



# Recognising Nairobi's Refugees

The Challenges and Significance  
of Documentation Proving Identity and Status

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## In appreciation

The Norwegian Refugee Council (NRC) and the International Human Rights Clinic at Harvard Law School (IHRC) would like to thank the refugees in Nairobi who shared their experiences with us for this report. Without their help we would not have been able to understand the very real and significant challenges that refugees outside of camps in Kenya face accessing and updating refugee documentation and securing legal status. We hope that this report allows these issues and the significance of refugee documentation to be better understood and changes made to better protect refugees. We would also like to thank partners who supported the research through their networks and comments on the report—the Refugee Consortium of Kenya, Northern Advocacy Organization, Kituo Cha Sheria, International Rescue Committee, and Danish Refugee Council—as well as the UNHCR Refugee Media Team for graciously allowing us to use photos from their collection. Finally, we want to extend our gratitude to the NRC ICLA staff and IHRC students who supported the fieldwork and analysis.



Cover photo: Somali refugee student shows her documentation at home in Nairobi.  
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Burundian refugee student at home in Nairobi.  
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## I. Executive Summary

As of September 2017, almost half a million refugees—mostly from East African countries, and predominantly from Somalia—live in Kenya.<sup>1</sup> The Office of the United Nations High Commissioner for Refugees (UNHCR) estimates that while the majority of refugees in Kenya live in Dadaab and Kakuma refugee camps, around 64,000 refugees reside in Nairobi.<sup>2</sup> This report provides a snapshot of the challenges urban refugees have experienced—generally from 2014 onwards—obtaining documents from the Government of Kenya or UNHCR in Nairobi that recognise their status as refugees. It also explores the significance of these documents to refugees and the consequences that flow from lack of documentation. It aims to contribute to discussions among humanitarian and local actors in Nairobi on how to ensure that refugees who have chosen to live in urban settings—in exercise of their right to freedom of movement under international human rights law<sup>3</sup>—are “provided with adequate documents . . . and not penalized for travelling,” as the *UNHCR policy on refugee protection and solutions in urban areas* stipulates.<sup>4</sup>

### Background

The first major movement of refugees into Kenya began in the late 1980s. (In this report, the term “refugee” is used to refer to all persons in need of international protection in Kenya, regardless of whether the Government of Kenya or UNHCR has recognised their status as a refugee or asylum seeker.) For almost two decades, refugee affairs were managed primarily by UNHCR. In the past decade, however, the Kenyan government has moved to assume more responsibility for refugee affairs. More recently, the Kenyan government has taken steps that have made it increasingly difficult for refugees to reside outside camps and obtain official documentation. These developments reflect a shift in public and political opinion in Kenya against refugees, fuelled at least in part by perceived national security concerns. Kenya has required refugees to live in camps for a number of years, but only formalised this encampment policy in law in March 2014, at which point residing outside designated refugee camps without official permission became a criminal offence.<sup>5</sup>

As of October 2017, authorities in Dadaab camp, Kenya’s largest refugee camp, are continuing to work towards the camp’s eventual closure, largely through encouraging the voluntary repatriation of Somali refugees living there. While the camp was officially slated for closure by 31 May 2017, as of October 2017 the camp remains open, although its future is uncertain.<sup>6</sup>

Since 1991, the Government of Kenya and UNHCR have issued a variety of different official documents to refugees living in Nairobi through registration and refugee status determination (RSD) processes. “Registration” means the collection and updating of basic information about a person who is seeking international protection in Kenya by either UNHCR or the Government of Kenya. RSD means the process by which UNHCR or the Government of Kenya determines whether a person meets the test set out in international law to be recognised as a refugee. RSD typically involves an interview or series of interviews with the person seeking international protection. The documents a refugee could expect to receive through registration and RSD in Nairobi have differed across time, including as to their form, number, duration of validity, and relationship to legal status.

Two documents have assumed a central role in the lives of refugees living in Nairobi: UNHCR mandate refugee certificates (“mandate certificates”) and government “alien cards” that have been issued in Nairobi. In this report, “urban refugee documentation” refers to these two documents. If a refugee holds a mandate certificate (usually issued on a family basis), it means that UNHCR has recognised them as a refugee. If a refugee holds an alien card (issued on an individual basis), it means the Government of Kenya has recognised them as a refugee. Some refugees hold both mandate certificates and alien cards, others have one, and some have neither. Apart from urban refugee documentation, refugees may hold (or have held) other documents that relate to their legal status in some way, such as “waiting” documents that indicate the refugee is waiting for urban refugee documentation to be issued or renewed.



## Key Findings

Thirty-one refugees living in Nairobi were interviewed for this report, along with representatives of six local and international non-governmental organisations (NGOs) working with refugees in Nairobi, as well as representatives of UNHCR and the Refugee Affairs Secretariat (RAS), the government body that manages refugee affairs—previously, the Department of Refugee Affairs (DRA). In interviews with refugees and NGO representatives, several themes emerged concerning refugees' experiences attempting to obtain urban refugee documentation in Nairobi, particularly since 2014:

- Stalled or suspended registration and RSD processes;
- Inconsistencies and delays in processes;
- Refugees' confusion about the next steps to take in a process due to a lack of clear information from DRA/RAS or UNHCR; and
- Burdensome administrative issues and travel costs associated with registration and RSD processes.

In general, refugees expressed feeling confusion and uncertainty about registration and RSD, largely stemming from the often conflicting, unclear, or incomplete information they received from different sources about their status in Nairobi and what was required of them.

In interviews, refugees discussed the many reasons why documentation mattered to them. By and large, holding urban refugee documentation gave refugees a sense of security in their legal status in Nairobi and their daily lives. Those who had been unable to obtain documentation, meanwhile, described feeling frustrated, stressed, and in some cases, without hope. Reflecting the role urban refugee documentation plays in securing a refugee's legal identity in Kenya, a lack of documentation was associated with restricted access to services and activities that required an official identity document, such as banking services. Problems with the police—

including harassment, demands for bribes, arrest, and detention—were also connected with lack of documentation. Without documentation, a number of refugees restricted their movements to avoid encounters with police. In some cases refugees experienced documentation-related problems accessing essential services, such as health and education. As the refugee policy environment evolves, these problems may become more widespread. Refugees identified additional consequences stemming from lack of documentation including complications for resettlement and the inability to obtain work permits. Finally, some refugees who had been unable to obtain urban refugee documentation described safety risks they would face if they were forced to live in camps.

## Recommendations

This report recommends that the Government of Kenya should:

- Continue to permit refugees to register in urban settings and renew alien cards;
- Recognise refugees' right to freedom of movement and allow refugees freedom of movement within Kenya, including by ensuring refugees have the ability to access registration and live legally outside camps;
- Improve registration and RSD processes in Nairobi, including by continuing to work with UNHCR to streamline RSD processes;
- Provide more information to refugees on registration and RSD, including by producing and widely disseminating clear, simplified, and accessible guidance on procedures in urban settings;
- Provide more information and additional trainings on RSD for relevant officials; and
- Undertake measures to ensure refugees can live securely in Nairobi, such as officially recognising a set of documents as sufficient proof of identity for processes that require such proof, and expanding opportunities for refugees to obtain work permits.

## Table of Acronyms

- UNHCR:** The Office of the United Nations High Commissioner for Refugees, the UN refugee agency.
- DRA:** The Department of Refugee Affairs, a department established under the Refugees Act 2006 that was the primary government body dealing with refugee affairs in Kenya. It was disbanded in May 2016.
- RAS:** The Refugee Affairs Secretariat, the body that replaced DRA following its disbandment. Formally established in law from May 2017.
- RSD:** Refugee status determination, the process by which UNHCR or the Government of Kenya determines whether a person meets the test set out in international law to be recognised as a refugee.



Kenyans mark 2017 World Refugee Day at the University of Nairobi Graduation Square, 20th June. © UNHCR/Tobin Jones, June 2017.





Eastleigh, Nairobi.  
Photo by Fatuma Abdullahi © NRC,  
September 2017.

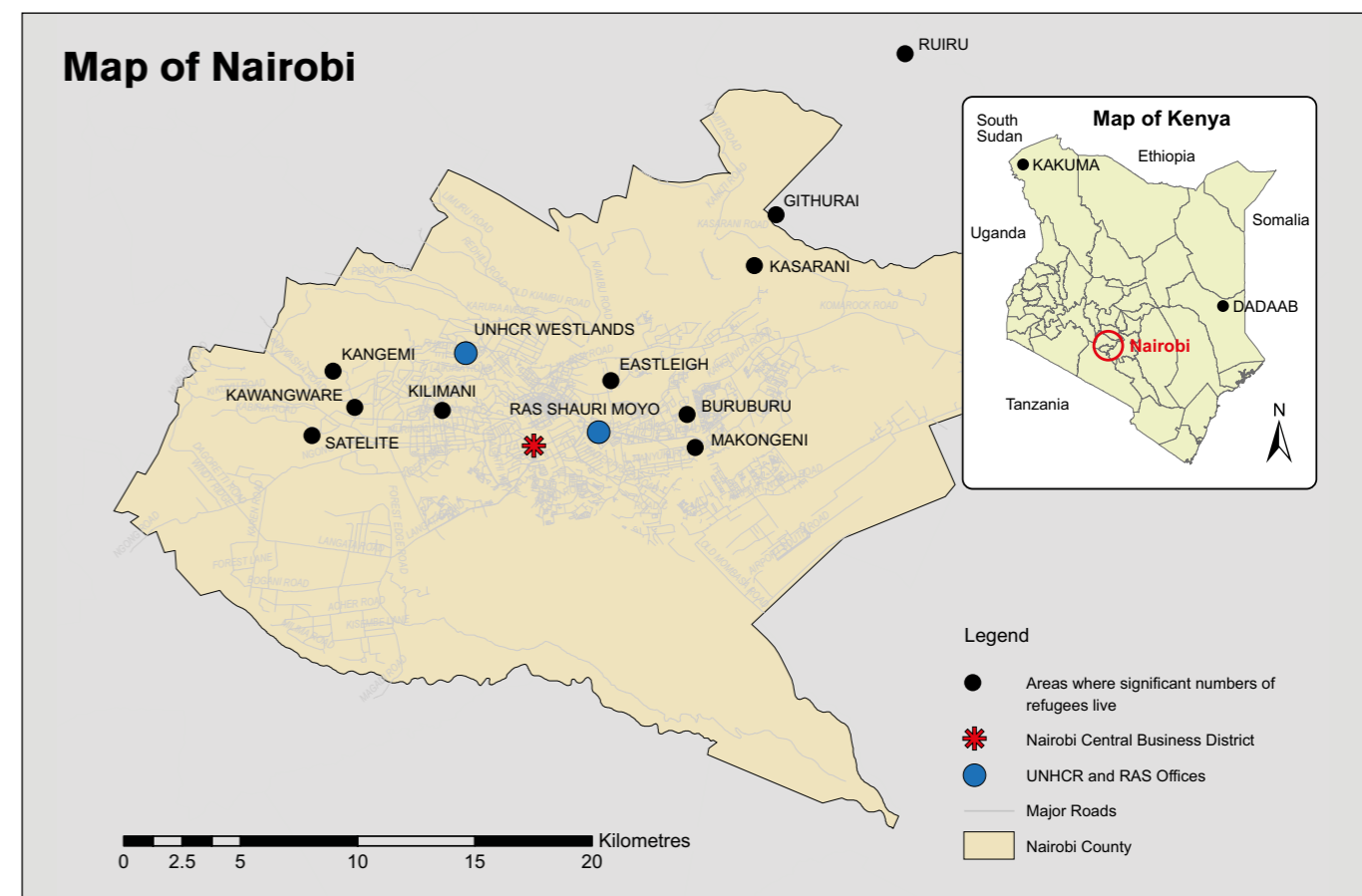
## II. Methodology

NRC Kenya collaborated with the International Human Rights Clinic at Harvard Law School (IHRC) to carry out research on documentation for refugees in Nairobi, Kenya. The project began in January 2017 with a review of relevant legislation and court cases, as well as registration, RSD, and birth and marriage registration processes.

In March 2017, IHRC and NRC researchers interviewed 31 adult refugees living in Nairobi.<sup>7</sup> Interviews took place in four Nairobi neighbourhoods: Eastleigh, Buru Buru, Makongeni, and Kilimani. The Refugee Consortium of Kenya, the Northern Advocacy Organization, Kituo Cha Sheria, the International Rescue Committee, and the Danish Refugee Council supported the research by connecting researchers with refugees living in

Nairobi and providing input into this report and its recommendations. All of the interviewed refugees lived outside of refugee camps and in the metropolitan Nairobi area. Almost half were from Somalia and the remainder from Ethiopia, the Democratic Republic of the Congo, Rwanda, Uganda, and Eritrea, in order of frequency. The majority had arrived in Nairobi by 2013.

The aim of interviews was to gain an understanding of a broad range of refugees' experiences with refugee documentation, identify challenges around documentation processes, and explore the consequences of lacking documentation. While interviews were based on a common set of questions, a quantitative survey was not conducted.

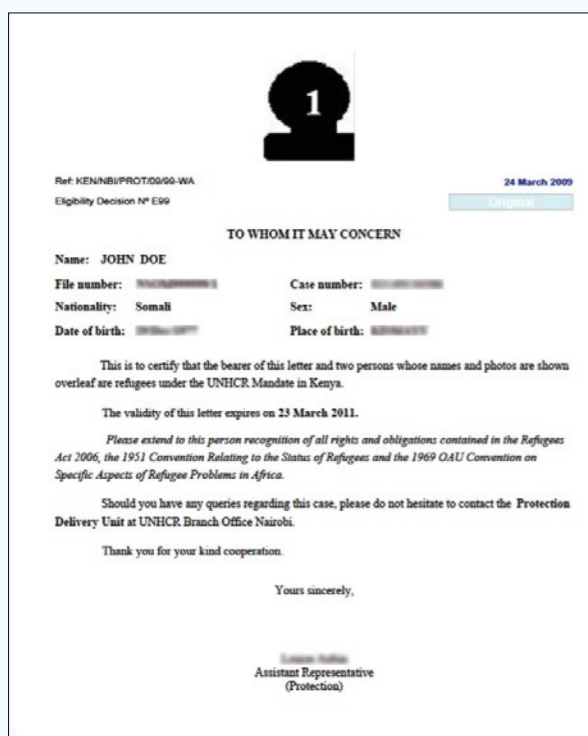


RAS has three different offices in Nairobi: the head office in Lavington, which is mostly administrative, the Shauri Moyo office, and the Eastleigh office (Saint Theresa's). Generally, refugees must travel to Shauri Moyo for registration and RSD. DRA had the same arrangement. UNHCR's main office is in Westlands.



## Glossary of Documents

- A **mandate certificate** is an A4-sized piece of paper issued by UNHCR that states the persons listed on the certificate (usually a family) are refugees under the UNHCR mandate in Kenya. Mandate certificates typically expire after two years and in the past could be renewed. (As of October 2017, it is not clear if they can be renewed, as discussed below.<sup>8</sup>) Although difficult to acquire due to long wait times and other challenges, a large number of refugees hold mandate certificates.<sup>9</sup> They may become less common over time as the government assumes further responsibility for RSD from UNHCR.
- An **alien card** refers to a government-issued identity card that includes a notation (either in the card's title or elsewhere) to indicate the holder is a refugee. Since 2006 they have been formally called "refugee identity cards" in Kenyan legislation. Depending on where and when the card was issued, its title could be "refugee identity card," "refugee certificate," "refugee certification," or "alien certificate." Alien cards typically expire after five years and can be renewed. Although they can be challenging to obtain, they are common documents.<sup>10</sup>



Ref: KEN/BU/PROT/00/00-WA  
Eligibility Decision N° E99

24 March 2009  
Original

**TO WHOM IT MAY CONCERN**

Name: JOHN DOE  
File number: [redacted] Case number: [redacted]  
Nationality: Somali Sex: Male  
Date of birth: [redacted] Place of birth: [redacted]

This is to certify that the bearer of this letter and two persons whose names and photos are shown overleaf are refugees under the UNHCR Mandate in Kenya.

The validity of this letter expires on 23 March 2011.

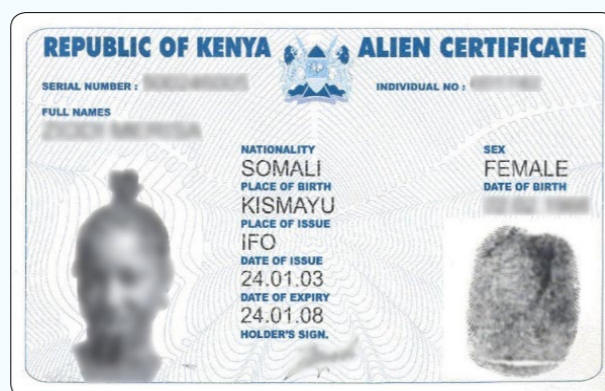
Please extend to this person recognition of all rights and obligations contained in the Refugees Act 2006, the 1951 Convention Relating to the Status of Refugees and the 1969 OAU Convention on Specific Aspects of Refugee Problems in Africa.

Should you have any queries regarding this case, please do not hesitate to contact the Protection Delivery Unit at UNHCR Branch Office Nairobi.

Thank you for your kind cooperation.

Yours sincerely,  
Assistant Representative  
(Protection)

Example of a mandate certificate.



REPUBLIC OF KENYA ALIEN CERTIFICATE

SERIAL NUMBER: [redacted] INDIVIDUAL NO: [redacted]

FULL NAMES: [redacted]

NATIONALITY: SOMALI  
PLACE OF BIRTH: KISMAYU  
PLACE OF ISSUE: IFO  
DATE OF ISSUE: 24.01.03  
DATE OF EXPIRY: 24.01.08  
HOLDER'S SIGN: [redacted]

SEX: FEMALE  
DATE OF BIRTH: [redacted]



REPUBLIC OF KENYA REFUGEE CERTIFICATE

SERIAL NUMBER: [redacted] INDV. NUMBER: [redacted]

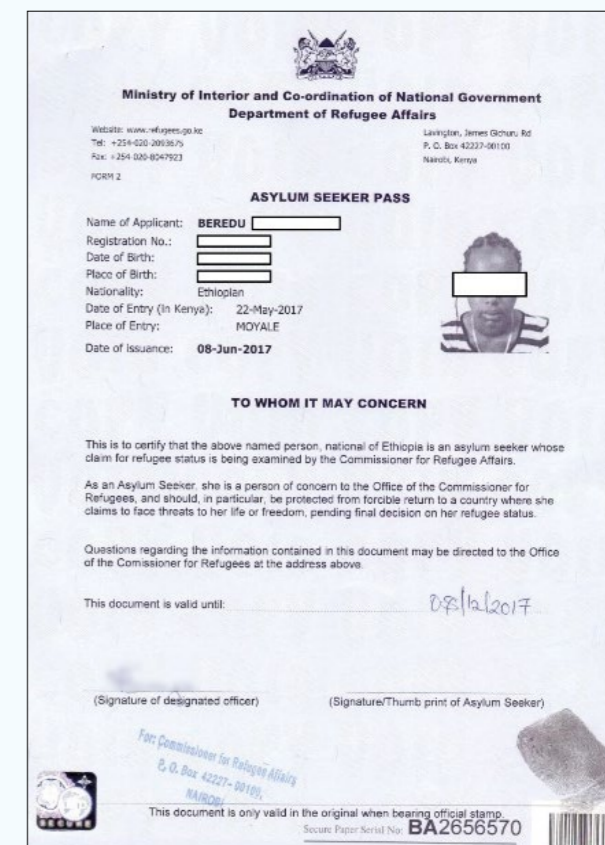
FULL NAMES: [redacted]

NATIONALITY: SOMALI  
PLACE OF BIRTH: SOMALIA  
PLACE OF ISSUE: DAGAHALEY  
DATE OF ISSUE: [redacted]  
DATE OF EXPIRY: [redacted]  
HOLDER'S SIGN: [redacted]

SEX: FEMALE  
DATE OF BIRTH: [redacted]

Examples of alien cards.

- An **asylum seeker certificate** is a document issued by UNHCR noting that those listed on it (usually a family) are recognised as asylum seekers by UNHCR. It is valid until the appointment date listed on it for an interview at UNHCR's offices. UNHCR may issue successive asylum seeker certificates to families, as certificates are reissued when they expire if the claim to refugee status has not yet been determined.
- A **waiting card, waiting document, or appointment slip** could refer to any number of documents issued by DRA/RAS or UNHCR. These documents usually indicate that the holder is waiting for a document, such as an alien card, that they are entitled to (but it may not state this is the case) or has an appointment for an interview as part of the RSD process. These are common documents that vary significantly in form. Some refugees may have received multiple waiting documents, issued one after the other.
- A **movement pass** is a document issued by DRA/RAS that requires a refugee to move from an urban area to a camp within 10 days. It is also the name used for the document DRA/RAS issues to camp-based refugees that gives them permission to leave the camp on a temporary basis.
- A **proof of registration** is a document issued by DRA/RAS that lists the members of a family registered in an urban setting. Its camp equivalent is usually referred to as a "manifest" and is very similar in form. Proof of registration documents appear to have been issued by DRA/RAS at various points, including to refugees who took part in the urban verification exercise that was carried out by RAS and UNHCR in 2016/17, as discussed below at page 19.<sup>11</sup>
- A **refugee recognition letter (or notification of recognition)** is a letter issued by DRA/RAS with a validity of one year that states the holder has been recognised as a refugee by the government and is waiting for an alien card. Very few of these documents appear to have been issued, as of October 2017.
- An **asylum seeker pass** is a document issued by DRA/RAS that indicates the holder has been recognised as an asylum seeker by the government. It is valid for six months or one year. Relatively few of these documents appear to have been issued, as of October 2017.



Ministry of Interior and Co-ordination of National Government  
Department of Refugee Affairs

Website: www.refugees.go.ke  
Tel: +254-020-2693679  
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Lavington, James Gichuru, Rd  
P. O. Box 42227-00100  
Nairobi, Kenya

FORM 2

**ASYLUM SEEKER PASS**

Name of Applicant: BEREDU [redacted]  
Registration No.: [redacted]  
Date of Birth: [redacted]  
Place of Birth: [redacted]  
Nationality: Ethiopian  
Date of Entry (In Kenya): 22-May-2017  
Place of Entry: MOYALE  
Date of Issuance: 08-Jun-2017

**TO WHOM IT MAY CONCERN**

This is to certify that the above named person, national of Ethiopia is an asylum seeker whose claim for refugee status is being examined by the Commissioner for Refugee Affairs.

As an Asylum Seeker, she is a person of concern to the Office of the Commissioner for Refugees, and should, in particular, be protected from forcible return to a country where she claims to face threats to her life or freedom, pending final decision on her refugee status.

Questions regarding the information contained in this document may be directed to the Office of the Commissioner for Refugees at the address above.

This document is valid until: 08/12/2017

(Signature of designated officer) (Signature/Thumb print of Asylum Seeker)

For Commissioner for Refugee Affairs  
P. O. Box 42227-00100  
NAIROBI

This document is only valid in the original when bearing official stamp.  
Secure Paper Serial No: BA2656570

Example of an asylum seeker pass issued by DRA.

## III. Background

### Legal and policy framework

Prior to a large movement of refugees into Kenya in 1991, around 15,000 refugees lived in the country.<sup>12</sup> At the time, Kenyan law permitted asylum seekers to apply for refugee status but contained little procedural detail. Until at least the late 1980s, immigration officers dealt with applications for refugee status on a case-by-case basis.<sup>13</sup> Government practice in this period was to issue alien cards to refugees that permitted holders to live and work throughout the country.<sup>14</sup> However, with the collapse of the Somali and Ethiopian governments, the refugee population in Kenya swelled to as many as 700,000 people in 1991.<sup>15</sup> In the face of this increase, the Government of Kenya gave UNHCR primary responsibility for refugee status determination (RSD) that same year.<sup>16</sup>

It was not until 15 years later that the Refugees Act 2006 created a detailed legal framework for the Kenyan government to exercise control over refugee affairs.<sup>17</sup> The Act made refugees' entitlement to reside in Kenya and the principle of non-refoulement (refoulement—forced return of refugees to a country where they may be subjected to persecution—is a violation of international law<sup>18</sup>) matters of domestic law, affirmed Kenya's commitment to providing refugees with the rights contained in the international agreements to which Kenya was a party, and set out a structured set of powers and functions for dealing with refugee-related issues.<sup>19</sup>

The Act also established a Department of Refugee Affairs (DRA), responsible for all administrative matters concerning refugees in Kenya.<sup>20</sup> DRA was to be headed by a Commissioner of Refugee Affairs<sup>21</sup> who was given powers to formulate refugee policy, work with UNHCR and other institutions to ensure the provision of adequate facilities and services for refugees, receive and process applications for refugee status, register refugees, issue identification cards, manage the relationship between refugees and local communities, and punish certain offences, among other functions.<sup>22</sup> However, as discussed below, in

practice UNHCR retained primary responsibility for RSD until around mid-2014.<sup>23</sup>

In 2010, Kenya adopted a new Constitution that guaranteed a range of rights to all persons (including refugees) within the country, and empowered the courts to provide a variety of remedies for breaches.<sup>24</sup> The 2010 Constitution also incorporated Kenya's international legal obligations directly into Kenyan law.<sup>25</sup> Relevantly, these include the 1951 United Nations Convention Relating to the Status of Refugees (the 1951 Refugee Convention) and its 1967 Protocol Relating to the Status of Refugees, as well as the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (the 1969 OAU Convention). Together, these treaties contain multiple protections for refugees, including as to non-discrimination,<sup>26</sup> freedom of movement,<sup>27</sup> and the issuance of identity papers.<sup>28</sup>

In line with its international refugee law obligations, Kenyan law distinguishes between “statutory” refugees and “prima facie” refugees.<sup>29</sup> Broadly speaking, statutory refugees are people who face a well-founded fear of persecution should they return to their countries of origin, reflecting the terms of the 1951 Refugee Convention.<sup>30</sup> In contrast, prima facie refugees are persons who have been compelled to leave their country of residence by external aggression, occupation, foreign domination, or events seriously disturbing public order, a definition drawn from the 1969 OAU Convention.<sup>31</sup> Kenyan law allows the Minister responsible for refugee affairs to designate specific classes of people as prima facie refugees; until late April 2016, people of Somali nationality enjoyed this status.<sup>32</sup> Because prima facie refugees from designated countries prove their claim to refugee status by demonstrating their nationality, the process for these refugees to be recognised as refugees is more straightforward than the RSD process for statutory refugees.

Over the last five years, the government has taken steps to make it more difficult for refugees to have access to asylum and obtain documentation in Kenya,

although a number of these steps have been successfully challenged in the courts. Since late 2012, government registration of refugees living outside camps (“urban refugees”) has been intermittent.<sup>33</sup> In that year, new legislation increased the Commissioner of Refugee Affairs' power to refuse a refugee application on security grounds.<sup>34</sup> The government also announced the closure of urban registration centres, required all refugees to report to refugee camps, and asked UNHCR and other partners serving refugees to cease providing direct services in urban settings.<sup>35</sup> These directives were later struck down as unconstitutional.<sup>36</sup> In 2014, further legislative amendments changed the time period asylum seekers had to register with the government from within 30 days of entering the country to “immediately,” and purported to cap the total number of refugees permitted in the country at 150,000—though in 2015, Kenya's High Court struck down this cap as a violation of the principle of non-refoulement.<sup>37</sup> The government also formally designated Dadaab and Kakuma camps as refugee camps in March 2014, meaning that it became a criminal offence for refugees to live outside those camps without official permission.<sup>38</sup>

In late April 2016, the government revoked the prima facie refugee status enjoyed by people from Somalia, and put in place new regulations that required all refugees to reside in designated refugee camps.<sup>39</sup> That same year, the government announced the disbandment of DRA (a body mandated by the Refugees Act) and the creation of its successor, RAS.<sup>40</sup> DRA's disbandment was also successfully challenged in legal proceedings, with the High Court ordering DRA's restoration in February 2017.<sup>41</sup> As of October 2017, this decision had not yet been implemented and appeared to have been superseded by May 2017 legislation that formally established RAS as a legal entity.<sup>42</sup>

In mid-2017, a bill to repeal and replace the Refugees Act was approved by Parliament, but did not receive the President's assent. Had it become law, the bill would have largely maintained the regime established by the Refugees Act, but would have also provided

clearer legal pathways for refugees to obtain work permits and gain access to land.<sup>43</sup> Because the President rejected the bill, it will be returned to Parliament, but as of October 2017, it is not clear if Parliament will choose to revisit the matter.

### Registration and RSD in Nairobi

Refugee registration and RSD processes in Nairobi have changed significantly over time. The overview of the changes outlined here is supplemented by an appendix to this report that provides greater detail. Under international refugee law, the state in which a person seeks international protection has primary responsibility for assessing that person's claim to refugee status through a process of RSD.<sup>44</sup> However, UNHCR may assume this responsibility in countries that are unable or unwilling to carry out RSD.<sup>45</sup> In Kenya, from 1991 to mid-2014, UNHCR, in accordance with its humanitarian mandate and at the request of the Kenyan government, had primary responsibility for RSD.<sup>46</sup>

At the first stage of the RSD process in Kenya, UNHCR would issue an **asylum seeker certificate**, noting that UNHCR recognised the person as an asylum seeker (as noted above, this report uses the generic term “refugee” for all persons in need of international protection, including asylum seekers whose claim to refugee status has not yet been determined).<sup>47</sup> If UNHCR had not completed assessing the person's claim to refugee status by the time an asylum seeker certificate expired, UNHCR would issue a new asylum seeker certificate. At the end of the process, if the person's claim was substantiated, UNHCR would issue a **mandate certificate**.<sup>48</sup> This process could take anywhere from several months to several years.

Once a refugee had a mandate certificate issued in Nairobi, the government would generally issue that person with a waiting slip for an **alien card** and, eventually, an alien card listing Nairobi as the refugee's place of residence (although, as discussed below, alien cards have not been consistently issued in Nairobi).



To avoid confusion and reflect colloquial usage, the report uses the term “alien card” to generically refer to the official identity card the government has issued to refugees, even though the name of this card, the agency issuing the card, and the legislation it has been issued under have differed across time<sup>49</sup>— according to current law, alien cards are officially called **refugee identity cards**.<sup>50</sup>

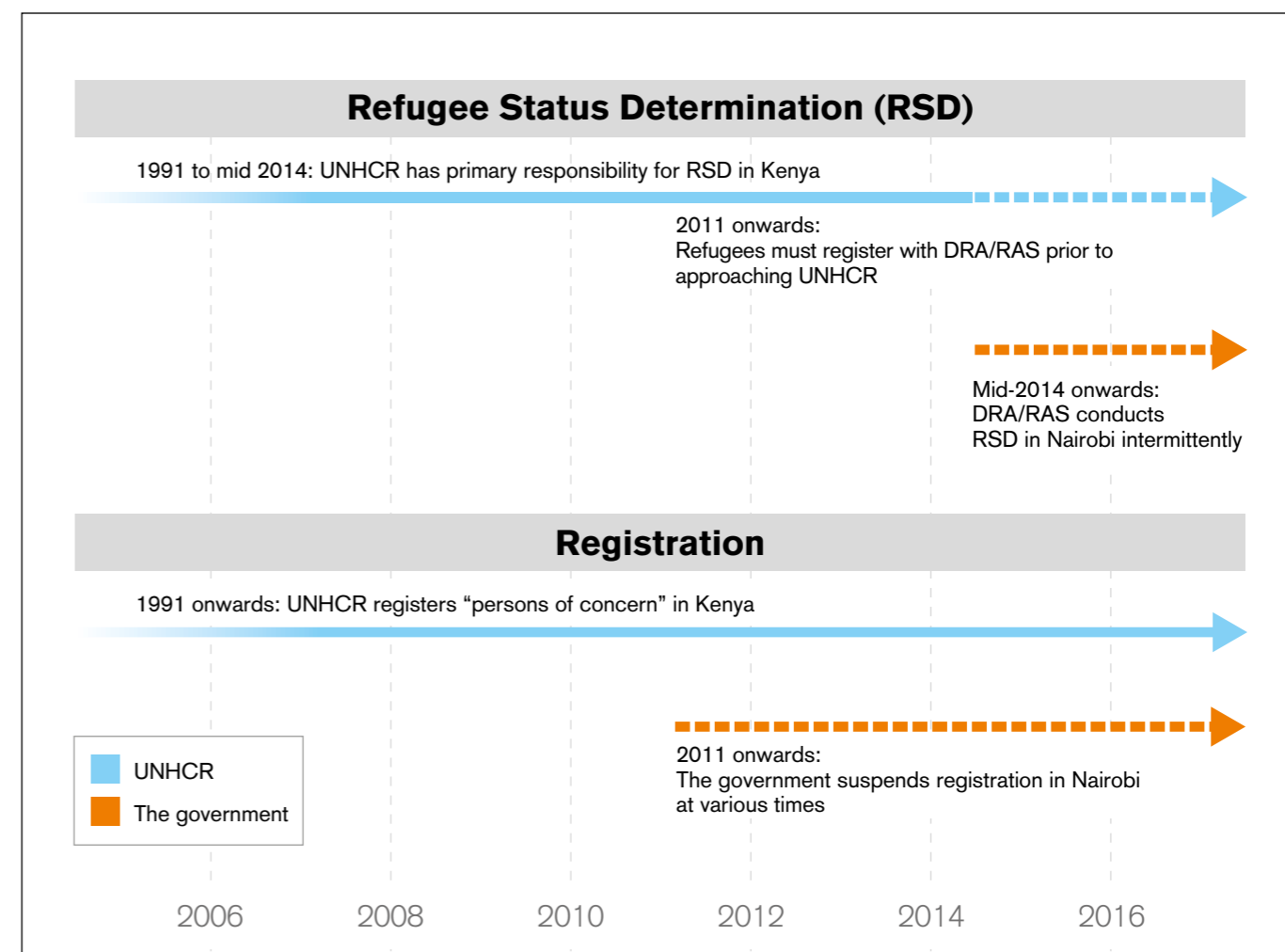
From around mid-2014 onwards, the Kenyan government has incrementally assumed responsibility from UNHCR for RSD. However, it appears that a relatively small number of refugees were able to complete RSD with DRA prior to its May 2016 disbandment. Under RAS, RSD has stalled.<sup>51</sup> According to NGOs, RAS intends to issue RSD decisions for refugees who started the process in Nairobi prior to DRA's disbandment, and the appointment of an acting Commissioner for Refugee Affairs in July 2017 has paved the way for the resumption of RSD. At the end of the government RSD process, refugees receive alien

cards. Although it no longer has primary responsibility for RSD, UNHCR has continued to issue mandate certificates in exceptional circumstances on a case-by-case basis.<sup>52</sup> The typical next steps in the RSD process for refugees who were partway through the UNHCR RSD process when responsibility for RSD shifted to the government are unclear.

In some countries, including Kenya, UNHCR registers “persons of concern”: asylum seekers (those going through RSD) and recognised refugees (those who have completed RSD and whose claim to refugee status has been accepted). Registration is often carried out at the same time as RSD, and is not a one-off event, but requires the periodic updating and verification of information about persons of concern.<sup>53</sup> Since 2011, the government has required refugees to register with DRA/RAS, and since that time, UNHCR has required refugees to register with DRA/RAS before registering and initiating RSD with UNHCR.<sup>54</sup>



Elshaday and Kassahum at the verification centre in Nairobi registering their newborn son. In late 2016 and early 2017, UNHCR and RAS conducted an exercise in Nairobi to verify information about refugees. This report discusses this “urban verification exercise” at page 19 © UNHCR/Modesta Ndubi, February 2017.



However, there have been periods during which DRA/RAS has not permitted urban refugees to register. At various times, the government completely suspended urban registration by DRA, including in December 2012<sup>55</sup> and March 2014.<sup>56</sup> Based on interviews with refugees and NGOs, registration appears to have resumed intermittently in 2015, and stalled again with DRA's May 2016 disbandment, resuming under RAS in mid-2016.<sup>57</sup> The issuance or renewal of alien cards has also stalled at different times. For example, as of October 2017, it does not appear that RAS has issued or renewed alien cards since it assumed DRA's functions, but instead has been issuing waiting documents to refugees who are eligible for the cards. As of October 2017, RAS has made no official announcements on this topic.

Although refugees who arrived after May 2016 (“new arrivals”) can register in Nairobi as of October 2017, they must go to camps to complete RSD. Since it assumed DRA's functions, RAS has issued **movement passes** to all new arrivals who present themselves for registration at RAS' offices in Nairobi.<sup>58</sup> These passes require refugees to go to a designated camp within 10 days. While the possibility for exemption from residence in camps exists in law, no public official exemption policy or procedure has been established as of October 2017.<sup>59</sup> However, unofficial reports in June 2017 indicated that an informal RAS committee in Nairobi had begun to issue movement passes, valid for three months, to allow small numbers of refugees to reside in Nairobi, although the committee does not appear to have met regularly.



## International Standards on Refugee Registration and Refugee Status Determination

Registration and RSD play a crucial role in protecting refugees' human rights. The documents refugees receive through these processes help them to establish new lives in their country of asylum. UNHCR's Executive Committee has "acknowledg[ed] the importance of registration as a tool of protection" and found that registration helps to ensure "access to basic rights," as well as allow for the "identification of those in need of special assistance."<sup>60</sup> Recognising the importance of documentation in urban settings in particular, the *UNHCR policy on refugee protection and solutions in urban areas* notes that UNHCR will "strive to ensure that refugees who travel to urban areas are provided with adequate documents and will advocate with the authorities and security services to ensure that they are not penalized for travelling and that they are allowed to remain in an urban area for as long as necessary."<sup>61</sup>

UNHCR's *Operational Standards for Registration and Documentation* set out best practices for refugee registration.<sup>62</sup> Among other things, the *Operational Standards* emphasise that:

- All persons of concern should be registered within three months after their arrival in the asylum territory. Registration information should be verified and updated continuously at a minimum of every twelve months.<sup>63</sup>
- Registration should be a free and voluntary process without discrimination based on sex, age, race, religion, nationality, or basis for application for international protection.<sup>64</sup>
- Registration should take place in a safe and secure location that is physically, economically,

and socially accessible to refugees and does not expose them to physical risk or intimidation. A registration location should have access to water and sanitation, protection from the elements, and adequate privacy, as well as require minimal walking.<sup>65</sup> Registration actors should seek out those who are unable to come to established registration locations.<sup>66</sup>

- Refugees should be informed of the purpose, intended outcome, rights and obligations before registration takes place.<sup>67</sup> The dignity and culture of the refugee should be respected during the process.<sup>68</sup>
- All registration staff should be knowledgeable about principles of international protection and the registration process.<sup>69</sup>

In terms of RSD, UNHCR's Executive Committee has outlined the following elements, among others, as particularly important:<sup>70</sup>

- "[F]air and efficient procedures for the determination of refugee status."<sup>71</sup>
- "[M]easures to promote the prompt determination of refugee status in fair procedures."<sup>72</sup>
- "[P]rocedures, measures and agreements [on RSD] must include safeguards adequate to ensure in practice that persons in need of international protection are identified and that refugees are not subject to refoulement."<sup>73</sup>
- "[R]ecognized refugees should be issued documentation certifying their refugee status."<sup>74</sup>

## IV. Refugees' Experiences Obtaining Documentation in Nairobi

Refugees interviewed for this report encountered a number of challenges trying to obtain or renew documentation in Nairobi. They described apparent stalls or suspensions in the issuance of urban refugee documentation (UNHCR-issued mandate certificates and government-issued alien cards), as well as inconsistencies and delays. Lack of clear information from RAS or UNHCR about the next steps they should take to obtain or renew documentation led to confusion.

Additionally, some refugees experienced administrative issues that delayed or complicated obtaining documents, and shouldered significant financial costs because they had to travel repeatedly to DRA/RAS's offices in Shauri Moyo (when used in this report, the phrase "Shauri Moyo" refers to the DRA—now RAS—building in that area) or UNHCR's Westlands offices. These themes were mirrored in discussions with NGOs working with refugees.

### Profile of Cases

In March 2017, researchers interviewed 31 refugees in Nairobi about their experiences with documentation.

#### Refugees came from the following countries:

- Somalia (13 refugees)
- Ethiopia (7 refugees, of whom 3 were ethnically Somali)
- Democratic Republic of the Congo (4 refugees)
- Uganda (3 refugees)
- Eritrea (3 refugees)
- Rwanda (1 refugee)

#### The majority arrived in Nairobi by 2013:

- 22 came straight to Nairobi after they entered Kenya (sometimes with a brief period in another Kenyan city)
- 9 lived in Dadaab camp or Kakuma camp prior to moving to Nairobi, including 2 refugees who were born in Dadaab

#### The documents refugees held included:

##### Government of Kenya alien cards:

- 12 refugees had alien cards that listed Nairobi as their place of residence
  - 10 had current alien cards
  - 1 had an expired alien card
  - 1 had lost their alien card and not been able to obtain a replacement
- 6 refugees had alien cards that listed Dadaab or Kakuma as their place of residence
  - 3 had current alien cards
  - 2 had expired alien cards
  - 1 had lost their alien card

##### UNHCR mandate certificates:

- 17 refugees had mandate certificates
  - 8 had current mandate certificates
  - 9 had expired mandate certificates (each of whom said they hoped to or were in the process of trying to renew their mandate certificate)

##### Other documentation:

- 8 refugees had neither a mandate certificate nor an alien card (and had never held one)
  - 5 had a current or expired asylum seeker certificate
  - 2 had a copy of the "manifest" (a document that attests to their registration in a camp)
  - 1 had no official documents whatsoever and had never held any
- 2 had movement passes issued in Nairobi that required them to return to the camps
- 2 had movement passes issued in the camps that allowed them to be in Nairobi for a short period, but that period had ended
- 5 refugees who had previously lived in the camps and did not have urban refugee documentation described themselves as waiting for a "file transfer" from the camps
- 11 refugees had documents that indicated they had an appointment scheduled with UNHCR or RAS for some point in the future

A number of refugees held multiple documents. In particular, 12 refugees had both mandate certificates and alien cards (current or expired).



## Stalled or suspended processes

Refugees who started the RSD process with UNHCR after 2014 reported that they had begun the process but been unable to complete it. They said that UNHCR had issued them only with documents such as an appointment slip or asylum seeker certificate that scheduled a future appointment. When the appointed day came and they returned to UNHCR, they generally received another such document pushing their appointment further into the future.

For example, a Ugandan refugee in his early twenties said that he had been issued with an asylum seeker certificate by UNHCR after he arrived in Nairobi in February 2015. He had twice returned on the appointed date, only to be reissued with another asylum seeker certificate. At the time he was interviewed in March 2017, he was waiting for his next appointment, scheduled for August 2017. In some instances, the delays between appointments were substantial. A teenage Congolese refugee showed interviewers an asylum seeker certificate that was issued in November 2015 with an appointment date of June 2018.

In none of these cases did it appear that the delay was related to the need for additional investigation of the person's claim to refugee status, as UNHCR had collected only preliminary information from the refugees in question during the time in which they had been waiting. Rather, the delay seemed to be connected to UNHCR's administrative capacity and the switchover of RSD responsibilities to the government. Those who started the process with UNHCR have been placed in limbo, as their path to obtaining official refugee status under Kenyan law has been unclear. Holders of asylum seeker certificates are unable to obtain alien cards because they have not completed the RSD process.

Some refugees reported their understanding that mandate certificates were simply no longer being issued or renewed. Several said that they had been told as much directly by UNHCR staff. One middle-aged Somali woman said she had been told this at the UNHCR office in March 2017. Similarly, an Eritrean refugee who had successfully renewed his mandate

certificate in 2014 was told, two years later, that the process had changed and he could no longer renew it. Others had heard that mandate certificates were only being issued in special circumstances, such as when an applicant was sick, or that Somalis in particular were no longer able to obtain mandate certificates in any circumstances.

### Case Study: Stuck in Limbo with a Waiting Document

One Ugandan refugee fled to Nairobi in early 2015 to escape persecution based on her sexuality. When she arrived in the city, she slept outside UNHCR's offices in Westlands for three weeks in hope of starting the RSD process, only to eventually realise that she had to go to DRA's office in Shauri Moyo. At Shauri Moyo, she was given an appointment for three weeks later. She returned on the appointed date, but was told to return four days later. When she returned for the second time, she was given a document that allowed her to stay in Nairobi for three months and to enter the UNHCR compound. At UNHCR's offices, she received an appointment slip for a date three months later. She attended that appointment and received her first asylum seeker certificate. It listed her appointment for an interview as one year in the future. She subsequently received three further successive asylum seeker certificates, the latest of which was valid to July 2017.

The woman hoped to receive a mandate certificate so that she could apply for an alien card and then resettlement in another country. She did not feel safe in Kenya given its proximity to Uganda, because she feared that her relatives would come to Kenya and force her to return to Uganda. Additionally, she had experienced problems with the police in Nairobi. When police asked her for her documents in November 2016 and she produced her asylum seeker certificate, they did not recognise the document and briefly detained her. Since that event, she had restricted her movements around Nairobi. "I stay indoors and I am not working because I am concerned about having problems with the police," she explained. "Having [an asylum seeker certificate] has not made me feel safe at all."



Poster outlining the DRA registration process as it existed at some point in time after 2010 and prior to 2016. A detailed explanation of registration and RSD processes in Nairobi appears in the appendix to this report. ©IHRM, March 2017.

Refugees also described stalls in RAS processes. Several refugees also said that they thought that RAS was no longer issuing or renewing alien cards. Some said that RAS staff had told them this directly. One ethnically Somali refugee from Ethiopia said that in late 2016, RAS staff told him that RAS was "not processing any new applications, nor renewing or replacing lost

cards." Two refugees said that RAS officials told them that alien cards were no longer being issued because the priority was producing Kenyan identity cards that would be needed by voters in the August 2017 general election. One refugee said RAS officials told him that the delay was partially due to the fact that there was only one machine to issue cards.

A number of refugees had waiting documents indicating that they were entitled to alien cards, but had not yet received them. One Somali woman, whose file was transferred to Nairobi in December 2015 because her young child was disabled and needed medical care that could not be provided in the camps, had received a mandate certificate but had been waiting nearly a year for a replacement alien card, as she had lost her Dadaab-based alien card shortly after she arrived in Nairobi. DRA had given her a waiting document. When she had last checked with RAS in December 2016, she was told her alien card was still not ready.

## Inconsistencies and delays

Successive changes to the RSD process have resulted in a wide variety of documents that refugees might hold and, in some cases, to the existence of documents that contain identical content but have been issued under different names at different times. For example, the title on a refugee's alien card could be "refugee identity card," "refugee certificate," "refugee certification," or "alien certificate," depending on when it was issued. Additionally, some documents described in relevant legislation appear to have been rarely issued in practice. Only one interviewed refugee had held a refugee recognition letter, for example, and none had possessed an asylum seeker pass. In light of this atmosphere of confusion and inconsistency, a number of refugees thought it best to retain all or most of their past documents despite the fact that they had since expired. As one Ethiopian man stated, "If these documents get lost, I will be better off being dead than staying alive in Kenya."

Delays between initiating RSD and receiving a mandate certificate were substantial in some cases, and appeared unconnected to the validity of a refugee's claim. Because registration and RSD in Nairobi has



gone through numerous changes over time, a refugee who initiated a process at a particular point in time could have a vastly different experience from a refugee who initiated a similar process at another time. One Congolese man, who initiated RSD with UNHCR when he first arrived in Nairobi in August 2010, received a mandate certificate four years later, following multiple reissuances of asylum seeker certificates. By contrast, another Congolese refugee who arrived in Nairobi in 2012 was issued with a mandate certificate within 18 months of his initial visit to UNHCR. However, this refugee reported that he first had to travel to Shauri Moyo to obtain a document from DRA that then allowed him to initiate the UNHCR process, whereas the other Congolese refugee did not.

In comparison to refugees of other nationalities, it appears to have been relatively easy for Somali refugees to obtain urban refugee documentation before the revocation of prima facie status in late April 2016. In particular, Somali refugees who sought urban refugee documentation before April 2016 generally reported shorter waiting periods between application and receipt of documents, with one woman stating that it took her only six months to receive both a mandate certificate and alien card in 2012. Indeed, she described obtaining documents as “not a difficult process.” Similarly, another Somali woman said she waited only three months for her first alien card in 2009. However, notwithstanding prima facie status, at least one Somali refugee reported challenges obtaining documents prior to late April 2016. Although this man, who arrived in Nairobi in 2007, was able to obtain a mandate certificate by 2008, he had to wait two years to receive his first alien card, which he applied for in 2013.

With the revocation of prima facie status, one Somali woman, who arrived in Nairobi in November 2016 and who tried to register soon thereafter, described how she was refused assistance at UNHCR without a document from Shauri Moyo. She said she could not obtain this document because officials at Shauri Moyo were intent on issuing her a movement pass to go to Dadaab camp. However, she feared going to the camp because of security concerns related to the reasons she had fled Somalia.<sup>75</sup>

## Confusion about next steps due to lack of information

Due to a lack of clear, accessible, and reliable information, many refugees were uncertain about what documentation they could obtain and the next steps they should take to complete a process. An ethnically Somali refugee from Ethiopia said: “I do not understand why they cannot make the process clearer and why they are not more upfront about what people actually can and cannot get.” He considered the lack of clarity over whether his alien card could be renewed when it expired to be “an example of how there is so much uncertainty and everything is unclear for refugees.” An NGO representative who worked in refugee policy told researchers that he would be “shocked if refugees were not confused,” as he was himself confused due to the dearth of information.

Refugees reported that it was difficult to obtain clarity from UNHCR and the government about processes, or the status of their individual cases, at any given time. A young Somali refugee said that she had heard through word-of-mouth that the RSD process was ongoing at RAS in late 2016. She was told differently at Shauri Moyo, but only after visiting several times.

One NGO attempted to clarify the registration/RSD situation for Somali refugees with RAS in late 2016. An NGO representative who had accompanied Somali refugees to Shauri Moyo on a number of occasions recalled:

Once, in late December 2016 we got told that [RAS officials] weren't registering Somalis [at Shauri Moyo]. The officials said: “We can't help. Go to head office.” We went to the head office and met the Deputy Head of RAS. He said that they still registered new arrival Somalis, though he acknowledged that prima facie status was no longer there. He said: “Bring the person involved [in the case the NGO representative was assisting on] to the office and we will see [the person].” So we went back twice [with the refugee] and the Deputy Head was unavailable. On the third day we were sent back to Shauri Moyo, having been told the registration was

back up and running. At Shauri Moyo, it was still not happening. And officials said that they'd received a phone call just telling them to stop doing Somali registration. There was nothing official or legal, just a phone call from a superior.

Subsequently, the NGO representative said he repeatedly followed up with RAS asking whether registration or RSD was available for Somali refugees, but had never received a clear answer.

The simultaneous involvement of both UNHCR and DRA/RAS in issuing documents has added to the confusion. Refugees spoke of shuttling back and forth between UNHCR in Westlands and DRA/RAS in Shauri Moyo in an attempt to obtain information. One refugee said, “I only know of people who have applied [for urban refugee documentation] and are waiting; most have waited, given up, and gone back to the camps.” Another refugee observed that whenever he went to UNHCR or Shauri Moyo, “We face a lot of difficulties. They keep sending us back and forth . . . They keep on sending us from one office to another office.”

## Administrative issues and travel costs

A number of refugees reported that administrative problems had complicated the processes to obtain or renew documentation. One Ugandan refugee said that his files had been lost by UNHCR and that the same had happened to others he knew. Other refugees reported that obtaining a replacement alien card after losing the original was a complicated process that typically involved first going to the police to obtain an “abstract” (an official police document) to attest to the fact the document was lost. One Somali woman in her early thirties who had lost her alien card (and her mandate certificate) was too afraid to visit the police to seek an abstract so had no documentation. Another refugee who did visit the police to obtain an abstract was subsequently arrested after being unable to pay the bribe that police demanded. A Rwandan refugee expressed frustration that the government did not communicate to refugees when their alien cards had been produced and were ready to be collected. He

said that DRA had taken so long to make his alien card available to be picked up that it had expired by the time DRA informed him it was ready for collection in 2014.

In a small number of cases, refugees mentioned being asked for bribes at Shauri Moyo. One Somali refugee, who arrived in Nairobi in 2007 and had an alien card registered in Nairobi, recalled being asked for a bribe at Shauri Moyo in 2015 when he went there to check if his renewed alien card was ready:

I said that UNHCR had told us that if you pay money, your documents will be cancelled. [The DRA official] told me, “Don't be difficult! Just pay money and you'll get the document.” I feel it's not acceptable for me to pay money for a document. Then he got angry and offended that I would not pay. He went away and sent a police officer who was his friend to come and talk to me. Then the police officer beat me up and pulled a gun on me. Then [the DRA official] took me [to other staff at Shauri Moyo] and said, “This man has insulted us.” I said, “I have not insulted you people and I'd like to apologise if I have.” They said, “We won't allow that. We're going to send you to jail!”

The man was eventually able to resolve the situation and received a renewed alien card in late 2015.

A number of refugees described making multiple trips to UNHCR and Shauri Moyo, encountering long lines, and being unable to speak to officials. A young Ethiopian man said, “People have many problems to even get inside to UNHCR. They are not given a chance to get inside. They are just keeping them outside.” An ethnically Somali refugee from Ethiopia in her early thirties who had only an asylum seeker certificate had attempted to find out from DRA what she could do to speed along the RSD process in early 2016, “but I was not allowed to enter DRA premises to start the process.” She said she tried “four to five times and always received the same answer. People outside, other refugees, security guards, [they] tell me that it is shut for the day, or I wait in line and can't get in.” An Ethiopian man who described how challenging it was to gain access to the UNHCR compound felt that UNHCR had “lost any heart.”



For many refugees, the financial cost of making multiple trips to UNHCR and Shauri Moyo was substantial. Neither the UNHCR Westlands nor DRA/RAS offices in Shauri Moyo are close to areas where significant numbers of refugees live. Although some refugees travelled by public transport or sought help from family or friends who had cars, a number used taxis to minimise their chances of encountering authorities. In some cases, they did not know how else to reach the offices except by car. One refugee said: "I can't really tell [how much I spent on travel], but definitely a lot. I went to Shauri Moyo at least 10 times; [it was expensive] because I came and went from Shauri Moyo by cab."

In 2011, an elderly Somali couple travelled to Shauri Moyo every Tuesday and Thursday for three months

in an attempt to obtain alien cards. Their 27-year-old daughter said that, despite these multiple trips, her parents had been unable to ever reach the front of the queue: "The [security officers] would give [my father] a slip at the entrance, then they would tell him, 'That's not your line—go to another.'" She estimated her parents' travel costs at 800 – 1,000 KSH (\$7.70 – \$9.65 USD) per visit as they travelled by taxi. Unable to bear these costs indefinitely, her parents eventually gave up and returned to Somalia. By way of context, 2012 research on refugee income in Nairobi indicated that the average daily earnings of a domestic worker were between 200 and 400 KSH (\$1.95 and \$3.90 USD), and small-scale traders selling handicrafts or food typically earned between 350 and 500 KSH (\$3.40 and \$4.85 USD) per day.<sup>76</sup>



The verification hall in Eastleigh, Nairobi where refugees and asylum-seekers living in Nairobi, Ngong, Kajiado, Kitengela, Rongai, Ruiru and Thika came to be verified. © UNHCR/Modesta Ndubi, February 2017.

## The Urban Verification Exercise

In 2016 UNHCR and RAS embarked on an exercise to verify information about refugees in the camps and in urban settings; the Nairobi urban verification exercise ended in late February 2017.<sup>77</sup> According to UNHCR, the purpose was to "allow the Government and UNHCR to collect accurate and updated information of all Persons of Concern and their family members" so "the Government and UNHCR [are able to] adequately plan the delivery of all services, to implement effective protection activities and provide meaningful support."<sup>78</sup> A UNHCR representative stated an additional purpose was to help those refugees who did not have documents to begin the process of applying for them or register for future appointments.<sup>79</sup>

In a February 2017 press release, UNHCR reported that around 47,000 refugees living in Nairobi had gone through the verification process.<sup>80</sup> The registered Nairobi urban refugee population at the same time was around 67,000.<sup>81</sup> Although this shortfall may be partly explained by some refugees having relocated to other urban centres, it nonetheless appears that significant numbers of refugees did not take part in the verification exercise. Anecdotaly, NGOs report that Somali refugees in particular were reluctant to take part because of fears of forced repatriation. UNHCR's press release noted that "the government and UNHCR will inactivate the records of persons who do not show up for the verification without any valid reasons."<sup>82</sup> It is unclear what this deactivation will mean for urban refugees, or what other consequences refugees who did not present themselves for the verification exercise may face.

Twenty-one interviewed refugees reported that they had participated in the verification exercise. They typically had heard about it either through receiving a text message from UNHCR or by word-of-mouth. An Eritrean refugee showed researchers the text message that he had received, which read: "Verification exercise alert! The government and UNHCR will conduct verification exercise for refugees and asylum seekers in Nairobi." Refugees reported that attending the verification exercise involved presenting

whatever documents they possessed, having an iris scan and fingerprints taken, and receiving a "proof of registration" document.

The "proof of registration" document demonstrates that the person's record is active in official databases, but it does not appear to have a broader practical significance. One refugee who went through the verification exercise and whose alien card was registered to Dadaab camp showed researchers a piece of paper he had received from the "Litigation Desk" at the verification exercise venue that referred to him as a "camp case" (without explanation) and noted his case would be "dealt with after [the verification exercise]."

Refugees' understanding of the purpose of the exercise was mixed. One refugee thought that the point was to "get an update on the numbers of people in the country." Some refugees were suspicious about the exercise and its goals. Both a Somali woman, who had lost her alien card and mandate certificate, and a 21-year-old Somali man, whose alien card was registered to Dadaab, chose not to participate in the exercise because they were worried about negative consequences that could result from presenting to the authorities with the wrong documents.

One ethnically Somali refugee from Ethiopia who was suspicious about the verification exercise said that he had tried to find out more about the process before deciding whether to participate in it, but had been unable to do so. He said: "Even when I went to ask at [the place where the verification exercise was happening] no-one would give me a straight answer." He added, "I thought that the officials, who would not tell me anything, were hiding something or perhaps just had no information themselves," noting, "My question, 'What will happen to me if I don't verify?' went unanswered." As a result, he chose not to participate in the verification exercise. Others said that they did not understand the significance, if any, of the proof of registration document they were given. One refugee said that he had not heard about the verification exercise at all.



## V. Significance of Documentation to Refugees in Nairobi



Somali refugee student shows her documentation at home in Nairobi. © UNHCR/Modesta Ndubi, February 2017.

Refugees repeatedly emphasised the many ways in which urban refugee documentation was significant in their lives. It has safeguarded their legal status in Nairobi and therefore promoted a feeling of security. Refugees who had been unable to obtain urban refugee documentation experienced frustration and stress that sometimes led to a feeling of hopelessness. Documentation was also linked to legal identity: without urban refugee documentation, refugees struggled with restricted access to services and activities that require official identity documents, particularly banking services. Lack of documentation could also exacerbate refugees' encounters with police, including harassment and demands for bribes. In some cases, refugees without urban refugee documentation faced documentation-related criminal charges. Accordingly, a number of refugees without

documentation restricted their movements to avoid encountering authorities, particularly police. Refugees also discussed the connection between documentation and healthcare and education. Finally, refugees described how lack of documentation created problems in resettlement processes and affected their ability to obtain work permits. In some instances, refugees facing security threats in camps had been unable to obtain urban refugee documentation to secure their legal status in Nairobi.

### Relationship of documentation to legal status and security

On the whole, refugees considered documentation to be useful and important to their lives, even if obtaining documentation did not necessarily solve many problems

they faced. Refugees who had only waiting documents, such as asylum seeker certificates from UNHCR or appointment slips from Shauri Moyo or UNHCR, described feeling insecure, since authorities and service providers generally asked to see alien cards or mandate certificates. In one case, a 40-year-old Somali man, who first arrived in Kenya in 1991 and had lived outside the camps since 1996, said that he finally "felt secure when [he] got the alien card" in 2012, after living without urban refugee documentation for 16 years. A Somali mother whose alien card had expired said, "For me to stay legally and raise my kids I need to have that document." Likewise, a 37-year old Congolese father wanted a mandate certificate and alien card to "show I'm not here illegally in urban areas. [They] show I can stay here in Nairobi." One man, pointing to his alien card, observed, "Someone who does not have this, he's nothing in Kenya." Another refugee, from Somalia, thought "[even] the expired mandate certificate is still better than nothing—you're in the UNHCR system, at least."

Many refugees, unable to obtain urban refugee documentation after various attempts to overcome administrative confusion and repeated delays at UNHCR and Shauri Moyo, described experiencing frustration and stress. One Ethiopian refugee, who had arrived in Nairobi in 2007, discussed the negative effects of multiyear waiting times for appointments with UNHCR: "[UNHCR] give[s] [new arrivals] appointments for three years. This is really affecting—emotionally, mentally. Some [refugees] decide to go to the Mediterranean Sea and they [lose] their life." Similarly, a Somali woman, who had lived in Kakuma camp from 1992 until 2016, described how she had fled to Nairobi after hearing about multiple cases of rape and gender-based violence in the camp. She had since applied to have her file transferred to Nairobi by UNHCR, expressing her wish for the process "to be simplified." Although she was waiting to see what would happen with her transfer application, she noted that "[there are] people like me who have been here for years, who have been victimised, and [have] decided to go back to Somalia [despite the risks], because of complications in [the] process."

For some refugees, the frustration and stress associated with administrative confusion and continued delays had gradually transformed into hopelessness about whether they would ever be able to secure their legal status in Nairobi. One ethnically Somali woman from Ethiopia in her early thirties, who had obtained only an asylum seeker certificate since coming to Nairobi in 2009, said that she felt "hopeless" after nearly a decade of failed attempts to acquire urban refugee documentation: "I do not have a country to go back to [but] I have no legal status here in Kenya." Likewise, a middle-aged Ethiopian man, whose mandate certificate had expired and who was waiting for an alien card, expressed doubts about whether staying in Kenya was better than returning to Ethiopia, "because I ran away only to find myself in this situation [without an alien card]." Some refugees discussed attempts others had made to secure their legal status through bribery, including by obtaining Kenyan national ID cards. One young Somali woman said that possessing a Kenyan national identity card would make her feel more secure in Nairobi, but "if you want to acquire a Kenyan national ID card, you have to pay money," adding that "if I had money, I would go . . . and acquire that [card]."

### Relationship of documentation to legal identity

In Kenya, people are asked to prove their identity in a multitude of settings: requests to show ID are inescapable. In some cases, producing an official identity document is a legal requirement in Kenya (for example to obtain a driver's licence); in others, it is a standard expectation (for example, to enter into certain buildings). While in most countries, birth certificates, national ID cards, passports, or other official documents issued by a person's country of origin are used as proof of identity, refugees often do not possess such documents. This is especially the case for refugees, such as Somali refugees, who have fled from conflict zones or places where the state institutions that would normally issue proof of identity documents are not functioning. The Refugee Convention requires states to issue identity documents



to refugees on their territory and assist refugees to obtain documentation that is normally provided by their home country, but cannot be obtained due to circumstances in that country.<sup>83</sup> Doing so helps refugees secure their legal identity in their country of asylum, ensuring that they are recognised in and protected by that country's law.

In interviews, few refugees described holding passports or ID cards from their countries of origin, and it has been practically very challenging for refugees to acquire Kenyan citizenship even if they are eligible to apply in theory.<sup>84</sup> As a result, although the alien card and mandate certificate are designed to serve as indicators of a person's legal status (as a recognised refugee), for many refugees these documents also serve as their primary means of proving their identity in Kenya. As one Ugandan refugee noted, "The alien card is like our passport now."

Refugees described the challenge presented by being unable to predict whether their documents would be accepted in particular circumstances. While the mandate certificate and alien card should serve as sufficient proof of identity, officials or others may not be familiar with these documents and refuse to accept them. Additionally, one NGO noted that because the alien card looks very similar to the Kenyan national ID card, officials sometimes mistake it for fraudulent documentation. Refugees holding interim documents, such as asylum seeker certificates, other waiting documents, or expired documents, face an even greater degree of uncertainty as to whether their documents will be accepted. Some refugees carry a variety of different documents in addition to refugee documentation—including student ID cards or employer ID cards—in the hope that one of these documents (or the cumulative force of multiple documents containing the same identifying information) will satisfy whoever is asking them to prove their identity.



Burundian refugee shows documentation and explains what brought her to Kakuma camp. © UNHCR/Antoine Tardy, February 2017.

Refugees have been denied access to financial services due to the requirement to prove identity in the banking context. Whether a refugee with or without a current alien card and/or mandate certificate is eligible to open a bank account or send or receive a wire transfer depends on each bank or financial organisation's policies and practices. While NGOs report that at least one bank has created special procedures for refugees to be able to access that bank's services, accommodations for refugees do not appear to be common across the banking sector. One young Ugandan woman said it was "impossible" to open a bank account as a refugee without a mandate certificate, passport, or alien card. An Ethiopian father-of-two said that he had been unable to receive a \$100 USD transfer from a friend in the United States because his mandate certificate had expired and he only had a waiting document for the alien card. He said that he had "never been so furious" as when his documents were rejected and he could not receive the money.

In particular, refugees reported that they could not use M-Pesa, a mobile money transfer service, unless they had alien cards. M-Pesa is used by a majority of Kenyans to send and receive money between family members, pay for services, and participate in micro-financing schemes. As around two-thirds of the adult population in Kenya use M-Pesa, exclusion from this system effectively precludes refugees without alien cards from participating in the formal economy.<sup>85</sup> An NGO representative noted that refugees without urban refugee documentation also cannot access micro-financing schemes, such as those offered through Grameen Bank, as these require official identity documents.

Refugees have also experienced restrictions outside the banking sector. Refugees without urban refugee documentation have encountered problems purchasing SIM cards for their mobile phones, as providing proof of identity is a legal requirement. A 23-year old Ugandan refugee, who arrived in Nairobi in 2015, attempted to purchase a SIM card in February 2017 and was asked to show proof of identity. The seller would not accept his asylum seeker certificate as a form of identification and asked him to produce an alien card or mandate certificate, which he did not have.

NGOs also report that refugees cannot obtain a PIN from the Kenya Revenue Authority (KRA), which is required for taxation purposes, unless they have an alien card. As a result, refugees without alien cards are precluded from receiving formal payment from employers.

Some refugees discussed coping mechanisms they have used to overcome proof of identity requirements, including asking friends or family to receive money or purchase SIM cards on their behalf. A Somali refugee who said he could not use M-Pesa or banks because of a lack of documentation asked friends or family to receive money transfers for him. He was unhappy with this arrangement, observing that it "affects my privacy because everyone knows what I have." Another refugee said that if a refugee lacked an alien card and wanted to receive money from overseas "you have to go with someone to get the money for you and give them a commission." To access a SIM card, a young Ugandan woman who had only an asylum seeker certificate asked a friend with a passport to purchase one for her to use. NGOs reported that some refugees who could not access formal banking services have resorted to "banking at home," which amounts to keeping cash hidden in their homes and increases their vulnerability to theft.

Expired documents have posed particular challenges. If a refugee has been unable to renew a document because of delays in the process, NGOs report that there is little understanding in the business community or elsewhere that these delays are usually outside the control of refugees. Additionally, unlike the Kenyan national ID card, the number listed on a refugee's alien card has typically changed on renewal. This change could trigger a number of consequences, including the possibility that a refugee's M-Pesa or bank account could be blocked or KRA PIN deactivated. Refugees, therefore, have had to update their numbers with a variety of institutions, which itself could be a challenge because few financial institutions or other bodies have been aware that refugees' card numbers have changed on renewal. In March 2017, UNHCR announced that RAS had confirmed its intention to ensure that each renewed card would retain the same number as the previous card, leading to the hope that this particular issue may be resolved.<sup>86</sup>



## Problems with police

Refugees reported encountering multiple problems with the police, including harassment, demands for bribes, arrest, and detention. While many people in Kenya experience challenges with the police, refugees are a particularly vulnerable and marginalised group whose vulnerability is heightened if they lack documents that prove identity and/or status, or if police officers do not recognise the validity of their documents. In a small number of cases, interviewed refugees faced criminal charges because they lacked documentation, a consequence feared by many similarly situated refugees.

### Harassment

Seventeen refugees reported having been harassed in some way by police.<sup>87</sup> Refugees stated that such harassment had most often taken place in public, such as in the streets, where police would stop them, ask for their documents, and demand bribes.<sup>88</sup> A number of refugees stated that problems with the police were prevalent and that they had been harassed on multiple occasions.

Many refugees said they were afraid of the police. An Ethiopian refugee who had two Kenya-born children recalled having been harassed “countless times” by officers who wanted to “instill fear in [my] heart.” He recounted how “the police insult you and call you names [such as] a terrorist.” As a result of his interactions with police, he felt “bad and ashamed.” Refugees reported that they feared deportation, detention, and being sent to the camps.

### Relevance of documentation

Some refugees thought that having certain documents—particularly the alien card and mandate certificate—helped them in dealing with police. A 25-year-old Somali refugee put it this way: “The difference between having the document and not having it is a big difference. If you don’t have it and you are arrested, the police can do anything to you because you have no document showing you are a refugee.” Another refugee said: “If the police come to your house, knock on your door, you have to have a document. That’s why I wanted one.” By contrast, a Somali refugee said

she considered it “better to leave [refugee documentation] at home,” reasoning that “it might be a detriment to carry [documentation], because if the police find out I’m a refugee, it will bring more problems.”

Some refugees thought that one type of document was particularly important in terms of protection, although their views were not consistent. A Rwandan refugee said: “You have to have an alien card. If you have a mandate [certificate], the police of Kenya don’t respect it.” However, a Somali mother-of-one, who had not yet received an alien card, found that police were satisfied with her mandate certificate when they stopped her.

Several refugees with alien cards reported that police had refused to acknowledge the validity of the card. One Somali refugee with six Kenya-born children who had been living in Nairobi since 2000 and possessed a current alien card, said: “Sometimes, the police ask for my ID card, and I give them the alien card, and they say that this is not an ID.” A 24-year-old Somali refugee said that she had initially hoped that having an alien card would protect her during encounters with the police but had found that “even if I had the [card], I could be arrested.” Similarly, refugees with waiting documents for alien cards said that police did not necessarily recognise these documents as valid.

Other refugees recounted how the police refused to accept asylum seeker certificates in particular. An ethnically Somali refugee from Ethiopia who had been in Kenya since 2009 said, “I feel that [my asylum seeker certificate] does not help me in any way. When I see the police, they throw it on the ground and tell me that it is worth nothing and that it is not valid.” She added that “this has happened four or five times.” A Ugandan refugee who did not yet have an alien card or mandate certificate said that police had torn up his first asylum seeker certificate in front of him.

NGOs report that in general the police—especially the Criminal Investigation Division—tend to be more familiar with the mandate certificate than the alien card because mandate certificates have been more consistently issued (and have been more consistent in form) over the years, and UNHCR has generally



Buruburu Eastleigh, Nairobi. Photo by Fatuma Abdullahi © NRC, September 2017.

been able to confirm whether someone is a refugee faster than the government.

However, an NGO representative cautioned that past awareness-raising activities with police about different refugee documentation had produced some unintended consequences: although greater recognition of documents was positive in many respects, in some cases, once police officers appreciated the value of certain documents to refugees, there was increased extortion of refugees through threats that those documents would be confiscated.

### Bribery

Police corruption is a well-recognised issue in Kenya and international studies suggest that bribery is especially prevalent.<sup>89</sup> Because of their precarious legal status in Nairobi, refugees may be particularly vulnerable to demands for bribes. In interviews, a

number of refugees reported that, regardless of what documents they had, police demanded bribes from them. In all, 14 refugees reported having paid a bribe to police and most discussed experiences paying bribes in the last five years; at least three other refugees said they had been asked for bribes by police. An Ethiopian refugee said: “There’s no such thing as being ‘let go’ even if you have the right documents. The police have to grill you and harass you in order to get something.” A number of refugees reported having paid or been asked for bribes multiple times. A Somali refugee stated: “Every time you encounter the police you have to pay a bribe.”

Refugees said that police would extract bribes by threatening to confiscate their documents, have them deported, or sent to the refugee camps. A young Eritrean woman said that “you have to pay or they won’t leave you alone,” adding: “Even when I show



them the documents, sometimes they say 'Why don't you go to your country or the [refugee] camp?' Then I have to give them money." An Eritrean refugee who had been in Kenya since 2010 considered: "Whether you have the documents or not, if you don't pay money, they will take you to jail." A 37-year-old Ethiopian refugee said that when he produced his current Nairobi-based alien card, the police would "put it in their pocket" until he paid the demanded bribe.

The amount refugees reported police demanded in bribes ranged from 200 to 150,000 KSH (\$1.95 to \$1,450 USD). An Ethiopian refugee who had been in Kenya since 1999 thought that the amount demanded in bribes by police "depends on the mood of the policeman at the time," and could also vary depending on the nationality of the refugee: "If you're Ethiopian, 1,000 or 1,500 KSH (\$9.65 or \$14.50 USD). If you are Somali, it's really expensive, like 5,000 (\$48 USD), because they stereotype [Somalis] as being very rich." Refugees most commonly reported the police demanding between 1,000 and 2,000 KSH (\$9.65 and \$19.30 USD).

### Arrest, detention, and criminal charges

Twelve refugees reported having been arrested by the police because they lacked documentation that police demanded, or because police did not recognise documentation that attested to the legality of their residence in Nairobi or Kenya. A number said they had faced multiple arrests. When asked how many times she had been arrested, one Somali woman who had been living in Nairobi since 2000 laughed and replied, "I can't remember how many times I've been arrested; but many times." Refugees reported that threats of arrest were frequently associated with the police demanding bribes. A Somali refugee noted, "I've been arrested many times and the only option I've seen is to bribe".

Nine refugees said that after being arrested, they were detained at a police station or in jail. Four said that they were released from custody only after a bribe had been paid. The amount they paid ranged from 1,000 to 80,000 KSH (\$9.65 to \$772 USD). One refugee, who said she was detained by police for a day in October 2016, reported that police told

her she would be sent to court unless she paid a bribe of 10,000 KSH (\$96.50 USD): she was released after her family paid the bribe.

Three refugees who reported being arrested and detained said that they had then been charged with a criminal offence. (Two of these refugees said that they faced charges only on being unable to pay a substantial bribe.) An Ethiopian refugee with a current alien card registered in Dadaab camp reported that he was arrested in Nairobi in December 2016. He said that he was charged and convicted on what seems to have been a count of residing outside a designated area.<sup>90</sup> He said that he appeared before a magistrate and was released once he paid a 5,000 KSH (\$48 USD) fine.

The other two refugees reported having been charged with being illegally present in Kenya.<sup>91</sup> One was a young Somali refugee who had moved to Nairobi from Dadaab camp in August 2013. She said that, after her arrest in September 2016, a legal aid provider was able to gather documentation from Dadaab and UNHCR to prove her refugee status. After nearly two weeks in detention, she was released. Another Somali refugee who arrived in Nairobi in 2009 said that in early 2016 she was arrested by police and subsequently convicted for being unlawfully present in Kenya. She was ordered to pay a fine of 50,000 KSH (\$483 USD), which she gathered from family and friends; following six days in jail, she was released after a relative paid a bribe (in addition to the fine the woman and her family had already paid). The woman had lost her mandate certificate and alien card, which would have shown that she had refugee status and was registered as living in Nairobi.

### Self-restrictions on movement

Nearly half of the refugees interviewed discussed restricting their movements within Nairobi because they feared encountering authorities. Refugees who lacked urban refugee documentation—and even those with documents—described concerns about interacting with authorities who might fail to recognise their legal status or confiscate their documents. The Somali refugee who had lost her alien card and mandate certificate observed: "When I had the documents, I

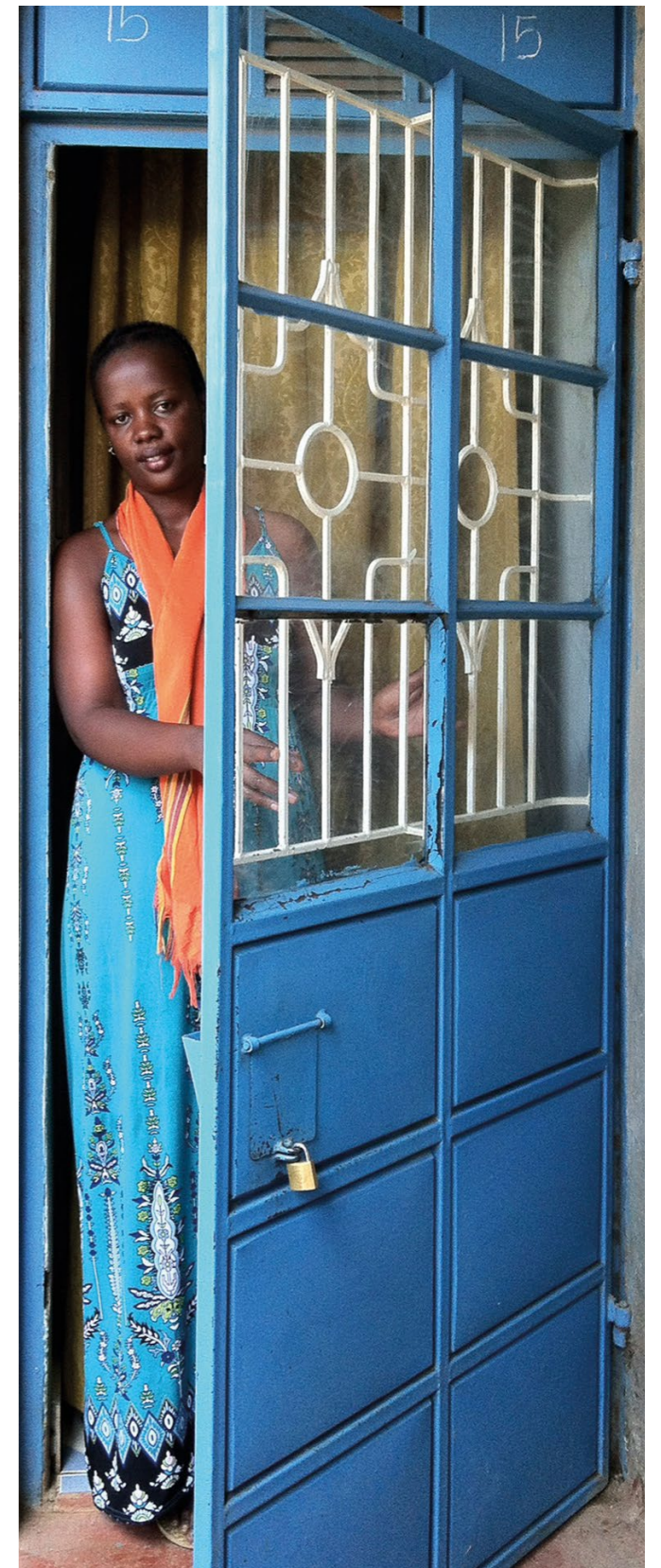
was free. I was feeling safe. I could walk, I could do whatever I wanted to do. I do not have that feeling anymore." Without documents, she said: "You live in fear because you are expecting to be arrested. You can't even walk within the city."

### CASE STUDY:

**"If you don't have a document, you don't have freedom of movement."**

One 27-year-old Somali refugee, who arrived in Nairobi in 2008, said that she feared moving around the city because of her lack of documentation. The woman had received an alien card from DRA in 2010 that listed her place of residence as Nairobi, but she encountered problems when she tried to renew the document once it expired in 2015. In April 2015, she went to Shauri Moyo and received a waiting document—a small piece of paper she showed researchers that indicated she was waiting for a renewal. It was covered in handwritten dates, reflecting the number of times she had returned to Shauri Moyo to ask about her new alien card. She said that she had most recently been to Shauri Moyo the week before the interview: "They said they would call me back."

The woman was afraid of encountering police without the right documents and consequently restricted her movements. She described how, during an upsurge in arrests of refugees several years earlier, she would routinely hide under her bed to avoid being found by the police, because she had only a waiting document: "Sometimes, I would lock myself in a cupboard—hide myself. I couldn't go outside because of fear. Day and night, they were arresting people." With a mandate certificate that expired in March 2017 and waiting for the renewal of her alien card, the woman remained fearful of encountering authorities. "Whenever I . . . hear the voice of [a] policeman, I feel pain—up to now," she explained. As a result, she continued to minimise her movements within Nairobi: "Now, I can't go outside except between my job, prayers, and the house. I just go between [them] . . . I just go back and forth from home to work." She noted, "If you don't have a document, you don't have freedom of movement."



Ethiopian refugee, Alemnesh Tefera Abebe smiles as she stands at the entrance to her home in an apartment complex in Ruiru. © UNHCR/S.Camia, October 2013.



Another Somali woman, who had lived in Nairobi for seventeen years, described how she did not leave her home in Eastleigh until a decade after her arrival due to restrictions that her husband placed on her movement, as well as her resulting lack of documentation:

From the moment when I arrived . . . [in 2000], I never left the house because I never had documents; my husband would bring everything. I never stepped outside. . . . [In 2010] my husband had gone to Somalia and then my neighbours came and told me that I wasn't legally here, and that I should go to UNHCR and get documents.

Following her neighbours' intervention, the woman obtained a mandate certificate in 2010, and later an alien card. Despite holding a current alien card, she remained cautious when moving around Nairobi, calling it "dangerous" and adding that she "always walk[s] looking for the police."

Lack of documentation has also affected refugees' ability to move within Kenya more broadly. A Somali refugee who arrived in Nairobi in 2009 said her inability to obtain urban refugee documentation had made it impossible for her to visit her parents, who lived in Dadaab camp: "I understand that for me to travel, I need a document from Shauri Moyo, and because I don't have an alien card, I can't apply [for a movement pass to travel to Dadaab]." She said she worried about what might happen if she were to attempt to travel to the camp without urban refugee documentation or a movement pass, and therefore had not been able to visit her parents for several years.

More generally, some refugees said they restricted their movements within Nairobi not only on account of lack of documentation, but also because of particular concerns related to their national origin. One Ugandan refugee talked about avoiding travel within Nairobi "because of insecurity," describing how he had been repeatedly harassed and even physically attacked by the police and others. He attributed these incidents to the common belief that Ugandan refugees in Kenya are LGBTQ. Similarly, one ethnically Somali refugee from Ethiopia, who came to Nairobi in 2009, explained

her fear of both the Kenyan police and the Ethiopian government: "I live in fear constantly. I don't feel that I can travel freely because of the police [and] I am scared that I might be being pursued by the Ethiopian government and militia."

### Restricted access to essential services and assistance

Refugees without urban refugee documentation have experienced some challenges accessing health services, as well as receiving assistance from charitable and humanitarian organisations. The connection between documentation and restricted access to healthcare was not always clear, however. In relation to education, it appears that refugee children may not be enrolled in school for reasons other than lack of documentation, although this is an area that requires further research.

The relationship between refugees' ability to access healthcare and documentation does not appear to be straightforward. Several refugees said they experienced challenges accessing healthcare on account of lacking urban refugee documentation. One Ugandan refugee, who came to Nairobi in early 2015 and did not have a mandate certificate or alien card, said he had a thyroid problem and required medical care, but staff at a public hospital he visited reportedly told him that he could receive assistance only if he had a mandate certificate or alien card. An elderly Congolese refugee similarly said that when she sought treatment for an injured leg at a private hospital a receptionist told her that she could not be treated at the hospital without a mandate certificate and alien card. Her nephew instead bought medication for her from a pharmacy. An Ethiopian refugee reported that at one health clinic run by a charitable organisation, "if you don't have the mandate [certificate], you cannot get treatment—it doesn't matter how sick you are." However, other refugees said it was possible to access healthcare without any documentation at all.

The cost of healthcare posed an issue regardless of documentation. NGOs report that officially refugees are eligible to register for the National Hospital Insurance Fund (NHIF), a social health insurance fund established by the Government, although it is



Eastleigh, Nairobi © IHRC, March 2017.





Kenya. Burundian refugee student at home in Nairobi. © UNHCR/Antoine Tardy, March 2017.

not clear what documentation is required to register. Refugees expressed confusion about whether they could register for the NHIF—and thereby receive an NHIF card—without an alien card or mandate certificate. Only one refugee (who had a mandate certificate) said he had obtained an NHIF card, but he had never used it. An NGO in the health sector has stated that refugees should be able to register with NHIF, so long as they have a UNHCR file number or an alien card, even if their documents have expired. In a policy environment in which all refugees are officially required to reside in camps, it is unclear whether this accommodating approach will persist. The situation for private facilities appears to depend on each organisation's policies and procedures.

Lack of urban refugee documentation could render refugees ineligible for assistance provided by the

not-for-profit sector. Some charitable and humanitarian organisations that work with urban refugees require refugees to hold an alien card or mandate certificate to be eligible for the services or assistance they offer. One NGO that has provided scholarships for refugees to enter tertiary education, for example, has required that applicants have either an alien card or mandate certificate. Another NGO has provided scholarships for secondary education only to refugee children with valid alien cards or mandate certificates.

Refugees did not describe encountering documentation-related problems registering their children in primary or secondary schools. This apparent flexibility suggests that, at least for the refugees interviewed, access to education was not restricted on account of documentation. However, refugee children sometimes did not attend school for other reasons, such as parents'

inability to pay school fees. Nonetheless, education is an area where small policy changes—such as requiring a parent to produce an alien card prior to a child's enrolment—could have a substantial detrimental effect on refugees, and requires further research.

## Resettlement and work permit complications

Refugees without urban refugee documentation identified challenges related to resettlement and obtaining work permits. A number of refugees described how lack of urban refugee documentation—as well as long delays in the processes at UNHCR and Shauri Moyo—complicated their applications for third-country resettlement. In one case, a young Somali woman said her resettlement application had stalled after she moved to Nairobi from Dabaab because of security concerns in the camp: "If I'm under the process of resettlement, then [UNHCR] need me to continue with my process in the camps." The woman hoped that UNHCR would eventually transfer her file from Dabaab to Nairobi so that she could continue the resettlement process from her new home. Another refugee felt that "delaying the documents, it's like messing [with] your life. . . . If you don't have proper documentation, you cannot access anything—resettlement, [or] work."

Many refugees discussed their desire to obtain a work permit to be able to work legally in Kenya, but none had been able to obtain this document. Both refugees with and without urban refugee documentation described challenges to obtaining work permits. One Ethiopian refugee, trained as a mechanical engineer and living in Nairobi since 2007, had an alien card, but not a mandate certificate. He said that when he went to the relevant government office to apply for a work permit he was asked for a 100,000 KSH (\$965 USD) bribe and told he needed a mandate certificate. Unable to pay the bribe and lacking a mandate certificate, he said he "just [gave] up" and felt "hopeless for some time." He described "struggling to pay for rent" on the basis of his income from four days of work a month. A young Eritrean woman observed that "refugees need work permits" but could not get them without a mandate certificate and alien card. "How are [we]

supposed to live?" she asked. Another refugee thought, "If you are a refugee, you are not acceptable to work; the government says if you're not a citizen, you can't get a work opportunity." Officially, refugees are eligible for "Class M" work permits, but NGOs report that permits can be challenging to obtain in practice.<sup>92</sup>

## Risks associated with residing in camps

Obtaining urban refugee documentation assumed particular importance for refugees who had chosen to reside in Nairobi because they had serious and credible concerns about their ability to live safely in the camps. The current registration and RSD processes do not appear to identify such refugees in a systematic manner nor promptly exempt them from the requirement to reside in camps. In interviews, several refugees identified serious risks they expected they would face if forced to live in Dadaab or Kakuma camps. A 23-year old Somali woman who was born and raised in Dadaab camp fled to Nairobi in 2013 to escape a forced marriage. While in Nairobi, she said she felt "insecure" because she received "phone calls saying some boys are coming for me and will kidnap me and bring me back to Dadaab." She had an alien card issued in Dadaab and did not believe she could transfer her registration to Nairobi until that card expired in 2019. (For further specific examples, see "Case Study: Nairobi refugees who fear living in camps" on page 32 of this report.)

Other refugees expressed more generalised concerns about living in the camps. Two refugee women cited gender-based violence and rape specifically as reasons why refugee girls and women leave the camps to come to Nairobi. A young gay Ugandan woman shared that some of her friends ran away from camps because "the girls say most of the men want to rape them and they can't be there; they are lesbians and can't sleep with a man." A Somali father-of-eight, who left Dadaab for Nairobi with his family in 2015 after living in the camp for two decades, said: "When the Government of Kenya decided to repatriate Somalis, I was scared for myself and my family so we decided to move to Nairobi to have some sort of life."



## CASE STUDY: Nairobi refugees who fear living in camps

### ***“I’ve lost hope; I don’t expect anything now”***

A young Somali woman was targeted and attacked in Mogadishu in August 2016 while travelling home from work with her sister. Her sister was killed. She and the driver of the vehicle they were travelling in were seriously injured: she was shot four times, in the arm and chin. Following her release from hospital, she hid at a relative’s house as she realised her assailants were following her. When the driver of the vehicle was killed several months later by the same people who had launched the original attack, the woman’s mother went to UNHCR in Mogadishu to seek advice. UNHCR reportedly advised the woman to go to Kenya or Ethiopia. She went alone, straight to Nairobi, in November 2016.

Although she was afraid to leave the place where she was staying in Nairobi, within 10 days of arriving the woman travelled to Shauri Moyo for the first time. After waiting for four hours, RAS staff informed her they were not registering Somalis and told her to leave. For the next month, she returned to Shauri Moyo every couple of days; most days, she received the same answer: that the registration process for Somalis was suspended. Some days, she said she “wouldn’t even get past the front gate.” She also went to the RAS offices in Saint Theresa multiple times, but had the same experience. For each journey, she travelled by taxi, incurring significant costs.

After queuing for four consecutive days at Shauri Moyo in January 2017, she finally reached the front of the line. A RAS official asked her to provide her fingerprints: “I asked why they needed my fingerprints. They said to issue a movement pass to go to Dadaab, and so I didn’t consent.” The woman feared going to Dadaab camp because she had reason to believe people affiliated with her assailants resided in the camp. She said: “I don’t want to go to Dadaab for the same reasons that I don’t want to return to Somalia . . . due to the security threat.” She explained her situation to RAS staff, “[but] they didn’t care, so I refused to give my fingerprints.” She then went to UNHCR to seek help, but a security guard refused to let her enter the compound without a document from RAS.

She said she “explained that it was hard and that I had tried, but he insisted that I go back to RAS at Shauri Moyo.” She told researchers that she had given up trying to obtain urban refugee documentation, adding, “I have tried as much as I can, and I’ve lost hope; I don’t expect anything now.”

### ***“I can’t even count [how many times I’ve been to UNHCR]”***

After an attack in Kakuma camp left his young brother in a coma, a 23-year-old Ethiopian refugee travelled with this brother (his only relative in Kenya) to Nairobi. He related the challenges he faced trying to have his and his brother’s files (and thereby registrations) transferred from Kakuma to Nairobi:

When I first came [to Nairobi], I was just looking after my brother. Finally I came to find out there is process [that] you can request UNHCR to do a data transfer if you can sustain yourself [in Nairobi]. I went to UNHCR in September 2015. When I [went] there, they told me they are not doing data transfer—that I have to consult DRA about it. I went to DRA . . . [I said,] “I have such security problems, I want you guys to transfer my data.” They told me, “You have to go back to the camp [and] get [exemption] letters.”

The man was concerned about returning to Kakuma camp because the people who had assaulted his brother still lived there. Despite these concerns, he travelled to Kakuma in January 2016 in an attempt to obtain an exemption letter. DRA Kakuma agreed to investigate the matter. Two weeks later, the camp manager gave the man an official letter stating that he and his brother were allowed to live outside the camp and requesting that DRA Nairobi transfer their files to Nairobi. As soon as the man got back to Nairobi, he went to Shauri Moyo. At Shauri Moyo, officials gave him a referral to UNHCR. He then went to UNHCR and was told that someone would call him once the transfer had taken place. A year later, he was still waiting for the transfer. When asked how many times he had gone to UNHCR, he said, “I can’t even count. I used to go every week and ask about it.”

## Birth Registration

According to Kenyan law and policy, after a woman gives birth in Kenya, the hospital or an assistant chief will give the child’s parents an Acknowledgement of Birth Notification. This is a standard form that includes information such as the child’s name, date of birth, and sex, as well as the mother’s name.<sup>93</sup>

To register the birth, the child’s parent or guardian fills in a birth certificate application and returns this form, along with the birth notification and a 50 KSH (\$0.50 USD) fee, to a Civil Registration Department office (or a head teacher or assistant chief).<sup>94</sup> The child’s birth certificate should then be available for collection within seven days.<sup>95</sup> If a child is registered more than six months after birth, the fee increases to 150 KSH (\$1.45 USD).<sup>96</sup>

Birth registration was discussed with 12 refugee parents, covering the births of 36 children currently living in Kenya. In relation to 33 of these children, their parents reported that they had Kenyan birth certificates. Three Kenya-born children did not have birth certificates, but one had only been born several weeks before interviews took place. In addition, two refugees discussed the situation of their children born outside Kenya who lacked birth certificates from their country of origin.

In one ethnically Somali family from Ethiopia, two children born in Kenya—aged 6 and 7—lacked birth certificates, while their two older siblings, who had also been born in Kenya, had birth certificates. Their parents had received birth notifications for the two unregistered children, but had not yet attempted to apply for birth certificates. The children’s mother said that to register her other children’s births she had paid a broker 1,700 KSH (\$16.40 USD) per child. She felt it was necessary

to use a broker to register a birth, because “[it is a] long process to go to the office” and “if you don’t pay the middlemen you’ll pay [the same amount] for transport anyway.”

Although several refugees stated that it was common to use brokers to obtain birth certificates, most parents of Kenya-born children said they simply brought the child’s birth notification to the Civil Registration Department in Nairobi, applied for a birth certificate, and then returned at a later date to collect the birth certificate. Refugees said that Civil Registration Department officials usually asked them to produce an identity document, in the form of an alien card or mandate certificate. In two cases in which only one parent had an alien card or mandate certificate, officials nonetheless issued the child’s birth certificate. Researchers did not speak to any refugee couples with Kenya-born children who had tried to register births when both parents lacked an alien card or mandate certificate.

Refugees whose children were born outside of Kenya and lacked birth certificates feared that their unregistered child would be unable to sit Kenyan national exams.<sup>97</sup> A 24-year-old mother of a son born in Somalia resorted to borrowing a friend’s Kenyan national ID card and paying 5,000 KSH (\$48 USD) to a middleman for a Kenyan birth certificate, as she believed that her son “had good grades and is a good student but without a birth certificate, he could not apply for the exam.” Similarly, a middle-aged father believed it was important to work on obtaining a birth certificate for his school-aged daughter who was born in the Democratic Republic of the Congo because “it is her right to do those exams.”



## VI. Recommendations

Lack of documentation proving identity or status can have a substantial effect on a refugee's human rights.<sup>98</sup> Identity documentation helps secure the right to recognition everywhere as a person before the law and often serves as proof of legal status in a territory.<sup>99</sup> Urban refugee documentation plays an important role in the lives of Nairobi's refugees, helping them to prove their identity and status, and feel more secure. In Nairobi, lack of urban refugee documentation is connected to restrictions on the right to work and the right to freedom of movement, in addition to restricted access to private services that enable participation in society, such as banking services.<sup>100</sup> In some cases, lack of documentation also appears connected to access to healthcare, implicating the right to health, as well as detention by police that could amount to arbitrary detention in certain cases.<sup>101</sup>

To better protect refugees' human rights and ensure refugees receive documentation that enables them to live their lives in Nairobi without fear or restriction, IHRC and NRC make the following recommendations:

### The Government of Kenya should:

- Continue to permit refugees to register in urban settings and renew alien cards.
- Recognise refugees' right to freedom of movement and allow refugees freedom of movement within Kenya, including by ensuring refugees have the ability to access registration and live legally outside camps.

### Through RAS and other relevant government entities, the Government should:

#### Improve registration and RSD processes

- Continue to promote standardisation of refugee documentation with the refugee identity card (referred to in this report by its colloquial term, "alien card") as the primary piece of documentation for an urban refugee.

- Continue to work with UNHCR to streamline RSD processes in Nairobi, including by:
  - Increasing staff capacity with the goal of reducing waiting times; and
  - Resuming the regular issuance and renewal of refugee identity cards.
- Continue to liaise with and share information on changes to policy and practice with local and international NGOs working with refugees.
- Continue to work towards developing consolidated databases of refugee information that meet international data protection standards, in order to reduce refugees' reliance on physical copies of documents to prove status and better map refugees' needs, including by:
  - Ensuring that access to personally identifiable data is appropriately restricted; and
  - Establishing processes for refugees to easily amend information concerning them.
- Ensure cases involving protection concerns in the camps receive priority for transfer to urban areas.

#### Provide more information to refugees

- Produce and widely disseminate clear, simplified, and accessible guidance on registration and RSD procedures in urban settings, including on:
  - The steps in the RSD process;
  - Where and how to apply for a refugee identity card, including any fees; and
  - How the refugee identity card can be used to access services and assistance.
- Periodically disseminate general information to refugees on expected waiting times for different documents and relevant changes to policies via text message.
- Establish effective and accessible systems to allow refugees to receive up-to-date information on their individual cases.

#### Provide more information and additional trainings for officials

- Provide regular trainings to RAS staff at all levels (including security personnel) on registration and RSD procedures, including on:
  - The different types documents refugees may hold and the refugee identity card's role as standard documentation; and
  - The RSD process.

#### Undertake measures to ensure refugees can live securely in Nairobi

- Officially recognise a set of documents—including the refugee identity card, mandate certificate, and asylum seeker certificate—as adequate proof of identity for refugees for processes that require proof of identity (such as opening a bank account).
- Continue to work towards ensuring that police abide by international human rights standards on arrest and detention.
- Expand opportunities for refugees to obtain work permits.
- Work towards understanding and dismantling barriers eligible refugees face when applying for Kenyan citizenship.
- Clarify existing procedures for movement passes and ensure vulnerable groups are prioritised within existing procedures.

#### UNHCR should:

- Support the Government of Kenya to provide clear and up-to-date information to refugees on registration and RSD procedures, as well as individual cases, including through the use of mass text messages.
- In line with the *UNHCR policy on refugee protection and solutions in urban areas*, "strive to ensure that refugees who travel to urban areas are provided with adequate documents [and] advocate with the authorities and security services to ensure that they are not penalized for travelling and that they are allowed to remain in an urban area for as long as necessary."

- Clarify and communicate UNHCR's policies around the issuance and renewal of mandate certificates in widely disseminated guidance.
- For refugees who have asylum seeker certificates or expired mandate certificates, in each case, conduct an assessment and provide specific and individualised advice on next steps.
- For cases in which the government is unwilling or unable to carry out RSD, ensure that mandate certificates continue to be issued.
- Clarify procedures relating to refugees' file transfer requests from the refugee camps to urban settings and build capacity in this area in order to process these requests in a timely manner.
- Ensure that refugees who left the camps while resettlement processes were ongoing are not disadvantaged by changing location.

#### Local and international civil society organisations working with refugees in Nairobi should:

- Continue to coordinate and share information regarding trends and developments relating to urban refugees.
- Work to ensure that refugees' legal needs are comprehensively addressed.
- Establish clear referral pathways for individual cases, particularly cases raising serious protection concerns.
- Work to ensure that lack of documentation does not prevent refugees from accessing services or assistance provided by civil society organisations.
- Conduct outreach to service providers, such as schools, banks, and hospitals, to promote recognition and acceptance of the wide range of documents urban refugees may hold, and assist refugees by advocating for the acceptance of documents in individual cases.

#### The international community should:

- Support the Government of Kenya, UNHCR, and civil society organisations to carry out the above recommendations.



# Appendix

## Registration and Refugee Status Determination in Nairobi Over Time: A Detailed Description

This appendix provides an expanded description of the processes outlined in the report's background section. The appendix can be read independently of the rest of the report (full citations are provided in endnotes), but the processes described here are best understood if read in conjunction with "Legal and policy framework" in the report's background section. As discussed in that section, both the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Kenyan government are actors in registration and refugee status determination (RSD) in Kenya. The Department of Refugees Affairs (DRA) was the main government body in this area until its May 2016 disbandment. Its successor is the Refugee Affairs Secretariat (RAS). The report uses the generic term "refugee" for all persons in need of international protection, including asylum seekers whose claim to refugee status has not yet been determined.

### UNHCR's involvement in RSD to 2014

Under international refugee law, the state in which a person seeks international protection has primary responsibility for assessing that person's claim to refugee status through a process of RSD.<sup>102</sup> However, UNHCR may assume this responsibility in countries that are unable or unwilling to carry out RSD.<sup>103</sup> In Kenya, from 1991 to mid-2014, UNHCR, in accordance with its humanitarian mandate and at the request of the Kenyan government, had primary responsibility for RSD.<sup>104</sup> Following internationally established procedures, UNHCR's RSD process

requires anyone who wishes to seek recognition of their status as a person in need of international protection to present themselves to UNHCR; UNHCR then initiates a process to determine whether the person's claim to refugee status is valid.

During the period that UNHCR had primary responsibility for RSD in Kenya, refugees who presented themselves at the UNHCR offices in Nairobi for the first time would typically receive an appointment slip to return for an interview.<sup>105</sup> Following that interview, they would receive an asylum seeker certificate, noting that UNHCR recognised the person as an asylum seeker (as noted above, this report uses the generic term "refugee" for all persons in need of international protection, including asylum seekers whose claim to refugee status has not yet been determined).<sup>106</sup> The person (usually with family) would then attend an interview, or series of interviews, to enable UNHCR officials to carry out an assessment of their claim to refugee status. If UNHCR had not completed assessing the person's claim to refugee status by the time an asylum seeker certificate expired, UNHCR would issue a new asylum seeker certificate; in some cases, multiple successive asylum seeker certificates would be issued. At the end of the process, if the person's claim was substantiated, UNHCR would issue a mandate refugee certificate ("mandate certificate").<sup>107</sup> This process could take anywhere from several months to several years, but (based on interviews with refugees) appears to generally have gone comparatively quickly for Somali refugees in particular, reflecting their status as prima facie refugees.<sup>108</sup>

### UNHCR Process (to mid 2014 and intermittently since\*)

Go to UNHCR offices in Westlands, register and receive an **appointment slip**

Return to UNHCR on appointed day and receive an **asylum seeker certificate** with an interview date

Attend the interview

Receive **mandate certificate**

Return to UNHCR to renew **mandate certificate** (usually every two years)

Depending on the circumstances of the case and processing times, receive another **asylum seeker certificate** with a new appointment date. This process may be repeated several times. Generally, the process has been shorter for prima facie than statutory refugees

\*As of October 2017, this process was still available in exceptional cases (where the government was unable or unwilling to carry out RSD)

### Registration by UNHCR and the government

In some countries, including Kenya, UNHCR registers "persons of concern": asylum seekers (those going through RSD) and recognised refugees (those who have completed RSD and whose claim to refugee status has been accepted). Registration is often carried out at the same time as RSD, and is not a one-off event, but requires the periodic updating and verification of information about persons of concern.<sup>109</sup> In Kenya, based on interviews with refugees and non-governmental organisations (NGOs),

UNHCR appears to have had primary responsibility for registration of "persons of concern" in Nairobi until 2011, when separate registration with DRA appears to have become a prerequisite to initiating RSD with UNHCR in most cases.<sup>110</sup> At the DRA building in the neighbourhood of Shauri Moyo, refugees would fill in a form indicating they were registering as asylum seekers and receive a waiting document of some kind that UNHCR required before it could start the RSD process.

However, there were periods during which DRA would not permit urban refugees to register. At various times,



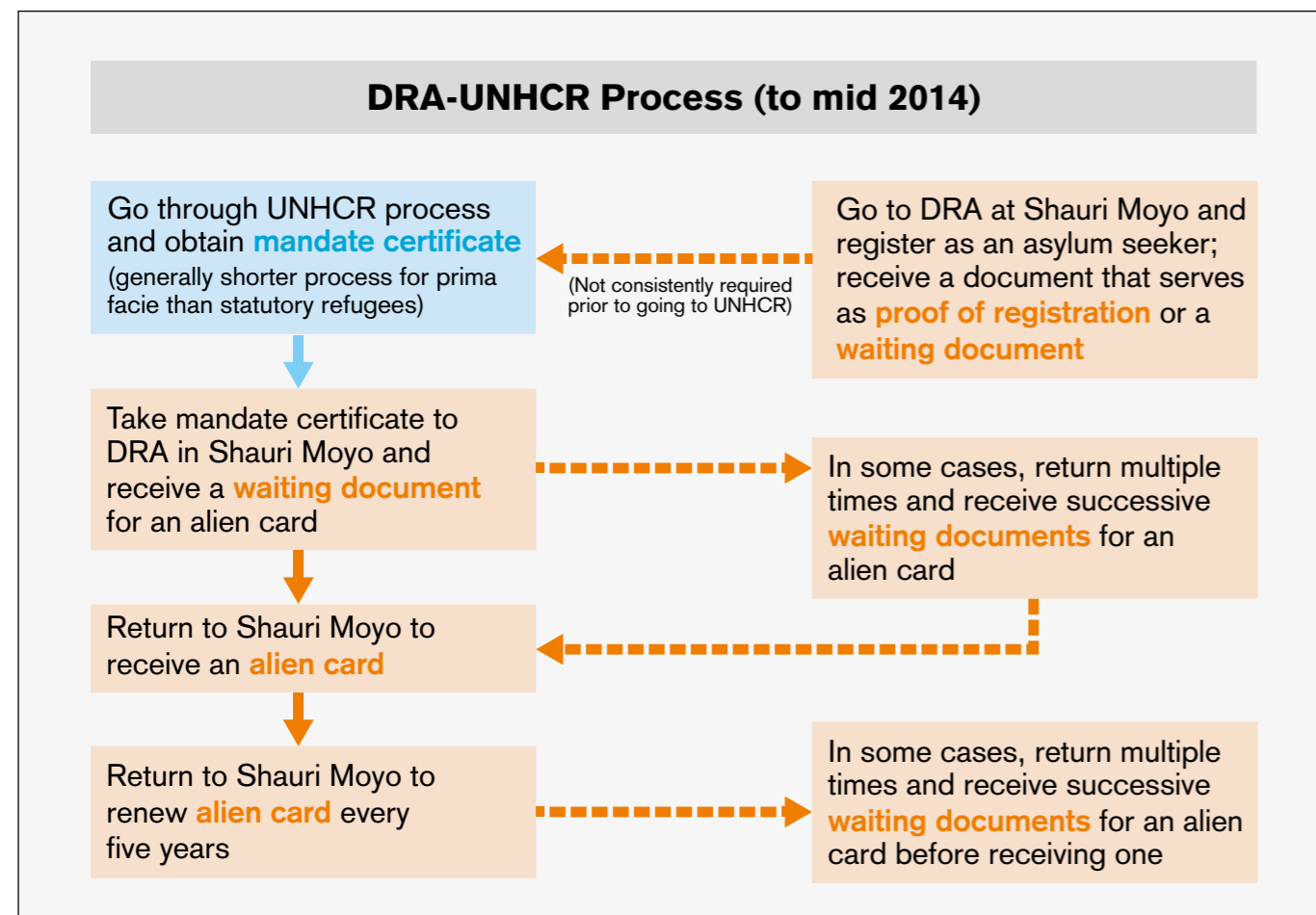
the government completely suspended urban registration by DRA. For example, urban registration was officially suspended from December 2012<sup>111</sup> until July 2013 (although in practice, it did not resume until early March 2014),<sup>112</sup> and again from 26 March 2014.<sup>113</sup> Based on interviews with refugees and NGOs, it appears to have resumed intermittently in 2015, and stalled again with the May 2016 disbandment of DRA, resuming inconsistently under RAS in mid-2016.<sup>114</sup>

Until DRA's May 2016 disbandment, UNHCR and DRA registration systems operated in parallel.<sup>115</sup> Since late 2016, UNHCR and RAS have progressively integrated their systems and in early 2017, UNHCR and RAS commenced joint registration.<sup>116</sup> Ultimately, UNHCR aims to hand over all registration responsibilities to RAS and to this end, has undertaken significant training and capacity-building exercises with RAS staff.<sup>117</sup>

"Double registration"—non-citizens who have acquired Kenyan national identity cards, despite not being citizens, or Kenyan citizens who have registered as refugees in an effort to obtain humanitarian assistance—is reportedly a practice that the government is particularly concerned about, and this issue seems to be a priority from a government policy perspective.

### Issuance and renewal of alien cards by the government

To avoid confusion and reflect colloquial usage, the report uses the term "alien card" to generically refer to the official identity card the government has issued to refugees, even though the name of this card, the agency issuing the card, and the legislation it has been issued under have differed across time.<sup>118</sup> According to current law, alien cards are officially called "refugee identity cards," but refugees themselves largely refer to them as "alien cards."<sup>119</sup>



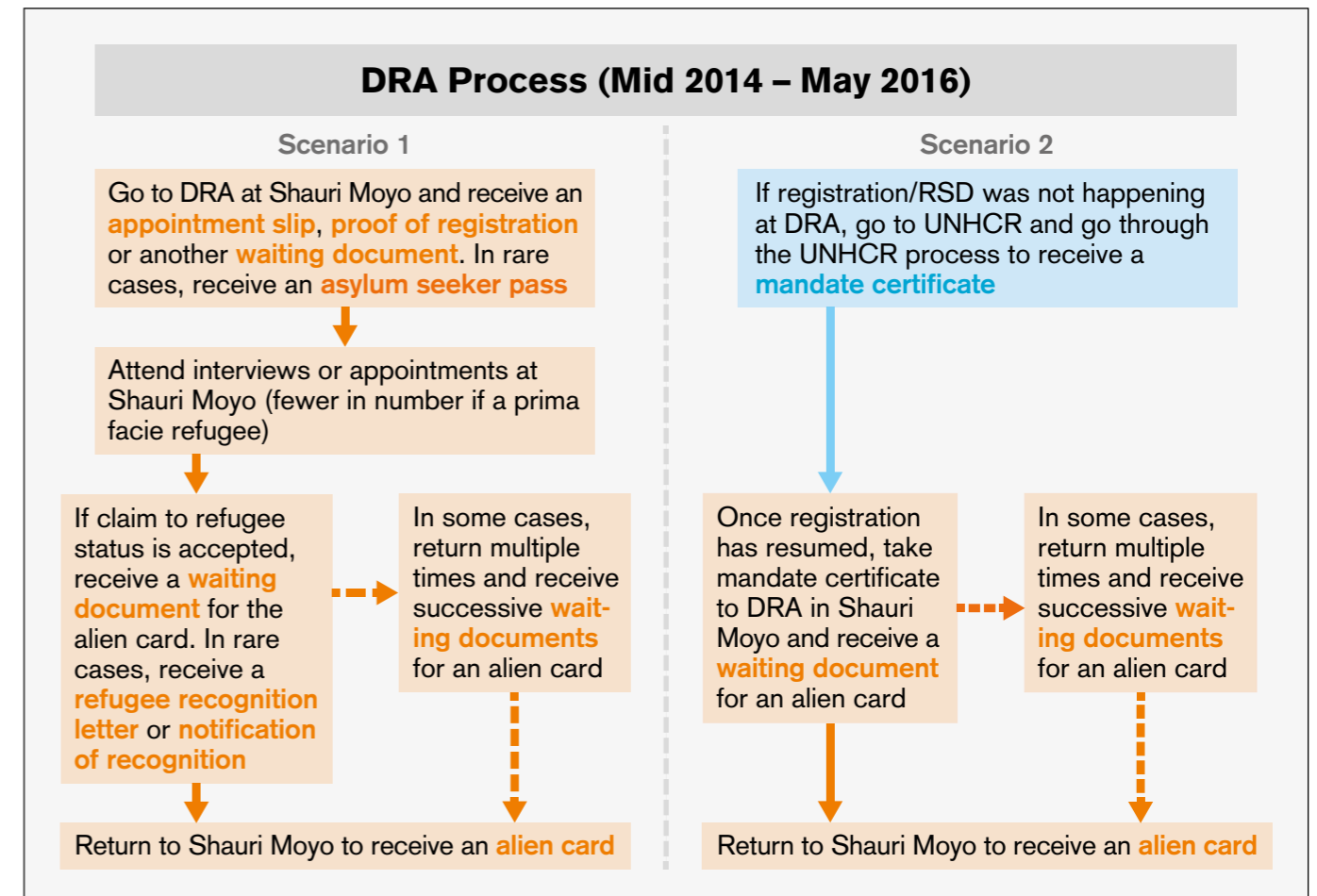
Once a refugee had a mandate certificate, DRA would generally issue a refugee with a waiting slip for an alien card and, eventually, an alien card listing Nairobi as the refugee's place of residence, although prior to 2010, the process to obtain an alien card appears to have been somewhat ad hoc.<sup>120</sup> In certain periods—particularly prior to 2013—refugees were able to register, obtain, and renew alien cards in Nairobi, despite the existence of the encampment policy, without necessarily needing to justify their residence outside the camps on an individual basis. Since around 2013, the official position that refugees should reside in camps has hardened.

In periods during which urban registration has been ongoing, it has not necessarily been the case that alien cards have been issued or renewed. For example, as of October 2017, it does not appear that RAS has issued or renewed alien cards since it assumed DRA's

functions in mid-2016, but instead has been issuing waiting documents to refugees who are eligible for the cards. As of October 2017, RAS has made no official announcements on this topic.

### The government's involvement in RSD since 2014

From around mid-2014 onwards, the Kenyan government has incrementally assumed responsibility from UNHCR for RSD. At various points since, both the UNHCR and government RSD processes have existed at the same time. From mid-2014 until its disbandment in May 2016, DRA undertook RSD processes at Shauri Moyo, where refugees would present themselves, receive a waiting document (usually an appointment slip), and return for an interview or series of interviews. However, it appears that a relatively small number of refugees were able





to complete RSD with DRA prior to its disbandment. At the end of the process, a government-issued “refugee recognition letter” was meant to put the letter’s holder on a waiting list to receive an alien card.<sup>121</sup> In practice, DRA issued very few refugee recognition letters.<sup>122</sup> Nonetheless, based on interviews, some refugees were able to obtain alien cards during this period without having received a refugee recognition letter.

Under RAS, RSD has stalled. From DRA’s disbandment, until July 2017, there was no Commissioner for Refugee Affairs—a position contemplated by the Refugees Act—and consequently the legal functions of that position could not be carried out, although RAS reportedly undertook RSD interviews in anticipation of a legal fix.<sup>123</sup> In July 2017, an acting Commissioner was appointed, paving the way for a resumption of RSD. DRA’s disbandment also resulted in a switch of personnel, resulting in the need for additional capacity-building

for RAS staff to be able to carry out RSD effectively.<sup>124</sup> NGOs perceive that RAS staff have focused more on security-related matters than their DRA predecessors. This perception aligns with RAS’s official placement in the security-oriented Ministry of the Interior.

According to NGOs, RAS intends to issue RSD decisions for refugees who started the process in Nairobi prior to DRA’s disbandment. However, refugees who arrived after May 2016 (“new arrivals”) must go to camps to complete RSD. From mid-2016 onwards, RAS has issued movement passes to all new arrivals who present themselves for registration at RAS’ offices in Shauri Moyo.<sup>125</sup> These passes require refugees to go to a designated camp within 10 days. According to RAS, new arrivals are also issued with a proof of registration document and an asylum seeker pass (the government equivalent of the UNHCR asylum seeker certificate), although it is not clear that this is in fact occurring.<sup>126</sup> In the

month of January 2017 alone, RAS reported that it had registered 3,121 new arrivals in Nairobi and issued these new arrivals with movement passes.<sup>127</sup>

Local legal aid providers, such as Kituo Cha Sheria and the Refugee Consortium of Kenya, have limited capacity to assist refugees facing challenges in RSD processes. Although Kenyan law provides for legal aid for refugee representation, NGOs report that a legal aid fund does not exist in practice.<sup>128</sup>

### Exemption from the requirement to reside in camps

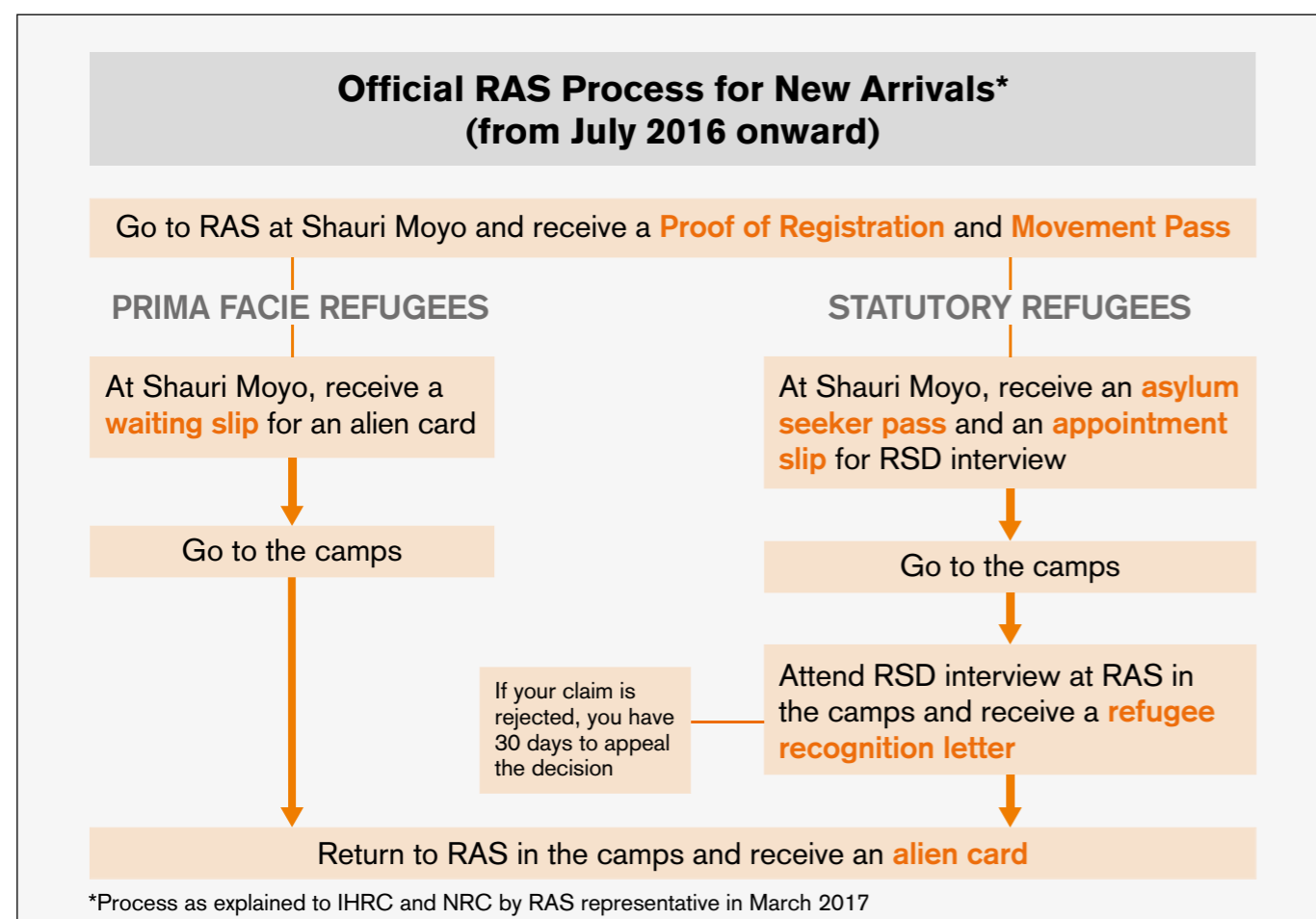
While the possibility for exemption from residence in camps exists in law, no official exemption policy or procedure has been established as of October 2017. However, reports in June 2017 indicated that an informal RAS committee in Nairobi had begun to issue movement passes, valid for three months, to allow small numbers of refugees to reside in Nairobi.<sup>129</sup>

In 2015 guidance, DRA noted that it had “a prerogative to exempt some refugees from being in the camp because of some pressing matters based on medical services, education, employment or business, resettlement, [and] security threats, among other compelling reasons.”<sup>130</sup> In a March 2017 interview, a RAS representative stated that “in some extreme cases” refugees would be allowed to reside permanently in an urban area, but the determination would be made on a “case-by-case” basis. UNHCR has reportedly been working with RAS to establish regularised procedures for exemption.<sup>131</sup>

### UNHCR’s involvement in RSD since 2014

In theory, since around mid-2014, UNHCR has only issued mandate certificates in exceptional circumstances on a case-by-case basis when the Kenyan government has been unwilling or unable to carry out RSD. However, between mid-2014 and May 2016, during periods in which DRA stopped registration and the issuance of alien cards in urban areas altogether, NGOs report that UNHCR resumed issuing mandate certificates on a more general basis. Based on interviews with refugees, it is unclear whether UNHCR has consistently required refugees to register with DRA prior to visiting UNHCR.

Additionally, UNHCR has maintained involvement in RSD decisions by providing technical support to RAS. As of March 2017, UNHCR has stated that it has a residual ability to issue mandate certificates in exceptional circumstances, but in general refers refugees to RAS for registration and RSD.<sup>132</sup> The situation remains unclear for refugees who were partway through an RSD process with UNHCR in 2014, or who had obtained an asylum seeker certificate from UNHCR after the handover of RSD responsibilities to the government.





# Endnotes

1 Office of the United Nations High Commissioner for Refugees (UNHCR), "Statistical Summary as of 30-Sep-17: Refugees and Asylum Seekers in Kenya," October 2017, available at [http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/10/Kenya-statistics-package-Sept\\_2017.pdf](http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/10/Kenya-statistics-package-Sept_2017.pdf) (accessed 12 October 2017).

2 Ibid.

3 International Covenant on Civil and Political Rights 1966 (ICCPR), article 12.

4 UNHCR, *UNHCR policy on refugee protection and solutions in urban areas*, September 2009, para 149.

5 Refugees Act 2006, section 25(f) (although the text of section 25(f) erroneously references section 15(2) instead of section 16(2)). Although the offence of residing outside a designated area had been included in the Refugees Act since its inception, prior to March 2014 no areas had officially been designated as refugee camps: "The Refugees Act: Designation of Areas as Refugee Camps" (March 2014) *The Kenya Gazette*.

6 As of October 2017, operations in Dadaab appear to be continuing as normal. See, for example, UNHCR, "Dadaab – Operational Update, 1-15 October 2017," October 2017, available at <http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/10/15-October-Dadaab-Bi-weekly-Operational-Update.pdf> (accessed 27 October 2017).

7 In addition to these 31 refugees, researchers interviewed one refugee who lived in a camp and was visiting Nairobi for a short period of time. Information from this interview has not been included in the report.

8 See "Background" and the appendix to this report.

9 For example, as of the end of 2009, UNHCR had issued 46,000 mandate certificates to refugees living in Nairobi: UNHCR Policy Development and Evaluation Service, *Navigating Nairobi: A review of the implementation of UNHCR's urban refugee policy in Kenya's capital city*, January 2011, para 25, available at <http://www.unhcr.org/4d5511209.pdf> (accessed 25 July 2017), archived at <https://perma.cc/8M3G-ZSSD>.

10 According to the Refugees Act 2006, children should receive "refugee identification passes" before they become eligible for refugee identity cards at the age of 18. Refugees Act 2006, section 15. This report does not address the situation of children as regards refugee documentation.

11 See "The Urban Verification Exercise" in this report.

12 John Burton Wagacha and John Guiney, "The Plight of Urban Refugees in Nairobi, Kenya," in *Refugee Rights: Ethics, Advocacy, and Africa* (Georgetown University Press, 2008), p 91.

13 Simon Konzolo, "Refugee Status Determination and the Rights of Refugees in Kenya: Protection envisaged under the 2006 Refugees Act" (paper presented to Refugee Studies Centre Workshop on Refugee Status Determination Rights in Southern and East Africa, 2010) available at University of Oxford Refugee Studies Centre <[www.rsc.ox.ac.uk](http://www.rsc.ox.ac.uk)> at p 11. See also Immigration Act 1967. The DRA website (last updated 2015) notes: "After independence, the government set up a secretariat in the then Ministry of Home Affairs to oversee documentation, registration and settlement programs for refugees. . . . The secretariat was later moved to the Ministry of State for Immigration and Registration of Persons in February 2005 and consequently became a department through the Refugee Act of 2006. The ministry of state for immigration was renamed into Ministry of Interior and Coordination of National Government in the year 2013." Ministry of the Interior and Coordination of National Government, Department of Refugee Affairs, "Historical Background," available at <http://www.refugeeaffairs.go.ke/index.php/2015-02-16-09-14-42/background> (accessed 25 July 2017), archived at <https://perma.cc/5H2Y-PE2Q>.

14 Wagacha & Guiney, p 93.

15 Ibid, pp 91–92.

16 Ibid, p 92.

17 For further background, see Andrew Maina, "The Development of Refugee Law in Kenya," *Refugee Consortium of Kenya Blog*, 14 November 2016, available at <https://www.rckkenya.org/development-of-refugee-law-in-kenya/> (accessed 25 July 2017), archived at <https://perma.cc/CSX7-LCEJ>.

18 United Nations Convention Relating to the Status of Refugees 1951, article 33(1). See also Human Rights Committee, *CCPR General Comment No. 31 (The Nature of the General Legal Obligation Imposed on States Parties to the Covenant)*, para. 12.

19 See Refugees Act 2006, sections 4(b), 6–8, 16(1), and 18.

20 Ibid, section 6.

21 Ibid, section 7.

22 Ibid, section 7(2). The 2006 Act also conferred upon the relevant Minister the power to make regulations "generally for the better carrying out of the provisions of the Act" and in 2009 the Minister put in place regulations under this provision. The 2009 Refugees (Reception, Registration and Adjudication) Regulations specified, for instance, more detailed procedures and rules for receiving and processing asylum seekers, the process of adjudicating claims for asylum, the issuing of identity documents, and the process of withdrawing refugee status. Refugee (Reception, Registration and Adjudication) Regulations, 2009 ("2009 Regulations"), parts II, III, and IV.

23 See "Background" and the appendix to this report.

24 The Constitution of Kenya (2010), chapter IV.

25 Ibid, article 2(6).

26 1951 Refugee Convention, article 3; 1969 OAU Convention, article IV.

27 1951 Refugee Convention, article 26.

28 Ibid, article 27.

29 Refugees Act 2006, section 3.

30 Ibid, section 3(1).

31 Ibid, section 3(2).

32 Ibid, section 3(3); "Gazette Notice No 2017: The Refugees Act: Revocation of Prima Facie Refugee Status" (29 April 2016) CXVIII 46 *The Kenya Gazette* 1901.

33 Amnesty International, *Nowhere Else to Go: Forced Returns of Somali Refugees from Dadaab Refugee Camp, Kenya*, November 2016, p 11.

34 Prevention of Terrorism Act 2012, section 48(1).

35 13 December 2012 announcement by acting Commissioner of Refugee Affairs; press release reproduced in *Kituo Cha Sheria & 8 others v Attorney General* (High Court of Kenya at Nairobi, Constitutional and Human Rights Division), 26 July 2013 [Petition No 19 of 2013, consolidated with Petition No 115 of 2013]. See Kenya Citizen Affairs, "Al-Shaabab Targeting Security Officers" (video), 13 December 2012, available at <https://www.youtube.com/watch?v=vWrfiUnja74> (accessed 25 July 2017).

36 *Kituo Cha Sheria & 8 others v Attorney General* [2013]. The High Court decision was upheld by the Court of Appeal in *Attorney General v Kituo Cha Sheria & others* (Civil Appeal No 108 of 2014), 17 February 2017.

37 Security Laws Amendment Act 2014, section 48; inserting a new section 16(A) into the Refugees Act 2006. *Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya & 10 others* (High Court of Kenya, 23 February 2015), para 427 [Petition No 628 of 2014, consolidated with Petition No 630 of 2014 and Petition No 12 of 2015]. Security Laws Amendment Act 2014, sections 45 and 46, amending section 11(1) and inserting a new section 12(3) into the Refugees Act 2006.

38 "The Refugees Act: Designation of Areas as Refugee Camps" (28 March 2014) CXVI 39 *The Kenya Gazette* 755 at 767.

39 "Gazette Notice No 2017: The Refugees Act: Revocation of Prima Facie Refugee Status." Refugees (Reception, Registration and Adjudication) (Amendment) Regulations 2016, regulation 4, inserting a new regulation 35A into the 2009 Regulations.

40 Government of Kenya, "Government Statement on Refugees and Closure of Camps," press statement, 6 May 2016, quoted in

*Kenya National Commission on Human Rights & another v Attorney General & 3 others* [2017] eKLR, 9 February 2017 [Constitutional Petition No 227 of 2016]. Although DRA was disbanded in May 2016, it was not clear that RAS was DRA's successor until mid-2016.

41 *Kenya National Commission on Human Rights & another v Attorney General & 3 others* [2017] pp 21–22.

42 The Statute Law (Miscellaneous Amendments) Act 2017, section 2. The Act commenced on 4 May 2017.

43 According to NGOs that are familiar with the final content of the bill; a public version is not available as of October 2017.

44 UNHCR, "Refugee Status Determination," available at <http://www.unhcr.org/en-us/refugee-status-determination.html> (accessed 27 July 2017).

45 Ibid. See also UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR's Mandate*, September 2005.

46 DRA's website (last updated in 2015) suggests DRA assumed primary responsibility for RSD from 1 July 2014. See DRA, "Identification Documents," available at <http://www.refugeeaffairs.go.ke/index.php/2015-05-05-14-53-15/identification-documents> (accessed 25 July 2017), archived at <https://perma.cc/4UDM-BJGB>.

47 Sometimes this certificate was provided on the person's first visit to UNHCR; in other cases, they would receive a waiting document of some kind before receiving an asylum seeker certificate.

48 Until around 2004, mandate certificates issued to refugees in Nairobi stated that the refugee listed on the certificate "should report to Kakuma or Dadaab within [a certain number of] days" (UNHCR, *Navigating Nairobi*, para 31). From around 2004, the wording on the mandate certificate was changed to remove any reference to the camps and since 2008, the standard wording has been: "[name of refugee] is a recognized refugee in Kenya under the 1951 Refugee Convention and the 1969 OAU Convention" (ibid, para 62).

49 Before the Refugees Act 2006, NGOs report that refugees were issued with documents under the Aliens Restriction Act 1973 by the Department of Immigration Services.

50 Refugees Act 2006, section 15, as read with regulation 33 of the 2009 Regulations.

51 See discussion in the appendix to this report.

52 See UNHCR, "Kenya Factsheet—June 2017," June 2017, available at <http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/07/Kenya-Operation-Factsheet-June-2017-.pdf> (accessed 25 July 2017): UNHCR notes that in June 2017, "90 cases were exceptionally recognized under UNHCR mandate pending the resumption of RSD decision issuance by government."



**53** For example, UNHCR notes that in countries where it carries out RSD, “procedures for receiving applications for RSD are generally carried out concurrently with procedures for collecting or updating UNHCR information for these Applicants.” UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR’s Mandate*, Unit 3.2.1.

**54** See UNHCR Policy Development and Evaluation Service, *Newcomers to Nairobi: the protection concerns and survival strategies of asylum seekers in Kenya’s capital city*, July 2013, available at <http://www.unhcr.org/51f6813b9.pdf> (accessed 25 July 2017). The author states (at p 10): “Until 2011 individuals were required to register their claim solely with UNHCR; however, they are now required to first register as asylum seekers with DRA, receive an asylum seeker pass, and then proceed to UNHCR for refugee status determination (RSD).” Although in theory DRA would issue asylum seeker passes, in practice it does not appear to have been a common practice.

**55** 13 December 2012 announcement by acting Commissioner of Refugee Affairs. This decision was overturned by the Kenyan High Court in July 2013 (in *Kituo Cha Sheria & Others v Attorney General* [2013], para 96). According to UNHCR, however, registration did not resume until 10 March 2014 (Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report, Universal Periodic Review, Kenya, 2014).

**56** “Press Statement By Cabinet Secretary for Interior & Coordination of National Government on Refugees and National Security Issues on 26<sup>th</sup> March 2014,” press statement, 26 March 2014, copy archived at <https://perma.cc/F2VS-U53F>.

**57** UNHCR notes: “In 2015, the Government of Kenya resumed registration of POCs in Nairobi.” UNHCR, *Kenya Comprehensive Refugee Program 2016: Programming for Solutions*, 2016, p. 4.

**58** IHRC/NRC interview with RAS representative, 13 March 2017.

**59** 2009 Regulations, regulation 35A(2) (as amended in 2016).

**60** UNHCR Executive Committee of the High Commissioner’s Programme, “Conclusion on Registration of Refugees and Asylum-seekers,” No 91 (LII) – 2001, 5 October 2001. The Conclusion also notes that registration provides “a means to enable the quantification and assessment of [refugees’] needs and to implement appropriate durable solutions.” UNHCR promotes three types of “durable solutions”: voluntary repatriation to a refugee’s home country (where circumstances permit the person’s return), local integration in the host country, and resettlement to a third country.

**61** *UNHCR policy on refugee protection and solutions in urban areas*, 2009, para 149.

**62** UNHCR, *Operational Standards for Registration and Documentation*, 2003, p 15.

**63** Ibid.

**64** Ibid.

**65** Ibid.

**66** Ibid, p 16.

**67** Ibid.

**68** Ibid.

**69** Ibid.

**70** UNHCR Executive Committee, “General Conclusion on International Protection,” No 71 (XLIV) – 1993, 8 October 1993.

**71** Ibid.

**72** Ibid.

**73** Ibid.

**74** UNHCR Executive Committee, “Identity Documents for Refugees,” No. 35 (XXXV) – 1984, 18 October 1984.

**75** See discussion of this refugee’s case in “Case Study: Refugees who fear living in camps” in this report.

**76** UNHCR and the Danish Refugee Council, *Promoting Livelihoods to Build the Self-Reliance of Urban Refugees in Nairobi*, May 2012, p. 19.

**77** UNHCR, *Kenya Comprehensive Refugee Programme* 2016, p. 12.

**78** UNHCR, “UNHCR Conducts Joint Verification of Refugees with the Government of Kenya,” statement, 24 February 2017, available at <http://www.unhcr.org/ke/10374-unhcr-conducts-joint-verification-refugees-government-kenya.html> (accessed 25 July 2017).

**79** IHRC/NRC interview with UNHCR representative, Nairobi, 16 March 2016.

**80** UNHCR, “UNHCR Conducts Joint Verification of Refugees with the Government of Kenya.”

**81** UNHCR, “Kenya Factsheet—January 2017,” January 2017, available at <http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/02/Kenya-Operation-Factsheet-January-2017.pdf> (accessed 19 August 2017).

**82** Ibid.

**83** 1951 Refugee Convention, articles 27 (identity papers) and 25 (administrative assistance).

**84** See Constitution of Kenya (2010), article 15 and Citizenship and Immigration Act 2011, section 13 (“lawful residence”). Although Kenyan law provides that recognised refugees are eligible to apply for Kenyan citizenship after seven years of residence (among other requirements), NGOs report that they have not encountered any refugees who have been able to acquire citizenship. Being born in Kenya does not entitle a

child to Kenyan citizenship unless one parent is a Kenyan citizen: Constitution of Kenya (2010), article 14.

**85** T.S. “Why does Kenya lead the world in mobile banking,” *The Economist*, 2 March 2015, available at <http://www.economist.com/blogs/economist-explains/2013/05/economist-explains-18> (accessed 25 July 2017).

**86** UNHCR, “Kenya Factsheet—March 2017,” available at <http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/04/Kenya-Operation-Factsheet-March-2017.pdf> (accessed 25 July 2017).

**87** This is a conservative number, as researchers did not consistently ask interviewed refugees about their experiences of police harassment.

**88** As discussed below, the amount refugees reported police demanded in bribes ranged from 200 to 150,000 KSH (\$1.95 to \$1,450 USD).

**89** See Transparency International, *People and Corruption: Africa Survey 2015*, December 2015, pp 17, 35, and 39, available at [https://www.transparency.org/whatwedo/publication/people\\_and\\_corruption\\_africa\\_survey\\_2015](https://www.transparency.org/whatwedo/publication/people_and_corruption_africa_survey_2015) (accessed 25 July 2017). See also Samuel Karanja, “EACC survey ranks Interior ministry as ‘most corrupt,’” *The Daily Nation*, 15 March 2016, available at <http://www.nation.co.ke/news/EACC-survey-ranks-Interior-ministry-as-most-corrupt/1056-3117500-4i1wb8/index.html> (accessed 25 July 2017).

**90** Refugees Act 2006, section 25(f).

**91** Citizenship and Immigration Act 2011, section 53(1)(j).

**92** Refugees Act 2006, section 16(4); Kenya Citizenship and Immigration Act 2011, section 40 and 41(2); Kenya Citizenship and Immigration Regulations 2012, First Schedule (Form 25), and Seventh Schedule (Class M).

**93** Births and Deaths Registration Act 1928, Form B1 (“Acknowledgement of Birth Notification (For Parents)”).

**94** Directorate of Immigration and Registration of Persons, Ministry of the Interior and Coordination of National Government, “Information,” available at <http://www.immigration.go.ke/Information.html> (accessed 25 July 2017), archived at <https://perma.cc/C8PV-TX44>. Under section 12 of the Births and Deaths Registration Act, evidence of marriage is required for registration if a mother registering a birth wants to include the father’s name on the birth certificate and he is not present at the time of registration. However, in May 2016 the Kenyan High Court declared the production of evidence that the father and mother were married unconstitutional as it violated the rights of children born outside of marriage to have the names of their fathers entered in the birth registers. *LNW v The Honorable Attorney General and the Registrar of Births and Deaths* (High Court of Kenya at Nairobi, Constitutional and Human Rights Division), 26 May 2016 [Petition No. 484 of 2014]. Although the court directed the Registrar to facilitate the entry of the

names of fathers of children born outside of marriage on birth certificates, as of April 2017, it does not appear that the Registration Act or the Registration Rules have been updated to reflect this direction.

**95** Directorate of Immigration and Registration of Persons, “Information.”

**96** Ibid. Additionally, according to the official late registration policy, evidence of marital status is required for persons who do not belong to an ethnic group or tribe indigenous to Kenya and for unmarried non-indigenous mothers.

**97** For discussion on this policy, see Plan International, *Birth Registration and Children’s Rights: Executive Summary*, p 10, available at <https://plan-international.org/publications/birth-registration-and-childrens-rights#> (accessed 25 July 2017).

**98** See UNHCR Executive Committee, “Conclusion on Identity Documents for Refugees, 1984” and UNHCR, “Identity Documents for Refugees,” EC/SCP/33 (20 July 1984).

**99** International Covenant on Civil and Political Rights (ICCPR) 1966, article 16.

**100** Ibid, article 12 (freedom of movement); International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, article 6 (right to work).

**101** ICCPR, article 10; ICESCR, article 12.

**102** UNHCR, “Refugee Status Determination,” available at <http://www.unhcr.org/en-us/refugee-status-determination.html> (accessed 27 July 2017).

**103** Ibid. See also UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR’s Mandate*, September 2005.

**104** DRA’s website (last updated in 2015) suggests DRA assumed primary responsibility for RSD from 1 July 2014. See Ministry of the Interior and Coordination of National Government, Department of Refugee Affairs, “Identification Documents,” available at <http://www.refugeeaffairs.go.ke/index.php/2015-05-05-14-53-15/identification-documents> (accessed 25 July 2017), archived at <https://perma.cc/4UDM-BJGB>.

**105** See UNHCR Policy Development and Evaluation Service, *Navigating Nairobi: A review of the implementation of UNHCR’s urban refugee policy in Kenya’s capital city*, January 2011, available at <http://www.unhcr.org/4d5511209.pdf> (accessed 25 July 2017), archived at <https://perma.cc/8M3G-ZSSD>. UNHCR notes (at para 49) that until the early 2000s, “UNHCR generally advised refugees approaching the Branch Office in Nairobi that they should report to and reside in Dadaab or Kakuma. Few refugees were provided with the documentation that they required to remain in Nairobi legally and assistance was limited to a small number of the most vulnerable cases, almost invariably on a short-term basis.” In 2011, UNHCR noted (at para 61) that its Westlands office on average received 450-500 people, four days a week, many of them new arrivals.



**106** Sometimes this certificate was provided on the person's first visit to UNHCR.

**107** As of the end of 2009, UNHCR had issued 46,000 mandate certificates to refugees living in Nairobi: UNHCR, *Navigating Nairobi*, para 25. Until around 2004, mandate certificates issued to refugees in Nairobi stated that the refugee listed on the certificate "should report to Kakuma or Dadaab within [a certain number of] days" (para 31). From around 2004, the wording on the mandate certificate was changed to remove any reference to the camps and since 2008, the standard wording has been: "[name of refugee] is a recognized refugee in Kenya under the 1951 Refugee Convention and the 1969 OAU Convention" (para 62).

**108** See "Legal and policy framework" at pages 8 and 9 of this report.

**109** For example, UNHCR notes that in countries where it carries out RSD, "procedures for receiving applications for RSD are generally carried out concurrently with procedures for collecting or updating UNHCR information for these Applicants." UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR's Mandate*, Unit 3.2.1.

**110** See UNHCR Policy Development and Evaluation Service, *Newcomers to Nairobi: the protection concerns and survival strategies of asylum seekers in Kenya's capital city*, July 2013, available at <http://www.unhcr.org/51f6813b9.pdf> (accessed 25 July 2017). The author states (at p 10): "Until 2011 individuals were required to register their claim solely with UNHCR; however, they are now required to first register as asylum seekers with DRA, receive an asylum seeker pass, and then proceed to UNHCR for refugee status determination (RSD)." Although in theory DRA would issue asylum seeker passes, in practice it does not appear to have been a common practice.

**111** 13 December 2012 announcement by acting Commissioner of Refugee Affairs; press release reproduced in *Kituo Cha Sheria & 8 others v Attorney General* (High Court of Kenya at Nairobi, Constitutional and Human Rights Division), 26 July 2013 [Petition No 19 of 2013, consolidated with Petition No 115 of 2013]. See Kenya Citizen Affairs, "Al-Shaabab Targeting Security Officers" (video), 13 December 2012, available at <https://www.youtube.com/watch?v=vWrFiUnja74> (accessed 25 July 2017).

**112** The December 2012 decision was overturned by the Kenyan High Court in July 2013 (in *Kituo Cha Sheria & Others v Attorney General* [2013], para 96). According to UNHCR, however, registration did not resume until 10 March 2014 (Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review, Kenya, 2014).

**113** See "Press Statement By Cabinet Secretary for Interior & Coordination of National Government on Refugees and National Security Issues on 26<sup>th</sup> March 2014," press statement, March 2014, copy archived at <https://perma.cc/F2VS-U53F>.

**114** UNHCR notes: "In 2015, the Government of Kenya resumed registration of POCs in Nairobi." UNHCR, *Kenya Comprehensive Refugee Program 2016: Programming for Solutions*, 2016, p. 4.

**115** Although DRA did not maintain a standalone registration database. "While the data sharing agreement between UNHCR and DRA on the use of UNHCR's proGres database remains in place, the absence of a standalone Government database remains an impediment to data management." Ibid, p 11.

**116** UNHCR, "Kenya Factsheet—March 2017," available at <http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/04/Kenya-Operation-Factsheet-March-2017.pdf> (accessed 25 July 2017).

**117** In addition, UNHCR has continued to add refugees to its database and it has shared appropriate parts of this database with RAS, such that RAS staff are able to contribute information directly to it.

**118** Before the Refugees Act 2006, NGOs report that refugees were issued with documents under the Aliens Restriction Act 1973 by the Department of Immigration Services.

**119** Refugees Act 2006, section 15, as read with regulation 33 of Refugee (Reception, Registration and Adjudication) Regulations, 2009 ("2009 Regulations").

**120** See discussion on Refugee Consortium of Kenya (RCK) website: "Refugees, Asylum-Seekers, and Returnees," <https://www.rckkenya.org/v2/refugees-asylum-seekers-and-returnees/> (accessed 19 August 2017), archived at <https://perma.cc/52BE-HS7V>. See also UNHCR, *Navigating Nairobi*, para 64: "In August 2010, DRA announced the introduction of a 'Rapid Results Initiative', the goal of which was, within a 90-day period, to register and provide an official document to 85 per cent of the refugees in Nairobi who were already registered with UNHCR."

**121** The letter was valid for one year. Initially, the letter was a document issued jointly by UNHCR and DRA called a "notification of recognition." See also DRA, "Identification Documents," <http://www.refugeeaffairs.go.ke/>.

**122** The form of the letter was officially established in 2016. Refugees (Reception, Registration and Adjudication) (Amendment) Regulations 2016, Form 6B.

**123** See UNHCR, "Kenya Factsheet—June 2017," June 2017, available at <http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/07/Kenya-Operation-Factsheet-June-2017-.pdf> (accessed 25 July 2017): UNHCR notes that in June 2017, "238 cases were interviewed in Nairobi, all but one were first instance interviews. Of these, 141 cases were interviewed by the Refugee Affairs Secretariat (RAS) RSD team."

**124** RAS assumed DRA's functions around July 2016: from May to July 2016, it does not appear that any government body exercised responsibility for refugee affairs.

**125** IHRC/NRC interview with RAS representative, 13 March 2017.

**126** Ibid.

**127** UNHCR, "Kenya Factsheet—January 2017" available at <http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/02/Kenya-Operation-Factsheet-January-2017.pdf> (accessed 25 July 2017).

**128** Legal Aid Act 2016, section 36(1)(c).

**129** 2009 Regulations, regulation 35A(2) (as amended in 2016).

**130** DRA, "Welcome to refugee affairs," available at <http://www.refugeeaffairs.go.ke/index.php/welcome-to-refugees-affairs> (accessed 25 July 2017), archived at <https://perma.cc/2UTA-L68Y>.

**131** IHRC/NRC interview with UNHCR representative, Nairobi, 16 March 2017. NGOs report that in practice refugees can leave the camps on a temporary basis (a process that requires a refugee to obtain a movement pass from camp authorities) on one of three grounds: a refugee's resettlement case requires them to come to Nairobi (for example, to come to the US Embassy); a refugee is enrolled in a public educational institution outside the camps; and health grounds.

**132** See UNHCR, "Kenya Factsheet—June 2017": UNHCR notes that in June 2017, "90 cases were exceptionally recognized under UNHCR mandate pending the resumption of RSD decision issuance by government."



## **Norwegian Refugee Council (Kenya)**

The Norwegian Refugee Council (NRC) is an independent, humanitarian non-governmental organisation which provides assistance, protection, and durable solutions to refugees and internally displaced persons worldwide. In Kenya, NRC helps refugees and internally displaced people in Kenya's camps access clean water, food, education, and shelter, and helps them exercise their rights.

## **International Human Rights Clinic at Harvard Law School**

The International Human Rights Clinic (IHRC) at Harvard Law School seeks to protect and promote human rights and international humanitarian law through documentation; legal, factual, and strategic analysis; litigation before national, regional, and international bodies; treaty negotiations; and policy and advocacy initiatives.

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