

GLOBAL **NEXTGEN** INDEX

Protecting the liberty of our next generation, today.

End Child Detention Scorecard

KENYA

Published August 2018 using information compiled between November 2017 – January 2018, based on the most up-to-date reports and analysis available.



FINAL SCORE

63

There is political will within the Government of Kenya to cease the detention of children. There are also some policies and practices that provide support for migrant children living in the community in Kenya.

However, it is estimated that between 100 - 499 children are held in detention, sometimes in criminal prisons without their families, for periods of up to one week.

	Kenya	Possible
Treaties	16	20
National laws	0	10
Processing	18	26
Placement	9	12
Rights	14	20
Oversight	4	12
Sub Total	61	100
Points off	-8	-15
Bonus points	+10	+15

Treaties 16/20

Kenya has ratified four of six Conventions and Protocols that assist in the protection of children in the context of migration.

Recommendation: The Government of Kenya is commended on this achievement so far. The government is encouraged to Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT).

National laws 0/10

The law in Kenya does not forbid the detention of children. However, there is law ensuring that the child's best interests are of paramount importance in every matter concerning the child, and that every child has a right not to be detained except as a measure of last resort.

Recommendation: The Government of Kenya is strongly encouraged to implement a law that prohibits the detention of all children up to the age of 18, as well as their families. This would bring policy in alignment with international standards and obligations, with family unity respected as a fundamental child right. Additionally, such a policy would ensure that children are never detained in Kenya for migration purposes.

Processing 18/26

Kenya has some child-sensitive processes in place. Age determination is carried out, Best Interest Assessments and Best Interest Determinations are codified into law and are conducted by independent professionals. Status documentation is also provided to children pending their refugee status determination, which prevents detention of this population. Additionally, there is some degree of a functioning case management system. However, legal

assistance is not provided by the government and essential processing assistance, such as translation and interpretation, is limited.

Recommendation: The Government of Kenya is commended on this achievement so far, especially for undertaking Best Interest Determinations for all children. The government is strongly encouraged to ensure that free legal assistance is guaranteed and accessible for all children in the processing stage. The government is also encouraged to immediately enact child-centred policies and practices that are implemented systematically, especially for unaccompanied children.

Placement 9/12

Kenya refers unaccompanied minors to children's homes and facilities. These placements do not require bail or financial guarantees. However, procedures to allow children to reside in the community with their own families, or for unaccompanied children to be placed in family homes, are long and expensive. This results in limited use of community-based alternatives for children.

Recommendation: The Government of Kenya is strongly encouraged to find solutions to rectify the long and arduous process required for the unconditional placement of families in the community. Additionally, the government is strongly encouraged to increase support for unaccompanied children when they are placed in the community. For example, a child with the possibility of residing with a family must not face barriers, such as providing financial guarantees or bail. The government is encouraged to utilise existing practices of alternatives to detention, in order to develop placement options in a robust and systematic fashion.

Rights 14/20

Kenya has no housing policy for children and social assistance is limited. However, children have the same access to primary school education and medical care as nationals of Kenya.

Recommendation: The Government of Kenya is strongly encouraged to uphold the rights of all migrant children, and ensure indiscriminate access to education, housing, social assistance and health care. Additionally, the government is encouraged to immediately expand work permits to all migrant parents, so that parents are able to contribute to the economy. The government is also strongly encouraged to introduce firewall legislation to ensure that social welfare services are not impeded by migration control activities.

Oversight 4/12

In Kenya, there is no effective judicial control over detention decisions. In most cases, immigration-related cases are processed through the standard court system as criminal proceedings, without an automatic judicial review. Any review or appeal must be initiated by the individual. There is also no National Preventive Mechanism, although monitoring is conducted by independent NGOs and INGOs. Further, there are some national independent commissions, however they are not recognized as NPMs.

Recommendation: The Government of Kenya is strongly encouraged to improve its statistics by including disaggregated data about immigration detention. This initiative must be coupled with developing the National Preventive Mechanisms for Detention Monitoring after ratifying the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Additionally, the government is strongly encouraged to immediately ensure that there is an automatic judicial review of detention decisions, and that individuals are able to appeal their detention. The government is further encouraged to make detention statistics publicly available to promote transparency and accountability.

Points off -8/ -15

In Kenya, children tend to be held in detention for short periods of time (less than one week). While there is lack of data surrounding immigration detention, it is estimated that between 100 - 499 children are held in detention, sometimes in criminal prisons without their families. Despite Kenya's respect of the non-refoulement principle, if children are deported to a third country or returned to their home country, they risk being detained again.

Recommendation: The Government of Kenya is strongly encouraged to abolish the detention of all children, in law and in practice. The government is encouraged to take significant and immediate action to reduce the numbers of children detained for extended periods of time.

Bonus points +10/+15

There is political commitment in Kenya to ensure that children are not held in immigration detention. This includes child friendly provisions in the Children's Act, which are in alignment with the general principles of the CRC, as well as other harmonisations of ratified international legislation. Kenya has taken considerable measures towards this commitment, and alternatives to detention exist to a certain degree. This includes a new provision that requires presumption of citizen by birth for all children found in Kenya who appear to be less than 8 years old, and whose nationality and parents are not known.

Recommendation: The Government of Kenya is commended for demonstrating political will to protect the rights of all children. However, the government is strongly encouraged to urgently uphold all the rights of children, in compliance with international standards and obligations. This includes the introduction of systematic, robust case management systems that avoid the detention of children.



This scorecard has been assessed by the Kenya NextGen Index Committee:

- Refugee Consortium of Kenya
- HAART
- Regional Mixed Migration Secretariat
- Kituo cha Sheria (Legal Advice Center)
- Solomon Masitsa – Individual consultant

For further information regarding how this score was measured visit <http://next-gen-index.org/>

If you have any questions, please contact the Global Campaign:
media@endchilddetention.org

Additional Resources

Treaties & Laws

- Kenya: [The Kenya Citizenship and Immigration Act, 2011](#)
 - Section 40 (3) – Work Permits for Migrants
 - Section 48 – Detention Authority
- Kenya: [The Refugee Act, 2006](#)
 - Section 6(2) – Commissioner to the Refugee Affairs Secretariat
 - Section 11 – Seeking Asylum in Kenya
- Kenya: [The Children's Act, 2001](#)
 - Section 3 – Best Interests of the Child
 - Section 102 - Guardianship

Directives & Services

- Kenya: [Basic Education Act, 2013](#)
 - Section 4 – Required School Attendance for All Children
- Kenya: [Constitution of Kenya, 2010](#)
 - Article 43(f) – Free Basic and Compulsory Education
 - Article 43(1)(a) – Right to Healthcare
 - Article 2(5) & (6) – Domestication of International Law
 - Article 14(4) – Presumption of Birth Right of Children

Infrastructure & Oversight

- Global Detention Project
 - [Kenya Immigration Detention Profile](#)