

## Refugee Protection in Multi-level Governance Regimes: A Case for Kenya and Indonesia

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Article Info	Abstract
<p><b>Keywords:</b>  <i>Functional Assignments, Multi-Level Governance, Refugee Protection.</i></p> <p><b>DOI:</b>  <i>10.25041/lajil.v5i1.2868</i></p>	<p><i>In Indonesia, Presidential Regulation No. 125 of 2016 concerning the management of asylum seekers, signed by President Joko Widodo on the last day of 2016, formalizes the role of sub-national units in refugee management, including providing appropriate, non-custodial accommodation. In Kenya, the recently enacted Refugee Act of 2021 alludes to the engagement of the County Governments in Refugee protection. This study examined the status of refugees within a multi-layered governance system, focusing on the legal framework through a comparative analysis of local government structures in the chosen states. The Article compares the decentralization adopted in these two refugee-hosting countries in establishing local government formation responsive to asylum seekers' plight. The results show that the role of local governments in refugee protection is crucial to the effective and sustainable management of displaced populations when equipped with adequate resources, clear guidelines, and robust institutional capacity.</i></p>

### A. Introduction

Multi-level governance structures call for responsibility sharing between different tiers of government, which, in most jurisdictions, are immigration controls, where refugee protection conventionally falls in the domain of national or federal government function. While local communities provide refugee shelters, policies and discourses about refugees and asylum seekers are under the responsibility of the Central Government. Such a system limits the authority of local government in refugee protection measures. Local governments are directly involved in crisis management. Their role during displacement emergencies is limited to carrying out tasks delegated by central governments rather than planning and decision-making processes.<sup>1</sup>

<sup>1</sup> Diane Archer, 'Migrant and Refugee Transit: The Role of Local Authorities in Humanitarian Response' (International Institute for Environment and Development 2016) <<https://www.jstor.org/stable/resrep16680>> accessed 19 February 2022.

Despite their limited roles in legislation and policymaking, local governments remain crucial participants in refugee affairs, largely due to their immediate physical proximity as hosts to displaced populations. In many refugee-receiving countries, local administrations are often the first-line asylum receivers responding to humanitarian emergencies. Long-term and successful inclusion necessitates the integration of refugee-related issues into a wide range of local government roles. Inevitably, the range of specified services offered by these geographically delineated areas addresses only the basic needs of such a vulnerable group.

The legal frameworks underpinning local government structures differ across sovereign jurisdictions, shaping the range of their functional capabilities. Essentially, a local authority's capacity to address a particular issue depends on whether that issue falls within its legally designated responsibilities, as defined by the legislation establishing its foundation. Recognizing the critical involvement of local authorities in refugee matters and acknowledging the diversity in their legal structures across various jurisdictions, this paper aims to conduct a comparative analysis of the multi-level governance systems in Kenya and Indonesia, specifically focusing on their approaches to refugee management.

In this research, the comparative method was employed to evaluate the role of local governments in Indonesia and Kenya in refugee protection. Data from this research were retrieved from secondary sources such as journals, textbooks, and government reports, which may have impacted refugee protection within the framework of multi-level governance structures embraced in the two countries. Relevant statutes and cases were critically examined, drawing on various points of view presented in the existing literature to test the efficacy of different forms of Multi-level governance in refugee protection.

Both nations host a significant number of refugees in their territories. Unlike Indonesia, Kenya is a signatory to the 1951 Convention on the Status of Refugees and its 1967 Protocol. Meanwhile, Indonesia has a progressive national legal regime that includes the constitutional right to asylum compared to other ASEAN nations.<sup>2</sup> Third, the selected countries practice some form of decentralized governance under different legal and continental jurisdictions, which can provide significant spectrum diversity in local governments' responses to the imposition of obligations and care for refugees in their respective governance frameworks. Comparing countries with different legal commitments towards the 1951 Convention and different national/regional dynamics of refugee protection is crucial as it allows for a better understanding of the role of local governments in refugee protection within diverse contexts.

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This research breaks new ground by analyzing the critical role of the legal framework in functional assignment. This role is not always effectively mirrored in practice due to various challenges. These include poor coordination and limited resource allocation to sub-national entities. While these challenges arose in both Indonesia and Kenya, decentralization design choices varied regarding responsiveness to refugee protection issues. Therefore, in the present

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<sup>2</sup> Nikolas Feith Tan, 'The Status of Asylum Seekers and Refugees in Indonesia' (2016) 28 *International Journal of Refugee Law* 365.

<sup>3</sup> *Ibid.*

analysis, the concurrent approach to functional allocation found in the Indonesian model is likely more adaptable and responsive than the exclusively defined functional approach observed in Kenya.

## B. Discussion

### 1. Functional Assignment in Multi-level Governance

Gary Marks first coined multi-level governance by describing developments in the European Union's (EU) major structural reform 1988. Hooghe and Marks<sup>4</sup> expanded the model by examining the integration of the EU and its policymaking processes compared to the state-centric model. In their subsequent writings, Marks and Hooghe<sup>5</sup> mentioned two types of multi-level governance called Type I & II. The initial category pertains to all-purpose jurisdictions that contain subordinate jurisdictions, while the second category concentrates on particular policy issues and includes jurisdictions with a distinct purpose.

Bache & Flinders<sup>6</sup> stated that multi-level governance is manifested in vertical and horizontal dimensions and jurisdictional and territorial boundaries within and beyond the normative Nation-state frame. Vertical dimensions reflect the State-centric distribution of roles down to subnational or local levels of administration. Conversely, horizontal dimensions involve the allocation of functions across the traditional branches of government and the interactions between subnational levels. This describes governing arrangements that apply to an entire system, characterized by a few clearly defined, non-overlapping jurisdictions at limited territorial levels. Each of these jurisdictions is responsible for a distinct set of functions.<sup>7</sup>

Therefore, literature on multi-level governance encompasses rationalization of authority in both vertical and horizontal decision-making within various levels of state structures. This article focuses on Multi-level governance from the standpoint of vertical or areal decentralization of public services from the Central Government to other subsidiary units. Political science and public administration define decentralization as a process or mechanism that distributes authority and divides duties between central government entities and locally established political and administrative bodies. Decentralization is expected to enhance the delivery of public services, promote economic and regional progress, and empower various groups' political and other rights.<sup>8</sup> The common thread that runs through the notion of multi-level governance is that authority is shared in a vertical relationship between levels of the public sector.

This article limitedly describes functional assignment as a core element of such a governance design with one or more subnational levels of government with a particular focus on the place of Refugee protection in such a setup. Gabriele Ferrazzi and Rainer Rohdewohld<sup>9</sup> describe Functional assignment as a sequence of activities through which levels of government receive roles and specific duties. The definition implies that functional assignment refers to transferring responsibilities and powers and the attendant resources to execute.<sup>10</sup>

The term "function" — determines which level of government is responsible for it and what resources should support the role distribution across different levels — is as diverse as the

<sup>4</sup> Marks-Structural-Policy-in-the-European-Community.Pdf <<https://garymarks.web.unc.edu/wp-content/uploads/sites/13018/2016/09/marks-Structural-Policy-in-the-European-Community.pdf>> accessed 10 October 2022.

<sup>5</sup> Marks, G. & Hooghe, L. (2004). *Contrasting Visions on Multi-Level Governance*, in Bache, I. & Finders, M. (Eds.), *Multi-Level Governance*. Oxford/New York: Oxford University Press, Pp. 15-30.

<sup>6</sup> Ian Bache and Matthew Flinders (eds), *Multi-Level Governance* (Oxford University Press 2004).

<sup>7</sup> *Handbook on Theories of Governance* | Christopher Ansell (Editor), Jacob Torfing (Editor) | Download <<https://book4you.org/book/21300848/ac19ae>> accessed 9 October 2022.

<sup>8</sup> Yusoff, Mohammad Agus; Sarjoon, Athamabawa; Hassan, Mat Ali, 'Journal Library of Politics and Law' 9 57 <[https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/jpola9&id=59&men\\_tab=srchresults](https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/jpola9&id=59&men_tab=srchresults)> accessed 18 March 2022.

<sup>9</sup> Gabriele Ferrazzi and Rainer Rohdewohld, 'The Context of Functional Assignment – Decentralization, Multi-Level Governance and the Quest for Impact', *Emerging Practices in Intergovernmental Functional Assignment* (Routledge 2017).

<sup>10</sup> *ibid*.

number of states implementing this form of governance. Furthermore, the design and legal framework of the multi-level governance model in a country significantly affects functional assignments and other foundational aspects of governance. In other words, the roles and responsibilities divided between national and sub-national levels of government differ worldwide, depending on the legal documents that establish them. These differences in legal structure lead to various models of decentralization and ways of categorizing functions.

The degree of functional assignment to various government levels is dynamic. Besides the design of legal governance, deciding whether the National or Sub-national level should manage a specific function involves considering several factors. These include the suitability of policy processes for engaging different government levels, the distribution of financial and human resources needed at various levels, and implementing accountability measures to the public. When deciding to delegate or devolve a function from one level of government to another, effectiveness and efficiency are crucial concerns.<sup>11</sup> The rationale behind these functional allocations is typically based on criteria like the capability of the unit to perform a specific task and the inherent nature of the function. For example, tasks such as agricultural extension services naturally fit better with devolved units, whereas the central government handles duties like foreign relations more appropriately.

Ferrazzi and Rohdewohld observed that functions could be assigned to levels of government with varying degrees of exclusivity in a multi-level government of a federal or unitary structure.<sup>12</sup> These variations are present in typologies of obligatory, exclusive, residual, and concurrent functions. Exclusive functions are allocated to one level of government to the exclusion of the other level of government, while one or more levels of government share concurrent functions. On the one hand, obligatory functions, which some places call mandatory or statutory, are duties the state must perform for its citizens, often outlined in international conventions, national constitutions, or laws. On the other hand, residual functions are those not specifically mentioned in the laws or rules that assign duties.

**Table 1. Below is an Illustration of the Normative Trend of General Functional Assignment in a Multi-Level Governance Structure**

Fig. 1. Illustration of functional assignment between levels of government as conceived by Ferrazzi and Rohdewohld

Levels of Government	Functional assignment (normative trend)			
	Obligatory function	Exclusive function	Concurrent function	Residual function
Central Government	Largely a preserve of central government	Assigned to the exclusion of the other level	Both levels perform the same role.	Varies from one jurisdiction to the other
Local Government	Plays no significant role	Assigned to the exclusion of the other level		

The allocation of responsibilities among different levels of government carries distinct advantages and disadvantages, contingent upon operational dynamics and the stakeholders'

<sup>11</sup> Erwan Agus Purwanto and Agus Pramusinto, 'Decentralization and Functional Assignment in Indonesia: The Case of Health and Education Services' (2018) 39 Policy Studies 589.

<sup>12</sup> Gabriele Ferrazzi and Rainer Rohdewohld, *Emerging Practices in Intergovernmental Functional Assignment* (Taylor & Francis 2017).

objectives. A scenario wherein multiple tiers of government vie to perform identical functions can engender disputes and redundancies, particularly in the absence of a clear delineation of duties. Conversely, certain services necessitate the collaborative engagement of all governmental levels to ensure efficacy. A rigid segregation of responsibilities may introduce an element of inflexibility, precluding intervention from a non-designated tier of government even in scenarios where such intervention is imperative.

This research endeavors to ascertain the optimal strategy for allocating tasks in the context of refugee protection. It examines the practical application of these strategies through case studies, aiming to identify the most effective framework for a national refugee assistance system. To enhance comprehension of this inquiry, an overview of the governmental structure within the two countries under study is deemed beneficial.

## **2. Decentralized Systems of Governance in Kenya and Indonesia**

The debate on decentralization revolves around the three traditional de-concentration, devolution, and delegation models. Each of these three models is characterized by a distinctive institutional framework, financial accountability, and personnel allocation across various levels of government.<sup>13</sup> Kenya and Indonesia have embraced political devolution as a form of decentralization with considerable variations in their functional distributions. This section summarizes the forms of multi-level governance in Kenya and Indonesia to provide a basis for the functional allocation of roles and responsibilities among various levels in the next part.

### **a. The Indonesian Model**

Indonesia has been reorganizing its National-Subnational ties by decentralizing public services to local entities since 1999. This approach is underpinned by Article 18 of the 1945 Constitutional Act, which supports establishing and sustaining local government through implementing a local government charter.<sup>14</sup> This article provides the fundamental tenet of the regional rights in the local government system to preside over their local affairs. The second constitutional amendment law passed in 2000, incorporated parts of the decentralization reforms, such as democratic elections for mayors and governors, into the Constitution to ensure long-term system stability and provide political guarantees against arbitrary overthrow.<sup>15</sup> Adopting Law No. 22/1999 on Regional Government, along with its amendments by Law No. 32/2004 and Law No. 23/2014, has solidified local government as a key component of local self-administration. This has reduced the central government's role to primarily administer functions related to defense and security, external affairs, fiscal and monetary matters, religion, and the judiciary.<sup>16</sup> The central government can revise these assignments relating to inter-governmental relations as it deems fit.<sup>17</sup>

Although the law has undergone several changes as part of the government's transition from the old order to the new, the three fundamental principles of decentralization, de-concentration, and task assistance remain to be reinforced in the governance structures of the Republic of Indonesia. The de-concentration principle appears more dominant than others, especially at the lowest levels of government structures. The decentralized framework of Indonesia can be more comprehensively grasped when considering its overarching aims of national political integration and stability. It is designed to mitigate conflicts and promote ethnic harmony among Indonesia's diverse ethnic groups.

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<sup>13</sup> Purwanto and Pramusinto (n 13).

<sup>14</sup> T Krishnamohan, 'The Local Government System in Indonesia and Sri Lanka: A Comparative Overview' (2016) 03 <<https://papers.ssrn.com/abstract=2910222>> accessed 19 March 2022.

<sup>15</sup> *ibid.*

<sup>16</sup> Purwanto and Pramusinto (n 13).

<sup>17</sup> Ferrazzi and Rohdewohld (n 11).

Erwan Agus Purwanto and Agus Pramusinto<sup>18</sup> found that the execution of decentralization has resulted in favorable and unfavorable effects on the delivery of public services in the country. These intricate frameworks have their duties and responsibilities delineated in their founding documents, as well as in local laws and the occasional presidential regulations. Of particular relevance to the scope of this study is Presidential Regulation No. 125 of 2016, which pertains to the management of refugees. This regulation was enacted by President Joko Widodo in 2016. The extent to which these governance structures accommodate the rights and interests of the diverse and vulnerable population is the main focus of this article. The evaluation is conducted within the framework of functional distributions within various levels of government in line with their fundamental constitutive regimes and legal framework that is in practice in Indonesia.

The article also shows the functional interactions between various tiers of government if such relations between different levels and actors are reflective of functional imperatives arising from legal instruments or are inspired by the actors' attempts to promote certain interests in respect of a level of government. Consideration should also be given to the coordinated response of different government levels during crises and emergencies, necessitating the involvement of all units for temporary or ongoing interventions and the significant impact these actions may have on vulnerable populations, including refugees.

## **b. The Kenyan Model**

After gaining independence from British rule on December 12, 1963, Kenya adopted a federal constitution known as *Majimbo*.<sup>19</sup> This gave regions significant autonomy in the management of public service. However, the federal system was quickly dissolved into a centralized governance. Shortly after its independence in 2010, a new constitutional order with two levels of government, the National and County governments, was established.<sup>20</sup> Kenya's devolution is designed to acknowledge the right to govern their affairs, pursue their development objectives, and safeguard and advance the interests and rights of minorities and underprivileged communities.

Kenya's supreme established the nation into forty-seven (47) states based on geographical boundaries and role allocations. Notably, neither the state nor the central government holds superiority over the other as outlined under the Fourth Schedule of the Constitution:

*"Article 6 (2) of the Constitution of Kenya 2010 provides that the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations based on consultation and cooperation."*

The autonomy of local government extends to the domain of exclusive county functions, wherein the authority to enact legislation pertaining these functions is vested in the county government. Consequently, in cases of legal conflicts, the legal framework established by the county precedes the National law as detailed under Article 191 of the Constitution.

- "(2) National legislation prevails over county legislation if—*
- a) the national legislation applies uniformly throughout Kenya and any of the conditions specified in clause (3) is satisfied, or*
  - b) the national legislation is aimed at preventing unreasonable action by a country that—*
    - i. is prejudicial to the economic, health, or security interests of Kenya or another county; or*

<sup>18</sup> Purwanto and Pramusinto (n 13).

<sup>19</sup> *Majimbo* is a Swahili term for political devolution of power to regions within a state territory

<sup>20</sup> The Constitution of Kenya, 2010. At Article 6(1) the Constitution provides that, the territory of Kenya is divided into the counties specified in the First Schedule

- ii. impedes the implementation of national economic policy.  
And 191 (4) provides that County legislation prevails over national legislation if  
neither of the circumstances contemplated in clause (2) applies.”*

As a result, counties have the authority to "regulate all matters relevant to the local community under their responsibility within limits established by the laws." While the judiciary maintains a national perspective, the forty-seven county governments exercise their legislative and executive authorities to further this distinction. However, numerous mechanisms enforce collaboration and joint decision-making across levels and jurisdictions to ensure concurrent function and unity of purpose. Two levels of government control their budgets and accounts to raise their revenue. The county governments have also been given a constitutional mandate to make and enforce local legislation.

In addition to the decentralized county structures, the central government has its presence locally through national coordination units. Representatives in this setting are responsible for the central government. Entities entrusted with refugee management are under the responsibility of the National government. The article examines whether the national government has the authority to assume sole responsibility for refugee protection, thereby sidelining county governments, despite the latter overseeing essential sectors like health, community land ownership, and general county administration. Refugees need these essential services as well. Consequently, if counties are excluded from refugee management and protection, the question arises: which entity or authority will ensure these essential services to refugees? The next part of the article presents how the selected countries' decentralized governance structures have attempted to address such needs.

### **3. A Comparative Analysis of Kenya and Indonesian Governance Models in Refugee Protection**

The distribution of functional responsibilities across different levels of government in Indonesia and Kenya is evaluated to assess the impact of multi-level governance in light of refugee protection in the two countries. The article delves into the vertical distribution of responsibilities, exploring the impact of local governance as it interfaces with higher government levels in the context of central-periphery relations.

#### **a. The Practice in Indonesia**

In Indonesia, refugee management is under the responsibility of the central government. Indonesia is a preferred country for transit among refugees sailing from Asia to the Australian continent. Since Indonesia has not ratified the 1951 Refugee Convention and its 1967 Protocol, its approach to refugee management is guided by the principle of human dignity, a core value embedded in its national ideology, Pancasila. This principle is expanded upon in the 1945 Constitution, particularly Articles 28A through 28J, as well as in Law Number 37, the Year 1999 on International Relations, Law Number 39, the Year 1999 on Human Rights, and other rules and regulations in Indonesia. These provisions are strengthened by Presidential Regulation Number 125 of the Year 2016 on the Treatment of Refugees, which fills a legal void in the country that has long affected asylum seekers and refugees. This regulation is a critical point of reference regarding treating asylum seekers and refugees.

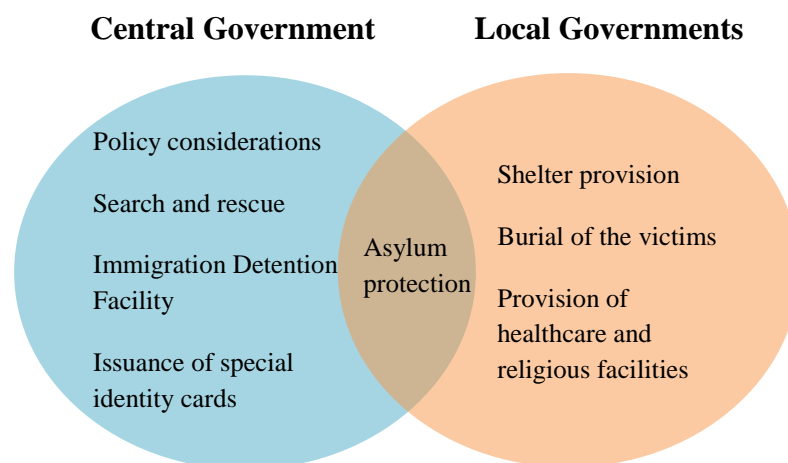
In Indonesia, the application of decentralization principles has primarily relegated the central government to establishing norms, standards, procedures, and criteria. While Article 2 of the regulation expressly states that refugees are handled following cooperation between the central government and the United Nations (UN) through the United Nations High Commissioner for Refugees (UNHCR) in Indonesia and other international organizations, Articles 24-26 of the same regulation delegate the role of non-custodial refugees to local

governments.<sup>21</sup> These non-custodial practices entail measures authorities apply to migrants and asylum seekers on their territories where some form of control is deemed necessary. Makassar, for example, has successfully placed many refugees in shelters that meet international quality and safety standards.<sup>22</sup> Besides the assigned functions of Shelter provisions for the asylum seekers, regency/municipal governments are key actors in the burial of deceased asylum seekers. The central government agencies bear the primary responsibility for managing refugee affairs.

However, Presidential Regulation No. 125 of 2016 concerning the Treatment of Refugees in Indonesia sets out a coordination mechanism for national and local governments in refugee protection efforts.<sup>23</sup> The regulation mandates the establishment of a National Committee for the Treatment of Refugees, which serves as a coordination body between the national government, local governments, and other relevant stakeholders in the implementation of refugee protection policies and programs. The committee is responsible for monitoring and evaluating the implementation of refugee protection policies and programs at the national and local levels and for promoting greater cooperation and collaboration between different levels of government.

The interaction between levels of government related to functional allocations, as outlined in Presidential Regulation Number 125 of the Year 2016 on the Handling of Refugees, is illustrated in Figure 2. The regulation covers refugee search and rescue, housing, security, supervision, and funding for related activities.<sup>24</sup> The four other elements manifestly demonstrate the Indonesian refugee policy's localization, except for search and rescue operations, which national organizations oversee. Local administrations are authorized and accountable for caring for refugees within their respective jurisdictions within this framework.

The normative trend of general functional assignment in a multi-level governance structure focuses on the distribution of refugee management roles between the central government and various tiers of subnational units, generalized as 'Local Governments.



*Fig 2. Illustration of interaction between levels of government in refugee protection in Indonesia*

<sup>21</sup> Refworld | Indonesia: Regulation of the President of the Republic of Indonesia No. 125 Year 2016 Concerning the Handling of Foreign Refugees 2016.

<sup>22</sup> Antje Missbach, Yunizar Adiputera and Atin Prabandari, 'Is Makassar a "Sanctuary City"? Migration Governance in Indonesia after the "Local Turn"' (2018) 11 *Advances in Southeast Asian Studies* 199.

<sup>23</sup> *Indonesia: Regulation of the President of the Republic of Indonesia No. 125 Year 2016 Concerning the Handling of Foreign Refugees* [Indonesia], 31 December 2016, available at: <https://www.refworld.org/docid/> [accessed 7 March 2022]

<sup>24</sup> *ibid.*



The central government is responsible for policy considerations, search and rescue, immigration detention facilities, and issuance of special identity cards. In contrast, the local government is charged with Shelter provision, the burial of victims, healthcare provision, and religious facilities. Indonesia has not yet set a comprehensive legal instrument to address refugee-related matters, such as claims made by foreign nationals seeking asylum to obtain recognition as refugees.

The government of Indonesia continues to address the refugee problem as a universal human rights issue. Currently, the Presidential Regulation No. 125 of 2016 concerning the Treatment of Refugees provides a legal framework for all practices that continue to be implemented in principle. Despite some substantive issues related to funding, the framework applies in handling refugees and asylum seekers at both the central and regional levels.

#### **b. The Kenyan Scenario**

Kenya has a comprehensive refugee policy that outlines the rights and obligations of refugees and the government's and other stakeholders' responsibilities. Unlike Indonesia, where the functional arrangement on refugee protection appears to be a shared responsibility between various levels of government, Kenya's refugee protection system is centralized. Entities entrusted with refugee protection are responsible to the national government and have no relationship with the authorities in the county governments. Therefore, within the normative trend of general functional allocation in a multi-level governance structure, Kenya's refugee protection role can be considered an obligatory and exclusive national government function.

The Refugee Act of 2021<sup>25</sup> represents a significant shift in conceptualizing refugee protection that provides access to the labor market and livelihood opportunities. It also allows for the inclusion of a representative from the Council of Governors in the Refugee Advisory Committee to enhance counties' participation in refugee protection, despite the absence of a clear framework for this participation.

Kenya is a pilot country for the UNHCR's Comprehensive Refugee Response Framework (CRRF)<sup>26</sup> - a multi-stakeholder approach involving the participation of national and local authorities, civil society organizations, the private sector, and refugees. This follows the provision of the Global Compact for Refugees,<sup>27</sup> which states in paragraph 106 that all stakeholders should "facilitate meaningful participation of refugees, including women, persons with disabilities, and youth" in refugee decision-making. Kenya's devolved system, which the 2010 Constitution established, also provides important avenues for CRRF engagement and public participation. For instance, Turkana and Garissa counties have incorporated refugee concerns into their County Integrated Development Plans (CIDPs) and created Integrated Socio-Economic Development Plans for areas that host the refugees.

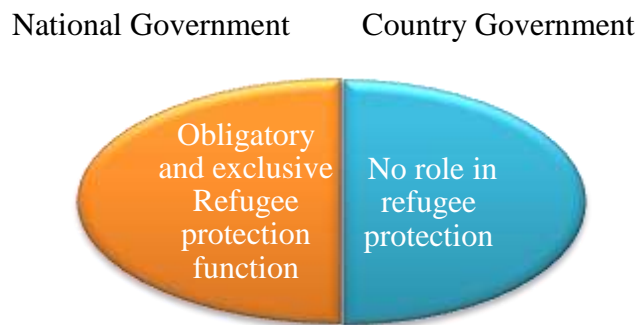
There is a notable gap between the provisions of the Act and the initiatives of the county and other stakeholders, owing to the exclusive nature of Kenya's refugee protection function. The exclusive nature of the protection role impedes the effective coordination and responsiveness of county government structures to the needs of refugees. County governments have no mandate to intervene in refugee protection under exclusive functional allocation, as in Kenya. Such allocations can be easily challenged due to a lack of legal mandate.

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<sup>25</sup> The Refugee Act, 2021. Section 28 (2) Provides that the Cabinet Secretary may, by notice in the Gazette and in consultation with the relevant county governments, designate specific counties to host refugees while sub-section (4) ...refugees shall be enabled to contribute to the economic and social development of Kenya by facilitating access to, and issuance of, the required documentation at both levels of Government.

<sup>26</sup> Randall Hansen, 'The Comprehensive Refugee Response Framework: A Commentary' (2018). 31 *Journal of Refugee Studies*. 131.

<sup>27</sup> BS Chimni, 'Global Compact on Refugees: One Step Forward, Two Steps Back' (2018). 30 *International Journal of Refugee Law*. 630.



*Fig 3. Illustration of Kenya's functional allocation of refugee protection between the two levels of government*

As seen in Figure 3, the national government undertakes refugee protection roles in Kenya to exclude the county government. Since county governments have jurisdiction over vital sectors like health, community land ownership, and General County management, a pertinent question emerges: Can the national government effectively assume sole responsibility for refugee protection without involving county governments? Considering counties' crucial roles, assigning refugee protection duties exclusively to a single government level presents significant challenges that could hinder the effective implementation of refugee protection measures.

### C. Conclusion

The functional distribution to the various government tiers determines which mode of functional allocation is responsive to refugee protection. The concurrent or shared functions dispersed to subnational levels have a more positive impact on the protection of refugees. In Kenya and Indonesia, the central governments dominate refugee protection and public service delivery. While local governments are generally assigned a wide range of functions, they are not provided with adequate budget allocation.

Indonesia's implementation of governance decentralization and regional autonomy has positive and negative outcomes.<sup>28</sup> Presidential regulations regarding this issue enhance the comprehension and effective execution between different tiers of the government. Despite these favorable evaluations, significant deficiencies have emerged in responding to asylum seekers' needs during emergencies. These shortcomings can be attributed to local governments and the lack of coordinated responsibility across various levels. The presidential regulation has not necessarily resulted in better outcomes for refugees. However, it has exposed certain weaknesses in refugee protection, including the dependency of local government care on national policy decisions, insufficient resources for refugee programs, and a lack of political consensus to assume responsibility for asylum seekers within the country.

Despite Kenya being committed to international and regional refugee laws and having detailed national legislation, its approach to refugee protection is flawed due to its governance structure, where only the National government is responsible for refugee protection. This arrangement prevents county governments from effectively participating in protection efforts due to a lack of clear coordination.

The discrepancy between the legal frameworks for assigning responsibilities and their implementation arises from poor coordination and limited resources for local units. These challenges are present in Indonesia and Kenya, but the design of their decentralization affects how they handle refugee protection. Specifically, Indonesia's model, which allows for shared

<sup>28</sup> Dwiyanto Agus, 'Functional Assignment in Indonesia: Policy Issues and Recommendations' World Bank <<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/Functional-assignment-in-Indonesia-policy-issues-and-recommendations>> accessed 14 October 2022.

responsibilities, seems to be more effective in responding to refugee protection needs than Kenya's model, where the National government solely holds such responsibilities.

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