



REFUGEE CONSORTIUM of KENYA

Advocacy and Policy Development Centre

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Refugee Protection Situation Report (No.2/2017)

Period: 2nd February – 28th February

Date: 15th March, 2017

Contextual Analysis

Kenya's order to shut down Dadaab refugee camp is still in force. The Kenyan Government has yet to reverse the orders after the High Court ruled that the closure of the Dadaab refugee camp was [unconstitutional](#). The government has also filed an appeal to challenge this decision by the High Court at the Court of Appeal. Nonetheless, the High Court order still remains for the time being.

Cases of arrests on charges of residing outside a designated area without authorization and unlawful presence increased by 56. In the Refugee Protection Situation Report No.1 of 2017, RCK recorded 23 such cases. Between 2nd of February and 28th of the same month, RCK has recorded 79 such cases. Below is a summarized compilation of the report collected and collated by RCK staff and monitors in the field.

Findings

Report of arraignment/arrests/harassment

Place of Incident	Incident	Characteristics of PoCs	Status of Situation
Busia	Arrest: Residing outside a designated area without authorization.	2 adult Sudanese males and 1 minor Sudanese male.	The trio were arrested in Busia making their way to Kampala. They claimed that they were moving out of the camp for want of food and were going to reunite with their uncle in Uganda. They were released and went to their Uncle in Uganda.



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Arrest: Residing outside a designated area without authorization.	2 adult South Sudanese males.	There were convicted and fined Ksh.10,000. RCK represented the pair in court.
Arrest: Unlawful presence	7 adult Congolese females	Matter is being addressed by UNHCR
Arrest: Residing outside a designated area without authorization.	3 adult males, 2 adult females, 4 minor males & 1 minor female (all Congolese)	All the adults were convicted and fined Ksh. 10,000 or face 6 months in prison. The minors were discharged.
Arrest: Residing outside a designated area without authorization.	1 adult Ethiopian male	Convicted and fined Ksh.5,000 or face 3 months in prison. He has since paid the fine and made his way back to Kakuma.
Arrest: Unlawful presence	1 adult male, 1 adult female, 2 minor males & 3 minor females (all Burundi)	RCK intervened to have the PoCs taken to Kakuma for registration and RSD.
Arrest: Residing outside a designated area	1 adult Burundi male	He was discharged after RCK intervened on his behalf.



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	without authorization.		
Kakuma	Arraignment: Residing outside a designated area without authorization.	4 adult males, 18 adult females, 7 minor males, 2 minor females (2 Congolese, 5 Ethiopians, 16 Somalis & 8 South Sudanese	19 of them were convicted and fined Ksh.5,000 or face 3 months in prison. The rest, including all the minors, were discharged to go back to Kakuma.
Garissa Township (Garissa County)	Arraignment: Unlawful presence	1 adult Somali male	Convicted and sentenced to 1 year in prison or payment of a Ksh. 100,000 fine. RCK verified that the person was not in Kenya to seek asylum.
Tana River Bridge (Garissa County)	Arraignment: Residing outside a designated area without authorization	2 adult Somali males & 1 minor Somali male	The boy and one man were discharged and ordered to return to Dadaab refugee camp. The other man was convicted and fined Ksh.5,000 or serve 3 months in prison.
	Arraignment: Unlawful presence	2 minors Somali males	They entered a plea of not guilty. One was discharged while the other's case will be mentioned in court on 16.03.17.
Malaba	Arrest: unlawful presence	1 adult male, 1 adult female, 6 minor males & 4 minor females (all	The 16 PoCs were denied access to Kenyan territory. It is not clear why there were turned back into Uganda.



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		Burundi)	
	Arrest: Unlawful presence	2 adult males & 5 minor males (3 Burundi nationals & 4 Congolese nationals)	RCK intervened on their behalf and they were transported to Kakuma.
	Arraignment: Residing outside a designated area without authorization.	2 adult Ethiopian females & 1 adult Somali female	RCK intervened and they were released to go back to Kakuma.
Mandera (Mandera County)	Arrest & Detainment: Residing outside a designated area	2 minors Somali females	Were released upon intervention from RCK. They were outside a designated area without authorization. RCK intervened and secured a movement pass for the pair who needed to come to Nairobi.
	Arraignment: Unlawful presence/Entering Kenya without a permit	6 adult Somali males	The 6 men were ordered by the court to pay fines between Ksh 100,000 to Ksh 200,000 or serve imprisonment sentences between 1 and 2 years. To be repatriated to Somalia upon completion of the order. RCK verified that the person was not in Kenya to seek asylum.



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Modika (Garissa County)	Arraignment: Unlawful presence	1 adult Somali male	Entered a plea of not guilty. Was given a bond and the case will be heard on 15.03.17. RCK verified that the person was not in Kenya to seek asylum.
Mwingi (Kitui County)	Arraignment: residing outside a designated area without authorization	2 adult Somali males	They were convicted and sent back to Dadaab refugee camp.
Wajir (Wajir County)	Arraignment: Unlawful presence	6 adult Somali males	4 of the PoCs were convicted and fined Ksh 200,000 or 1 year Imprisonment; cases of the 2 others are still ongoing.
	Arraignment: Residing outside a designated area without authorization	1 adult Somali male	PoC was fined Ksh 10,000 or 3 months imprisonment.

Dadaab

Border crossing from Somali into Kenya has decreased by 21 percent. Between December 22nd 2016 and January 22nd 2017, RCK recorded 2,833 Somali and Ethiopian nationals crossing into Kenya. The Ethiopians interviewed were moving primarily because of persecution in their country of origin. The Somalis, on the other hand were moving owing to security concerns. In the period between 22nd January 2017 and February 22nd 2017 there were 2,235 crossings into Kenya made by Ethiopian and Somali nationals. The reasons for movement have not changed from those provided in January.

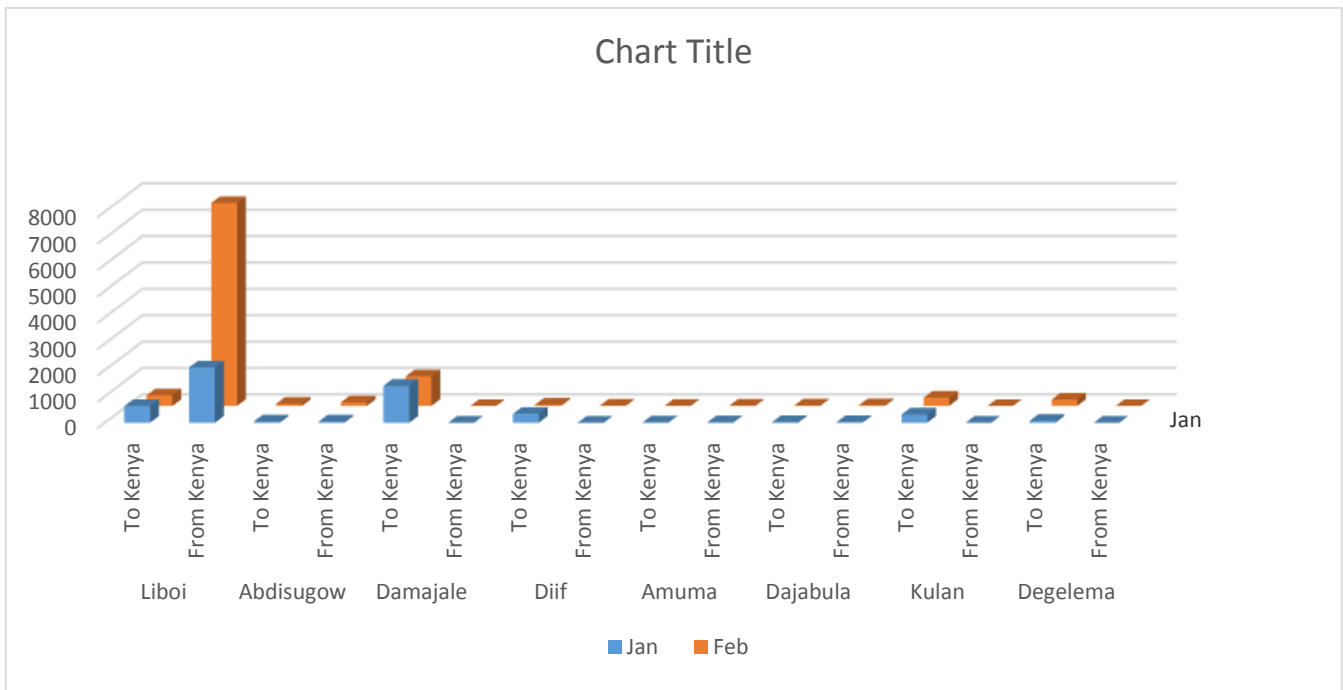


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Movement from Kenya has increased by over 300% between 22nd January, 2017 and 22nd February, 2017. Between 22nd December, 2016 and 22nd January, 2017, RCK recorded 2,185 Somali refugees leaving the camps heading to Somalia. This figure increased to 7,884 as the repatriation efforts by RAS intensified in the reporting period. Graph 1 below shows the figures in last reporting period compared to the current reporting period. It should be noted that there are some Somali refugees spontaneously leaving the camps which would account for the differences between these figures and those provided by UNHCR for Somalis leaving by road.



Graph 1: Cross-border movements between 22nd January and 22nd February, 2017

In the period under review, RCK received 23 cases of new arrivals from Somalia fleeing the drought situation. These Somali nationals arrived in Kenya within the last six months. This figure is expected to rise in view of the crisis in Somalia that has been precipitated by the drought affecting the region.

Garissa



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There were no major incidences in Garissa involving PoCs other than what is indicated in the findings section.

Kakuma

There were no major incidences affecting PoCs that have been reported in Kakuma other than those indicated in the summary findings.

Nairobi

There were no major incidences reported in Nairobi. However there is a rising concern of xenophobic attitudes in Kitengela Kajiado County targeted at PoCs residing in the area. Traders in the area have been lamenting of unfair business practices used by the refugee community. They allege that they are required by the county government to pay for business licenses whereas the refugees are not. This makes the goods sold by the refugees cheaper as they do not have license costs to pass on to the final consumer as compared to the Kenyan traders. The matter may take a political angle considering that some aspiring Members of County Assembly (MCA)¹ have reportedly made campaign pledges to relocate the PoCs from that area.

There is also a further grievance from the community that the refugees are operating without work permits. This has prompted the law enforcement officers in the area, to change the nature of charges once they arrest the PoCs. Whereas they were charging them under the Refugees Act, 2006 for residing outside a designated area, a charge that carries a penalty of **6 months** in prison or **Ksh.20,000** fine; they are considering charging them under s.53 of the Kenya Citizenship and Immigration Act, 2011 for working without a work permit. This offence carries a **Ksh.500,000** or a **36 months** jail sentence in lieu of the fine.

Conclusion

Despite the ruling of the High Court in February, declaring the closure of camp as unconstitutional, the government has yet to make any public statement on the future of the camp. Camp consolidation is

¹ RCK received this information from law enforcement officers and the refugee community living in the area.



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still on going as so is the Somali repatriation exercise. Cases of arrest are still being recorded especially against Ethiopian and Somali nationals accessing the country either for asylum or for economic reasons. A new trend that is unique to this reporting period is a rise in xenophobic attitudes among Kenyans against refugees in Kitengela. This might escalate considering that this is an election period in Kenya and already some MCAs are making campaign promises to remove the PoCs from that area.

For more information kindly contact Ms. Eunice Ndonga-Githinji, Refugee Consortium of Kenya Executive Director on refcon@rckkenya.org