

Detention in Kenya: risks for refugees and asylum seekers

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Refugees and asylum seekers detained in Kenya risk multiple convictions and protracted detention due to poor coordination between immigration officials, police and prison officers, coupled with lack of interpreters and low levels of knowledge among government officers.

Kenya plays host to large numbers of refugees, internally displaced persons (IDPs), stateless persons, economic migrants and victims of human trafficking and smuggling. The Refugee Consortium of Kenya (RCK) runs a detention monitoring scheme comprising ten detention monitors stationed in prisons along key migration routes and in urban centres hosting asylum seekers and other migrants. These detention monitors monitor refugee rights violations and asylum-related cases in prisons, police stations and courts of law and in this way play a core protection role in that they not only form a critical link with the criminal justice system but can also provide immediate intervention and assistance to migrants in detention. In 2012 alone, RCK provided legal representation to 727 asylum seekers and refugees held in various detention centres across the country.

One of the challenges in mixed migration and refugee protection in Kenya has been the failure by law enforcement officers and other actors to draw a distinction between criminals, illegal immigrants and asylum seekers. All categories of persons are detained in the same prisons and subjected to the same standards of confinement; asylum seekers end up being treated as criminals, an issue that clearly goes against the concept of asylum being of a civil character. Prison conditions expose asylum seekers and refugees to assault, sexual abuse, torture, ill-health, lack of counselling support, limited legal assistance and a poor diet. The situation is often made worse by lack of translation services in the prisons which means that asylum seekers are not able to talk about the challenges they are facing or report any violations to authorities.

Under Kenya's Refugee Act 2006, all asylum seekers have 30 days upon entering Kenya to travel to the nearest refugee authorities to register as refugees, regardless of how or where they entered the country. The law also stipulates that such a refugee be accorded a fair hearing and given the chance to defend himself/herself before a court of law. However, law enforcement officers routinely ignore these rights and more often than not refugees end up being prosecuted – wrongly – because law enforcement officers tend to lack proper knowledge of how to handle asylum seekers and because of language barriers and a shortage of interpreters.

Asylum seekers have been made more vulnerable since the issuance of a directive on 18 December 2012 by the Government of Kenya, through the Department of Refugee Affairs, requiring all refugees in urban centres to move to camps.¹ The directive also issued a notice to stop registration of all refugees and asylum seekers in urban areas and accordingly directed that all agencies including UNHCR should stop providing direct services to refugees. This clearly opened serious protection gaps, limiting access to services for refugees and exposing them to arrest, detention and deportation. It is worth noting that since the issuance of the directive, harassment of refugees by law-enforcement officers in Nairobi and other urban areas has dramatically increased. Instances of arbitrary arrests and illegal detention of refugees have been reported; furthermore, detainees are not arraigned in court within the constitutionally sanctioned time of 24 hours after arrest, thus denying them their rights.

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Mixed migration and detention

During one of its protection monitoring missions in the coastal region, RCK visited Voi prison in Taita Taveta County to follow up on detention cases.² The region is a transit route used for human trafficking of persons from the Horn of Africa through Tanzania to South Africa. At the prison, we met and interviewed eight Ethiopians who had served four-month sentences for unlawful presence and were being held as they awaited deportation. We also managed to interview the officers and listen to their concerns and were able to deduce certain of their challenges, namely that asylum seekers are often mixed in with those being trafficked and that the authorities are not always able to distinguish between the two groups and provide the necessary assistance to the asylum seekers. This is due to lack or limited knowledge with regard to asylum so that any person without a document is treated as an unlawful immigrant and detained. This is worsened by the officers' limited knowledge of and access to the Department of Refugee Affairs which could intervene or vet asylum seekers.

Of concern also is the uncoordinated way in which deportation of migrants is conducted across the region. Officers normally return migrants to the nearest point of entry, usually without handing them to the proper authorities at border points. This exposes migrants to multiple convictions and protracted periods of detention by authorities in each country where they are returned, which is clearly an abuse of their rights.

Recommendations

To address the challenges outlined above, we recommend the following:

- Reception centres should be set up on key migration routes or at border entry points. This would help in timely registration and vetting of all migrants, particularly asylum seekers.
- Government agencies dealing with detention and deportation need to work together better to reduce cases of detention



and protracted detention pending deportation.

- Detention should only be used as a measure of last resort after exploring all other available avenues.³
- Regional and international civil society networks need to do more to share information on best practices in working with refugees and asylum seekers who face detention and/or deportation; efforts such as those of the International Detention Coalition (IDC) should be supported and harnessed to help effective implementation of laws with regard to detention and deportation.
- Regional governments and judicial bodies should work together to share information on and to advocate for best practice, including establishing monitoring committees and Special Rapporteurs.

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1. The order came in the wake of persistent grenade attacks in Nairobi's Eastleigh Estate which is mostly inhabited by Somali and Oromo refugees.

2. 'Border monitoring mission of refugee protection: issues at the coast: A report by the Refugee Consortium of Kenya on a monitoring mission to Mombasa, Voi, Taveta, Kwale and Lunga Lungu', Nov 2012 <http://tinyurl.com/RCK-2012-Coast-monitoring>

3. See Alice Edwards 'Detention under scrutiny' p4-6. www.fmreview.org/detention/edwards