



## CHILDREN AND MIGRATION: A COMPARATIVE ANALYSIS ON MIGRATION LAWS AND STATUS OF CHILDREN IN KENYA AND INDIA

Dr. John Kanya Musembi\*

### Abstract

Children are the future, and if they are not recognized in terms of protection of their rights within any civilized society, then the future of the world is under threat. This being the case and being the year when children's rights and welfare are remembered, it is not only of importance but rather of necessity that the rights of children in society, which has long been overlooked, are addressed and hence, for these to become a reality it is only right that the future of the world is preserved through ensuring the rights of children are well in place in society today. The world today is at a crossroads when it comes to migration laws and human rights violations, as will be epitomized in different scenarios that this research paper seeks to address and outline the different facets by taking a key focus on children's rights in relation to migrant refugee children with a special focus on the level of protection epitomized under International Human Rights Laws and refugee laws with respect to migration of children within the dynamics of Kenya and India. The paper will therefore analyse whether migrant and refugee children's rights are a reality in Kenya and India today. The study will also examine whether the organs mandated with protecting and enforcing International Human Rights Laws are doing enough. Moreover, the paper looks to find out if the two states are working towards a common goal in ensuring that children rights are protected. Finally, the study will compare to what extent both governments have transversed in recognizing refugee and migrant children's rights and the measures taken by United Nations organs towards the achievement of refugee and migrant children's rights protection.

---

\* Dr. John Kanya Musembi, Lecturer, Department of Public Law, Kenyatta University School of Law, Nairobi, Kenya.  
Email: musembi.john@ku.ac.ke



## 1. Introduction

Refugees and migrants are not a new phenomenon in the world today, and nobody chooses to be a refugee or a migrant but rather they are victims of circumstances which vary from situations such as wars, climate change, political or economic instability and hence, such provocations force families to be separated and the saddest part is that also children are involved in this plight making them vulnerable to what the future holds for them. A child born or forced into such a situation is in dire need for laws to be in place that ascertain their future well-being is protected and if that's not the case then their future is in danger of extinction. It is therefore, not only of importance to ensure that laws are in place towards safeguarding the rights of migrant and refugee children but of essence to ensure that these laws are fully in practice in ensuring that these rights are enforced.

The Asian-African Legal Consultative Organization (AALCO), in a recent 2022 brief on the topic 'The Status and Treatment of Refugees', depicted it as one of its oldest topics on their agenda, which they have been discussing along with the United Nations High Commissioner for Refugees (UNHCR) with whom AALCO signed a Memorandum of Understanding (MoU) on 23 May 2002.<sup>1</sup> Thereby, both continents which the study focuses on while trying to ascertain the rights of migrant and refugee children, the above organization it depicts the historical evidence towards the need of trying to end the refugee problem in both Kenya and India.

Human rights violations are something that is not new to society today, and it's evident as this paper will try to depict and highlight in order to give a clearer picture of where Kenya and India stand when it comes to children and migration rights status within the states. In support of highlighting the status of refugees the study also observed from the AALCO brief of 2022,<sup>2</sup> that the Organization of African Unity (OAU) Convention Governing Specific Aspects of Refugee Problems in Africa was more inclusive in matters concerning refugee status, unlike the 1951 Refugee Convention in that from the definition of a refugee under the OAU Convention is more accommodative unlike the definition given under the 1951 Refugee Convention by defining a refugee as:

“...a person who owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in

---

<sup>1</sup> Asian-African Legal Consultative Organization, 'The Status and Treatment of Refugees', 60<sup>th</sup> Annual Session, Final Refugee Brief, 18<sup>th</sup> August 2022, P. 1, Para 1 <<https://www.aalco.int/60thAnnualSession/Briefs2022/Final%20Refugee%20Brief%20as%20on%2018%20August%202022.pdf>> Accessed 28/12/2023.

<sup>2</sup> Ibid.



another place outside his country of origin or nationality. Thus, individuals who are victims of armed conflicts or other catastrophic violent situations qualify as refugees unlike the case in, the Refugee Convention, 1951 where the categorization is limited to those fearing persecution.”<sup>3</sup>

Although the OAU was later replaced by the African Union (AU) in the year 2002, precedents show that the history of refugee problems is something that has been an African problem for quite some time. Therefore, Kenya being a member of the AU and it being evident that humanitarian violations were included in the definition of a refugee by its predecessor the OAU it therefore should observe the same while dealing with refugees and asylum seekers which the study will try and ascertain in its conclusion’s.

The existence through recognition of both governments to various conventions which fall under different United Nations agencies, such as the Migration for Employment Convention, a component of the International Labour Organization (ILO), and the United Nations Convention on the Rights of the Child, which is a Component of UNICEF. Further, certain regional human rights instruments have also been adopted towards the protection of the child, such as the African Charter on the Rights and Welfare of the Child (ACRWC), just to name a few. It is still evident that violations children and migrant rights are present attesting it to be a challenge when it comes to their protection and hence the need for addressing such issues.

According to statistics from the Office of the United Nations High Commissioner for Human Rights (OHCHR), it estimates that around 281 million people, which amounts to approximately 3.6% of the world’s population, currently live outside their country of origin.<sup>4</sup> These also includes child migrants and they suffer similar human rights violations like lack of proper sanitation, education, healthcare, and food which are basic humanitarian elements that should strive in our societies today. Therefore, this paper looks to highlight the vulnerability of migrant and refugee children and show a clearer picture of the challenges they are facing within the two developing nations and in finality assess where the two nations lie in terms of protecting and ensuring that the rights of migrant and refugee children are protected.

According to the global report of 2022 of the UNHCR, it is stated that by the end of 2022, the East and Horn of Africa and the Great lakes hosts around 4.9 million refugees and Asylum seekers and

---

<sup>3</sup> Ibid, P. 8 Para 29.

<sup>4</sup> United Nations Human Rights Office of the High Commissioner, “About Migration and Human Rights” <<https://www.ohchr.org/en/migration/about-migration-and-human-rights>> Accessed 20<sup>th</sup> July 2023.



10.7 million internally displaced people out of which most happen to be vulnerable children in need of protection and prevention from atrocities such as gender-based violence, child labor, early marriage, lack of education etc.<sup>5</sup>

Kenya has ratified the 1951 Refugee Convention and the 1967 Protocol unlike India who is not a state party to the Refugee Convention and its Protocol, nor does it have any legislations in place to deal comprehensively with refugees but rather deals with refugees largely at political and administrative levels relying on the Foreigners Act of 1946 which a model rooted in the Foreigners Act that the British bestowed upon India in 1864<sup>6</sup> and has only Ad Hoc systems in place to deal with refugees unlike Kenya which has the Refugee Act of 2021 which was enacted and is in place presently to tackle refugee problems. Despite the lack of formal refugee laws in India, it is a signatory to several human rights instruments that articulate the protection of refugees, such as the Universal Declaration on Human Rights (UDHR) 1948 and has joined the International Convention on Civil and Political Rights (ICCPR-1966) and the International Convention on Economic, Social and Cultural Rights (ICESCR-1966) since 1979. It is also a signatory to the Convention on Eliminating all forms of Racial Discrimination (CERD-1965) and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Torture Convention-1984).<sup>7</sup> Article 14 of the Universal Declaration on Human Rights states, “Everyone has the right to seek and to enjoy in other countries asylum from persecution”,<sup>8</sup> and Article 13 of the International Covenant on Civil and Political Rights states,

“An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.”<sup>9</sup>

---

<sup>5</sup> United Nations High Commissioner for Refugees, “Global Report 2022” <<https://reporting.unhcr.org/operational/regions/east-and-horn-africa-and-great-lakes>> Accessed 17<sup>th</sup> July 2023.

<sup>6</sup> The Wire, ‘The Union Government Should Understand, No Human Is Illegal’ <<https://thewire.in/rights/the-union-government-should-understand-no-human-is-illegal>> Accessed 15<sup>th</sup> November 2023.

<sup>7</sup> Saurabh Bhattacharjee, ‘India Needs a Refugee Law’, [2008 updated 2019] Vol. 43 Issue 9 Economic and Political Weekly <<https://www.epw.in/journal/2008/09/notes/india-needs-refugee-law.html#>> Accessed 15<sup>th</sup> November 2023.

<sup>8</sup> Universal Declaration on Human Rights, Art. 14.

<sup>9</sup> International Covenant on Civil and Political Rights, Art. 13.



The above extracts, which are from a couple of the human rights instruments to which India is a signatory, show the obligation India has towards protecting refugees within its territory.

Therefore, this being the case, the legal status of refugees in Kenya stands recognized through its ratification of international instruments and additional incorporation of national laws on refugees through the Refugee Act of 2021. Contrastingly, its counterpart India is of a dissimilar approach whereby refugees are regarded as not different from aliens, whose presence is regulated by the Foreigners Act of 1946. In reverence of the above scenario, the direction of the current study finds basis in trying to conceptualize what both states have done towards tackling the children refugee problems within their respective state machinery systems.

## **2. Migrants and Refugees *vis -a - vis* Human Rights**

According to the Kenya National Commission on Human Rights (KNHRC), migration is basically the movement from one place to another of an individual or a group of people, and it can either be organized or spontaneous for different reasons or it can also be voluntary or involuntary.<sup>10</sup> Voluntary migrants can be categorized as migrants, immigrants and transnationals and on the other hand, involuntary migrants can be categorized as forced migrants, asylum seekers or refugees.<sup>11</sup> Therefore, depending on the reasons for migration then, a migrant can fall into either of the above groups. The reasons for migration are numerous, and the list is endless and hence below are some of the reasons which include;

To find better jobs/income

To improve their livelihoods, quality of life/lifestyle

To enjoy more rights and freedoms

To seek better education opportunities

For family reasons (marriage, accompanying a child/parent/relative)

Investing in a new country

Enjoying better healthcare

Escaping persecution/ war/ poverty/ environmental and natural disasters, etc.

However, looking at the dynamics of both Kenya and India, the study identifies that mostly the migrants and refugees in both countries are more of involuntary migrants who have had to flee their states due to wars, persecution, and poverty, and such can be seen with the Rohingya migrants who

---

<sup>10</sup>Kenya National Commission on Human Rights, “Hand Book on Migration and Human Rights Simplified Reference material” <<https://www.knchr.org/Portals/0/GroupRightsReports/Handbook%20on%20Migration%20and%20Human%20Rights.pdf?ver=2018-06-06-190119-147>> Accessed 28/06/2023

<sup>11</sup> Ibid.



have been experiencing discriminatory policies since the early 1970s.<sup>12</sup> However, renewed violence at the beginning of 2017 that has reported instances of murder, rape, as well as arson, has led to their recent migration from Myanmar, and they have found themselves in neighboring states such as India.<sup>13</sup> Children as well are not left behind during this migration in seeking refuge thereby ending up in detention centers as will be depicted later in this article which is a violation of children's refugee rights as per article 37 (b) of the Convention on the Rights of a Child which states that, "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall conform with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time".<sup>14</sup> The Somali and South Sudanese migrants in Kenya are mostly fleeing their states majorly due to political instability and changes in climatic conditions that have recently been affecting the Horn of Africa, and this is clearly depicted from the stats that the UNHCR Kenya has been able to provide.<sup>15</sup> Similarly, by women and children being part and parcel of these migration that ends up in detention centers and refugee camps it also forms basis of violations of stipulations under Article 37 of CRC which the study discusses in detail in later parts of these paper. It is in these light that the research looks to address whether the rights and duties of refugee and migrant children in both Kenya and India are in place and to what extent have they been guaranteed. India also has been accepting refugees from way back in the 1950's especially during the partition whereby neighboring countries which included the Chakma from Bangladesh, Pakistan, Tibetan's from China, Tamil refugees from Sri Lanka, and the most recent Rohingya from Myanmar. Kenya on the other hand the journey with refugees came much later in the 1990's as noted in the following subheadings of the current study.

Human rights are claims or entitlements inherent to all human beings and cannot be taken away by anyone despite your color, origin, religion or any other status. These rights are all interrelated, interdependent and indivisible.<sup>16</sup> Chapter 4 of the Constitution of Kenya provides for all human rights and fundamental freedoms, while Article 25 stipulates when the enjoyment of these rights can be limited.<sup>17</sup> On the Indian counterpart, Part III of the Constitution of India provides for all human rights

---

<sup>12</sup> Council on Foreign Relations, 'The Rohingya Crisis' <<https://www.cfr.org/backgrounder/rohingya-crisis>> accessed 18/11/2023.

<sup>13</sup> Ibid.

<sup>14</sup> Convention on the Rights of a Child, Art. 37 (b).

<sup>15</sup> UNHCR Kenya, 'Figures at a glance' <<https://www.unhcr.org/ke/figures-at-a-glance>> accessed 18/11/2023.

<sup>16</sup> Kenya National Commission on Human Rights, (n 8).

<sup>17</sup> The Constitution of Kenya, 2010, Art. 25



and fundamental freedoms, with Article 13 (2) stipulating that no law can take away any fundamental right.<sup>18</sup>

Finally, state parties to the Convention on the Rights of a Child have certain legal obligations which they have to put into consideration when it comes to refugee or migrant children in order to protect the best interest of a child, which is clearly articulated under Article 3 of the convention and states that, “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”<sup>19</sup> With respect to the obligations that state parties to the convention need to adhere to, the committee on the rights of the child was depicted in the 39<sup>th</sup> session on the treatment of unaccompanied and separated children outside their country of origin through the General Comments, and it stated that,

“State obligations under the Convention apply to each child within the State’s territory and to all children subject to its jurisdiction (art. 2). These State obligations cannot be arbitrarily and unilaterally curtailed either by excluding zones or areas from a State’s territory or by defining particular zones or areas as not, or only partly, under the jurisdiction of the State. Moreover, State obligations under the Convention apply within the borders of a State, including with respect to those children who come under the State’s jurisdiction while attempting to enter the country’s territory. Therefore, the enjoyment of rights stipulated in the Convention are not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness.”<sup>20</sup>

Thereby being clear in ascertaining the responsibilities state parties should adhere to when it comes to refugee and migrant children.

### **3. Migrant Children and Detention**

When it comes to matters of detention of children and the law, the study would like to start with the recent legislation of the Children Act of 2022, which forms part of the laws and regulations in Kenya. As much as the Act has given various rights and directions when it comes to dealing with children, it

---

<sup>18</sup> The Constitution of India 1947, Art. 13(2).

<sup>19</sup> The Convention on the Rights of a Child, Art. 3 (1).

<sup>20</sup> Committee on the Rights of the Child, ‘Treatment of unaccompanied and separated children outside their country of origin’ General Comment No. 6 (2005) Thirty-ninth session 17 May – 3 June 2005.



doesn't directly touch on detention in relation to refugee children or migrant children but rather equivocally disbands putting children in detention like in other legislations captured under the current study by stating that, "A child shall not be deprived of his or her liberty or otherwise treated in a manner contrary to Articles 29 (f) and 51 of the Constitution, except in accordance with the Persons Deprived of Liberty Act."<sup>21</sup> The article further in sub section 7 goes ahead and provides for when such detention can happen by stating that, "The detention of a child under this Act or any other written law shall be a matter of last resort and in conformity with Article 53 (f) of the Constitution."<sup>22</sup> Therefore, the Act reiterates what is captured under various legislations when it comes to children in conflict with the law but doesn't give certainty or a measure of ensuring that when such detention happens it is actually a matter of last resort. Thereby, when it comes to refugee and migrant children who happen to find themselves within the territory of Kenya, the same Act or regulations are expected to be observed while treating them but then the only issue would be how it will be measured that their detention is a matter of last resort. India on the other hand has the Children Act of 1960, as well as the Juvenile Justice (Care and Protection of Children) Act, 2000, which both give regulations in matters children in conflict with the law. However, both Acts do not directly discuss about migrant or refugee children as well detention per se when it comes to children. The CRC stipulates clearly the state obligation when it comes to treatment of unaccompanied and separated children outside their country of origin, by stating under General Comment No. 6 of 2005, that,

"State obligations under the Convention apply to each child within the State's territory and to all children subject to its jurisdiction (art. 2). These State obligations cannot be arbitrarily and unilaterally curtailed either by excluding zones or areas from a State's territory or by defining particular zones or areas as not, or only partly, under the jurisdiction of the State. Moreover, State obligations under the Convention apply within the borders of a State, including with respect to those children who come under the State's jurisdiction while attempting to enter the country's territory. Therefore, the enjoyment of rights stipulated in the Convention are not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking,

---

<sup>21</sup> The Children Act 2022, Art 26 (1).

<sup>22</sup> Ibid, Art. 26 (7).





refugee and migrant children - irrespective of their nationality, immigration status or statelessness.”<sup>23</sup>

This quote clearly depicts what is expected of Kenya when it comes to dealing with migrant or refugee children who happen to find themselves within the territory.

The Convention on the Rights of a Child is one of the international human rights law instruments that provides the road map for children's rights. However, there is still much criticism when it comes as to the protection of children during migration. Several human rights activists have depicted their perceptions when it comes to violation of children rights when it comes to migration and their major concern lies on the detention aspect. Article 37 (b) as earlier discussed has clearly been criticized as not to be clear enough when it comes to the prohibition of detention of children. Smyth in her article on detention of children questions the detention aspect status by stating that, “The legal position on the immigration detention of children is unclear: is it permissible, subject to the *ultima ratio* (last resort) principle, or is it prohibited outright?”<sup>24</sup> Further, the article tries to establish the confusions arising out due to the general nature Article 37 (b) of the CRC by opinionating that, “the source of the general rule is not precisely identified since the *Ultima ratio* principle only applies whenever detention is exceptionally justified for other reasons (that is, other than immigration control) and this cannot be the source of the general rule.”<sup>25</sup> From the above criticism it is evident that as much as the law is available, the extent of determination when it comes to detention of children still needs addressing as it is not clear on what determines detention of children and whether the grounds stipulated under the convention are justifiable or are arbitrary.

Further there are other treaty monitoring bodies that support or prevent the arbitrary detention of children such as the International Convention on Civil and Political Rights (ICCPR), which states under Article 9 (1) which states, “Everyone has the right to liberty and security of a person. No one shall be subjected to arbitrary arrest and detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure established by law.”<sup>26</sup> The detention aspect here includes children and offers grounds for such detention to the prescriptions of the law. Furthermore, the International Convention on the Protection of the Rights of All Migrant Workers and Members

---

<sup>23</sup> Committee on the Rights of the Child, General Comment No. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin, Thirty-ninth session 17 May – 3 June 2005, p. 6 at para 12 <<https://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>> Accessed 28/12/2023.

<sup>24</sup> Ciara Smyth, ‘Towards a Complete Prohibition on the Immigration Detention of Children’ (February 2019) Volume 19, Issue 1 *Human Rights Law Review* <<https://doi.org/10.1093/hrlr/ngy045>> accessed 18/11/2023.

<sup>25</sup> Ibid.

<sup>26</sup> International Convention on Civil and Political Rights, Art. 9 (1).



of Their Families under Article 16 which states that, “Migrant workers and members of their families shall have the right to liberty and security of person,” and “Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.”<sup>27</sup> Similar display of protection of arbitrary detention is displayed here also depicting the reasonable aspect when it comes to detention of migrant workers and their children. Another body that highlights the detention aspect *per se* is the Convention on the Rights of Persons with Disabilities under Article 14 which states that,

“States Parties shall ensure that persons with disabilities, on an equal basis with others:

- a) Enjoy the right to liberty and security of person;
- b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.”<sup>28</sup>

Looking at the context of these provisions that prohibit arbitrary detention of person and children precisely in relation to the current study, it is evident that Kenya and India have relevant laws available in promotion and protection from detention of children and despite the fact that some of these provisions providing grounds on when such detention is permissible, the treaty bodies still lack a discrete right to liberty when it comes to children and also don't directly provisionally include children detention within their parent treaties. It is worth noting that the only body that discretely mentions children not to be detained with their mothers is the Committee on the Elimination of Discrimination against Women (CEDAW), which states that,

“Children should not be detained with their mothers unless doing so is the only means of maintaining family unity and is determined to be in the best interest of the child. Alternatives to detention, including release with or without conditions, should be considered in each individual case and especially when separate facilities for women and/or families are not available.”<sup>29</sup>

---

<sup>27</sup> The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 16 (1) and (4).

<sup>28</sup> The Convention on the Rights of Persons with Disabilities, Art. 14 (1)

<sup>29</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No 32, The gender-related dimensions of refugee status, asylum, nationality and statelessness of women, 14 November 2014, p. 15 at para 49 <<https://digitallibrary.un.org/record/807254?ln=en>> accessed 18/11/2023.



However, it can be noted that as much as the laws are evident, the idea that children can still be detained shows the need to formulate laws that completely prohibit the detention of children, which is a problem that needs to be addressed towards ensuring the liberty of migrant refugee children.

#### **4. Rights of Migrants and Refugee Children**

Refugees and asylum seekers have the basic right to receive medical attention in emergency cases. According to Article 23 of the 1951 Refugee Convention, which states that “refugees are entitled to the same treatment as nationals of their host State as regards public relief, which includes health care.”<sup>30</sup> Further, Article 24 (1) of the Convention on the Rights of a Child (CRC) stipulates that,

“States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services...”

which is something that is not only humane but something that needs to be put right towards ensuring this right is safeguarded and protected since they are not the initiators of their plight but rather victims of circumstances such as war or draught.

Secondly, upon fleeing and arriving in the host territory of the State, refugees and asylum seekers have the right to communicate with their family members or lawyers who represent them upon being detained in detention centres that the host countries may have put them in while processing them. These can further be inclined with the right of an unaccompanied child to family unity and family life which is provided also under Article 9 (1) of the CRC which states,

“States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or where the parents are living separately and a decision must be made as to the child’s place of residence.”<sup>31</sup>

This clearly tries to ensure that migrant refugee children and their parents are connected despite their plight when it comes to ensuring communication during their separation, which has to occur only subject to best interests of the child and in accordance with the applicable laws as the CRC stipulates.

---

<sup>30</sup> The 1951 Refugee Convention, Art 11.

<sup>31</sup> Convention on the Rights of a Child, Art. 9 (1).



Thereby, a significant area in which the study tries to ascertain the extent to which both states have endorsed ensuring child migrants are protected from similar predicaments.

Thirdly, every refugee or asylum seeker has the right to be treated with dignity and respect by the host country to enable stress free transmission and processing in order to ascertain their well-being. Which also includes the right to life and security which is paramount towards ensuring that they are able to live like any other human being without prejudice or discrimination regardless of the situation they find themselves in relation to them fleeing for safety due to circumstances out of their control. These rights can be inclined to the protection of a child and prevention of abuse which can be traced under Article 19 (1) of CRC which provides that,

“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents(s), legal guardians or any other person who has the care of the child.”<sup>32</sup>

Fourthly, refugees have the right to access justice through due process of law whenever they feel their rights have been infringed or before deportation or imprisonment. Access to justice must as well include the right to be heard and treated fairly as they go through their ordeal. This is something that both states uphold within their constitutional framework when it comes to matters of access to justice, and the paper has tried to highlight to what extent access to justice has been achieved by both states when it comes to dealing with refugee and migrant children, which has seen the need for India to adopt refugee laws.

Fifthly, refugees and asylum seekers should also be accorded humane treatment while they await processing during detention. Additionally, refugees and asylum seekers should also not be discriminated against while undergoing detention and processing of their refugee statuses. The CRC also clearly underpins under Article 37 (a) that, “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”<sup>33</sup> Alluding to previous comments when it comes to treatment of refugee and migrant children, both states have shown steps towards ensuring that maltreatment of refugees is not condoned but still instances can be traced such as the cruel treatment of

---

<sup>32</sup> Ibid Art. 19 (1).

<sup>33</sup> Ibid Art. 37 (a).



Rohignya in India as well as degrading conditions which the paper has tried to capture when it comes to the Kenyan context within the refugee camps.

Lastly, equality before the law is a right that should be enforced by the host country while detaining and processing of refugees and further, should have the right to hold documentation such as passports and identity cards as well as apply for citizenship in respect to the laws of the host nations which can be inclined within Art 3 (1) of the CRC which clearly stipulates that, “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”<sup>34</sup>Positives steps towards ensuring such rights are enjoyed by refugee and migrant children are evident in both states as the paper has depicted with instances whereby, Kenya has been able to incorporate and grant citizenship to migrant communities such as the Nubians and similarly India allowed migrants who came from minority communities from neighboring Afghanistan, Bangladesh and Pakistan before end of December 2014 to be eligible for Indian citizenship of which the study has also been able to capture.

## **5. Right to Return**

Article 13 (2) of the Universal Declaration of Human Rights (UDHR) guarantees the right to return for refugees by stating that “Everyone has the right to leave any country, including his own, and to return to his country”.<sup>35</sup> This provision, it clearly states that refugees have the freedom of movement, which is a fundamental right that Kenya and India have incorporated within the Bill of Rights of their respective Constitutions.

Therefore, the study looks to reveal whether this right is a reality in Kenya and India, respectively, with respect to refugee children who may have found themselves in this plight as they seek refuge with their families to safeguard their well-being and secure a future.

Growing up in a refugee camp or as a refugee child can be overwhelming and challenging if not traumatizing as instead of living the normal way of life one is forced to deal with various challenges from a very tender age and hence upon growing up and finally settling one may feel the urge to return to their roots. Thereby, by the UDHR guaranteeing the right of return enables refugees to be able to return voluntarily or re-enter their country of origin or citizenship which is part of a broader aspect of human rights as well as the freedom of movement which is envisioned by Kenya and India in their constitutions as stated earlier.

---

<sup>34</sup> Ibid Art. 3 (1).

<sup>35</sup> Universal Declaration of Human Rights, 1948 Art. 13 (2)



## 6. Principle of Non-Refoulement

The principle of *non-refoulement* is an International Law principle which forbids a country from transferring or removing refugees and asylum seekers from their territory and returning them to a country where they are likely to face persecution with respect to their nationality, race, and religion, membership to a particular political affiliation or social order. By Kenya and India being state parties and signatories to international human rights laws and as well as included provisions in relation to domesticating these laws within their respective constitutional provisions, such as Article 2(5) and (6) of the Kenyan Constitution, which states, “The general rules of international law shall form part of the law of Kenya,”<sup>36</sup> and “any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.”<sup>37</sup> India, on the other hand through the directive principles of state policy which is evidently captured in the Indian Constitution, envisages similar principles although not direct as stipulated under the Kenyan Constitution, through Article 51 (c) which states that, “The State shall endeavor to Foster respect for international law and treaty obligations in the dealings of organized peoples with one another.” It thereby portrays a positive stance when it comes to the incorporation of international human rights law when it comes to migrant refugee children within both states.

Kenyan refugees may enjoy this basic refugee right by being a party state but India on the other hand having not ratified to the 1951 Refugee Convention but rather being a party state or acceding to some other international human rights law conventions such as the CRC, it has further formulated enactments towards obligations arising out of the CRC and has enacted legislations such as the Protection of Children from Sexual Offences Act, 2012, the Juvenile Justice (Care and Protection of Children) Act, 2015 etc. but by not acceding to the 1951 Refugee Convention, it is not bound to it. However, through India acceding to CRC which provides for the *non-refoulement* principle, clearly implies the recognition of this right as stipulated under Article 22 of the CRC which states that,

‘(s)tates (p)arties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties’<sup>38</sup>

---

<sup>36</sup> The Constitution of Kenya, 2010, Art. 2(5)

<sup>37</sup> Id at Art. 2(6)

<sup>38</sup> The Convention on the Rights of a Child, Art. 22.



Therefore, it displays that India, although not expressly bound to the Principle of *non-refoulement* as enshrined under refugee laws, impliedly still has obligations to meet in this aspect through acceding to other international instruments which can be displayed by the UNHCR's statistics of February 2022 where around 17,933 thousand Sri Lankan refugees returned voluntarily with UNHCR's assistance.<sup>39</sup> Further, In *Nandita Haksar v. State of Manipur*, which is a recent case at the High Court of Manipur, the Court granted seven Manipur citizens to approach the UNHCR offices in Delhi after the Government of India had placed restrictions on the illegal migrant influx from Myanmar. The court outlined in its decision that "India has obligations towards Refugees and Asylum seekers despite her not being a signatory of the 1951 Refugee Convention, by ascertaining that, the principle of *non-refoulement* is encompassed under Article 21 of the constitution which guarantees the fundamental right to life."<sup>40</sup> Further, the Court also relied on international law and the State's duty under as stipulated under Article 51 of the Constitution to, "foster respect for international law and treaty-obligations in the dealings of organized peoples with one another."<sup>41</sup> However, the Court also reminded India that, "it cannot turn a blind eye to its obligations towards "asylum seekers" or "refugees," which arise from international human rights law, by highlighting that Article 14 of the Universal Declaration of Human Rights, 1948 and the International Covenant on Civil and Political Rights, 1966 provide for the principle of *non-refoulement* and the inalienable right to dignity, respectively of which India is party to both instruments."<sup>42</sup>

## 7. Bodies in Place Promoting the Rights of Migrants and Children in Kenya and India

UNHCR is one of the bodies in Kenya and India actively monitoring migrant and refugee day to day activities in the globe. According to their statistics, by December 2022, there were around 108.4 million people worldwide who were forcibly displaced and of these, they categorized them as, they were either refugees who are under the UNHCR mandate; Palestine refugees under the UNRWA mandate; asylum seekers, and other people who needed international protection or internally displaced persons.<sup>43</sup> The statistics also show that of the 108.4 displaced persons, 35.3 million of them are refugees around the world and around 41% of them happen to be children under the age of 18 which is a major focus of

---

<sup>39</sup> United Nations High Commissioner for Refugees, "India" <India | UNHCR> Accessed 30<sup>th</sup> July 2023.

<sup>40</sup> Snehal Dhote, 'Right to Life Encompasses Non-refoulement: Indian High Court Advances Refugee Policy' Jurist (June 30<sup>th</sup> 2021) < <https://www.jurist.org/commentary/2021/06/indian-high-court-advances-refugee-policy/> > Accessed 27/01/2024.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> United Nations High Commissioner for Refugees, "Global Trends" <<https://www.unhcr.org/sites/default/files/2023-06/global-trends-report-2022.pdf> > Accessed 20<sup>th</sup> July 2023.



the current study.<sup>44</sup> Further statistics show that out of these, 76% of them are hosted by low and middle-income countries, which both Kenya and India fall.<sup>45</sup>

UNICEF has also played a key role because it works to help protect the rights of migrant and displaced children globally by providing lifesaving humanitarian supplies in refugee camps and ensuring they have safe places where mothers can rest feed, and reunite with their children.<sup>46</sup> Furthermore, by UNICEF working and being present within Kenya and Indian spaces, it supports both national and local governments to put into place law policies, systems and services that are inclusive of all children and address the specific needs of migrants and displaced children, helping them thrive. Moreover, UNICEF also analyses and disseminates data gathering evidence about the situation and individual experiences of children and young people on the move hence providing both nations with proper statistics on how migrant and refugee children thrive or are deprived of necessary amenities required for their growth and development in Kenya and India.<sup>47</sup> Finally, UNICEF also works towards ending child immigration detentions which is a human rights violation and helps government towards finding alternative measures to integrate migrants and children refugees into the community.<sup>48</sup> Therefore, basing on the above UNICEF plays an important role in ensuring children are safeguarded and in this case migrant and refugee children by providing necessary and relevant information that can be used by the national and local authorities in Kenya and India towards ensuring the protection of refugees and asylum seekers.

Kenya National Human Rights Commission (KNHRC) is also an active body which tries to ensure that human rights concepts that are attributed by the Universal Declaration on Human Rights (UDHR) are safeguarded within Kenya and that also includes rights of refugees and asylum seekers. This plays a key role in ensuring not only the regulations set out under the Refugee Act are well protected but also a local body is in place to ensure that grievances in relation to refugee rights and migrant children's rights can be heard in terms of their humanitarian basis. India on the other hand has also the National Human Rights Commission (NHRC) as well as the Protection of Human Rights Act of 1993 which was later amended in 2019 which similarly protects human rights within India as

---

<sup>44</sup> United Nations High Commissioner for Refugees, "Figures at a Glance" <<https://www.unhcr.org/about-unhcr/who-we-are/figures-glance>> Accessed 20<sup>th</sup> July 2023.

<sup>45</sup> Ibid.

<sup>46</sup> The United Nations Childrens Fund, "Migrant and Displaced Children" <<https://www.unicef.org/migrant-refugee-internally-displaced-children>> Accessed 18<sup>th</sup> July 2023.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.





well as being a stepping stone when it comes to violations in respect to refugee and asylum seekers human rights.

## **8. Status of Migrant and Refugee Children in Kenya and India**

Kenya works towards safeguarding the children concerns through bodies such as the UNHCR in partnership with the children themselves, their communities, the national, local and central authorities, other international organizations especially UNICEF and non-governmental organizations.<sup>49</sup> This being the case it shows that Kenya is working progressively towards ensuring the safety and protection of migrant and refugee children who happen to find themselves in this situation bearing in mind that more than half of the refugees and asylum seekers populace in Kenya are children.

Further the UNHCR's Age, Gender and Diversity (AGD) mainstreaming approach actively participates in addressing and prioritizing the needs of children, women, elderly persons and other vulnerable categories of people within the country which plays a positive role towards ensuring that the rights of children within Kenya are protected towards achieving a way back to their normal life.<sup>50</sup>

Kenya has two main refugee camps that is Daadab which is located North Eastern Kenya in Daadab and Fafi districts and Kakuma refugee camps which host a number of refugees from its neighboring countries mainly Somalia, South Sudan, and Ethiopia whom have either fled their nations mainly due to civil wars and drought. Daadab Refugee camp which is the oldest and was established in 1991 had a population of about 218,873 thousand registered refugees by the end of July 2020 which basically reiterates that the number today is higher.<sup>51</sup> Kakuma on the other hand is divided into two sub offices that is one the Kakuma Refugee Camp which is subdivided to Kakuma one, Kakuma two, Kakuma three, and Kakuma four and the second sub office being the Kalobeyei integrated settlement which comprises of three villages that is village one, village two and village three.<sup>52</sup>

Kakuma was established in 1992 following the arrival of "The Lost Boys of Sudan" and further an influx of Ethiopian refugees arrived following the fall of the Ethiopian government and by the end of July 2020 the camp had a populace of 196,666 thousand registered refugees and asylum seekers. It was in 2014 after influx of refugees that made it surpass its capacity and hence negotiations between the

---

<sup>49</sup>United Nations High Commission for Refugees, Kenya, "Children" <<https://www.unhcr.org/ke/children>> Accessed 18<sup>th</sup> July 2023.

<sup>50</sup> Ibid.

<sup>51</sup> United Nations High Commission for Refugees, Kenya, "Daadab Refugee Complex" <<https://www.unhcr.org/ke/dadaab-refugee-complex>> Accessed 18<sup>th</sup> July 2023.

<sup>52</sup> United Nations High Commission for Refugees, Kenya, "Kakuma Refugee Camp and Kalobeyei Integrated Settlement" <<https://www.unhcr.org/ke/kakuma-refugee-camp>> Accessed 18<sup>th</sup> July 2023.



UNHCR, the national government and the county government of Turkana and the host community that provided land for the new settlement identified as Kalobeyei.<sup>53</sup>

Within the urban areas of Kenya, the urban refugee program caters for around 80,750 thousand asylum seekers and refugees residing mainly in Nairobi and other urban locations such as Mombasa, Nakuru, Eldoret, Kitale, Meru-Maua, Isiolo and Bungoma as per the UNHCR statistics of July 2020.<sup>54</sup>

India, on the other hand, has been hosting refugees for decades as compared to Kenya and has also been able to counter a lot of refugee and forcibly displaced persons problems through the support of UNHCR, NGOs, government efforts as well as the local communities across mainly eleven states in India. India hosts approximately 250,000 thousand refugees and asylum seekers, but presently, it provides sustainable and timely support to only about 49,415 thousand refugees and asylum seekers in urban areas across the country.<sup>55</sup> This being so since India has earlier stated that it has not ratified to the 1951 Refugee Convention and there no being any national legislation in respect to refugees. Refugees and asylum seekers in India primarily live in urban settings alongside the host community, unlike the Kenyan scenario, and according to UNHCR's statistics, 46% of the refugees in India are women and girls, and about 36% are children.<sup>56</sup>

Kenya recently amended the Refugee Act which was assented to on the 17<sup>th</sup> of November 2021 and was to commence with the lapse of ninety days from date of publication, now forms part of the Laws of Kenya and gives a clear road map on refugee laws in terms of administration, application of refugee status, reception of refugees and asylum seekers, rights and duties of refugees and asylum seekers, control of designated areas and integration, repatriation, and resettlement guidelines of refugees and asylum seekers. Thereby, these guidelines provide a road map on handling of refugees and asylum seekers who happen to arrive in Kenya hence clearly demonstrating the transformative approach Kenya has in relation to recognition of asylum seekers and refugees as well as protection of their rights of which also includes children rights which is a focus of this study and finally reaffirming the commitment of the Kenyan Government towards conforming with the sustainable development goals to achieving a better future for refugee.

---

<sup>53</sup> Ibid.

<sup>54</sup> United Nations High Commission for Refugees, Kenya, "Urban Areas" <<https://www.unhcr.org/ke/urban-areas>> Accessed 18<sup>th</sup> July 2023.

<sup>55</sup> United Nations High Commission for Refugees, India, "Key Facts and Figures" <The UN Refugee Agency | UNHCR India> Accessed 20<sup>th</sup> July 2023.

<sup>56</sup> United Nations High Commission for Refugees, India, "India" <India | UNHCR> Accessed 20<sup>th</sup> July 2023.



India as earlier depicted being a non-signatory to the 1951 Refugee Convention does not have within its structure a refugee Act that seek to address the refugee situation but rather have been implementing the principles enunciated by Jawaharlal Nehru in 1959, which stipulated that refugees will be accorded a humane treatment, they should be welcome, the issues of refugees to be treated as bilateral issues and the refugees should return to their homeland when normalcy returns.<sup>57</sup> Further, the Citizenship Amendment Bill of 2019, allowed migrants who came from minority communities from neighboring Afghanistan, Bangladesh and Pakistan before end of December 2014 to be eligible for Indian citizenship at least a move towards recognitions of refugees within India.

### **9. UNHCR Education Strategies in Kenya and India**

As the study has clearly outlined that almost half of refugees today in the world are below the age of eighteen, that being the case Kenya and India statistics almost if not so conform to the global statistics. Therefore, basing on those facts' education is of necessity to these masses of refugee and asylum seekers and both Kenya and India should have in place instruments which are ensuring that refugees and migrant children receive basic education. In the Kenyan scenario majority of refugee and asylum-seeking learners are enrolled schools and tertiary institutions in Dadaab, Kakuma and Kalobeyei Settlement, and as well a small number acquire chances to study in public and private universities across Kenya and abroad.<sup>58</sup> Despite all the measures that are put in place still half of the children in these camps are still out of school due to variety of reasons and the gap widens as they approach tertiary education which is a major concern. India on the other hand also strives through NGO's which support a number of refugee support centers that offer language classes, bridge classes, computer classes and as well help in enrollment in schools. Further, refugee youth in India can apply for DAFI (Albert Einstein German Academic Refugee Initiative) scholarship programme which offers qualified refugees and returnee students the possibility to earn an undergraduate degree in their country of asylum or home country.<sup>59</sup> Through this programme and dedicated support from Germany, Denmark and Czech Republic the UNHCR and private donors have supported over 18,000 young refugees to undertake tertiary education since 1992.<sup>60</sup>

---

<sup>57</sup> V, Suryanarayan and G. Rameshan, "Citizenship without Bias" *The Hindu* (Chennai, 25<sup>th</sup> August 2016) <Citizenship without bias - The Hindu> Accessed 18<sup>th</sup> July 2023.

<sup>58</sup> United Nations High Commission for Refugees, Kenya, "Education" <Education – UNHCR Kenya> Accessed 24<sup>th</sup> July 2023.

<sup>59</sup> United Nations High Commission for Refugees, India, "Education" <Education - UNHCR India> Accessed 24<sup>th</sup> July 2023.

<sup>60</sup> Ibid.



Barriers to school enrolment include issues such as supply issues as well as cultural norms in which most of these migrants find themselves in, for example, camps situated where their cultural norms are quite different as to where they are coming from. Kenya and UNHCR along with the Global impact promote inclusion of refugees and asylum seekers into the national education system while responding to their immediate needs by;

fostering and enabling an environment that supports learning...; adopting an area based approach in supporting both refugees and asylum seekers and the community that host them...; investing in the natural system to enable it to expand to provide quality education for refugee and asylum seekers and their host communities; and promoting opportunities for earning and for the use of education towards jobs, economic inclusion, community development and self-reliance benefitting both refugees, asylum seekers and the host community.<sup>61</sup>

India on the other hand also has through the UNHCR programmes that ensure youth in India get education through advocating for Accelerated Education Programmes as well as the Educate a Child (EAC) multi-year programme<sup>62</sup> which are evident although still much needs to be done to ensure that any migrant youth is assured of education.

## 10. Conclusions and Suggestions

The refugee problem is not a new thing in our societies today following from the statistics discussed in this current study and that being the case the current study focused mainly on refugee and migrant children who happen to face these challenges yet some even don't know the reason they are fleeing or as to why they have to undergo such ordeals. It is therefore, of importance that the current study looked into some of the problems these children face while on this journey and try and see whether the respective governments of Kenya and India are doing enough when it comes to handling the plight of refugee and migrant children. In an analysis of the concluding observations of the committee on the rights of a child in relation to the detention of children, Ciara Smyth, in her article, scrutinized 78 concluding observations between 1993 and 2017 which dealt with immigration detention and in turn observed the following trends;

“that immigration detention should be prohibited outright; that a standard other than outright prohibition governs immigration detention, such as the *ultima ratio* principle; The Committee's message is mixed or unclear: the *ultima ratio* principle and the prohibition on immigration

---

<sup>61</sup> United Nations High Commission for Refugees, Kenya, “Education” (n, 28)

<sup>62</sup> Ibid.



detention apply; the *ultima ratio* principle or the prohibition on immigration detention applies; States should cease detention and institute standards on detention; The Committee uses euphemistic language to refer to immigration detention; and The Committee identifies detention as an issue of concern but makes no recommendation on its legality.”<sup>63</sup>

Observing these arguments with respect to the detention of migrant refugee children, it's evident that there is a need for a clear interpretation of Article 37 (b) in order to remove any confusion which are evidently arising as depicted from the concluding observations in terms of ascertaining that children within the migration space are completely free from detention whether they are unaccompanied children or they are with their parents who are seeking refuge or asylum.

According to the Global Report 2023 by UNHCR with respect to the East and Horn of Africa and the Great Lakes projected that millions of people who have fled their homes due to conflict, climate-related events and political violence may face worsening prospects in 2023.<sup>64</sup> This prediction shows the need of nations receiving refugees and asylum seekers to be more concerned in respect of handling and resettling refugees and that means creation of structures that can help to prevent this from actually happening. Kenya and India, according to the study conducted, have shown a transformative approach with respect to the various amendments to laws for refugees and asylum seekers within their respective nations as discussed in the study.

The Global Refugee Compact which was adopted in 2018 has also played an important role by giving the international community and host countries a roadmap to better include refugees in their national systems, societies and economics so as to enable them to contribute to their new communities and to secure their own futures.<sup>65</sup> This is an important aspect especially when it comes to children who through such initiative can acquire quality education and hence use the same within the society to improve themselves and the society at large. Kenya recently recognized the people of Pemba descent as Kenyan citizens which resolved a long-term problem of statelessness affecting a particular community thereby displaying a positive impact in terms of recognizing refugees and asylum seekers with another positive example being the recognition of the Nubian community much earlier thus showing positive development in refugee laws in Kenya. India on the other hand as earlier discusses have positively displayed that they also are ready to incorporate migrants by granting neighboring

---

<sup>63</sup> Ciara Smyth, (n. 19).

<sup>64</sup> United Nations High Commission for Refugees, Global Focus, “East and Horn of Africa and Great Lakes” <<https://reporting.unhcr.org/globalappeal/east-and-horn-africa-and-great-lakes>> Accessed 1<sup>st</sup> August 2023.

<sup>65</sup> United Nations High Commission for Refugees, “The Global Compact on Refugees” <<https://www.unhcr.org/about-unhcr/who-we-are/global-compact-refugees>> Accessed 1<sup>st</sup> August 2023.



migrants who had been there before end of 2014 the eligibility to apply for citizenship and further relaxed the requirement for residents to become eligible for citizenship from eleven years to six years.<sup>66</sup> The study was able to find out that yes, Kenya and India do realize the rights of refugee and migrant children within their respective governance strategies but in terms of real Laws in place Kenya has enshrined within its structure various local refugee laws that are in tandem with the United Nations Convention Protocol whereas India who is not a signatory though has as well displayed moves which inculcate recognition of refugees within the Country. Further, the study finds that there is an existence of bodies in place within the two countries which look into refugee and migrant children developments, such as UNHCR, UNICEF and other NGOs working along with respective governments towards ensuring a sustainable future for refugees and asylum seekers both in Kenya and India.

The study has also discovered that the problem of refugees is not something that is going away soon but rather an issue that is growing worldwide and numbers are on the increase. This being the case, as analyzed by the statistics which the study has been able to provide, shows the need to increase awareness on matters of refugees and children not only in Kenya and India, where the study focuses, but rather around the globe. India should also strive for ratification of the 1951 Refugee Convention in order to deal better with the refugee crisis which is affecting the country and more so children who find themselves in the midst of such atrocities.

Finally, the study has been able to put across insights on the progress both nations have tried through their governance structure to ensure that refugees and migrant children at least are able to acquire basic amenities such as quality education and resettlement within the host communities as well depicted by the Kalobeyei Integrated Settlement in Kenya and the Tamil refugees in the Indian context. Despite a lot of positive interests being put forward by both nations a lot still needs to be done in respect to ensuring that every refugee life counts since a lot of them die unnoticed while in detention centers or even face maltreatment at times from the local communities as well as camp officials in terms of registration and processing. It is with this note that I would like to end the current study by asserting that both Kenya and India should not relax on matters refugees and asylum seekers but work tirelessly towards ensuring refugee rights and asylum seekers are protected to the core especially when it comes to child migrants.

---

<sup>66</sup> PTI, "Citizenship Bill Glimmer of Hope for Hindus, Sikh Refugees from Afghanistan" *Mint* (New Delhi, 6<sup>th</sup> January 2019) <Citizenship bill glimmer of hope for Hindu, Sikh refugees from Afghanistan | Mint (livemint.com)> Accessed 1<sup>st</sup> August 2023.



### References:

- Asian-African Legal Consultative Organization, 'The Status and Treatment of Refugees', 60<sup>th</sup> Annual Session, Final Refugee Brief, 18<sup>th</sup> August 2022, P. 1 , Para 1 <<https://www.aalco.int/60thAnnualSession/Briefs2022/Final%20Refugee%20Brief%20as%20of%2018%20August%202022.pdf>> Accessed 28/12/2023
- Ciara Smyth, 'Towards a Complete Prohibition on the Immigration Detention of Children' (February 2019) Volume 19, Issue 1 *Human Rights Law Review* <<https://doi.org/10.1093/hrlr/ngy045>> accessed 18/11/2023
- Committee on the Elimination of Discrimination against Women, General Recommendation No 32, The gender-related dimensions of refugee status, asylum, nationality and statelessness of women, 14 November 2014, p. 15 at para 49 <<https://digitallibrary.un.org/record/807254?ln=en>> accessed 18/11/2023



- Committee on the Rights of the Child, ‘Treatment of unaccompanied and separated children outside their country of origin’ General Comment No. 6 (2005) Thirty-ninth session 17 May – 3 June 2005
- Committee on the Rights of the Child, General Comment No. 6 (2005), ‘Treatment of unaccompanied and separated children outside their country of origin’, Thirty-ninth session 17 May – 3 June 2005, p. 6 at para 12 <<https://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>> Accessed 28/12/2023
- Council on Foreign Relations, ‘The Rohingya Crisis’ <<https://www.cfr.org/backgroundunder/rohingya-crisis>> accessed 18/11/2023
- Kenya National Commission on Human Rights, ‘Hand Book on Migration and Human Rights Simplified Reference material’ <<https://www.knchr.org/Portals/0/GroupRightsReports/Handbook%20on%20Migration%20and%20Human%20Rights.pdf?ver=2018-06-06-190119-147>> Accessed 28/06/2023
- PTI, ‘Citizenship Bill Glimmer of Hope for Hindus, Sikh Refugees from Afghanistan’ *Mint* (New Delhi, 6<sup>th</sup> January 2019) <[Citizenship bill glimmer of hope for Hindu, Sikh refugees from Afghanistan | Mint \(livemint.com\)](https://www.livemint.com)> Accessed 1<sup>st</sup> August 2023.
- Saurabh Bhattacharjee, ‘India Needs a Refugee Law’, [2008 updated 2019] Vol. 43 Issue 9 *Economic and Political Weekly* <<https://www.epw.in/journal/2008/09/notes/india-needs-refugee-law.html#>> Accessed 15<sup>th</sup> November 2023
- Snehal Dhote, ‘Right to Life Encompasses Non-refoulement: Indian High Court Advances Refugee Policy’ *Jurist* (June 30<sup>th</sup> 2021) < <https://www.jurist.org/commentary/2021/06/indian-high-court-advances-refugee-policy/>> Accessed 27/01/2024
- The Children Act 2022
- The Constitution of Kenya, 2010
- The Convention on the Rights of a Child, 1989
- The International Covenant on Civil and Political Rights 1966
- The Refugee Convention 1951
- The United Nations Childrens Fund, ‘Migrant and Displaced Children’ <<https://www.unicef.org/migrant-refugee-internally-displaced-children>> Accessed 18<sup>th</sup> July 2023
- The Universal Declaration on Human Rights 1948





- The Wire, ‘The Union Government Should Understand, No Human Is Illegal’ <<https://thewire.in/rights/the-union-government-should-understand-no-human-is-illegal>> Accessed 15<sup>th</sup> November 2023
- UNHCR Kenya, ‘Figures at a glance’ <<https://www.unhcr.org/ke/figures-at-a-glance>> accessed 18/11/2023
- United Nations High Commission for Refugees, “The Global Compact on Refugees” <<https://www.unhcr.org/about-unhcr/who-we-are/global-compact-refugees>> Accessed 1<sup>st</sup> August 2023
- United Nations High Commission for Refugees, Global Focus, “East and Horn of Africa and Great Lakes” <<https://reporting.unhcr.org/globalappeal/east-and-horn-africa-and-great-lakes>> Accessed 1<sup>st</sup> August 2023
- United Nations High Commission for Refugees, India, “Key Facts and Figures” <The UN Refugee Agency | UNHCR India> Accessed 20<sup>th</sup> July 2023
- United Nations High Commission for Refugees, Kenya, “Children” <<https://www.unhcr.org/ke/children>> Accessed 18<sup>th</sup> July 2023
- United Nations High Commission for Refugees, Kenya, “Daadab Refugee Complex” <<https://www.unhcr.org/ke/dadaab-refugee-complex>> Accessed 18<sup>th</sup> July 2023
- United Nations High Commission for Refugees, Kenya, “Education” <Education – UNHCR Kenya> Accessed 24<sup>th</sup> July 2023
- United Nations High Commission for Refugees, Kenya, “Kakuma Refugee Camp and Kalobeyei Integrated Settlement” <<https://www.unhcr.org/ke/kakuma-refugee-camp>> Accessed 18<sup>th</sup> July 2023
- United Nations High Commission for Refugees, Kenya, “Urban Areas” <<https://www.unhcr.org/ke/urban-areas>> Accessed 18<sup>th</sup> July 2023
- United Nations High Commissioner for Refugees, “Figures at a Glance” <<https://www.unhcr.org/about-unhcr/who-we-are/figures-glance>> Accessed 20<sup>th</sup> July 2023
- United Nations High Commissioner for Refugees, “Global Report 2022” <<https://reporting.unhcr.org/operational/regions/east-and-horn-africa-and-great-lakes>> Accessed 17<sup>th</sup> July 2023



- United Nations High Commissioner for Refugees, “Global Trends” <<https://www.unhcr.org/sites/default/files/2023-06/global-trends-report-2022.pdf> > Accessed 20<sup>th</sup> July 2023
- United Nations High Commissioner for Refugees, “India” <India | UNHCR> Accessed 30<sup>th</sup> July 2023
- United Nations Human Rights Office of the High Commissioner, “About Migration and Human Rights” <<https://www.ohchr.org/en/migration/about-migration-and-human-rights>> Accessed 20<sup>th</sup> July 2023
- V, Suryanarayan and G. Rameshan, “Citizenship without Bias” *The Hindu* (Chennai, 25<sup>th</sup> August 2016) <Citizenship without bias - The Hindu> Accessed 18<sup>th</sup> July 2023