary education, for which refugees must receive the same treatment as nationals; (iv) the right to engage in agriculture, industry, handicrafts, and commerce and establish commercial and industrial companies; (v) the practice of one’s qualified profession; and (vi) accessing employment opportunities and obtaining gainful employment.²³⁹

With respect to certain matters, refugees are granted rights equal to those of citizens.²⁴⁰ Refugees are afforded the same rights as nationals with respect to religious practices and religious education for children. Refugees also have: (i) a right of association with non-political and non-profit making associations and trade unions; (ii) free access to courts of law, including legal assistance; and (iii) the same intellectual property rights as nationals.²⁴¹

Unlike many host countries, Uganda does not segregate its refugees in isolated camps. While the Minister may designate certain areas as refugee settlements, an asylum seeker or refugee wishing to reside elsewhere may apply to the Commissioner for Refugees for permission



to reside in any other part of Uganda.²⁴² Recognized refugees are also entitled to travel documents for travel outside Uganda.²⁴³ This has a measurable impact on the economic outcomes for refugees.

Research on Uganda refugee economies empirically evaluated the impact of varying institutional contexts. The urban context (refugees living in Kampala) is most similar to that enjoyed by citizens. Refugees living in emergency camps have the most distinct experience from those of citizens, and refugees living in protracted camps, or traditional settlements, have an experience falling in the middle.²⁴⁴

Refugees in Kampala have access to transnational economic lives – utilizing large markets and easily participating in transnational trade networks with relatively low barriers to engaging in formal economic activity.²⁴⁵ In settlements, which are formally administered by the OPM and led by the Ugandan Settlement Commander, there is an overlay of coordination and collaboration with the UNHCR and other aid organizations.

The geographic scope of economic activities for refugees living in settlements is limited; the majority of refugees

engage in farming activities and sell crops to middlemen, rather than directly engaging with transnational markets.²⁴⁶ However, for refugees in Nakivale and Kyangwali, two such settlements, there is a “significant minority” whose “economic lives are embedded in much wider trade networks that transcend communities, settlements, and often also national borders.”²⁴⁷

In contrast, in Rwamwanja, an emergency camp in southwestern Uganda, aid organizations play a more active role in settlement management. The economy in Rwamwanja is mostly “geographically isolated, with trade and exchange mainly confined to the surrounding areas.”²⁴⁸ This is exacerbated by the “significant barriers to economic activity that have been put in place by the government.”²⁴⁹ Researchers found “[t]ighter restrictions have been imposed on refugee movements in this camp, and the district government has imposed an entry tax on Ugandans who wish to engage in exchange within the settlement,”²⁵⁰ limiting the economic integration of refugees living in the emergency camp. While refugees living in the urban context enjoy the most economic freedom, they receive the least external aid by organizations like the UNHCR, so there is a trade-off for that heightened independence.²⁵¹ Despite the

varying outcomes across institutional contexts, Uganda stands out among host countries: 2016 research found, even in rural settlements, only one percent of refugees depended entirely on humanitarian aid.²⁵²

b) Enterprise Development

- i. *Do refugees have the right to set up a business? Are there any restrictions placed on the sector, location, or size of business? (e.g. home based)*

Refugees are legally allowed to set up businesses, however, the process is “costly and time-consuming,”²⁵³ so many refugees operate unregistered businesses. A related, but distinct issue is the ease with which refugees otherwise engage in formal-sector economic activity.

While there are some barriers to formal-sector economic activity,²⁵⁴ the Act is “generally interpreted to imply that refugees can work without a permit.”²⁵⁵ Under the Refugee Regulations, refugees are “allowed to engage in gainful or wage-earning employment on the most favourable treatment accorded to foreign residents in similar circumstances.”²⁵⁶ Further, recognized refugees are “exempt from any requirement to pay any charges or fees prior to the taking up of any offer of or to continue in his or her employment.”²⁵⁷

Until recently, however, there were inconsistent interpretations of the Act and the Refugee Regulations. Earlier research found different sectors of the government had diverging views on whether refugees did, or did not, need to apply for work permits.²⁵⁸ While the Act states refugees have the right to work just like ‘aliens in similar circumstances’,²⁵⁹ there was confusion interpreting that statement. The Immigration Department previously interpreted it to mean refugees required work permits for formal employment, just as aliens are required to have work permits to enter the country; while the OPM asserted refugees did not need work permits; rather, “once a refugee is in the country she/he is allowed *de facto* to work.”²⁶⁰ More recent research asserted “the consensus now, confirmed by [the Office of the Prime Minister], is that refugees with a Refugee ID do not need work permits.”²⁶¹

The Act provides refugees at least the same treatment as aliens when it comes to engaging in agriculture, industry, handicrafts, and commerce and establishing commercial and industrial companies. Refugees engage in a wide range of entrepreneurial activities. However, some of these businesses operate on a non-registered basis, due, in part, to the prohibitive nature of the fees

associated with formal registration. In a 2011 report, the Women’s Refugee Commission found - while refugees in Kampala were permitted to set-up businesses after obtaining a license - as a practical matter, the fees associated with registration often proved prohibitive, leading “many refugees [to keep] their business[es] non-registered.”²⁶² According to a 2010 interview with a Kampala City Council Association representative:

*“To set up a business, owners must first register with the Register General’s Office for a fee and then obtain a license from the Kampala City Council (KCC). A license costs 108,000–280,000 UGX (54–140 USD) per year depending on the location. Meanwhile, hawker licenses are required for each employee selling goods off site, adding a cost of 150,000–180,000 (75–90 USD) per year, per person.”*²⁶³

According to that research, “Business licenses may also be obtained without registration, but the license cost remains high. Thus, many refugees risk hawking goods without a license, which can result in their goods and earnings being confiscated by the KCC.”²⁶⁴

Despite formal registration hurdles, refugees engage in a wide range of entrepreneurial activities. A study in Kampala found twenty-one (21) percent of refugee business owners employ others, and forty-one (41) percent of those employees are Ugandan nationals.²⁶⁵ Thus, refugee entrepreneurship creates jobs for host country nationals.

The types of entrepreneurship opportunities vary by refugee location and nationality. Research found when Congolese and Rwandan refugees engage in entrepreneurship, it is primarily in the form of small shops, hawking or bars and restaurants. Only in exceptional cases do larger-scale businesses succeed; however, there are examples, like the Congolese cinema in Nakivale’s ‘little Congo’.²⁶⁶ In contrast, Somali refugees engage in less agricultural work and undertake a large range of entrepreneurial activities. “Somali refugees have more established, larger-scale and often more profitable businesses, including mini-supermarkets, restaurants, transportation services, garage businesses and guesthouses.”²⁶⁷

A 2015 Oxford University study found sixty (60) percent of refugees in Uganda were self-employed; another thirty-nine (39) percent were employed by others and only the remaining 1 percent were unemployed.²⁶⁸ Refugees have the highest income and lowest dependency levels in Kampala, followed by the protected camp

context, and ultimately the emergency camp context.²⁶⁹ Qualitative research “suggests that the greater refugees’ opportunities are for integration into the mainstream economy (or the lower the degree of institutional separation), the more positive the economic outcomes are likely to be.”²⁷⁰

The Act provides refugees the right to set up a formal business, which can take the form of a sole proprietorship, a partnership, or a company (in one of the various company forms). Registration is conducted through the Uganda Registration Services Bureau (“URSB”), headquartered in Kampala. URSB recently opened upcountry offices and mobile clinics to encourage formal registration of business operations.²⁷¹

Once a business is established, certain licenses are required to lawfully conduct business, including: (a) trade license; (b) certificate of tax registration; (c) NSSF registration if the business employs more than five (5) employees; and (d) certificate of registration of workplace. Penalties may be imposed for operating without these licenses.²⁷²

- ii. *What laws or policies are in place regarding export (e.g. rules of origin; export licenses) for refugee-owned businesses or sectors that refugees most likely work in? (e.g. artisanal)*

There are no laws specifically regulating exports by refugee-owned businesses; refugees are subject to the same export control rules applicable to Ugandan businesses. Exports are regulated by the Uganda Export Promotion Board (“UEPB”).²⁷³ Following the liberalization of the export/import sector, there is no requirement to issue an export or import license, except for a few controlled products.²⁷⁴ Unless exporting an enumerated controlled product, the only requirement is to register with the UEPB for an export registration certificate.²⁷⁵

Export plays a large role in refugee economies.²⁷⁶ Refugees purchase items in Kampala and then export them to retail sellers in their country of origin through trade networks. Refugees also work as brokers for businesspeople in their country of origin. To evade saturated markets, refugee traders go to border towns to cater to new markets.²⁷⁷

- iii. *Are refugees legally allowed to lease/own land? Other assets?*

Refugees may legally lease land although they are prohibited from owning land. Pursuant to Chapter 15

of the Uganda Constitution, “[l]and in Uganda belongs to the citizens of Uganda”;²⁷⁸ however, “noncitizens may acquire leases in land”.²⁷⁹

Per the Refugee Regulations, a refugee living in a designated refugee settlement or area has a right to “free access to use land for the purposes of cultivation or pasturing”; however, the refugee does not have the right to “sell, lease or otherwise alienate the land”.²⁸⁰ Such land is allocated “strictly for their individual or family utilization.”²⁸¹

While a refugee residing outside a designated refugee camp may serve as a tenant and “may legally acquire or dispose of his or her occupancy or leasehold interests in land, as the law permits resident aliens generally to do”; refugees are prohibited from acquiring or holding freehold interests in land.²⁸² The Act further requires refugees receive the same rights as other aliens, including the right to transfer assets held and declared upon entry and assets lawfully acquired in Uganda.²⁸³

- iv. *Are there laws on forming joint ventures with refugee-owned companies?*

There are no laws, or restrictions, on forming joint ventures with refugee-owned companies. There is a general state-ownership requirement imposed on joint ventures operating in the oil and gas sector, but this is not unique to refugee-owned companies.²⁸⁴

- v. *Is legal residency or other identification required to set up or own a business?*

There is no requirement to be a resident in order to establish a business in Uganda. However, as a practical matter, any person establishing a business is required to provide a copy of his or her identity card or passport bio data page as part of the business registration process.

- vi. *Are there any laws restricting access to finance/banks for refugee-owned businesses?*

While no formal laws prohibit refugees from accessing banks and formal financial institutions, the Ugandan National Financial Inclusion Strategy (2017–2022), developed by the Bank of Uganda and the Ministry of Finance, Planning and Economic Development, does not recognize refugees.²⁸⁵

Informal restrictions on access to formal banking facilities are “one of the greatest barriers to scaling businesses” due to the “lack of access to finance and capital.”²⁸⁶ Titled property is a preferred security for loans among all financial service providers (“FSPs”).²⁸⁷



Reuters/Euan Denholm

Because refugees cannot own land, this serves as a barrier to refugee-owned businesses accessing formal finance and banks. Historically, certain refugee communities, like Somalis, have been able to overcome these barriers, using higher rates of remittance-sending and great utilization of collective community-based savings and investment mechanisms which provide opportunities to overcome limited formal access to credit and capital.²⁸⁸

Recently, FSPs have focused on refugees as a distinct potential segment of clientele. A 2018 study sought to clarify the interventions and technical assistance needed for four FSPs to successfully offer financial services to refugees in Uganda.²⁸⁹ With respect to standard socio-

demographics, researchers found refugees are more similar than different from nationals, concluding, "lack of familiarity, data and knowledge are possibly the main barriers for FSPs to serve refugee populations."²⁹⁰ FSPs also need to extend the scope of their reach to settlements.

c) Informal business activities: Are there legal frameworks in place that seek to regulate or formalize the informal economy or informal business activities?

While there is no legal framework in place, the URSB has undertaken a nationwide sensitization drive to

encourage registration of informal businesses. The URSB introduced an abridged form of Memorandum of Articles of Association of a company to reduce the time spent registering.²⁹¹ The Kampala Capital City Authority ("KCCA") has seriously cracked down on street hawking and vending.²⁹² In addition, the various local governments in Uganda are involved in sensitization drives to promote the shift from the informal to the formal sector.

World Bank research on the informal economy in Kampala found sixty-nine (69) percent of the city's informal enterprises fall below the lowest company income tax threshold.²⁹³ Although city governments collect trading license fees, because enterprises operating in a trader's market, which produce handicrafts or which are based out of the trader's home, are exempt from licensing requirements, the majority of Kampala's informal sector firms are exempt, or ineligible for a trading license.²⁹⁴

However, not all informal business activities are immune from regulation. Over the years, the KCCA has taken a harsh stance on street vending. In one instance in 2015, over twenty (20) street vendors were arrested and charged²⁹⁵ for selling drinks, snacks, fruits, shopping bags and various accessories. The arrested individuals appeared before a City Hall magistrate for prosecution under the Trading License Act²⁹⁶ and were encouraged to operate in legal spaces moving forward, like designated markets.

8.3 CONCLUSION

While Uganda has some of the most progressive refugee laws, it is facing a critical juncture. The steady influx of refugees, combined with strained sources of humanitarian aid, may force a critical review of its refugee policies. The trend of focusing on refugee and host communities in a collaborative and inclusive manner, from a development perspective with an eye towards self-reliance, rather than a purely humanitarian view, may be key to helping Uganda maintain its progressive refugee laws and policies while ensuring positive outcomes for all stakeholders.

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ENDNOTES

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200 Investment Guide, available at: <http://www.invest.gov.tr/TR-TR/investmentguide/investorsguide/Pages/BusinessLegislation.aspx>.

201 (<http://www.invest.gov.tr/en-US/Pages/DownloadPdf.aspx?ref=http://www.invest.gov.tr/TR-TR/infocenter/publications/Documents/ULUSLARARASI-DOGRUDAN-YATIRIMLAR.pdf®Url=http://www.invest.gov.tr/TR-TR/infocenter/publications/Pages/Publications.aspx>)

202 UNCTAD, Turkey: Foreign Direct Investment Law, available at: <https://investmentpolicy.unctad.org/investment-laws/laws/33/turkey-foreign-investment-law>.

203 İşyeri Açma ve Çalışma Ruhsatlarına İlişkin Yönetmelik, Madde 5-(1), Resmî Gazete Sayı: 25902 (August 10, 2005), available at <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6735.pdf>.

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- 206 <https://www.aivecalisma.gov.tr/uigm/genel-bilgiler/yabancilarin-sirket-isyeri-acmalari/>; *Investment Guide*, available at: <https://www.invest.gov.tr/en/investmentguide/pages/establishing-a-business.aspx>.
- 207 See the 2019-2020 Plan at: <https://reliefweb.int/report/turkey/regional-refugee-and-resilience-plan-3rp-response-syria-crisis-country-chapter-turkey>
- 208 <https://birim.aivecalisma.gov.tr/media/12609/essn-exit-strategy-1.pdf>
- 209 For more information on Uganda's history of hosting refugees, refer to the resources provided in appendix sources.
- 210 See Tessa Coggio, *Can Uganda's Breakthrough Refugee-Hosting Model Be Sustained?* MIGRATION POL'Y INST. (Oct. 31, 2018), <https://www.migrationpolicy.org/article/can-ugandas-breakthrough-refugee-hosting-model-be-sustained> (describing the displacement during the 1970s and early 2000s).
- 211 *Id.*
- 212 *Uganda Comprehensive Refugee Response Portal*, UN HIGH COMMISSION FOR REFUGEES, <https://ugandarefugees.org/en/country/uga>, (last visited Mar. 21, 2019). See also Winnie Watera, et al., *Uganda's Refugee Management Approach Within the EAC Policy Framework*, KONRAD-ADENAUER-STIFTUNG 5, 13 (2017), <https://www.kas.de/web/guest/einzelteil/-/content/uganda-s-refugee-management-approach-within-the-eac-policy-framework> (last visited Mar. 21, 2019).
- 213 *Uganda Comprehensive Refugee Response Portal*, supra note 212. See also *Summary of Study: Uganda's Contribution to Refugee Protection and Management*, UN DEV. PROGRAMME 3 (2017), <https://data2.unhcr.org/en/documents/download/64687> (last visited Feb. 20, 2018).
- 214 Watera, et al., supra note 212, at 8. See also *The Secretary-General's opening remarks to the Uganda Solidarity Summit on Refugees*, UN SECRETARY-GEN. (June 23, 2017), <https://www.un.org/sg/en/content/sg/statement/2017-06-23/secretary-generals-opening-remarks-uganda-solidarity-summit-refugees>.
- 215 See Coggio, supra note 210.
- 216 *Id.* Uganda has combatted these allegations of fraud by replacing the leadership of the refugee program and by instituting biometric verification measures to more accurately count and track refugees. See *OPM and UNHCR complete countrywide biometric refugee verification exercise*, UN WORLD FOOD PROGRAMME (Oct. 29, 2018), <https://www.wfp.org/news/news-release/opm-and-unhcr-complete-countrywide-biometric-refugee-verification-exercise>.
- 217 For more information on the New York Declaration, see *New York Declaration*, UN REFUGEES AND MIGRANTS, <https://refugeesmigrants.un.org/declaration> (last visited Mar. 21, 2019); *Comprehensive Refugee Response Framework: from the New York Declaration to a global compact on refugees*, UNHCR (Dec. 5, 2016), <https://www.unhcr.org/584687b57.pdf>. The full text of the New York Declaration is available at: *New York Declaration for Refugees and Migrants*, A/RES/71/1 (Oct. 3, 2016), http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1.
- 218 *Comprehensive Refugee Response Framework* UGANDA, UNHCR (May 2017), <https://data2.unhcr.org/en/documents/download/63267> (last visited Mar. 21, 2019). Two refugees have been elected as members of the CRRF Steering Group, which is the highest decision-making body for the comprehensive refugee response in Uganda, further illustrating the progressive and inclusive approach the country is taking to its ongoing refugee response. See *Applying Comprehensive Responses (CRRF) in Africa*, UNHCR (Dec. 2018), <http://www.globalcrf.org/wp-content/uploads/2018/12/CRRF-in-Africa-poster-December-2018-Final-Version.pdf> (last visited Mar. 21, 2019).
- 219 *ReHoPE – Refugee and Host Population Empowerment: Strategic Framework – Uganda*, UNHCR v (June 2017) <https://docplayer.net/51129206-Rehope-refugee-and-host-population-empowerment.html> (last visited Mar. 22, 2019).
- 220 *Id.*
- 221 *Id.*
- 222 *Uganda: The Refugee Act 2006*, Act 21, 24 May 2006, available at: <https://www.refworld.org/docid/4b7baba52.html> (last visited Mar. 21, 2019).
- 223 *Id.* at Preamble.
- 224 National Legislative Bodies/National Authorities, *Uganda: The Refugees Regulations, 2010*, 27 Oct. 2010, S.I. 2010 No. 9, available at: <https://www.refworld.org/docid/544e4f154.html> (last visited Mar. 21, 2019).
- 225 Vanessa Akello, *Uganda's progressive Refugee Act becomes operational*, UNHCR, (June 22, 2009), <https://www.unhcr.org/news/latest/2009/6/4a3f9e076/ugandas-progressive-refugee-act-becomes-operational.html>. The Act was formally launched by Prime Minister Apolo Nsubambi at a ceremony on June 18, 2009 in recognition of World Refugee Day.
- 226 *Id.*
- 227 See Akello, supra note 225.
- 228 *Id.*
- 229 *Id.*
- 230 See ALEXANDER BETTS, ET AL., *REFUGEE ECONOMIES: FORCED DISPLACEMENT AND DEVELOPMENT 10* (Oxford University Press, 1st ed. 2017) ("Refugee Economies").
- 231 *Id.*
- 232 Despite the progressive nature of Uganda's refugee laws and policies, they do not go without criticism. See, e.g., Lucy Hovil, *Uganda's refugee policies: The history, the politics, the way forward*, INT'L REFUGEE RIGHTS INITIATIVE, (Oct. 2018), <https://reliefweb.int/sites/reliefweb.int/files/resources/IRRI-Uganda-policy-paper-October-2018-Paper.pdf> (last visited Mar. 21, 2019).
- 233 *Uganda: The Refugee Act 2006*, § 11, supra note 223.
- 234 Such as in the case of a denial of refugee status. See *id.* § 12.
- 235 *Id.* § 19.
- 236 *Id.* § 1.
- 237 *Id.* § 4. See *id.* § 25. Section 25 of the Act deals with group recognition, mass influxes and temporary protection of certain classes of persons.
- 238 Additionally, Part I Section 9 of the Refugee Regulations, supra note 224, provides that refugees who are nationals of a Member State of the East African Community are entitled to all the rights and privileges conferred on the "Community nationals" as set forth in the Treaty and Protocols establishing the East African Community.
- 239 In addition to any other right legally accorded a refugee. *Uganda: The Refugee Act 2006*, § 29(1)(e)(i)-(vii), supra note 223.
- 240 See *id.* § 29.
- 241 *Id.* § 29 (including the protection of industrial inventions, patents, designs, trade names, copyrights and other artistic and scientific works).
- 242 See *id.* § 44.
- 243 See *id.* § 31 (declaring the travel documents are valid for all countries except the refugee's country of origin and any other country on which Uganda may have restrictions).
- 244 See REFUGEE ECONOMIES, supra note 231, at 202.
- 245 *Id.* While the Act is "generally interpreted as giving refugees the right to work", researchers have found that the Kampala City Association at times harasses refugees to pay license fees for a work permit, serving as a potential barrier to engaging in formal economic activity.
- 246 *Id.*
- 247 *Id.*
- 248 *Id.* at 203.
- 249 *Id.*
- 250 *Id.*
- 251 See *id.* at 202.
- 252 Kelly T Clements, et al., *Uganda's approach to refugee self-reliance*, 52 FORCED MIGRATION REV., 50 (May 2016), <https://www.fmreview.org/solutions/clements-shoffner-zamore#edn3> (last visited Mar. 22, 2019).

- 253 *The Living Ain't Easy: Urban Refugees in Kampala*, WOMEN'S REFUGEE COMMISSION 9 (Mar. 2011), <https://www.womensrefugeecommission.org/resources/document/701-the-living-aint-easy-urban-refugees-in-kampala> ("Women's Refugee Commission, 2011"). As discussed *infra* at page 16 the Uganda Registration Services Bureau is implementing various measures to make the business registration process less burdensome.
- 254 For example, some restrictions on the right to leave the settlements. See REFUGEE ECONOMIES at pp. 202–03.
- 255 *Id.* at 203.
- 256 *Uganda: The Refugees Regulations* § 64, supra note 224.
- 257 *Id.*
- 258 Dr Naohiko Omata, *Refugee livelihoods and the private sector: Ugandan case study*, REFUGEE STUD. CTR. 9 (Nov. 2012), <https://www.rsc.ox.ac.uk/files/files-1/wp86-refugee-livelihoods-private-sector-uganda-2012.pdf> ("RSC Working Paper Series No. 86"), (citing Bernstein, J. 'A Drop in the Ocean: Assistance and protection for forced migrants in Kampala', REFUGEE L. PROJECT 28 (2005), http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo:5928).
- 259 *Id.* at 9.
- 260 Women's Refugee Commission, 2011, supra note 253, at 9.
- 261 Lene M.P. Hansen & Francis Zikusooka, *Expanding Financial Inclusion of Refugees in Uganda: Diagnostic Study*, NPM 30 (Aug. 2018) http://www.inclusivefinanceplatform.nl/documents/Documents/npm%20diagnostic%20study%20uganda%20final_0.pdf.
- 262 RSC Working Paper Series No. 86, supra note 258, at 9 (citing Women's Refugee Commission, 2011).
- 263 Women's Refugee Commission (2011), supra note 253, at 9 (citing Kampala City Council official, interviewed by Dale Buscher and Jasmeet Krause-Vilmar, Kampala, Uganda, October 6, 2010).
- 264 *Id.*
- 265 REFUGEE ECONOMIES, supra note 231, at 208.
- 266 *Id.* at 208–09.
- 267 Dr Naohiko Omata & Dr Josiah Kaplan, *Refugee livelihoods in Kampala, Nakivale and Kyangwali refugee settlements, patterns of engagement with the private sector*, REFUGEES STUD. CTR. 13, (Oct. 2013) <https://www.rsc.ox.ac.uk/files/files-1/wp95-refugee-livelihoods-kampala-nakivale-kyangwali-2013.pdf>
- 268 Abigail Higgs, *Why Uganda is an Unexpected Haven for Refugees*, BRIGHT (Mar. 9, 2017), <https://brightthemag.com/why-uganda-is-an-unexpected-haven-for-refugees-79ef64ce982f> (citing Alexander Betts, et al., *Refugee Economies: Rethinking Popular Assumptions*, HUMANITARIAN INNOVATION PROJECT, UNIVERSITY OF OXFORD (June 2014), <https://www.rsc.ox.ac.uk/files/files-1/refugee-economies-2014.pdf>).
- 269 See REFUGEE ECONOMIES, supra note 231, at 203. These results are evident, even when controlling for variation in nationality, education, and length of exile.
- 270 *Id.* at 204.
- 271 Further appendices available upon request to contributors.
- 272 Further appendices available upon request to contributors.
- 273 Which is established under the Uganda Export Promotion Board Act (Cap. 102). See *Export Documentation*, UEPB, <http://www.ugandaexports.go.ug/en/export-documentation/> (last visited Mar. 22, 2019).
- 274 Mandatory export permits are required for purposes of quality assurance and control. These products include: Fish & Marine Products; Minerals, Precious Stones & Ores; Coffee; Wildlife & Wildlife Products; and Timber Products. See *id.*
- 275 This involves filling out an online form and providing supporting documentation. A certificate is issued, free of charge, within 3–5 days. See generally *Exporter Registration Form*, UGANDA EXPORT PROMOTION Bd., <http://www.businesslicences.go.ug/uploads/documents/Exporter%20Registration%20Certificate%20-%20Application%20Form.pdf> (last visited Mar. 23, 2019); *Information for Exporters*, UGANDA EXPORT PROMOTION Bd., <http://www.ugandaexports.go.ug/en/information-for-exporters/> (last visited Mar. 23, 2019).
- 276 See, e.g., RSC Working Paper Series No. 86, supra note 258, at 16 ("[S]ome livelihood strategies of Kampala-based refugees are deeply linked with business demands in their country of origin.").
- 277 See *id.* at 23.
- 278 UGANDA CONST. chpt. 15, § 237(1). While non-citizens may buy land or property, similar to Ugandan citizens, non-citizens may not own a freehold interest in land. A leasehold is the only option available to non-citizens. Any freehold interest in land must be owned by a Ugandan citizen or a Ugandan company. If a company wishes to own freehold land, the Ugandan interest in the company must comprise at least fifty-one percent (51%). UGANDA LAW SOCIETY, <http://www.ugandaecology.com/trade-associations/uganda-law-society> (last visited Mar. 22, 2019). As a practical matter, however, there is little land that is held under freehold in Uganda.
- 279 UGANDA CONST. chpt. 15, § 237(1)(c).
- 280 *Uganda: The Refugees Regulations* § 65, supra note 224.
- 281 *Id.*
- 282 *Id.*
- 283 See *Uganda: The Refugee Act 2006* § 29(1)(e)(ii), supra note 223.
- 284 With respect to shareholding in joint venture companies operating in the oil and gas sector, the Ugandan company must hold at least 48% of the share in the joint venture company. See *Uganda – Joint Ventures/Licensing*, EXPORT.GOV, <https://www.export.gov/article?id=Uganda-Joint-Ventures> (last visited Mar. 22, 2019).
- 285 *National Financial Inclusion Strategy 2017 – 2022*, BANK OF UGANDA (Oct. 2017), www.bou.or.ug/bou/bou-downloads/publications/special_pubs/2017/National-Financial-Inclusion-Strategy.pdf.
- 286 REFUGEE ECONOMIES, supra note 23, at 231.
- 287 Hansen & Zikusooka, supra note 261.
- 288 REFUGEE ECONOMIES, supra note 23, at 231.
- 289 See generally Hansen & Zikusooka, supra note 231.
- 290 *Id.* at 16.
- 291 See *Business Registration Forms*, URSB, <https://ursb.go.ug/business-registration-forms/> (last visited Mar. 22, 2019).
- 292 Cf. Women's Refugee Commission (2011), supra note 253.
- 293 Angus Morgan Kathage, *Understanding the informal economy in African cities: Recent evidence from Greater Kampala* (Mar. 14, 2018), <https://blogs.worldbank.org/african/understanding-the-informal-economy-in-african-cities-recent-evidence-from-greater-kampala>.
- 294 *Id.*
- 295 Lawrence Mulondo, *Arrests: KCCA tough on street vending*, NEW VISION (Aug. 1, 2015, 09:22 AM), https://www.newvision.co.ug/new_vision/news/1331625/arrests-kcca-tough-street-vending.
- 296 Sentences ranged from either two to six weeks in jail or fines ranging from 200,000 – 600,000 Ugandan shillings, with heftier two-month jail terms for those who could not pay the fines levied. *Id.*



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