



Refugee Protection Situation Report Volume 2, Issue No.9 of 2018

Period: 1st August – 31st August

Date: 17th September, 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).

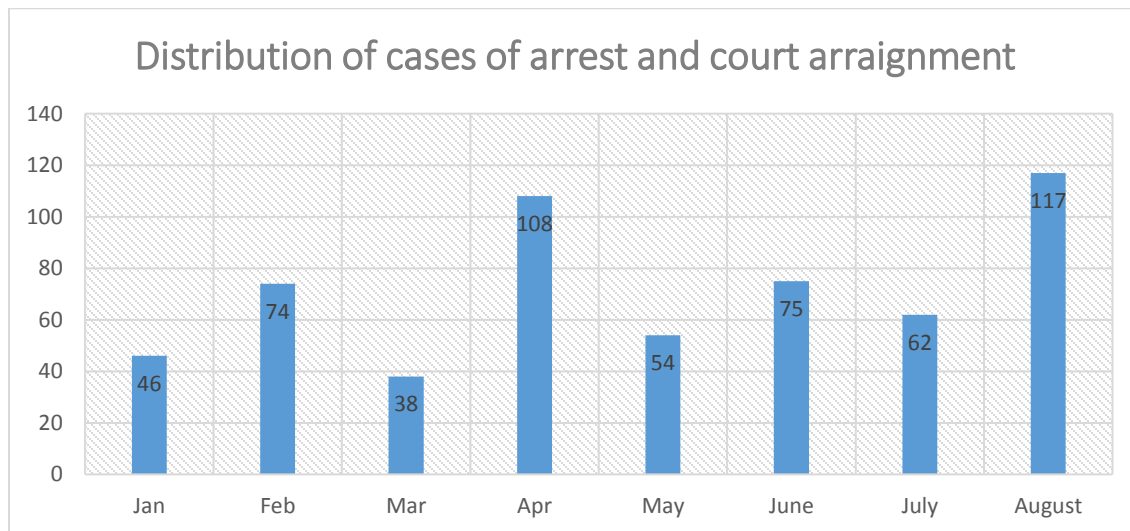
Data used for this report was collected by RCK legal officers and RCK protection and border monitors. This was on a daily basis and was reinforced by information collected during legal aid clinics, and interventions at police stations and courts of law. The geographical areas covered for detention monitoring included Dadaab, Garissa, Kakuma and some parts of Nairobi. Cross border movement data covered 12 entry points along the Kenyan border. These were Abdisugow, Amuma, Busia, Dajabula, Damajale, Degelema, Diif, El-Wak, Kitale, Kulan, Liboi and Malaba border points.

In the period under review, there was an increase of arrests and arraignment cases. The figure increased from 62 cases in July to 117 cases in August. About three quarters (73%) of the 117 cases were related to the offence of unlawful presence contrary to section 53(1) (j) of the Kenya Citizenship and Immigration Act, 2011. The other twenty-seven percent of the cases were related to the offence of residing outside a

designated area contrary to section 25(f) of the Refugees Act, 2006. Fines and jail terms recorded in August were the same as those recorded in July. The highest fines recorded in July was Ksh.200,000 which was the same in August. The longest sentence imposed by the court in July was 12 months imprisonment which was the same in August.

Arrests and Arraignment Cases

A hundred and seventeen asylum and immigration cases were recorded in the period under review. This amounts to 89 percent increase from the number of cases reported in July, 2018. The total number of cases recorded since January stands at 574, 73 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 (27%) related to the offence of residing outside a designated area contrary to section 25(f) of the Refugees Act, 2006. Sixty-five percent of the 574 cases involved men while 20 percent involved women. Minors accounted for 14 percent (10% boys and 5% girls) of the cases since January 2018. Graph 1 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 August, 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

Place of Incident	Incident	Characteristics of PoCs	Status of Situation
Busia	Arrest: Unlawful presence	6 Congolese nationals (1 adult male, 1 adult female, 1 minor male and 3 minor females)	They were all released to head to Kakuma after intervention from an officer from RCK.
Garissa	Arraignment: Residing outside a designated area without authorization	5 Somali nationals (3 adult males, 1 minor female and 1 minor male)	Four out of the five accused persons were discharged by the court. The court further ordered that they be transported back to Hagadera and Kakuma camps. The case against the remaining accused person is still on going.
	Arraignment: Unlawful presence	14 Somali Nationals (3 adult males, 2 adult females 2 minor females and 7 minor males)	All cases for the accused persons were concluded except three which are ongoing. Ten of the remainder of the cases ended in discharge and deportation orders issued. The deportation orders were issued after RCK assisted the court to verify that the accused persons were not seeking asylum. One accused person was convicted and ordered to pay a fine of Ksh.200,000 or serve a jail term of 12 months. The court ordered deportation after either paying the fine or serving the jail sentence.

Kakuma	Arraignment: Residing outside a designated area without authorization	16 individuals: 9 South Sudanese and 7 Somali (10 adult males, 5 adult female and 1 minor male)	All the accused persons were unconditionally discharged after RCK's intervention.
Kitale	Arraignment: Residing outside a designated area without authorization	3 Congolese male adults	The accused persons were released with a warning not to repeat the offence again.
Malaba	Arrest: Residing outside a designated area without authorization	8 Burundi nationals (4 adult males, 1 adult female and 3 minor females)	They were all released to head to Kakuma after intervention from an officer from RCK.
Mandera	Arraignment: Unlawful presence	8 Somali nationals (7 adult males and 1 adult female)	All the accused persons were convicted after they pleaded guilty. They received sentences ranging from 3 months to a year or payment of a fine in the alternative. The fines ranged from Ksh.40,000 to Ksh.100,000. The court further ordered that they be deported after paying the fine or serving the sentence.
Mwingi	Arraignment: Residing outside a designated area without authorization	4 Somali nationals (2 adult males and 2 adult females)	The accused persons were released after they produced valid travel documents to the court.

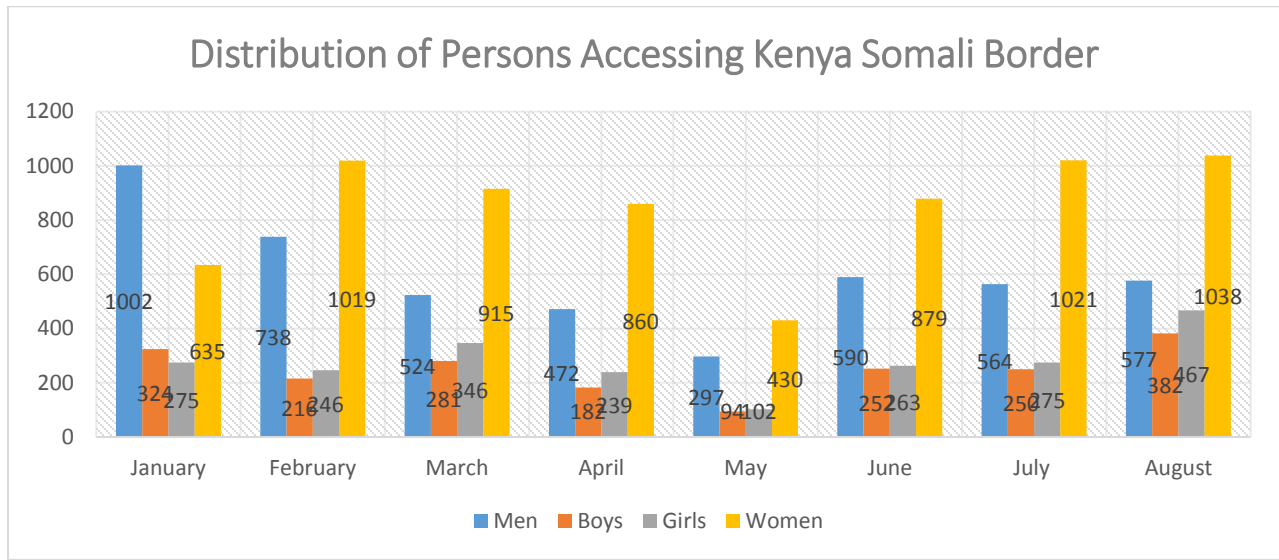
Wajir	Arrestment: Unlawful presence	53 foreign nationals (43 Ethiopian adult males, 1 Somali adult female, 1 Somali minor male and 8 Somali minor females)	Cases against all the accused persons ended in conviction with the court imposing a fine of between Ksh.50,000 and Ksh.51,000 or a jail term of 12 months. The court also ordered for their deportation after paying the fine or serving the sentence.
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Table 1: Breakdown of arrest and arraignment cases

Access to Territory

Dadaab

In the period under review, the number of foreign nationals entering Kenya from Somalia was 2464. This represents a 17 percent increase compared to the figure recorded in July, 2018. Sixty-five percent of the 2464 individuals were adults (23% men & 42% women) while 35 percent were minors (16% boys & 19% girls). There was a significant increase (62%) of children on the move in August as compared to July. However, women contributed the lion's share of foreign nationals crossing into Kenya in this area. The total figure for border entry observations since January, 2018 stands at 15,755. Graph 2 below shows the distribution of the persons entering Kenya from Somalia disaggregated broadly by age and gender while figure1 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 and includes refugees that left Dadaab for Somalia for whatever reason. 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.



Graph 2: Distribution of persons entering Kenya from Somalia by age and gender.

NUMBERS OF BORDER ENTRIES PER LOCATION

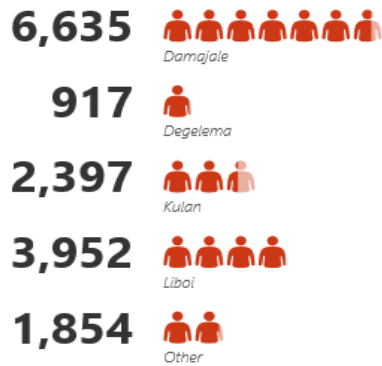


Figure 1: Number of border entries since January, 2018

The individuals observed crossing into Kenya were Ethiopian and Somali nationals. 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.

Kitale

There were 101 asylum seekers that accessed Kenyan territory through this location. They were made of Burundi, Congolese, Rwandan and Ugandan nationals. Fifty-five of them were adult males while 46 of them were adult females. They were facilitated to move to Kakuma to register for asylum.

Nairobi

Arrests of asylum seekers were recorded in Nairobi. However, RCK could not ascertain the numbers or nationalities of those arrested. This push for arrest of foreign nationals is linked to an order by the Interior and Coordination of National Government Cabinet Secretary to intensify [crackdown](#) on irregular migrants. RCK and its partners are working to ensure that all asylum seekers and refugees access legal representation and that the principle of non-penalization and non-refoulement are respected.

Conclusion

This report evaluated access to justice and territory for refugees and asylum seekers in Kenya. Despite the significant increase in arrests and court arraignments, the sentences that were ordered were in line with the law. The defendants were allowed to seek legal counsel from RCK officers on site. This increase in arrests can be linked to the order by the Interior and Coordination of National Government Cabinet Secretary to arrest foreign nationals illegally working in Kenya. Moreover, there is evidence that asylum seekers did not meet any physical or legal barriers in accessing Kenyan territory in the areas that RCK officers monitored in the month of August.

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