

AMNESTY INTERNATIONAL

Public Statement

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Kenya: The Government must respect the rights of refugees under international law

Amnesty International is calling on the Kenyan government to refrain from mass arrests and deportation of foreign nationals, following the expiry of the 15 August 2005 deadline for the registration of non-citizens. Since many persons still do not have the necessary registration documents, the organization is concerned that arbitrary arrests could follow in Kenya. Further, if returned to their country of origin, many persons could face human rights violations such as arbitrary arrests, torture and other ill-treatment and imprisonment without trial.

To forcibly return any person to a country or territory where s/he would be at risk of serious human rights violations would be in breach of Kenya's obligations under international human rights and refugee law, including the 1951 Convention relating to the Status of Refugees and the 1969 OAU Convention Governing the Specific Problems of Refugees in Africa, to which Kenya is a party.

In April 2005, the Minister for Immigration, Registration of Persons and Refugees, Ms. Linah Kilimo, stated that those non-citizens who do not possess the necessary registration documents would be considered as staying illegally in Kenya and would therefore be deported to their countries of origin. The original deadline for the registration of non-citizens in Kenya was fixed for 30 June 2005 and was later extended to 15 August 2005. This was an indication that the Kenyan government was willing to take into consideration the plight of refugees and migrants.

However, Amnesty International is concerned that this still does not allow sufficient time for registration. The issue is further complicated by the government's failure to clearly indicate where registration should take place and what the government considers qualifying as necessary documents. Given the large number of persons who have made contact with UNHCR to date, Amnesty International is also concerned about the inevitable difficulty the UNHCR may face to assess all claims. Given all these obstacles the organisation fears that several people would be subjected to forcible return before having their refugee claim fully assessed.

Amnesty International recognizes that the Kenyan Government has the right to control the entry, residence and removal of foreign nationals on their territory, but it cannot be at the expense of the fundamental human rights of refugees or migrants, whatever their legal status. In view of the government statements regarding the 15 August deadline and that all persons may not yet have managed to register or have not had their refugee claims assessed by the UNHCR, the organization fears the Government's methods of exercising their right to control its borders, in the form of mass arrests and deportations of those not registered by the deadline of 15 August, will be in breach of Kenya's obligations under international human rights and refugee law.

Amnesty International calls upon the Kenyan authorities to:

- Refrain from carrying out arrests and deportations of non-citizens who do not have the necessary registration documents after the 15 August 2005 deadline, given that such arrests and deportations may result in large scale human rights violations;
- Respect documents delivered by UNHCR, including those guaranteeing that asylum applications will be examined individually, which may take several months;
- Ensure that no one is forcibly returned to a country where s/he would be at risk of serious human rights violations, in line with Kenya's obligations under international human rights and refugee law, including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the 1969 OAU Convention Governing the Specific Problems of Refugees in Africa and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Ensure that all persons who wish to seek international protection have access to UNHCR and are not forcibly returned without having had their refugee claims assessed in a fair and satisfactory procedure in accordance with international human rights and refugee law and standards;
- Ensure that any expulsion procedures guarantee the fundamental human rights of all individuals, including the right to have an individual examination of his/her case, the right to have a decision communicated in a language s/he understands and the right to have an effective opportunity to challenge the expulsion decision by means of a prompt, fair and individual hearing before a judicial or other similar authority.

Background

In Kenya, refugees are required to live in designated refugee camps – Dadaab near the Somalia border and Kakuma near the Sudan border. Kenya hosts a total of approximately 240,000 refugees, mainly from Somalia and Sudan. Dadaab has about 138,571 refugees, predominantly from Somalia, whereas Kakuma has about 87,100 refugees, the majority of whom are from Sudan. However, there are substantial numbers of others from Ethiopia, Eritrea and neighbouring countries in the Great Lakes region. Estimates of the number of refugees residing illegally in Nairobi and other towns range from 15,000 to 60,000. These are subject to constant police harassment, often for the purpose of obtaining bribes.