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EAST AFRICA: PUSHBACK PRACTICES AND THEIR IMPACT ON THE HUMAN RIGHTS OF MIGRANTS AND REFUGEES

AMNESTY INTERNATIONAL SUBMISSION TO THE UNITED NATIONS (UN) SPECIAL
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In response to the [Questionnaire](#) of the UN Special Rapporteur on the human rights of migrants on “pushback practices and their impact on the human rights of migrants”, Amnesty International is pleased to provide the following input on select patterns of unlawful pushbacks of migrants and refugees in East Africa region.

1.1 TANZANIA (QUESTIONS 1, 4, 5, 6)

The refugee environment in Tanzania is governed by the Refugee Act of 1998 (hereafter the Act)¹ and the 2003 National Refugee Policy (NRP)². Section 4 of the Act provides that the Tanzania Government can recognise refugees on an individual basis or group basis. Refugee status determination is conducted by the National Eligibility Committee (NEC).³ If an applicant is dissatisfied with the decision of the NEC, Section 9 of the Act provides that they can appeal to the Minister seven days from the date of receiving the decision. The Act provides that the decision by the Minister to grant or deny the appeal is final.

Section 34 of the Act provides that asylum seekers and refugees shall have the right at any time to return voluntarily to their country of nationality. It also prohibits any action that prevents asylum seekers or refugees to return to their country of origin without due process.

Since 2017, restrictions on access to territory and asylum in Tanzania have increased over time especially for Burundian refugees. In January 2017, the Tanzanian authorities ended *prima facie* recognition of refugees from Burundi, meaning that all asylum seekers coming from Burundi would from then on have their cases individually assessed.⁴

By July 2018, the Government of Tanzania had closed all reception centres at border entry points from Burundi – both restricting access to the country and the possibility of claiming asylum.⁵ This affected 19 reception points which were previously used by Burundian and Congolese asylum seekers.⁶ New arrivals from Burundi and Congo could not register. Burundian refugees who had been supported by UNHCR over the years to return to Burundi, but were forced to flee again, were unable to register with the Tanzanian authorities to seek asylum and have their asylum claim assessed individually.⁷

¹ Tanzania Refugees Act, 1998, available at <https://www.refworld.org/docid/3ae6b50bf.html>

² 2003 National Refugee Policy (NRP) available on file with Amnesty International.

³ Section 7 of by Tanzania Refugees Act of 1998, available at <https://www.refworld.org/docid/3ae6b50bf.html>

⁴ See Amnesty International, Confidential document shows forced repatriation of Burundi refugees imminent, (Press release, 6 September 2019)

⁵ Amnesty International, *Maintain protection space for Burundian refugees* (Index number: AFR 56/1007/2019) available <https://www.amnesty.org/en/documents/afr56/1007/2019/en/>

⁶ UNHCR, *Tanzania Country Refugee Response Plan January 2019 - December 2020* available at <https://reliefweb.int/report/united-republic-tanzania/tanzania-country-refugee-response-plan-integrated-response-plan>

⁷ United States Department of State, *Country Reports on Human Rights Practices for 2019* available at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/tanzania/>

In addition, the asylum claims processed by the government's National Eligibility Committee (NEC) showed a high rejection rate.⁸

Tanzania has not only restricted the right to seek asylum, but also the freedom of movement and economic opportunities for Burundian refugees, making their stay in the country difficult. Those who venture outside of the Nyarugusu, Nduta and Mtendeli refugee camps to meet their daily needs have at times been arrested and detained by Tanzanian security forces.⁹

Government officials increasingly made statements that pressure refugees and asylum-seekers to return to their country of origin, especially the Burundian refugees. The President John Magufuli and other officials have told Burundian refugees publicly to return to their country of origin.¹⁰ In mid-July 2018, senior Tanzanian officials visited the camps and urged refugees to sign up for voluntary return. Refugees claimed that they were informed that return was the only available solution for them.¹¹

In August 2018, UNHCR, the UN Refugee Agency, urged Tanzania authorities to ensure Burundian refugees' returns are voluntary and based on individual choice. UNHCR cautioned the Government not to directly or indirectly to influence the refugees' decision on return.¹²

On 24 August 2019, Tanzania's Minister for Home Affairs Kangi Lugola and Burundi's Minister of Interior Pascal Barandagiye signed a confidential agreement, which was reviewed by Amnesty International, to step up the repatriation of Burundian refugees with or without their consent.¹³ The two ministers visited Nduta and Mtendeli refugee camps in the Kigoma region on 25 August where they announced that the returns would start on 1 October.¹⁴ Tanzania's Minister for Home Affairs Kangi Lugola also had interviews with media houses where he reiterated calls that Burundian refugees will be sent back whether they want to or not.¹⁵

International human rights organisations have also recorded incidents where asylum-seekers and refugees were pushed back. On October 15, 2019, Tanzanian authorities unlawfully coerced more than 200 Burundian nationals into returning to Burundi.¹⁶

The restriction of the possibility to enjoy international protection for Burundian refugees was also compounded by the closure and destruction of markets in the camps¹⁷, restrictions on their business activities, access to services and freedom of movement. Reported cases of enforced disappearances in some refugee camps¹⁸ compromised the security of the camps and increasingly added pressure for refugees to leave.¹⁹

In response to COVID-19 pandemic, Tanzania imposed a total border closure and suspended international flights for about

⁸ UNHCR, *Tanzania Country Refugee Response Plan January 2019 -December 2020* available at <https://reliefweb.int/report/united-republic-tanzania/tanzania-country-refugee-response-plan-integrated-response-plan>

⁹ Amnesty International, *Burundi: African Leaders Should Raise Concerns About Tanzania's Pressure On Refugees To Return To Burundi* (Index number: AFR 16/1522/2019) available at <https://www.amnesty.org/fr/documents/afr16/1522/2019/en/>

¹⁰ Amnesty International, *Amnesty International Report 2019* <https://www.amnesty.org/en/countries/africa/tanzania/report-tanzania/>

¹¹ Thijs Van Laer 'There is pressure on us': Burundian refugees in Tanzania pushed to return' available at

<https://africanarguments.org/2018/08/pressure-burundi-refugees-tanzania-pushed-return/>

¹² UNHCR, Burundian refugee returns must be voluntary and sustainable, 24 August 2018 available at

<https://www.unhcr.org/uk/news/press/2018/8/5b7fd46f4/burundian-refugee-returns-must-voluntary-sustainable.html>

¹³ Amnesty International, *Tanzania: maintain protection space for Burundian refugees* (Index number AFR 56/1007/2019) available at <https://www.amnesty.org/en/documents/afr56/1007/2019/en/>

¹⁴ Amnesty International, *Tanzania: maintain protection space for Burundian refugees* (Index number AFR 56/1007/2019) available at <https://www.amnesty.org/en/documents/afr56/1007/2019/en/>

¹⁵ BBC, 'Tanzania to forcibly return refugees', 28 August 2019, <https://www.bbc.co.uk/news/topics/ce1qrve07t/burundi>

¹⁶ Human Rights Watch, *World Report 2019 Tanzania Events of 2019* available at <https://www.hrw.org/world-report/2020/country-chapters/tanzania-and-zanzibar#4694c7>

¹⁷ Amnesty International, *Conform or flee: Repression and insecurity pushing Burundians into exile*, (Index number: AFR 16/7139/2017) available at <https://www.amnesty.org/en/documents/afr16/7139/2017/en/>

¹⁸ Human Rights Watch, *Tanzania: Burundian Refugees 'Disappeared,' Tortured Halt Forced Returns; Investigate Police, Intelligence Services* available at <https://www.hrw.org/news/2020/11/30/tanzania-burundian-refugees-disappeared-tortured>

¹⁹ Statement by The Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa on 2020 Dec available at <https://www.achpr.org/pressrelease/detail?id=556>

3 months²⁰. The total border closure decided by the Tanzanian government continued to reinforce the restrictions on access to asylum in place since 2017. This drove many refugees and asylum seekers from Burundi to use unofficial border crossing points to enter Tanzania where there is no provision for identification, documentation and health screening for new arrivals.²¹

Comments from government officials directed at NGOs have created an environment of fear for humanitarian organisations. NGOs supporting asylum seekers and refugees are facing a more restrictive climate, especially following comments from Tanzania's home affairs minister at the end of August 2019.²² Minister Lugola warned that any individual or NGO working on refugee issues would "face the wrath of President John Pombe [Magufuli]" if they opposed the government's repatriation plans.²³

1.2 KENYA (QUESTIONS 1, 4, 5)

Kenya's 2006 Refugee Act and 2009 Refugee Regulations set the framework to register refugees and asylum-seekers and manage their claims under the auspices of the Department for Refugee Affairs (DRA) which works with UN Refugee Agency (UNHCR).

Under the 2006 Refugee Act²⁴, Kenya recognizes two kinds of refugees: prima facie and statutory refugees. Legally, there are no limitations in relation to the right to seek asylum at Kenya's international borders. In practice, border closures following the COVID-19 pandemic and the requirement for negative COVID-19 test certificates have restricted the options for migrants and refugees trying to cross Kenya's international borders.

1.2.1 PUSHBACKS

Amnesty International has documented a series of pushbacks by Kenyan authorities, especially against Somali refugees. In April 2014, during 'Usalama Watch', a counter-terrorism operation, hundreds of Somalis were arbitrarily arrested, detained and then deported back to Somalia, in violation of the principle of non-refoulement.²⁵

1.2.2 OTHER VIOLATIONS OF THE OBLIGATION OF NON-REFOULEMENT

Kenya has made several attempts to limit the number of refugees entering and living in the country.

In late 2012, the Department of Refugee Affairs (DRA) announced that registration of asylum-seekers and refugees in urban areas would be suspended. This was followed by another announcement in December 2012 of a new policy requiring all refugees and asylum-seekers in urban areas to relocate to camps as part of a plan to repatriate them to their own countries. Later, however, the High Court held that the announcements were unconstitutional and a violation of the right to freedom of movement for refugees and of the principle of non-refoulement, in accordance with Kenya's 2006 Refugee Act and the Kenyan Constitution.²⁶

In 2015, Kenya passed a controversial Security Law Amendment Act (SLAA) that amended Kenya's refugee laws to cap the number of refugees living in Kenya at 150,000. At that time, Kenya was hosting over 500,000 refugees. The High Court however declared that the provisions of the SLAA capping the number of refugees in Kenya were unconstitutional because

²⁰ The Citizen, *Tanzania reopens colleges, sports activities as Covid-19 numbers drop, Govt says*, 21 May 2020 available at <https://www.thecitizen.co.tz/news/Tanzania-reopens-colleges--sports-activities-as-Covid-19-/1840340-5559368-13rqy6kz/index.html>

²¹ Amnesty International, *Oral statement on the situation of refugees in Africa at the 66th ordinary session of the African Commission on human and peoples'* (Index number: AFR 01/2756/2020) available at <https://www.amnesty.org/en/documents/afr01/2756/2020/en/>

²² The New Humanitarian, *Pressure builds on Burundian refugees in Tanzania amid threat of forced return* <https://www.thenewhumanitarian.org/news/2019/10/15/Burundian-refugees-Tanzania-fear-sent-home-forced-returns>

²³ Amnesty International, *Tanzania: maintain protection space for Burundian refugees* (Index number AFR 56/1007/2019) available at <https://www.amnesty.org/en/documents/afr56/1007/2019/en/>

²⁴ Kenya Refugee Act of 2006 available at http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/RefugeeAct_No13of2006.pdf

²⁵ Amnesty International, *No place like home: Returns and relocations of Somalis displaced*, (Index AFR 52/001/2014) available at: <https://www.amnesty.org/en/documents/AFR52/001/2014/en/>

²⁶ For more information see: High Court of Kenya, *Kituo Cha Sheria & 8 Others v. Attorney General* [2013] eKLR, available at <http://kenyalaw.org/caselaw/cases/view/84157>

they violated the principle of non-refoulement as recognized under the 1951 Convention on the Status of Refugees, which is part of the laws of Kenya.²⁷

Since 2015 all registration points in Dadaab refugee camp were closed and continue being closed.²⁸ This has left new arrivals, mostly from Somalia, unable to register, and those with expired documents unable to renew their status, putting them at risk of human rights violations. According to UNHCR, there are over 15,000 unregistered asylum seekers in Dadaab refugee camp²⁹. Lack of identification documents increases the risk of asylum seekers being arrested by police and missing out on some humanitarian support.³⁰

On 6 May 2016, the Kenyan government announced its intention to close Dadaab refugee camp by 30 November 2016, claiming that the camp was a threat to national security. At the time, the camp was hosting over 300,000 refugees. A statement by the Deputy President, William Ruto at global forums³¹ and comments from high-ranking authorities calling on refugees to leave Kenya created fear among the refugees. Many had no option but to sign up for the return process, facilitated by UNHCR.³² The tight timeframe and the lack of any alternative options for Somali refugees had left open the prospect of large-scale forced returns to Somalia.³³ In 2019, the threat to close Dadaab was again renewed, when a leaked UNHCR document reported that the Kenyan government had informed UNHCR of "plans to close the Dadaab camps within a six-month period"³⁴.

Local leaders in refugee hosting areas and officials from the refugees' countries of origin have been used to put pressure on refugees to return home. In early 2018, Kenyan local leaders, including Marsabit County Governor accompanied by Ethiopian government officials, visited a makeshift settlement hosting over 6,000 Ethiopian refugees in Moyale, near the border with Ethiopia, to persuade the refugees to return home. The refugees had fled a brutal military attack in Ethiopia and fled into Kenya to seek safety. Kenya's Governor for Marsabit County also visited the makeshift refugee settlements in his county in April 2018 and urged the refugees to return home.³⁵

In response to COVID-19 pandemic, Kenya closed its the borders with Somalia and Tanzania on 16 May 2020 with no special mechanism made available for asylum seekers and refugees to enter the country. Asylum seekers and refugees who crossed into Kenya were sometimes arrested and returned to the border point of entry.³⁶ Reception and registration centres in urban centres and in refugee camps remained closed in 2020. In April 2020, the Government of Kenya placed Dadaab and Kakuma refugee camps under partial lockdown with movement into and out of the camps restricted to control the spread of COVID-19.

1.3 UGANDA (QUESTION 5)

Uganda has maintained a welcoming policy for asylum seekers and refugees over the years. As a result, the country is currently hosting over 1.3 million refugees, the majority of whom are from South Sudan.³⁷

However, during the COVID-19 pandemic, Uganda imposed a blanket border closure? around March as a public health measure to contain the transnational spread of COVID-19. Along the DRC-Uganda border, approximately 10,000 displaced

²⁷ See Kenya National Commission on Human Rights and others Vs. Attorney General and others Petition 628, 630 of 2014 & 12 of 2015 (Consolidated) <http://kenyalaw.org/caselaw/cases/view/106083/>

²⁸ Amnesty International, *Kenya: Global Compact on Refugees must be quickly anchored in national policy* (OPED, 24 December 2018)

²⁹ UNHCR, *Monthly Operational Update- Dadaab, Kenya /September 2020* available at <https://www.unhcr.org/ke/wp-content/uploads/sites/2/2020/12/Dadaab-October-2020-Operational-Updates.pdf>

³⁰ Amnesty International, *Kenya: Failure to register Somali refugees putting them at risk of starvation and abuse* (OPED, 20 February 2018)

³¹ Aggrey Mutambo, 'Decision to close Dadaab refugee camp final, Ruto tells UN boss', Daily Nation, 23 May 2016, available at: <http://www.nation.co.ke/news/1056-3215622-6Inkuz/index.html>

³² Amnesty International, *Kenya: Nowhere Else To Go: Forced Returns Of Somali Refugees From Dadaab Refugee Camp*, (Index number: AFR 32/5118/2016) <https://www.amnesty.org/en/documents/afr32/5118/2016/en/>

³³ Amnesty International, *Somalia: not time to go home: unsustainable returns of refugees to Somalia*, (Index number: AFR 52/7609/2017) available at <https://www.amnesty.org/en/documents/afr52/7609/2017/en/>

³⁴ Amnesty International, *Kenya must not force refugees back to Somalia by closing Dadaab camp*, (Press release 26 March 2019).

³⁵ Amnesty International, *OPED Kenya must protect refugees who fled brutal military attacks in Ethiopia* (OPED 28 May 2018).

³⁶ Amnesty International, *People seeking safety are trapped at borders due to COVID-19 measures*, (Press statement, 22 June 2020)

³⁷ UNHCR, *Refugee Statistics December 2020* available at <https://data2.unhcr.org/en/documents/details/84122>

people have been camped out between May and June 2020, waiting to seek asylum in Uganda. Uganda authorities allowed them to enter Uganda on the 16 June 2020.³⁸

³⁸ Amnesty International, People seeking safety are trapped at borders due to COVID-19 measures, (Press statement, 22 June 2020)