



## **Refugee Protection Situation Report Volume 2, Issue No.11 of 2018**

**Period: 1<sup>st</sup> October – 31<sup>st</sup> October**

**Date: 15<sup>th</sup> November, 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 the 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).

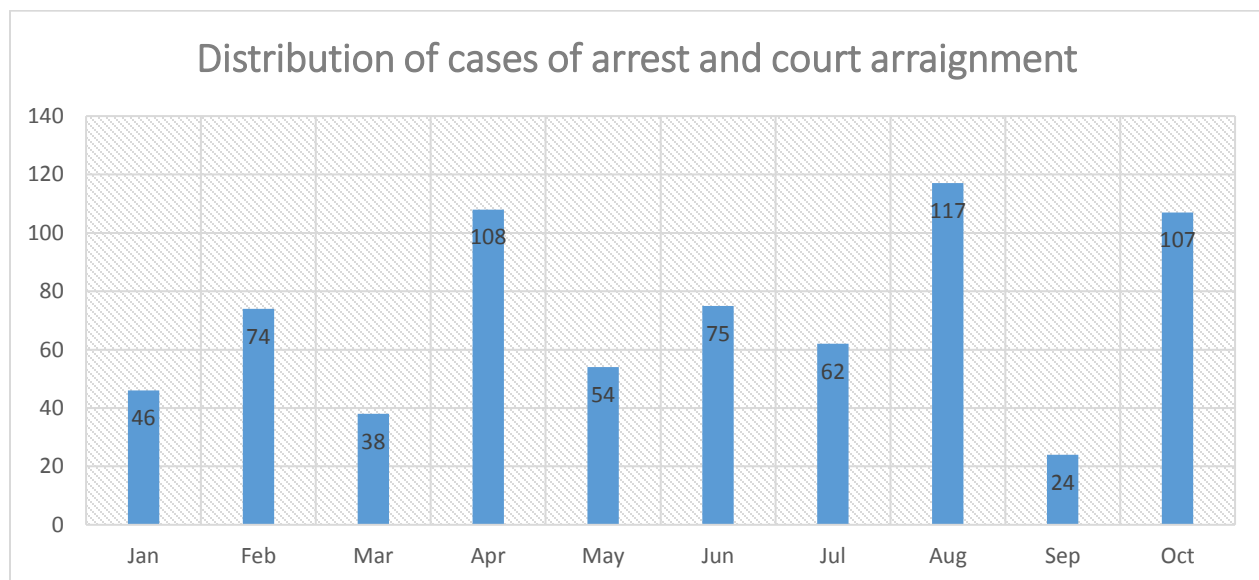
Data used for this report was collected by RCK legal officers and RCK protection and border monitors. This was on a daily basis and was reinforced by information collected during legal aid clinics, and interventions at police stations and courts of law. The geographical areas covered for detention monitoring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

### **Arrests and Arraignment Cases**

One hundred and seven cases of asylum and immigration nature were recorded in the period under review. This amounts to threefold increase from the 24 cases reported in August, 2018. The total number of cases recorded since January stands at 705, 76 percent of which related to the offence of unlawful presence

contrary to section 53(1) (j) of the Kenya Citizenship and Immigration Act, 2011. The remainder of the cases (24%) related to the offence of residing outside a designated area contrary to section 25(f) of the Refugees Act, 2006. Sixty-six percent of the 705 cases involved men while 19 percent involved women. Minors accounted for 15 percent (10% boys and 5% girls) of the cases since January 2018.

Fines and jail terms recorded in October were significantly higher than those recorded in September. The highest fines recorded in October was Kes.200,000 as compared to Kes.50,000 in September. The longest sentence imposed by the court in October was 12 months as compared to a month in September. Graph 1 below shows the distribution of cases handled by RCK since January 2018 while table 1 below provides a breakdown of the types of cases that RCK staff intervened in the month of October, 2018.



**Graph 1: Distribution of cases of arrests and arraignment in courts recorded by RCK since January, 2018.**

**Summary of reports of arrests and arraignments**

<b>Place of Incident</b>	<b>Incident</b>	<b>Characteristics of PoCs</b>	<b>Status of Situation</b>
Garissa	Arraignment: Residing outside a designated area without authorization	9 Somali nationals (6 adult males and 3 adult females)	Five of the accused persons were convicted. They were fined fines ranging from Kes.10,000 and Kes.20,000 or serve three months in prison. The court also ordered that they be escorted back to Kakuma Refugee Camp. The remainder of the accused were discharged with orders that they be returned to Dadaab Refugee Camp.
	Arraignment: Unlawful presence	21 Somali nationals (11 adult males, 4 adult females, 2 minor males and 4 minor females)	Five of the accused were convicted. They were fined fines ranging from Kes.20,000 to Kes.200,000 or serve prison sentence between three and 12 months. Cases against 13 others were withdrawn and deportation order issued. The remaining three accused are still waiting for their cases to be determined.
Kakuma	Arraignment: Residing outside a designated area without authorization	3 South Sudanese nationals (2 adult males and 1 adult female)	Two out of the three accused persons pleaded guilty. They were convicted and ordered to perform one day community service by the court after mitigation by RCK advocates. The third accused person pleaded not guilty and the case is still ongoing in court.

Malaba	Arrest: Unclear charge (most likely unlawful presence)	2 Burundi adult males	The two were arrested and detained at the Malaba police station. RCK monitor intervened on their behalf and was informed by the OCS that they had to undergo security vetting. The security vetting committee comprised of the NIS, OCS and Immigration department. After the vetting process, and the asylum seekers having expressed themselves accordingly, the two were still denied access to territory by the Immigration department.
Mandera	Arraignment: Unlawful presence	50 Ethiopian nationals and 1 Somali national (45 adult males, 2 adult females and 4 minor males)	Thirty-four of the accused persons entered a plea of guilty. They were convicted and fined Kes.10,000 of serve a prison sentence of between 1 and 2 months. 12 of the accused persons were held as the Office of the Director of Public Prosecutions suspected that they were victims of trafficking in persons. Cases against the remaining five, including the four minors were dismissed and the court ordered that they be handed to Ethiopian authorities.
Mwingi	Arraignment: Unlawful presence	13 Somali nationals (6 male adults, 6 female adults and 1 minor male)	The accused persons entered a plea of not guilty. Their case is ongoing.

Wajir	Arraignment: Unlawful presence	10 Ethiopian nationals (7 adult males and 3 adult females)	All the accused persons entered a plea of guilty and were convicted. The court ordered their deportation.
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*Table 1: Breakdown of arrest and arraignment cases*

## Access to Territory

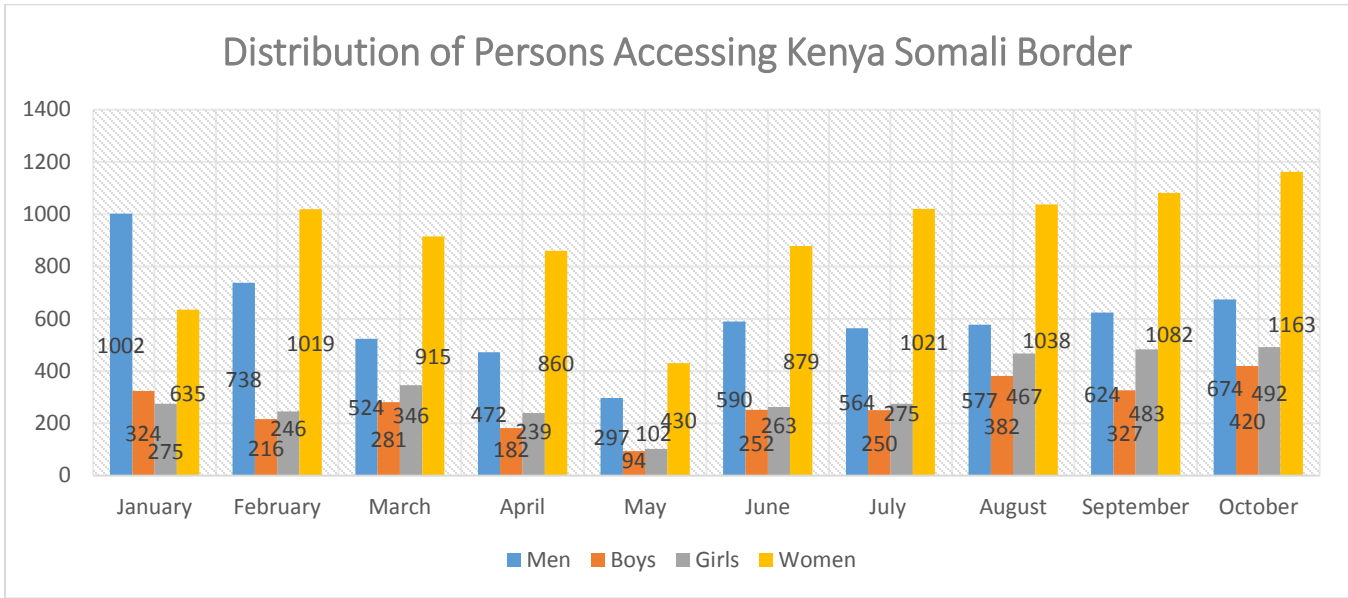
### *Busia*

There were no arrests in the month of October at this border point. However, the monitor noted that asylum seekers from a safe third country of origin like Burundians and Congolese who passed through Uganda were still being denied access to territory. There were however five adult males from Burundi and the Democratic Republic of Congo that were able to reach the Kenya Red Cross Society for facilitation to Kakuma.

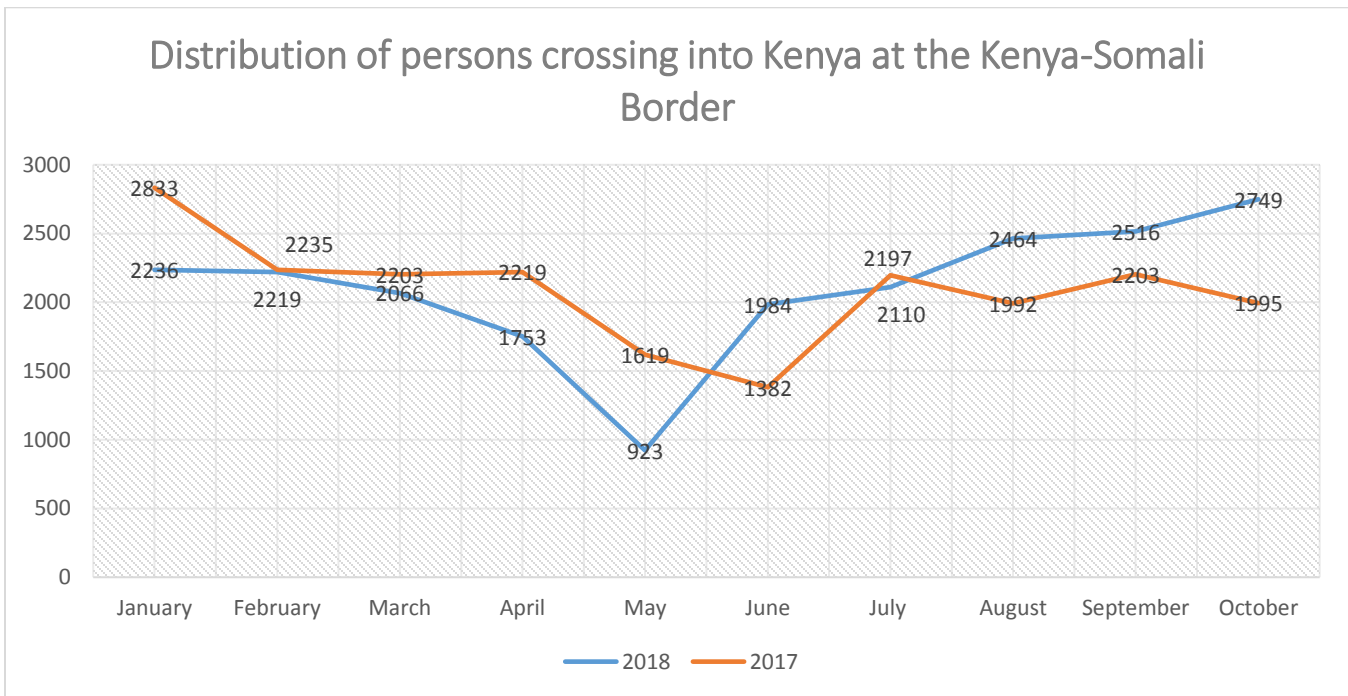
### *Dadaab*

The number of foreign nationals entering Kenya from Somalia increased by 9.26 percent from the last period reported. In October, 2,749 foreign nationals were recorded entering Kenya from Somali. All of the entries made were Somali nationals. This was an increase of 233 people from 2,516 recorded in the month of September. Sixty-seven percent of the 2,749 individuals were adults (25% men & 42% women) while 33 percent were minors (15% boys & 18% girls). Graph 2 below shows the distribution of the persons entering Kenya from Somalia disaggregated broadly by age and gender.

There is a general increase in the number of border entry observations in the first 10 months of 2018 as compared to a similar period in 2017. The total figure for border entry observations since January, 2018 stands at 21,020. There were 20,878 observations made between January and October of 2017. When compared to the figure in 2018, this translates to an increase of 0.68 percent. Graph 3 below shows the distribution of entry per month since January, 2018 as compared to a similar period in 2017.



**Graph 2: Distribution of border entry observations disaggregated by age and gender**



**Graph 3: Comparison distribution of entry observations between 2017 and 2018**

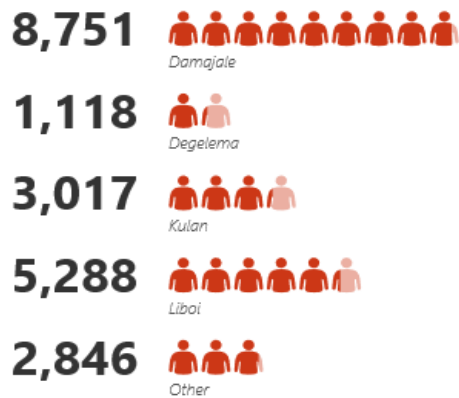
Damajale continues to dominate the frequency of entry observations made as compared to other points monitored along the Kenya-Somali border since January, 2018. Forty-two percent of entry observations

made were located at Damajale border point. Figure 1 below shows the distribution of border entry observations since January, 2018.

It should be noted that those accessing Kenyan territory are not necessarily newly arrived asylum seekers. This is because it may include refugees and asylum seekers that left Dadaab for Somalia for whatever reason and are returning to Kenya. Officers from RCK were not able to ascertain which of the foreign nationals were asylum seekers as some of those gaining access to Kenyan territory did not want to be interviewed. However there were those that provided some information about the reason for entering the country. They cited their reasons for flight as insecurity arising from militia groups controlling the stated areas of origin and political differences between them and the ruling class therein.

This data supports the conclusion that these foreign nationals did not have physical or legal barriers to enter the country at these border points. The asylum seekers that agreed to be interviewed by RCK officers did not state that they were blocked to enter the country. Moreover, the increase in the number border crossing, though not sufficient evidence in itself, provides anecdotal evidence of freedom of movement at the border.

## NUMBERS OF BORDER ENTRIES PER LOCATION



**Figure 1: Distribution of border entry observations made since January, 2018**

### *Kitale*

During the reporting period, the RCK monitor at Kitale assisted 80 adult male and 60 adult female asylum seekers get access to Kakuma Refugee Camp. The asylum seekers included nationalities from Burundi, Democratic Republic of Congo and South Sudan.

### **Conclusion**

The refugee situation in Kenya is fair. A majority of asylum seekers are able to access Kenyan territory. However those accessing Kenya through Busia and Malaba border points experienced restrictions that were yet to be justified by the time RCK drafted this report. Those PoCs that were arraigned in court had access to legal assistance and therefore were well informed of their rights. Officer from RCK continue to monitor the situation on the ground and provide timely legal intervention for refugees and asylum seekers.

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