

KENYA

Kenya is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights, but not to its First or Second Optional Protocols. Kenya hosted approximately 245,000 refugees at the end of 2001.¹ Kenya has no refugee law and consequently, no formal asylum procedure.² The detention of asylum seekers occurs on an ad hoc and incidental basis, and is common.³

The detention of asylum seekers takes place at two levels. First, detention occurs at the border points, including airports, when asylum seekers are physically crossing the Kenyan border into the country. Second, detention occurs when asylum seekers are arrested within the country, especially in urban areas, for lack of documentation declaring their status. However, as a Kenyan NGO explained, because the government does not actually issue any documents, there is not basis for this type of arrest.⁴ Upon arrest, asylum seekers are usually brought before the courts and formally charged with immigration offenses. More often than not, they are sentenced to short periods of imprisonment and thereafter, deported to their home countries.⁵

Is there independent review of the decision to detain? Yes, but only at the intervention of NGOs.

At both levels of detention, the decision to detain is made by the Kenyan police and Immigration officials, and is not based on any particular set of factors.⁶

An appeal of the decision to detain can only happen at the intervention of lawyers, which NGOs, such as the Refugee Consortium of Kenya (RCK), are able to do if information regarding the arraignment is timely received.⁷

¹ U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2002 at 65, *available at* <http://www.refugees.org/WRS2002>. (Immigration and Refugee Services of America 2002) [hereinafter USCR WORLD REFUGEE SURVEY 2002].

² *Id.*; E-mail from Muthee Kiunga, Refugee Consortium of Kenya (Legal/Referral Programme) to Jaya Ramji, Debevoise & Plimpton (Nov. 13, 2001) (on file with Debevoise & Plimpton) [hereinafter RCK Correspondence (Nov. 13, 2001)]

³ RCK Correspondence (Nov. 13, 2001), *supra* note 2.

⁴ E-mail from Roselyn Mungai-Mwatha, Refugee Consortium of Kenya (Legal/Referral Programme) to Min Jung Lee, Debevoise & Plimpton (Sept. 10, 2002) (on file with Debevoise & Plimpton) [hereinafter RCK Correspondence (Sept. 10, 2002)].

⁵ RCK Correspondence (Nov. 13, 2001), *supra* note 2.

⁶ *Id.*

Are there limits on the period of detention? No.

Periods of detention vary greatly. Before they are formally charged in court, asylum seekers are detained at police stations for periods of between one day to many months. This detention is for any charge, mostly illegal presence in Kenya as a result of a lack of documentation.⁸ Upon trial and conviction, asylum seekers can be imprisoned for one to twelve months. As with the decision to detain, the periods of detention are determined ad hoc and are not based on any particular set of factors.⁹

Is there periodic review of detention? No.

Is there access to government-funded free legal aid? No.

The only free legal aid available to refugees and asylum seekers in Kenya is that provided by the Legal/Referral Programme of the RCK. Upon receipt of reports of detention of asylum seekers, staff representing this NGO visit detained asylum seekers and try to secure their release.¹⁰ The RCK also represents these asylum seekers in criminal proceedings. Lawyers on the Programme visit police stations and intervene on behalf of the refugees to the officers commanding the police stations. The lawyers represent the refugees, informing the police of UNHCR procedures and the meaning of documents in the possession of the asylum seekers. The lawyers also represent the asylum seekers in court, where they request the magistrates to drop the charges against them.¹¹

⁷ RCK Correspondence (Sept. 10, 2002), *supra* note 4.

⁸ *Id.*

⁹ RCK Correspondence (Nov. 13, 2001), *supra* note 2.

¹⁰ *Id.*

¹¹ RCK Correspondence (Sept. 10, 2002), *supra* note 4.