



## **Refugee Protection Situation Report Volume 2, Issue No.5 of 2018**

**Period: 1<sup>st</sup> April – 30<sup>th</sup> April**

**Date: 14<sup>th</sup> May, 2018**

### **Introduction**

This report focuses on refugees and asylum seekers' protection situation in Kenya. Specifically, it provides information on arrest and arraignment of 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).

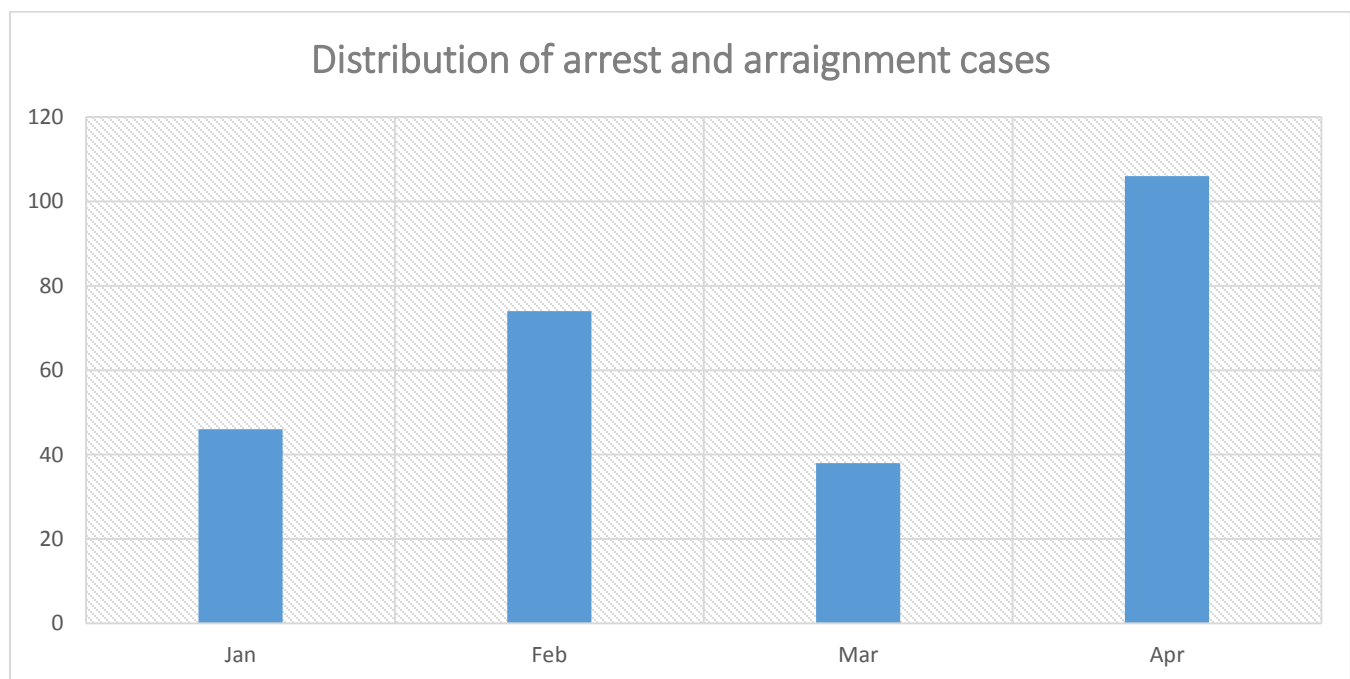
Data used for this report was collected by 9 RCK legal officers and 40 protection and border monitors. It was collected on a daily basis and was reinforced by information collected during legal interventions at police stations and courts of law. The geographical areas covered for detention monitoring included Dadaab, Garissa, Kakuma and Nairobi. Cross border movement data covered 14 entry points along the Kenyan border. These were Abdisugow, Amuma, Busia, Dajabula, Damajale, Degelema, Diif, El-Wak, Kitale, Kulan, Liboi, Malaba, Mandera and Wajir border points.

In the period under review, there was a 184 percent increase– from 38 cases in March to 108 cases in April – in the number of cases handled by RCK staff and monitors. Fifty-seven percent of the cases related to the offence of unlawful presence contrary to section 53(1) (j) of the Citizenship and Immigration Act, 2011. Forty-three 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 proceeded to court and ended up in convictions, the accused persons were fined between Ksh.20,000 and Ksh.100,000 or in default to serve imprisonment term ranging from 3 months to 12 months. The penalties meted out by the courts were higher in April than in March. The upper limit of the fines in April was Ksh.100,000 as compared to Ksh.50,000 in March. The upper limit of jail term in April was 12 months as compared to 6 months in March.

### Arrests and Arraignment Cases

A total of 108 asylum and immigration cases were recorded in the period under review. This is a 184 percent increase from the number of cases reported in March, 2018. The total number of cases recorded since January stands at 267 cases. Since January, 78 percent of these 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 (22%) related to the offence of residing outside a designated area contrary to section 25(f) of the Refugees Act, 2006. Sixty-seven percent of the cases involved men while 19 percent of the cases involved women. Minors accounted for 14 percent of the cases since January, 2018 with a ratio of 9 to 5 in favour of the boys. Table 1 below provides a breakdown of the types of cases that RCK staff intervened in the month of April, 2018.



**Summary of reports of arrests and arraignments**

Place of Incident	Incident	Characteristics of PoCs	Status of Situation
Busia	Arrest: Unlawful presence	1 South Sudanese adult male	The PoC was released to go to Kakuma for registration after RCK intervened in court.
	Arrest: Unlawful presence	3 Somali adult males	The PoCs were released after an RCK protection monitor intervened. The three were registered asylum seekers and therefore legally in the country.
Garissa	Arrest: Residing outside a designated area without authorization.	3 Somali nationals (1 adult males and 2 adult females)	Two of the cases concluded with convictions. The PoCs were fined Ksh.20,000 or serve a three month prison sentence.
	Arrest: Unlawful presence.	41 Somali nationals (20 adult males, 7 minor males, 9 adult females and 5 minor females)	Cases against seven of the 12 minors concluded. A deportation order was issued against the minors after the court concluded that they were not seeking asylum. Cases against five others is still ongoing. Cases against 22 of the 29 adult defendants ended in convictions. Those convicted were fined Ksh.100,000 or serve a 12 month prison sentence. One of the adult accused person was discharged. Deportation orders were issued against each the 23. Cases against three of the 29 adult defendants were withdrawn after RCK officers presented

			evidence of registration for the accused persons; two of the three were ordered to go to Dadaab Refugee Camp for registration as they were asylum seekers. Cases against three adult defendants of the 29 are still ongoing.
Kitale	Arrest: Residing outside a designated area without authorization.	38 (22 Burundi nationals and 16 Congolese) (18 adult males and 28 adult females)	The PoCs were travelling to Nairobi to visit with relatives. They did not have movement passes. RCK intervened to have them facilitated back to Kakuma.
Mandera	Arrest: Unlawful presence.	6 Somali nationals (3 adult males & 3 adult females)	Cases against all the six accused persons were concluded. There were each fined Ksh.40,000 or spend three months in prison.
Mwingi	Arrest: Residing outside a designated area without authorization.	3 Somali adult males	The trio were arrested on their way to Nairobi. They were released after RCK intervention. They all had a valid movement pass.
Nairobi	Arrest: Unlawful presence.	6 Ethiopian adult males	One of the six Ethiopians was released as he was a registered refugee in Kenya. The cases against the other five is still on going as they pleaded not guilty. They also indicated that they were not seeking asylum in Kenya.

	Arraignment: Residing outside a designated area without authorization.	1 Congolese adult male and 1 Somali adult male	The two PoCs were convicted of the offence and were fined Ksh.20,000 or serve three months in prison.
Wajir	Arraignment: Unlawful presence.	5 Somali adult males	Cases against all of the five defendants were concluded: two were convicted and fined Ksh.50,000 or spend six months in prison and thereafter deported to Somalia; two were discharged after it emerged they were Kenyans and one was discharged after RCK facilitated the production of his registration papers as a refugee in Kenya.

*Table 1: Breakdown of arrest and arraignment cases*

## Access to Territory

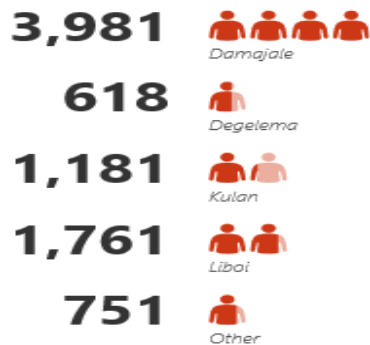
### *Busia*

There were no reported cases of asylum seekers trying to access the border point in the period under review.

### *Dadaab*

In the period under review, the number of foreign nationals entering Kenya from Ethiopia and Somalia was 1,755. This represents a 15 percent decrease compared to the figure of 2,081 recorded in March, 2018. This decrease was occasioned by mobility challenges as a result of heavy rainfall. Seventy six percent of the 1,755 individuals were adults (27% men & 49% women) while 24 percent were minors (10% boys & 14% girls). The total figure for border entry observations since January, 2018 stands at 8,292. Figure 1 below shows the distribution of border entry observations since January, 2018.

## NUMBERS OF BORDER ENTRIES PER LOCATION



**Figure 1: Number of border entries since January, 2018**

Damajale 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 (21%), Kulan (14%) and Degelema (7%). These four locations are near the Dadaab Refugee Camp complex which could explain the high levels of border entry observations. The other locations include Abdisugow, Amuma, Diif, El-Wak, Mandera and Wajir which accounted for nine percent of the entries.

The individuals observed crossing into Kenya were Ethiopian and Somali nationals. The Ethiopians interviewed for this report were from Ogaden region of Ethiopia. They were mainly from Makahil, Reer-Isaack, Bahgeni and Malingun clans and fled Ethiopia due to difference in political opinion with the government. The Somali nationals interviewed for this report hailed from lower and middle Juba, Kismayu, Salagle, Buale, Hosingo, Baqdad and Kanjaron in Somalia. They cited their reasons for flight as insecurity arising from militia groups controlling the stated areas of origin.

### *Malaba*

Five Congolese women seeking asylum, were observed having crossed into Kenya without any difficulty. They were advised to register with the Refugee Affairs Secretariat (RAS) in Kakuma refugee camp.

## Conclusion

Access to territory is reasonably available for refugees and asylum seekers. This is demonstrated by the number of asylum seekers that were able to enter into Kenyan territory from neighbouring countries. It is also evident from the decision of the courts to allow asylum seekers to go and register at the camps instead of issuing deportation orders.

Be that as it may, cases of arrest or court arraignment have increased by a factor of 2.8. The fines meted out in the court cases also increased from Ksh.50,000 as recorded in March to Ksh.100,000. These fines were the upper limit of the fines issued by the courts in the cases that were prosecuted. However, in all the cases the rights of asylum seekers to seek asylum was protected.

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