



REFUGEE CONSORTIUM of KENYA

Advocacy and Policy Development Centre

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Refugee Protection Situation Report (No.4/2017)

Period: 1st April – 30th April, 2017

Date: 19th May, 2017

Operational Context

There has not been a change in the operational context in the period under review. The six month extension to the deadline that had been initially set at November, 2016 lapses at the end of May, 2017. So far the major step toward shutting down Dadaab that has been done is the consolidation of Kambioos camp. Dadaab refugee camp hitherto had five constituent refugee camps namely Hagadera, Dagahaley, Ifo 1, Ifo 2 and Kambioos. The latter two were opened to accommodate the influx between 2010 and 2012 at the height of the drought situation in Somalia. Owing to a significantly reduced population in Kambioos, the Refugee Affairs Secretariat (RAS) decided to close this camp and relocate its residence to other camps that are still open.

Registration of new arrivals from Somalia by RAS has been stopped. The RAS Dadaab camp manager confirmed this while making an application for revision of orders issued by a Mwingi Senior Principal Magistrate's Court. The orders by the magistrate were directed at RAS to profile Somali nationals that had been convicted of the offence of unlawful presence. While making the application to revise these orders, the RAS camp manger stated to the court that RAS is no longer registering new arrivals from Somalia. No sufficient reasons for this were provided.

The voluntary repatriation process is still on going. According to the latest figures provided by UNHCR¹, there was a 21 percent increase in the number of Somali refugees that left for Somalia under the process. Figures as at end of 31st March, 2017 indicated that a total of 20,515 refugees had left for

¹ UNHCR Weekly Update: Voluntary repatriation of Somali refugees from Kenya (undated)



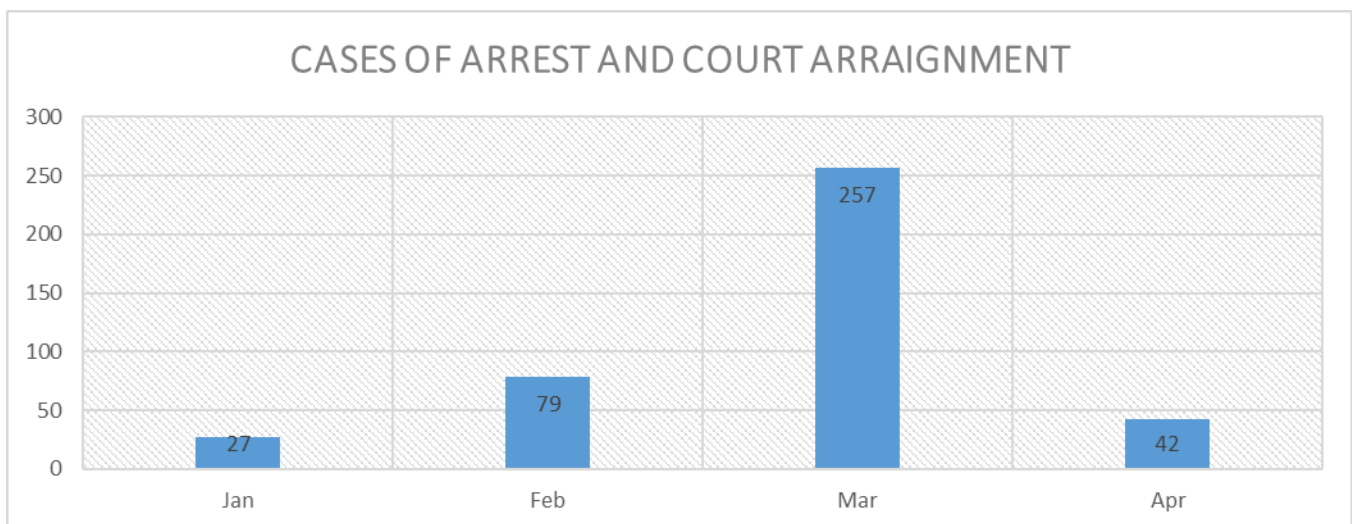
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Somalia in 2017 alone.² The figure stands at 24,871. Some 64,761 Somali refugees have left for Somalia under the voluntary repatriation process since it kicked off in 2014.

Cases of arrest and court arraignment significantly reduced in April as compared to March. March recorded 257 cases of arrests and court arraignment on immigration related charges. In April, the number reduced to 42 which represents an 84 percent reduction. Graph 1 below depicts the distribution of cases of arrest and/or court arraignment in immigration related charges.



Graph 1: Graph depicting cases of arrests and court arraignment since January 2017

Table 1 below shows a breakdown of the cases recorded by RCK between 1st April, 2017 and 30th April, 2017.

Reports of arraignment/arrests/harassment

Place of Incident	Incident	Characteristics of PoCs	Status of Situation
Dadaab (Garissa County)	Arraignment: Unlawful presence	6 (3 Somali adult males & 3 Somali adult	They were all convicted and sentenced to terms ranging from 1 month to 2 years or

² See RCK, Refugee Protection Situation Report No.3 of 2017 (18th April, 2017)



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		females)	pay fines ranging from Ksh.10,000 to Ksh.200,000.
	Arrestment: Residing outside a designated area without authorization.	2 Somali adult males	One case is still ongoing while the other has been convicted and sentenced to 1 month in prison or payment of a Ksh.10,000 fine.
Garissa (Garissa County)	Arrestment: Unlawful presence	10 Somali nationals, 1 Tanzanian national and 1 Ethiopian national (11 adult males, 1 adult female)	The Ethiopian case is still ongoing as the court needed an Amharic translator. The other cases were concluded with 6 (5 men, 1 female) accused convicted and sentenced to jail terms of 6 months or fines of Ksh.30,000 Another 4 men were also convicted and sentenced to 1 year jail terms or payment of fines of between Kshs. 250,000 or 300,000. The Court ordered that all 10 should be repatriated to Somalia



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			on completion of their sentence. The Tanzanian was convicted and sentenced to a jail term of 6 months or fine of Kshs. 10,000. The court further ordered that he be repatriated to Tanzania on completion of his sentence.
	Arraignment: Unlawful presence	2 Somali Girls	The girls were arraigned in court and a probation report was presented to the court. They were remanded at the Garissa Children’s Rescue Centre for one month to allow for family tracing and further assessment.
	Arraignment: Residing outside a designated area without authorization.	2 Somali adult males	The PoC’s were convicted and sentenced to 3 months in prison or pay a fine of Ksh.10,000.
	Deportation	41 Somali nationals	41 Somali nationals were



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			deported to Somali despite the High Court issuing orders to stay the execution of deportation orders until an application by RCK can be heard and determined.
Mwingi (Kitui County)	Arrest: Unlawful presence	6 Somali nationals	Convicted and fined Ksh. 200,000 or face 1 year in prison. The court further ordered that they be taken to Dadaab refugee camp for registration.
Nairobi (Nairobi County)	Arrest: Unlawful presence	2 South Sudanese (adult males)	They were both convicted on their own plea of guilt and sentenced to 3 months in prison or payment of a Ksh.20,000 fine. The court further ordered that they be repatriated to South Sudan after fulfilling the terms of their sentence. RCK has filed an application to revise the sentence as South Sudanese are



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			considered <i>prima facie</i> refugees in Kenya.
Wajir (Wajir County)	Arrest: Unlawful presence	5 Ethiopian nationals and 5 Somali nationals	The Ethiopian Were convicted and sentenced to jail terms of between 3 to 9 months and sent to Dadaab refugee camp for profiling. RCK and UNHCR intervened to have them released and sent to Dadaab for profiling. 3 of the Somali nationals were profiled in Dadaab while 2 had already been registered as asylum seekers.

Table 1: Breakdown of the cases documented between 01.04.17 and 31.04.17

Dadaab

Graph 2 below shows the distribution of Somali nationals that crossed into Kenya from different border points since January, 2017. Whereas not all of these people were seeking asylum in Kenya, a majority of them were asylum seekers. April registered a 0.7 percent increase in the number of cited new arrivals. A total of 9,490 Somali nationals have crossed the border since January 2017. They stated that they were fleeing the drought situation in Somalia as well as general insecurity in their areas of origin. These PoCs arrived from areas in Kismayo, Lower Juba, Salagle and Buale. Kismayo is one of the preferred return areas with 85 percent of the returnees opting to go there in 2017. RCK monitors also

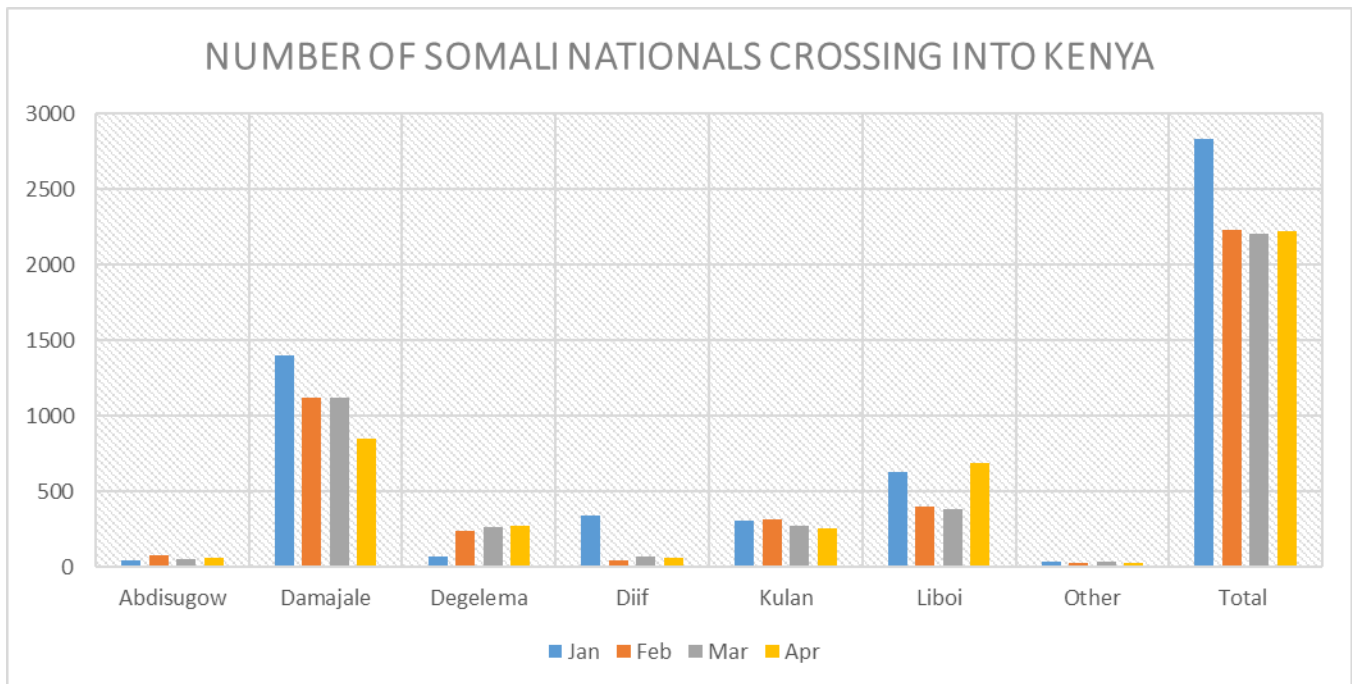


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interviewed some PoCs who were members of the Boon and Mmakabul clan who claimed that they left Somali for fear of political persecution.



Graph 2: Graph depicting the number of Somali nationals crossing into Kenya since January 2017

Garissa

The High Court in Garissa heard an application made by the RAS Dadaab manager requesting the setting aside of the decision issued by the Senior Principal Magistrate (SPM) in Mwingi. The SPM had ordered that the RAS Dadaab manager appear before him to explain why he had not complied with the orders issued by that court. The orders from SPM was to the effect that the manager profile 29 adult Somali nationals with the aim of registering them as asylum seekers in Kenya. The manger successfully challenged at the High Court (a court with higher jurisdiction than the magistrate’s court) this order on the eve of the day he had been summoned to explain his lack of compliance.



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In granting the application of the RAS Dadaab manager, the High Court concluded that there was no written law that states that profiling or registration ought to be done at the camp. Furthermore, the court added, once a foreign national has been convicted of the offence of unlawful presence, they are to be deported either immediately or upon completion of their sentences. The court then proceeded to order that the 29 Somali nationals be removed from Kenyan territory which was effected by the police in May. Two of the 29 Somali nationals were registered asylum seekers in Kenya and it is unclear why the court would order for their deportation. The 29 Somali nationals were accompanied by their children; 10 in number. These too were also deported with their parents into Somalia.

RCK had made an application at the High Court to stay the execution of deportation until the status of these Somali nationals and their children could be ascertained. The court granted this stay but appears that they were not honoured. The matter will be heard on 18th of May, 2017 to get the court's direction on the matter now that the PoCs are no longer in Kenya.

Kakuma

There have been no major incidences in Kakuma.

Mwingi

A magistrate's court in Mwingi ordered that RAS register 6 Somali nationals after it had convicted them of the offence of unlawful entry. This case is eerily similar to that of the 39 discussed in the Garissa situation. These Somali nationals were sentenced to 12 months in prison or pay a fine of Ksh.200,000. It is unclear how RAS would register foreign nationals that the court has declared to be unlawfully present in Kenya. Section 13 of the Refugees Act, 2006 bars any unlawful presence charge brought against an asylum seeker. Where one is not seeking asylum and are in Kenya unlawfully, then the law demands that they be deported to their country of origin. It is likely that RAS will not honour this order from this court and that the 12 will eventually be deported to Somalia.



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Nairobi

The situation of erroneous legal conclusion on asylum related matters was also witnessed in Nairobi. In this instance, a Nairobi court had convicted 2 South Sudanese nationals of the offence of unlawful residence without interrogating whether they were seeking asylum. Legal notice 5274 of 27th June, 2014 recognizes South Sudanese as *prima facie* refugees. This means that once a South Sudanese enters the Kenyan territory seeking asylum they would be granted refugee status without the lengthy individual process, unless there are reasons that such nationals should be excluded from refugee protection. RCK is working with UNHCR and other partners to have the court to revise its orders, including one of deportation, and have these South Sudanese nationals taken to Kakuma refugee camp for registration.

Conclusion

Cases of court decisions that do not respect the right to seek asylum of foreign nationals in Kenya are on the rise. RCK is and will continue to engage stakeholders in the judicial system to address the charging and conviction of asylum seekers for unlawful presence. This is a worrying trend and more resources ought to be committed to ensure that that the right to seek asylum is respected by all.

The lack of registration of new caseload of asylum seekers is also deeply concerning. Since January there have been at least 9,490 new arrivals coming into Kenya. With the drought situation in Somalia not abating, it is anticipated that more of these would be flowing into the country. This matter ought to be highlighted with the relevant officials and a clear way forward provided for the sake of foreign nationals seeking asylum in Kenya.

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