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Paper laid on the table of the House by the Chair, RACR (Dr. Sirandu Blacks) on 20/June/2023 (Morning Sitting)
Mutega SCLA
20/6/2023

EAST AFRICAN COMMUNITY
EAST AFRICAN LEGISLATIVE ASSEMBLY

REPORT OF THE COMMITTEE ON REGIONAL AFFAIRS AND CONFLICT RESOLUTION

TO ASSESS THE PROGRESS MADE IN THE DEVELOPMENT OF THE DRAFT EAC REFUGEE MANAGEMENT POLICY

(14th -17th March 2023 Nairobi, Kenya)

Clerk's Chambers

EALA Headquarters, 3rd Floor

EAC Headquarters

Arusha – TANZANIA **June, 2023**

LIST OF ACRONYMS

CORM:	Committee of the Refugee Management Chiefs
CRA:	Commission of Refugees Affairs
DRS:	Directorate of Refugee Services
EAC:	East African Community
EALA:	East African Legislative Assembly
ECOWAS:	Economic Community of West African States
ICGLR:	International Conference for the Great Lakes Region
IDP:	Internally Displaced persons
IGAD:	Intergovernmental Authority on Development
MINEMA:	Ministry in charge of Emergency Management
MOU:	Memorandum of Understanding
NGO:	Non-Governmental Organization
OAU:	Organization of African Unity
ONPRA:	Office National pour la protection des Refugees at Apatrides
OPM:	Office of the Prime Minister
RACR:	Regional Affairs and Conflict Resolution
RAS:	Refugees Affairs Secretariat
RSD:	Refugee Status Determination
SADC:	Southern African Development Community
TWG:	Technical Working Group
UNHCR:	United Nations High Commissioner for Refugee

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1.0 INTRODUCTION

Article 49 (2), (d) of the Treaty for the establishment of the East African Community inter alia that "the Assembly shall discuss all matters pertaining to the Community and make recommendations to the Council as it may deem necessary for the implementation of the Treaty.

In accordance with the Rules of Procedure of the Assembly, East African Legislative Assembly established its standing committees to efficiently discharge its mandate. The Committee on Regional Affairs and Conflict Resolution is one of the Standing Committees of the Assembly and is responsible for:

(a) examining, discussing and making recommendations to the Assembly on all matters relating to peace and security in the Community, including:
   (i) political matters;
   (ii) regional peace and security;
   (iii) defence matters;
(b) initiating and conducting studies, investigations on regional peace and security;
(c) receiving reports and complaints on non-compliance or non-implementation of provision of the Treaty, programmes and activities of the Community relating to regional peace and security and political matters.

Article 124 of the Treaty for the Establishment of the East African Community provides for various aspects of regional peace and security in the region. It stipulates that Partners States are required to establish Common Mechanisms for the Management of Refugees.

It is for this reason that the Committee on Regional Affairs and Conflict Resolution (RACR) undertook an oversight activity in Nairobi, Kenya from 14TH -17TH March 2023 to assess the progress made in the development of the draft EAC Refugee Management Policy.

The team was comprised of the following Members:

i. Hon. Siranda Geralds Blacks – **Chairperson**
ii. Hon. Bigirimana Goreth
iii. Hon. Karerwa Mo-Mamo
iv. Hon. Ewanga Ise'wanga Jean
v. Hon. Kalala Kwete Evariste
vi. Hon. Kaubo Kalwa Geraldine
vii. Hon. Hassan Hassan Omar
viii. Hon. Kurgat Zipporah Jesang

ix. Hon. Shahbal Suleiman Said
x. Hon. Amb. Dr. Harebamungu Mathias
xi. Hon. Nyiramana Aisha
xii. Hon. Uwumukiza Francoise
xiii. Hon. Teny Luke Thomson Thoan
xiv. Hon. Thoar Gideon Gatpan
xv. Hon. Dr. Leonardo Anne Itto
xvi. Hon. Machano Ali Machano
xvii. Hon. Millya James Kinyasi
xviii. Hon. Dr. Shogo Richard Mlozi
xix. Hon. Mugyenyi Mary Rutamwebwa
xx. Hon. Amongin Jacquiline
xxi. Hon. Manirambona Anastase

2.0 BACKGROUND

Refugees are people who have fled their own countries due to war, violence, conflict or persecution (for reasons of race, religion, national political opinion or membership in a particular social group) and have crossed an international border to find safety in another country upon being granted refugee status. Refugees can be categorized as migrants, asylum seekers, internally displaced persons, stateless persons, war refugees, religious or political affiliation refugees and hunger refugees.

One of the fundamental principles of the East African Community is peaceful settlement of disputes and peaceful co-existence. In effect, the Community aspires to have a prosperous, competitive, secure, stable and politically united East Africa.

Unfortunately, countries in East Africa are in the midst of an exceptional refugee crisis. There has been a sharp increase in the number of refugees from within and outside the East Africa region. Today there are 4.9 million refugees scattered across the region due to armed conflict and instability in the Republic of South Sudan, Republic of Burundi, Federal Republic of Somalia and Democratic Republic of Congo. Other factors that have caused refugees are drought, flooding, food shortages and localized violence among others. It should be noted that out of the 4.9 million refugees in East Africa, the Horn of Africa and the Great Lakes region, 2.8 million are East Africans and 1.9 million are internally displaced persons. Uganda with 1.44m, Rwanda with 163,377, Burundi 73,550, South Sudan 298,854, Kenya with 466,134 and Tanzania with 351,284 (UNHCR refugee statistics)

Article 7 (8) of the Common Market Protocol states that the movement of the refugees shall be governed by the relevant international conventions. Goal 8 of the EAC strategy on Regional Peace and Security provides for the establishment of Common Mechanisms for the management of Refugees.

The mandate to develop a Common Mechanism for the management of refugees was derived from Article 124 of the EAC Treaty, paragraph (4) (h). In addition, Article 10 of EAC Peace and Security protocol requires Partner States to establish Common Mechanisms for the management of refugees through, among others harmonization of their policies, laws, strategies and programmes.

To give effect to the above treaty provisions, at its 5th meeting held in September 2013 the EAC Chiefs of Refugee Management Entities (CORM) directed its Technical Working Group (TWG) to work with the EAC Secretariat towards developing a common policy on refugee management.

With support from United Nations High Commissioners for refugees (UNHCR), the EAC Secretariat procured the services of two consultants in 2019 to develop a draft EAC Refugee Management Policy. In June 2020, the Draft Policy was presented to the TWG and thereafter to the CORM for consideration. The CORM approved the Draft Policy on 16th June 2022 and recommended that it is sent for consideration to the Sectoral Council on Interstate Security and adoption by the EAC Council of Ministers.

3.0 OBJECTIVES OF THE ACTIVITY

The objectives of the activity were to understand the:

i. Draft EAC refugee management policy;
ii. Key consultation process and key findings;
iii. Challenges faced in the development of the policy;
iv. Road map to the draft policy.

4.0 METHODOLOGY

While undertaking this activity, the Committee used the following methodology;

i. The Committee met in Nairobi, Kenya from 14th -17th March, 2023; and
ii. Had an interactive meeting with Mr. Senai Terrefe (UNHCR Senior Regional Policy advisor) and Mr. Gerald Owachi, one of the two experts who drafted the EAC Refugee Management Policy.

5.0 KEY FINDINGS

The Peace and Security department of EAC in conjunction with the department of Social Sectors worked with UNHCR to undertake a study in 2010 on the Harmonization of Refugee Policies and Legislation in the East African Community which informed the development of the Draft EAC Policy on Refugee Management. The study among others called for the development of a Common Refugee Management Policy to serve as a benchmark for harmonization of the national refugee policies and Laws.

In March 2010, the UNHCR and EAC signed a MOU resulting into the formation of the Committee of the Refugee Management Chiefs mandated to examine the progress of the refugee management Policy through regular regional validation meetings

The MOU focused on:

i. Conflict prevention and peace building;
ii. Early warning and responses;
iii. Movement of persons, immigration and refugees;
iv. Human trafficking and mixed migration population movement; and
v. Promotion and protection of human rights in East Africa:

The priority engagements of the EAC Refugee Management Policy were to;

i. Ensure fair and efficient refugee status determination procedures across EAC region in accordance with applicable international refugee laws;
ii. Promote effective access and inclusion of refugees in basic services in the East African Community;
iii. Mainstream the needs of refugee women, children and youth into national and regional development plans
iv. Create efficient coordination platforms with UNHCR for refugee management, early warning and contingency planning.

5.1 Key Areas of the Draft Policy

The Committee of the Refugee Management Chiefs charged with the function of refugee management (CORM) spearheaded the development of this EAC Refugee Management Policy and once adopted will play the leading role in monitoring its implementation.

The policy was developed around 17 key areas for harmonization defined by the 6th and 7th meetings of the Chiefs of Refugee Management Entities held in Nairobi, from 15th - 17th May 2018 and 17th -19th December, 2018. The key areas are listed below: -

i. Access to territory and asylum procedures by asylum seekers;

ii. Fair and efficient refugee status determination procedures;
iii. Enhancing border management systems, security and procedures;
iv. Reception, registration, electronic documentation and national databases;
v. Inclusion of refugees in national and regional development plans;
vi. Coordination platform with UNHCR and other development partners for refugee management, early warning and contingency planning;
vii. Protection of rights to refugees such as freedom of movement, rights to access education, employment, health e.t.c;
viii. Durable solutions for refugees, mechanism for responsibility sharing and complementary pathways;
ix. Environmental management and protection;
x. The role of the host communities, local authorities, national NGOs in refugee management;
xi. Integration of refugee management in the national development plans and local budgets of the host countries;
xii. Integrate the host community needs in the refugee response framework;
xiii. Maintaining the civilian character of asylum;
xiv. Maintaining the humanitarian character of asylum;
xv. Capacity building for national NGOs and integration of local content in the management of refugee;
xvi. Joint capacity development /strengthening of government institutions and other development partners; and
xvii. Regional resource mobilization strategies.

5.2 National Consultative Meetings

National consultations that formed a key basis for the development of this draft policy were held in each of the Partner States as follows:

i. Republic of Rwanda (Ministry in charge of Emergency Management (MINEMA) from 14th- 15th February 2019;
ii. Republic of Uganda (Office of the Prime Minister (OPM) from 18th- 19th February 2019;
iii. Republic of Burundi (Office National pour la protection des Refugees at Apatrides (ONPRA) from 5th-6th March 2019;
iv. Republic of Kenya (Refugees Affairs Secretariat (RAS) from 21st-22nd February 2019;
v. Republic of South Sudan (Commission of Refugees Affairs (CRA) from 25th- 26th February 2019; and

vi. The United Republic of Tanzania (Directorate of Refugee Services (DRS) from 28th February – 1st March 2019.

The National Consultations were framed around the key areas identified by the May 2018 Meeting of the CORM as priority issues for inclusion in the EAC Refugee Management Policy. The outcome of this consultation process was a comprehensive situation analysis report which documented the structures and processes as well as the different approaches being used by the individual Partner States to manage responses to refugee situations.

5.3 Key Stakeholders in the development of the Policy

Representatives from the key government ministries and entities listed below participated in the National Consultations in each of the Partner States: -

i. Ministry responsible for the management of refugee issues, Local government, Internal Security and Finance;
ii. National Planning Agency;
iii. Ministry of East African Affairs;
iv. Ministry of Justice and Constitutional Affairs;
v. Ministry of Health;
vi. Ministry of Defense;
vii. Ministry of Education;
viii. Ministry responsible for Gender Affairs;
ix. Department /Directorate of Immigration;
x. Law reform Commission;
xi. Human Rights Commission; and
xii. Relevant Non- State Actors / Civil Society.

5.4 Domestic Legal and Policy Frameworks

All EAC Partner States have adopted legislation to domesticate international refugee instruments and to govern other aspects of refugee management namely;

i. The Republic of Kenya

Refugee matters are governed by the Refugee Act, 2021 the Country is in the process of developing new regulation to operationalize the new Act.

ii. The Republic of Burundi

The new laws related to the regulation of migrants was gazetted on 5th November 2021. The new law (no1/25) repeals the 2008 asylum and refugee protection law.

iii. **The Republic of Rwanda,**

The general legislation governing refugees and asylum seekers is the National Law 13ter/2014 relating to refugees.

iv. **The Republic of South Sudan**

Relevant legislations like the Refugee Act 2012 and Refugee Status Eligibility Regulation, 2017 were adopted.

v. **The United Republic of Tanzania**

The principal instruments on refugee matters are the Refugee Act, No. 9 OF 1998 and the National Refugee Policy of 2003.

vi. **The Republic of Uganda**

Refugee management is provided for under the Refugee Acts of 2006 and the Refugee Regulation of 2010.

In all Partner States, refugee specific instruments are complemented by other general legislations which deal with matters such as citizenship and nationality, labour, human rights and child protection.

5.5 International, Regional Legal and Policy Instruments used in the Policy

i. Treaty for the Establishment of the East African Community of 1999;
ii. Protocol on the Establishment of the East Africa Community Common Market;
iii. The East African Protocol on Peace and Security of 2013;
iv. 1967 Protocol relating to the status of refugees;
v. OAU Convention governing the specific aspects of refugee problems in Africa of 1969;
vi. African Charter on Human and Peoples' rights;
vii. UN convention against torture and other cruel, inhuman or degrading treatment or punishment;
viii. Handbook and guidelines on procedures and criteria for determining refugee status under the 1951 convention and the 1967 protocol relating to the status of refugees reissued in Geneva, December 2011;
ix. UN High Commissioner for Refugees (UNHCR), Guidance on responding to irregular onward movement of refugees, September 2019;
x. AU agenda 2063 on peace, security and stability;
xi. The Kampala Convention for the protection and assistance of Internally Displaced Persons.

5.6 Challenges identified by the committee in developing the policy

i. It was evidently clear that individual EAC Partners States are significantly feeling the "strain and stretch"- especially in terms of resources- associated with hosting refugees. This is due to the fact that most of the EAC Partners States are struggling to improve the social-economic conditions of their respective states;

ii. Partner States' policies and legislations on refugees do not comprehensively cover some key aspects of refugee management in the region;

iii. Lack of uniformity in implementation of international instruments on refugees across Partner States;

iv. Limited institutional capacity for refugee management in Partner State;

v. Continuous conflicts in countries of origin of refugees and the related risk of mass influxes of refugees to the neighboring Partner States. This may create difficulties in the implementation of Refugee Management Policy;

vi. Limited financial resources for effective implementation of the Policy;

vii. Limited local capacity and involvement in management of refugee programmes;

viii. Porous borders which might cause challenges in the implementation of the Policy impractical;

ix. Climate change and its impact on refugees and host communities;

x. No joint coordination and harmonization of refugee laws for smooth operation;

xi. Competition for resources with the host communities.

At its 8th Meeting held in Nairobi, Kenya on 16th June 2022, the Chiefs of Refugee Management Entities, observed that this Draft Policy provides a good basis for Partner States to strengthen national asylum systems, emergence of new partnerships and development of regional approaches to current and future refugee protection challenges.

Accordingly, the Chiefs of the Refugee Management Entities approved the draft EAC Refugee Management Policy for consideration by the Sectoral Council on Interstate Security and adoption by the Council of Ministers

6.0 GENERAL OBSERVATIONS

At the time of the oversight activity, the Committee observed that;

i. The Memorandum of Understanding between EAC Secretariat and the United Nations High Commissioner for Refugees of March 2010 which enjoins them to cooperate on a range of refugee - related issues had expired;

ii. The process of drafting the Policy was more consultative and therefore request similar consultations to be carried out in DRC for their views to be included in the Policy;

iii. The Committee observed that EAC needs to reaffirm and share good practices to implement its commitments or pledges at the Global Refugee Forum and share best practices with IGAD's Nairobi process;

iv. There were shortcomings in the national laws to inform a regional refugee Management policy in terms of harmonization of the policies;

v. There was a delay in developing this policy yet new trends are emerging and may not have been included in the analysis; and

vi. UNHCR statistics showed that out of the 4.9 million refugees in East Africa, the Horn of Africa and the Great Lakes region, 2.8 million are East Africans and 1.9 million are internally displaced persons.

7.0 RECOMMENDATIONS

7.1 The Committee recommends to the Assembly to urges the Council of Ministers to direct EAC Secretariat to:

i. Renew the Memorandum of Understanding between EAC Secretariat and the United Nations High Commissioner for Refugees;
ii. Develop the regional action plan for implementation of this Policy;
iii. Coordinate and guide the overall implementation of this Policy and the regional Action Plan;
iv. Disseminate information about the Policy across the Partner States;
v. Facilitate the implementation of actions that require intervention at regional level;
vi. Establish sustainable partnerships with UNHCR, development and other relevant partners, for technical and financial support in the implementation of the Policy;

vii. Report on the implementation progress of the Policy to Sectoral Council on Peace and Security; and

viii. Benchmark with the Regional Economic Communities such as IGAD, ECOWAS, SADC and ICGLR to learn best practices in order to enhance regional economic growth.

7.2 The Committee recommends to the Assembly to urge the Council of Ministers to direct Partner States to;

i. Set up effective institutional structures and mechanisms for implementing and monitoring the Refugee Management Policy and allocate adequate financial and human resources for this purpose;

ii. Align their refugee management practices to the Policy;

iii. Establish or strengthen their institutional arrangement for refugee management to ensure effective implementation of the Policy; and

iv. Allocate adequate resources for the implementation of the policy.

7.3 The Committee recommends to the Assembly to urge the Council of Ministers to;

i. Seek Democratic Republic of Congo's views to be included in the Policy;

ii. Follow up with the department of Peace and Security that commenced the process of drafting the Policy so that it is included on the agenda for the next Sectoral Council on Interstate Security scheduled for May 2023; and

iii. Give this draft EAC Refugee Management Policy a priority and adopt it.

7.4 The Committee recommends to the Assembly to;

i. Start modalities of coming up with a Bill that will help in the implementation of the policy.

8.0 Acknowledgment

The Committee on Regional Affairs and Conflict Resolution wishes to thank the Rt Hon. Speaker and the office of the Clerk for facilitating it to carry out its oversight function. The Committee further appreciates the experts for the information shared.

REPORT OF THE COMMITTEE ON REGIONAL AFFAIRS AND CONFLICT RESOLUTION TO ASSESS THE PROGRESS MADE IN THE DEVELOPMENT OF THE DRAFT EAC REFUGEE MANAGEMENT POLICY ;14TH -17TH MARCH 2023

1. Hon. Siranda Gerald Blacks .....
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