



Refugee Protection Situation Report Volume 2, Issue No.3 of 2018

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Introduction

This report focuses on refugee and asylum seeker protection situation in Kenya. Specifically, it provides information on arrest and arraignment cases at police stations and courts of law respectively in the period indicated above. It also addresses access to territory for refugees and asylum seekers across various border entry points in Kenya. The report is produced by the Refugee Consortium of Kenya (RCK) on a monthly basis with the financial support of the Human Security Division of Federal Department of Foreign Affairs of the Swiss Confederation, SIGRID Rausing Trust, United Nations High Commissioner for Refugees (UNHCR) and the United Nations Voluntary Fund for Victims of Torture (UNVFVT).

Data used for this report was collected by 9 RCK legal officers and 40 protection and border monitors. It was collected on a daily basis and was reinforced by information collected during legal interventions at police stations and courts of law. The geographical areas covered for detention monitoring included Dadaab, Garissa, Kakuma and Nairobi. Border crossing data covered 11 entry points along the Kenyan border. These were Abdisugow, Amuma, Dajabula, Damajale, Degelema, Diif, El-Wak, Kulan, Liboi, Mandera and Wajir border points. The information provided therefore covers the areas RCK has funding to support data collection and thus the information may not include variables where RCK has no presence.

In the period under review there was a 61 percent increase in the number of cases handled by RCK staff as compared to the previous month. Ninety-two percent of the cases related to the offence of unlawful presence contrary to section 53(1) (j) of the Citizenship and Immigration Act, 2011. Eight percent of the

cases related to the offence of residing outside a designated area contrary to section 25(f) of the Refugees Act, 2006. For the cases that ended up in convictions, the accused persons were fined between Ksh.20,000 and Ksh.250,000 or condemned to face an imprisonment term that ranged from 3 months to 18 months. The penalties meted out by the courts were higher in February than in January. The upper limit of the fines in January was Ksh.100, 000 as compared to Ksh.250,000 in February. The upper limit of jail term in January was 12 months as compared to 18 months in February.

Arrests and Arraignment Cases

A total of 74 asylum and immigration cases were recorded in the period under review. This is a 61 percent increase from the number of cases reported in January, 2018. The total number of cases since January stands at 120 cases. A total of 92 percent of the cases related to the offence of unlawful presence contrary to section 53(1) (j) of the Citizenship and Immigration Act, 2011. The remainder of the cases related to the offence of residing outside a designated area contrary to section 25(f) of the Refugees Act, 2006. Seventy percent of the cases involved men while 13 percent of the cases involved women. Minors accounted for 13 percent of the cases since January, 2018. Table 1 below provides a breakdown of the types of cases that RCK staff intervened in the month of February, 2018.

Summary of reports of arrests and arraignments

Place of Incident	Incident	Characteristics of PoCs	Status of Situation
Bumula	Arraignment: Unlawful presence.	1 Burundi adult male	The accused was convicted and fined Ksh.100,000 or face 12 months in prison. RCK officers are pursuing a review at the High Court as the accused fit the definition of a refugee.
Garissa	Arraignment: Residing outside a designated area	4 Somali nationals (2 adult males, 1	2 accused female PoCs persons were discharged while 2 others were fined

	without authorization.	adult female, 1 (minor female)	Ksh.20,000 or face 3 to 6 months in prison in the alternative.
	Arrestment: Unlawful presence.	6 Somali nationals (4 adult males, 1 adult female and 1 minor females)	1 adult male and 1 adult female were discharged after RCK facilitated the delivery of their refugee documents to the court. Cases against the others is still ongoing.
Kisumu	Arrestment: Unlawful presence.	1 Somali adult male	The accused was charged with the offence but later released after RCK legal officers intervened. He was released to go to Kakuma.
Mandera	Arrestment: Unlawful presence.	8 Somali adult males	All the accused persons were convicted and fined Ksh.40,000 or face 3 months in prison in the alternative. A further order of deportation was issued after they satisfy the penalty outlined by the court. The eight did not intend to seek asylum in Kenya.
Mwingi	Arrestment: Unlawful presence.	10 Somali nationals (3 adult males and 7 adult females)	All the accused were convicted and fined Ksh.250,000 or face 12 months in prison in the alternative. A further order of deportation was issued after they satisfy the penalty outlined by the court.
Nairobi	Arrestment: Unlawful presence.	38 Ethiopian adult males	The accused pleaded guilty to the offence but stated that they were seeking asylum. An RCK legal officer intervened on their behalf and the court issued an order for RAS to conduct RSD. However, RAS informed the court through a letter that it

			could not conduct RSD as they were not 'registered anywhere in Kenya.' Deportation orders were issued to all but one. The one that was not deported was sent back to RAS for further action. This individual claimed that he would face political persecution should be deported back to Ethiopia.
Nambale	Arraignment: Unlawful presence.	1 Somali adult male	The PoC was convicted and fined Ksh.50,000 or face 12 months in prison. The PoC paid the fine and was escorted to Kakuma refugee camp.
Wajir	Arraignment: Residing outside a designated area without authorization.	2 Somali adult males	All the accused were convicted and fined Ksh.50,000 or face 6 months in prison in the alternative. A further order of relocation to Dadaab camp was issued after they satisfy the penalty outlined by the court.
	Arraignment: Unlawful presence.	3 Somali adult males	All the accused were convicted and fined Ksh.41,000 or face 6 months in prison in the alternative. A further order of deportation was issued after they satisfy the penalty outlined by the court.

Table 1: Breakdown of arrest and arraignment cases

Access to Territory

Busia

There was no movement of asylum seekers at Busia border point. However, immigration officers are still adamant that PoCs from a third country that is signatory to any refugee legal regime should be denied

entry into the country which is a major challenge to access to territory. Another major challenge is a result of transfers being occasioned in different stations. The new officers being posted do not have the relevant training on refugee protection. Therefore, they do not understand asylum related issues which could negatively impact on access to territory in the area. This is a major gap and constant capacity building of new officers is required.

Dadaab

In the period under review, the number of foreign nationals entering Kenya from Ethiopia and Somalia was 2,234. This represents a naught point 5 percent increase compared to the figure of 2,222 recorded in January, 2018. The total figure for border entry observations since January, 2018 is 4456. Figure 1 below shows the distribution of border entry observations since January, 2018.

NUMBER OF BORDER ENTRIES PER LOCATION



Figure 1: Number of border entries since January, 2018

Damajale, the second time in the year, recorded the most entries among the areas that RCK was monitoring in the period under review. Border entries observed at this point accounted for 48 percent of all the border entries recorded. This was followed by Liboi (23%), Kulan (14%) and Degelema (10%). These four locations are near the Dadaab Refugee Camp complex which could explain the high levels of traffic. The other locations include Abdisugow, Amuma, Diif, El-Wak, Mandera and Wajir which accounted for eight percent of the entries.

The individuals observed crossing into Kenya were Ethiopian and Somali nationals. The Ethiopians interviewed for this report were from Warder, Fiq, Salahad & Danot areas in Ethiopia. They were mainly from Makahil, Reer-Isaack and Abdalla clans and fled Ethiopia due to difference in political opinion with the government. The Somalis interviewed for this report hailed from lower and middle Juba, Kismayu, Salagle and Buale in Somalia. They cited their reasons for flight as insecurity arising from militia groups controlling the stated areas of origin. The militia groups impose taxes on the residents, thereby increasing their tax burden because they also had to pay government taxes as well.

Malaba

Eleven South Sudanese nationals arrived at the border point. There were 6 men and 5 women. They had difficulties accessing services as the immigration officials and security personnel were reluctant to admit them. This is because of the silent immigration policy of not allowing asylum seekers from third countries entry. After consultations between the immigration officials and the security personnel they were later escorted from Malaba to head to Kakuma refugee camp.

Conclusion

There was an increase in asylum related cases in the month of February as compared to January, 2018. An increase of these cases by 28 cases was noted. The majority of these cases involved the charge of unlawful presence in Kenya contrary to section 53(1) (j) of the Citizenship and Immigration Act, 2011. These cases attracted higher penalties as compared to those reported in January.

Asylum seekers could also generally access Kenyan territory. However the challenge of the third country policy being enforced by the Directorate of Immigration Services still persists. There is also the challenge of personnel transfers leading to loss in asylum procedure expertise at the border points. Although these challenges did not deny asylum seekers access to Kenyan territory in the period under review, they still have the capacity to hinder the same.

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