

Hear my voice: refugees' participation in Kenyan policy development

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The involvement of refugees in recent legislative changes in Kenya demonstrates how public participation can be used as a tool to empower refugees and give them an opportunity to influence policy.

Public participation is critical to the development of good public policy. Based on the belief that those who are affected by a decision have a right to be involved in the decision-making process, it contributes to the empowerment of communities and to informed policy development. However, refugees – who may be perceived as a threat to domestic harmony, seen as vulnerable and as unable to make decisions about their lives – are often excluded from such participation.

Examples of public participation include voting, attending meetings and participating in policy discussions. In the context of refugee protection, UNHCR defines public participation as “the full and equal involvement of persons of concern in all decision-making processes and activities in the public and private spheres that affect their lives and the life of their community”.¹

Participation rights in international law

The 1951 Refugee Convention does not deal explicitly with political rights of refugees in the country of asylum. However, Article 7 (1) notes that refugees should be afforded the same treatment (including political rights) as other ‘aliens’. The Convention further notes in Article 7 (3) that refugees should continue to enjoy rights to which they were already entitled in their country of origin.

International human rights law includes more specific provisions relating to citizens’ public participation, such as in the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and People’s Rights and the Universal Declaration of Human Rights. In addition, public participation is embedded in a number of interconnected rights, such as freedom of opinion and the right to seek,

receive and impart information and ideas through any media regardless of frontiers, as provided in Article 19 of the ICCPR. Significantly, the ICCPR guarantees not only the ‘right’ but also the ‘opportunity’ to take part in the conduct of public affairs.

More recently, the 2018 Global Compact on Refugees (GCR) specifically provides for the participation of refugees in decision-making processes, with Paragraph 34 stating that “responses are most effective when they actively and meaningfully engage those they are intended to protect and assist”.

Benefits of participation

Displaced persons are affected – just as host communities are – by policy and legislation developed in the country of asylum. Public participation contributes to increased awareness by the community of legislative proposals, building a sense of shared accountability, and contributing to empowerment and inclusive practices. It also promotes the democratic and accountable exercise of power by leaders. The government gets an opportunity to hear directly from affected people, for example about gaps that need to be filled to improve service delivery. The public in turn feel a greater sense of belonging, which is particularly important to refugees and which helps foster unity, trust and dignity.² Refugees should be given a real chance to influence policy decisions through access to timely and relevant information, data or documents related to policy formulation and implementation.

Public participation in Kenya

The right to participate in public affairs is enshrined in Kenya’s 2010 Constitution, whereby sovereign power is vested in

the people, including refugees. Article 10 specifically references “participation of the people” (popularly referred to as public participation) in a list of binding national values and principles of governance.³ Article 118 provides that Parliament shall conduct its business in an open manner and facilitate public participation and involvement in legislative matters.

Since the Constitution was adopted in 2010, an increasing amount of legislation and policies have been invalidated by Kenya’s courts due to inadequate public participation. In 2017, the Court of Appeal in Kenya commented that *“the issue of public participation is of immense significance considering the primacy it has been given in the supreme law of this country and in relevant statutes relating to institutions that touch on the lives of the people”*.⁴ It follows that members of the public and all interested parties have a right to challenge any administrative action, legislation or public policy decision on the grounds of inadequate public participation.

Refugee participation in Kenya

Kenyan courts have held that the standard to be applied in public participation is one of ‘reasonableness’, depending on the circumstances and facts of each case. This requirement of public participation extends to refugees. In 2020, Kenya’s Constitutional Court invalidated the Refugee Community Leader Election Guidelines on the basis that the State Department failed to hold any public forum to gauge the concerns and obtain the input of the refugee community prior to the formulation of the Guidelines.⁵

In 2017, the Refugees Bill 2016 was presented to the President to sign into law. The Bill made provisions for the recognition, protection and management of refugees in Kenya. However, the President refused to sign the Bill and referred it back to the National Assembly for reconsideration, citing lack of public participation during the development of the Bill.⁶ Unfortunately, Parliament was dissolved in 2017 and the Bill could not be discussed. But despite the Bill lapsing there was continuing momentum to review it. In 2019, parliamentarians instituted a series of

measures to facilitate public participation, in particular participation by refugees.

Firstly, Members of Parliament (MPs) visited Kakuma and Dadaab refugee camps to engage with refugees and the host community and hear first-hand about their experiences. The MPs also met local officials and leaders who shared their challenges, concerns and recommendations. The visit to the camps provided an opportunity for many refugees to interact informally with the MPs and share their stories and concerns. As a result, the new Refugees Bill of 2019 reflected some of these concerns and included one of the specific proposals made by refugees, which related to shared use of resources among refugees and the host community.

Once a Bill has been introduced in the National Assembly, a government committee formally conducts public participation. For the Refugees Bill 2019, the Departmental Committee on Administration and National Security published an advertisement in local newspapers inviting the public to submit memoranda on the Bill. The advertisement also invited members of the public to attend public participation fora in six areas densely populated by refugees: Nairobi, Mombasa, Nakuru, Eldoret, Kakuma refugee camp and Dadaab refugee camp. The six fora provided an opportunity for refugees and asylum seekers, NGOs, county governments and representatives from academia to share their views on the law. This extensive consultation with the public, including refugees, was in stark contrast to the single public participation forum conducted in 2017, which had been attended by only a handful of people, representing NGOs only.

The participation of refugees in consultations relating to the Refugees Bill 2019 was supported by a number of measures to ensure refugees had the skills, knowledge and confidence to participate effectively. Ahead of the formal consultations, various stakeholders with knowledge of refugee law held training sessions with refugees. This training was instrumental in demystifying the proposed law, clearly communicating the relevance of the provisions to the refugees, and in introducing the basic concepts of legislative

drafting and international refugee and human rights law. Refugees were subsequently able to draft a written memorandum in advance of the consultations, detailing their proposals, including on the need for the government to keep refugee information confidential and the need to increase the time period allowed for people to declare their intention to seek asylum to 30 days. This memorandum was signed and submitted to the MPs, and later described by the chairperson of the Committee, Paul Koinange, as “relevant and useful in review of the Bill”⁷.

The opportunity for MPs to listen to individuals in Kakuma and Dadaab refugee camps had an influence on both MPs and refugees. For refugees, the engagement with MPs during this visit complimented and increased the impact of their previous training and capacity building on refugee law. For MPs, the impact stemmed from personal interactions. During a parliamentary debate, for example, MP Oku Kaunya recounted meeting a young man who had been born in 1991 in Dadaab refugee camp and who, now aged 28, was still a resident in the camp. He urged the National Assembly to provide for the rights of such persons.

Recommendations for enabling effective refugee participation

The public participation of refugees in the development of Kenya’s Refugees Act, 2021⁸ revealed four key lessons:

- Refugees come from many countries and speak diverse languages. However, the Bill was only published in English. Translating government policy documents into key languages would allow many more people to read, understand and participate in the review process.
 - It is important for refugees to understand the form, extent and purpose of any policy participatory process.⁹
 - Non-State actors such as national organisations or refugee-led organisations can be effective in lobbying for recognition, promotion and participation of refugees
- in the development of legislation by providing oversight and holding leaders to account.
 - Special consideration needs to be given to how to enable minority and marginalised groups within the refugee community to participate in legislative development. All voices are of equal value.

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