

DIGNITY DENIED:

Somali Refugees Expelled from Kenya in 2014

EXECUTIVE SUMMARY

**SHADOW REPORT ON VIOLATIONS UNDER THE AFRICAN CHARTER
ON HUMAN AND PEOPLES' RIGHTS AGAINST SOMALI REFUGEES AND
ASYLUM SEEKERS IN THE REPUBLIC OF KENYA
DURING "OPERATION USALAMA WATCH"**

Submitted in response to The Combined 8th Periodic Report
(2008-2014) of the Government of Kenya
presented at The 57th Ordinary Session of the Commission
(4-18 November 2015)

4 September 2015

prepared by

**International Commission of Jurists, Kenya Chapter (ICJ-Kenya) and
Justice Forum**

Reporting Organisations



Justice Forum is a UK based not-for-profit with a focus on investigating human rights violations committed by powerful governments and corporations around the world.



The Kenyan Section of the International Commission of Jurists (ICJ Kenya) is a nongovernmental, nonpartisan, not for profit making, membership organisation registered in Kenya. Its mission is to protect human rights, and promote the rule of law and democracy in Kenya and across Africa through the application of legal expertise and international best practices.

Executive Summary

This shadow report documents violations occurring during the refoulement of Somali refugees and asylum seekers from Kenya to Somalia, occurring between March and May 2014 in the context of an internal security operation called “Operation Usalama Watch.” The Operation was carried out around Eastleigh Estate and other predominantly Somali areas of Nairobi. During this operation, thousands of Somali refugees and asylum seekers were apprehended and detained in the Kasarani Sports Stadium Complex in Nairobi. Detainees were subsequently either released without charge, charged with unlawful presence, made to relocate to refugee camps, deported, or released after payment and on the condition that they would return to Somalia as soon as possible. Over five thousand such individuals were subsequently forcibly relocated to refugee camps in northern Kenya and at least 359 others were formally expelled back to Somalia, with an unknown number of individuals informally expelled.²

Conditions of confinement and ill-treatment experienced by the Somali refugees whilst still in Kenya has been well documented by international human rights organisations and other bodies including the Independent Police Oversight Authority (IPOA), who sent a team of monitors and investigators to various police stations including the Kasarani Sport Complex and Jomo Kenyatta International Airport detention centers. The IPOA indicated that the police operations may “engender a feeling of ethnic profiling,”³ and reported violations of human rights including: discriminatory policing practices with Somali refugees being overrepresented amongst those who were detained and expelled during the operation; unconstitutional detention conditions with detainees being placed in overcrowded, unsanitary conditions and being denied basic rights; and that children were routinely being held with adults.⁴

Building on research already conducted relating to events in Kenya during Operation Usalama Watch, this Shadow Report presents new evidence relating to the enforced transfers of Somali refugees and asylum seekers from Kenya to Somalia, following their detention in Nairobi. Our findings are primarily based on interviews with returnees who were forcibly returned to Somalia, together with other supporting research.

² Amnesty International Country Report, Kenya available at <https://www.amnesty.org/en/countries/africa/kenya/report-kenya/>

³ IPOA Report, 2014. Available at <http://www.ipoa.go.ke/ipoa-media/press-releases/209-press-statement-ipoa-regarding-alleged-%E2%80%9Cethnic-profiling,-unlawful-detention-and-deportation%E2%80%9D-of-members-of-certain-communities-by-the-national-police-service-when-carrying-out-security-operations>

⁴ IPOA (2014) “Monitoring report on Operation Sanitization Eastleigh publically known as “Usalama Watch”” available at <http://www.ipoa.go.ke/images/press/MONITORING%20REPORT%20ON%20OPERATION%20%28USALAMA%20WATCH%29%2017%207%202014.pdf>

All of our interviewees held refugee certification documents, and none of them described what could credibly be described as a voluntary, non-coerced return. Their enforced transfers to Somalia with no judicial oversight breached the principle of non-refoulement, a cornerstone principle of both the 1951 Refugee Convention and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.”⁵ Regarding the involuntary nature of the returns, Kenya is in breach of domestic, regional and international legal obligation, as well as the tripartite agreement that was entered into with Somalia and the UNHCR whereby Kenya agreed to continue providing protection and assistance to all refugees: expulsions or forced repatriation of Somali refugees is in direct contradiction of the agreement to facilitate the repatriation of Somali refugees on a “mutually agreed upon and voluntary basis.”⁶

Two of our interviewees now reside in Somalia with their families as “Internally Displaced Persons” (IDPs), whilst the rest are living precariously supported by distant relatives or in one case the relative of a friend. Additionally, interviewees have described a range of connected violations including unlawful ethnic profiling and discrimination, arbitrary arrest and detention, physical and psychological ill-treatment, separation from family members, loss of property and business, and denial of access to medical care. These violations invoke a range of protections required under the African Charter on Human and Peoples’ Rights, including in particular Articles 2, 3, 5, 6, 7, 12, 14, 16, 17 and 18.

In light of the material in this report, we suggest that as part of its review of Kenya, the Commission should engage the Republic of Kenya in an urgent, constructive dialogue with a view to the Republic of Kenya:

- Reaffirming its commitment to a genuine protection of the rights of all refugees on its territory or unlawfully expelled;
- Ceasing all forced or coerced returns of Somali refugees from Kenya to Somalia;
- Upholding its obligations under the Refugee Convention and taking positive steps to integrate Somali refugees into Kenyan society, in particular by ceasing the practise of resettlement of urban Somali refugees in refugee camps, and by recommencing programmes of registering urban refugees in Kenya;

⁵ Kenya Human Rights Commission (2015) “Country Brief at the 56th ordinary session of the African Commission on Human and People’s Rights.” Available at http://www.khrc.or.ke/resources/publications/doc_details/99-country-brief-at-the-56th-ordinary-session-of-the-african-commission-on-human-and-peoples-rights.html

⁶ The Tripartite Agreement Governing the Voluntary Repatriation of Somali Refugees Living in Kenya, available at <http://www.refworld.org/pdfid/5285e0294.pdf>

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- Conducting human rights compliant inquiries into abuses committed against Somali refugees by police, military and security forces over the past several years, and holding to account individual officers found to have committed offences;
- Developing and implementing effective policies for the protection of particularly vulnerable Somali refugees, including women and children;
- Providing reparations and an apology to all refugees wrongfully arrested, detained, and/or expelled from Kenya;
- Welcoming wrongfully expelled Somali refugees back into Kenya and assisting with their return;
- Ceasing conflating Somali refugees with terror suspects;
- Ceasing discriminatory treatment towards Somali refugees.