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Fråga-svar

Situationen för somalier som vistas illegalt i Kenya

Fråga

Brukar somaliska flyktingar registrera sig hos UNHCR om de inte bor på flyktingförläggningar?

Hur ser situationen ut för somalier som vistas illegalt i Kenya? Kan de exempelvis gå i kenyansk skola, äga mark eller bostad och arbeta?

Kan en person från Somalia, som är född och uppvuxen i Kenya, få medborgarskap i Kenya?

Svar

Brukar somaliska flyktingar registrera sig hos UNHCR om de inte bor på flyktingförläggningar?

I november 2013 skrev Kenya, Somalia och UNHCR under *Tripartite Agreement*, <http://www.refworld.org/pdfid/5285e0294.pdf>. Avtalet gäller frivillig återvandring av somaliska flyktingar från Kenya till Somalia.

Institute for Security Studies (2014) skriver om *Tripartite Agreement* och dess konsekvenser. I rapporten finns även information om oregistrerade flyktingar.

The Tripartite Agreement sets the conditions for voluntary repatriation of the Somali refugees. The voluntary character relates to both the conditions in the country of origin (calling for an informed decision) and the situation in the country of asylum (permitting a free choice). In addition, return must be done in safety – legal, physical and material security – and dignity. With regards to the obligations of the parties, the country of origin should take all measures to ensure the

restoration of full national protection in order to create conditions that foster voluntary repatriation. On the other hand the country of asylum, Kenya, is bound by the obligation of non-refoulement and is obliged to continue to treat refugees according to internationally accepted standards as long as they are on its territory. Within this Agreement the UNHCR undertakes the role to facilitate voluntary repatriation, which includes providing

On 10 November 2013, the governments of Kenya and Somalia signed a tripartite agreement with the United Nations High Commission for Refugees (UNHCR) to repatriate Somali refugees from Kenya to 'safe areas' in southern Somalia. The exercise was expected to be voluntary. The idea was conceptualised after the new Somali Federal Government was formed, and the agreement came amid reports that between 30 000 and 80 000 refugees had freely returned to Somalia since January 2013.

Daadab has been hosting about half a million refugees, mostly from Somalia, since the outbreak of civil war 1991 and in October 2011 witnessed kidnappings of aid workers – something that contributed to Kenya's military intervention in Somalia. It is estimated that there are about 500 000 other undocumented Somali refugees in Kenya.

Landinfo och Udlændingestyrelsen (2014) :

UNHCR Mogadishu described the signing on 11 November 2013 of the Tripartite Agreement³³ between Kenya, Somalia and UNHCR as a "historical moment". The agreement governs voluntary returns from Kenya to Somalia, and should not be seen as a gate for returning rejected Somali asylum seekers from abroad: voluntary repatriation and forced return are processes of fundamentally different characters, engaging different responsibilities on the parts of the various actors involved. The Tripartite Agreement is a framework for dialogue and discussion relating to Somali individuals who, being fully informed of the situation in their places of origin, choose to return voluntarily. (s. 42f)

RMMS och IRIN skriver om på *Tripartite Agreement* och innebörden av definitionen frivillighet.

RMMS, *The Tripartite Agreement: contested & complicated*, Februari 2014, http://regionalmms.org/fileadmin/content/featured%20articles/The_Tripartite_Agreement_-_contested_complicated.pdf

IRIN News, *Briefing: Repatriating Somali refugees from Kenya*, 2013-11-13, <http://www.irinnews.org/report/99117/briefing-repatriating-somali-refugees-from-kenya>

UNHCR (*update as of 29 January 2014*) om registrering av flyktingar.

In December 2006, Kenya enacted its first refugee legislation, which came into force on 15 May 2007. The Refugee Act allows the designation of areas in which refugees may reside (a) transit centres and (b) refugee camps. The Act does not indicate whether refugees shall be required to reside in these designated areas. The Department of Refugee Affairs (DRA) commenced the registration of refugees in Kenya in March 2011. Initially registration efforts were limited to Dadaab refugee camps, Kakuma and Nairobi, but in the course of 2011 and 2012 expanded their registration activities and operates offices now as well in Mombasa, Malindi, Nakuru, Eldoret and Isiolo. Registration activities in the urban areas are currently suspended as a consequence of the relocation directive of December 2012. (s. 2)

On 12 December 2012 the Kenyan Department of Refugee Affairs (DRA) issued a directive stating that the authorities had stopped all urban refugee operations with immediate effect. The notion of stronger application of the encampment policy and relocation of refugees and asylum-seekers to refugee camps came as a result of the public statements made by the authorities. According to these statements, Somali refugees were expected to relocate to the Dadaab while refugees of other nationalities were requested to move to Kakuma. (s.2)

On 19 January 2013 one of UNHCR's legal partners Kituo Cha Sheria filed a constitutional petition in the High Court challenging the directive on various grounds. Given the urgency of the matter, Kituo Cha Sheria also sought an injunction ordering the Government of Kenya to stop the relocation of refugees pending the hearing and determination of the petition. On 23 January 2013 the case was filed before a judge in the High Court who issued interim orders stopping the government from relocating the refugees. On 4 February 2013 UNHCR's application to be admitted to the petition as amicus curiae was granted by the Court. (s. 2)

The main hearings in front of the High Court have been completed at the end of May and the ruling was pronounced on 26 July 2013. The High Court concluded that the Directive is in violation of the right to freedom of movement, right to dignity, right to fair and

administrative action and that it violates the State's responsibility towards persons in vulnerable situations, all rights guaranteed by the Kenyan Constitution, 2010. In addition, the Court declared that the proposed implementation of the Directive is a threat to the non-refoulement principle, contained in the Section 18 of the Refugees Act, 2006. The Court ordered that the Directive be quashed. In early August 2013, the Attorney General's office filed a notice of appeal indicating that the Government will appeal the High Court ruling in its entirety. UNHCR is in the process of analyzing the new legal situation and its impact on the urban refugee programme. Consultations are held with refugee communities and legal partners (within Legal Advocacy TG) as the substantive memorandum of appeal and associated records are expected from the Government (to be filed within 60 days from the date of notice of appeal). (s. 2f)

The authorities have failed to reinstate the registration and documentation services for asylum-seekers and refugees in urban centers. (s.3)

Center for Domestic Training and Development (CDTD) och UNHCR (2013):

It is however, estimated that Nairobi had 32,000 refugees in 2006 growing to 46,310 by 2009. Presently, there are more than 55,000 refugees living Nairobi who are registered with UNHCR. Anecdotal, estimates however puts this figure to over 100,000 since a large number of refugees who sneak out of the designated camps do not register with the authorities. (s. 1)

Heshima Kenya (2013):

With more than 600,000 registered refugees and asylum-seekers, Kenya has one the largest refugee populations of any country in the world.¹ (s.3)

[Footnot]1 Although refugees and asylum seekers are required to register with United Nations High Commissioner for Refugees (UNHCR), it is believed that there are thousands of non-documented refugees living in Kenya, making the total number of stateless people residing in Kenya much higher.

Although most refugees in Kenya live in the established Dadaab and Kakuma camps, there is a significant number that reside in urban areas; at the time of writing it is believed that more than 100,000 refugees live in Nairobi. This population is increasingly targeted in the Kenyan media and by authorities as perpetrating political

instability, small arms proliferation, and terrorist acts. On 18 December 2012, the Kenyan government announced a directive mandating all urban-based refugees and asylum-seekers be relocated to the Dadaab and Kakuma refugee camps, and terminated registration and other services to refugee claimants in Nairobi and other urban centers throughout the country.⁶ In January 2013, Kenya's High Court temporarily halted the implementation of the directive, pending the hearing of a case filed by refugee protection organizations in Nairobi. In July 2013, the directive was overturned by the High Court. (s. 4)

BARRIERS TO REGISTRATION As a result of their experiences with Kenyan authorities, refugee and asylum seeking women are of two minds as to whether being registered is of value to them. Those who appreciate being registered state that it makes them feel safe and allows them to access additional assistance, including medical care. (s. 13)

Somali women, on the other hand, are less effusive about the benefits of registration, with 60 percent stating that they feel their registration papers are not well recognized and that they do not get additional benefits. "I do have the documents," says FIN, a 45-year-old from Somalia, "but it does not mean anything because the government continues harassing us and they don't recognize it, so I believe it doesn't make me safe." Similarly, 33-year-old UMF from Somalia says, "The policemen don't even recognize me and they tear up the papers." (s. 13f)

Several women from both communities noted that one advantage of being registered was that the invariable police bribes that they must pay when they are detained are lower when they show their registration papers. "The bribe you pay is smaller compared to someone who isn't registered," says FMW, 48-years-old from Somalia. Registration papers do not prevent refugee women from being stopped by Kenyan authorities, but they can smooth the process. According to 35-year-old Somali KMW, "If you are not registered then the police can take you anywhere, but they left me alone after I showed them my papers." (s. 14)

Rapporten skriven av Heritage Institute (2013) innehåller information om oregistrerade flyktingar.

A further 50,783 Somali refugees are registered in Kakuma camp in northwestern Kenya near the borders of Uganda and South Sudan. Finally 33,537 Somalirefugees are registered in Nairobi with the majority thought to be

residing in the Somali dominated Eastleigh neighbourhood. There is little doubt that there are many more undocumented Somali refugees living in Kenya. (s. 6)

Though only 33,537 Somalia refugees are officially registered in Nairobi, the total number is estimated to be significantly higher, according to the UNHCR, and Kenyan and Somali government officials.¹⁸ While it's almost impossible to ascertain the exact figures, Somali refugees dominate an entire neighbourhood of Eastleigh in Kamakuji district of Nairobi. Known as "Little Mogadishu", Eastleigh is home to as many as 100,000 Somali refugees by some estimates.¹⁹ Most are thought to be undocumented immigrants who are supported by their family members in the diaspora.²⁰ Others are business owners. This often makes them more affluent than their peers in Dadaab. (s. 11)

Amnesty International (2014-02-19) rapporterar om oregistrerade flyktingar.

Many Somalis have not registered as refugees in Kenya for a variety of reasons, including lack of awareness about their rights and the asylum procedures, or for fear of being arrested and deported. In recent years there have been increasingly restrictive measures on the ability of asylum-seekers to register as refugees, and today it is almost impossible. (s. 16)

There have been restrictions on the registration of refugees since January 2007 when the government of Kenya closed the country's 682km border with Somalia, and the main transit centre in Liboi.⁴³ In October 2011, Kenya's Department of Refugee Affairs stopped all registration of refugees in Dadaab.⁴⁴ Since that time registration has opened on only a few occasions and for short periods. The last registration was in August 2013, and was open for four days before it was again closed.⁴⁵ The Department of Refugee Affairs' announcement on 13 December 2012 ordered the suspension of all registration for asylum-seekers and refugees in urban centres.⁴⁶ Urban registration has since remained closed. (s. 17)

The only place in Kenya where there is ongoing registration is in Kakuma refugee camp, in the North-West of Kenya. Not being registered leaves Somalis at a high risk of arrest for unlawful presence, and at the time of writing it is extremely difficult for new arrivals to establish a lawful presence in Kenya. (s. 17)

Arrest is commonplace for Somali refugees and asylum-seekers, particularly for those who have not registered with UNHCR. Police arrests are often accompanied by extortion, and Somalis are reportedly perceived by Kenyan police as “cash cows” who will readily pay bribes because they are unaware of their rights, and because they fear the threat of prosecution.¹¹⁶ (s. 26)

Hur ser situationen ut för illegala somalier i Kenya? Kan de exempelvis gå i kenyansk skola, äga mark eller bostad och arbeta?

Heritage Institute (2013):

Since the start of Operation Linda Nchi, Kenya has suffered from growing insecurity with a series of low-level attacks in Nairobi, Mombasa and throughout North Eastern Province (NEP). Attacks are largely blamed on groups connected to or sympathising with al-Shabaab. Al-Shabaab itself has claimed direct responsibility for very few of these attacks. The attacks have led to reprisals against Somali populations living in Kenya including Kenyan-Somalis. The Kenyan military and police have been blamed for some of these attacks.⁵ Xenophobic attacks carried out by members of the public have further contributed to the rising sense of insecurity among the Somali community. (s. 7)

Though only 33,537 Somalia refugees are officially registered in Nairobi, the total number is estimated to be significantly higher, according to the UNHCR, and Kenyan and Somali government officials.¹⁸ While it's almost impossible to ascertain the exact figures, Somali refugees dominate an entire neighbourhood of Eastleigh in Kamakuji district of Nairobi. Known as “Little Mogadishu”, Eastleigh is home to as many as 100,000 Somali refugees by some estimates.¹⁹ Most are thought to be undocumented immigrants who are supported by their family members in the diaspora.²⁰ Others are business owners. This often makes them more affluent than their peers in Dadaab. Despite recent reprisal attacks, Eastleigh refugees feel considerably safer than those in Dadaab camps. They also enjoy significantly more mobility as they have access to a large cosmopolitan city. (s. 12)

URPN (2012) skriver om skolgång för flyktingar.

Refugee children in the urban are allowed to enroll in public schools. Public schools situated in refugee

populated areas, such as in Eastleigh, have high number of refugee pupils (50%- 80% in some schools). Due to lack of a policy framework on refugee education, admission of refugee pupils to schools is highly dependent on various factors. Some schools require UNHCR/ DRA documentation for admission, a demand used by some schools as a method of discrimination. Refugees undertaking national examinations and/ or joining secondary schools are required to produce a birth certificate to undertake exams or Kenya Certificate of Primary Education to undertake secondary school national examinations. While access to secondary school is available to refugee children, lack of required documentation (such as KCPE certificate) and tuition fees present barriers for their transit to post primary level. (s. 8)

Center for Domestic Training and Development (CDTD) och UNHCR (2013) skriver om försörjningsmöjligheter i Nairobi.

The influx of urban refugees into Nairobi has been attributed to search of greater livelihoods opportunities and increased security. However, due to a weak legal framework in Kenya the rights of such refugees to move freely within Kenya and reside in urban areas are currently unclear. Despite the passage of the Refugee Act, 2006 there has not been a commensurate policy guideline to help in the enforcement of the provisions thereof. Such confusions make it virtually impossible for refugees to secure jobs in the formal sector in Nairobi in both private and public sectors. Yet, studies have shown that refugees do make a contribution to the local and national Kenyan Economy. (s. 1)

UNHCR (januari 2012) rapporterar om möjligheten till arbete.

Most refugees in Nairobi do not have regular jobs, and they only get paid for the days they actually work, if they find work at all. Whenever they sacrifice a day traveling to UNHCR or an NGO, they do not earn any money. (s. 9)

On the other hand, though seeking assistance can be like a job, respondents recognize that obtaining a mandate can lead to increased livelihood opportunities. Without a mandate, said one respondent, refugees have “no access to employment.” While refugees are not allowed to work in the formal economy in Kenya, with or without a mandate, respondents explained that having one makes it

much easier and safer to establish informal ways of earning an income. (s. 10)

UNHCR (maj 2012) berättar om arbetstillfällen för somalier.

Somali refugees engage in a range of jobs, mainly in the informal economy as casual workers in shops, restaurants, hotels, and so on (Moret et al: 2006). However, for many Somali refugees in Eastleigh, gaining employment is a huge challenge, as it still remains illegal for refugees, Somali or other, to legally enter the formal job market in Kenya.(s. 10)

Life in Kenya for the average Somali refugee has presented many challenges. Somalis in Eastleigh live in difficult conditions and the inability for most, including the youth, to access employment and education is an unfortunate reality. Although Eastleigh thrives with businesses ranging from shopping centres to big hotels, the majority of Somali refugees struggle to negotiate a meaningful place for themselves in this urban jungle. (s. 11)

UNHCR, (*Update as of 29 January 2014*) skriver om försörjning och arbete.

Asylum-seekers have historically been granted admission into Kenya and the country has a long tradition of providing and securing asylum for refugees. Refugees in Kenya mainly receive UNHCR protection and assistance at the Dadaab and Kakuma camps. These camps are characterized by harsh living conditions, limited opportunities for economic activity, insecure environment, and are situated in remote semi-arid to arid regions with little surface water where refugees and local population competes for scarce natural resources. The government policy confines refugees to designated areas and provides only permission to a handful of refugees, who are self-sufficient, to reside outside camps. In the Nairobi context refugees have limited access to local and national economic activities, however, many of them are self-sufficient. In the light of the urban policy UNHCR and partners attempt to enhance livelihood and other self-reliance projects for refugees in the urban areas. (s. 2)

UNHCR (juli 2013) informerar om registrering och levnadsförhållanden i Nairobi.

Asylum seekers are at their most vulnerable when they arrive in Nairobi and the period immediately following arrival. In contrast to a camp setting, there are no clear entry hubs to begin the registration process and seek assistance. Instead, asylum seekers reaching Nairobi arrive at dispersed locations and have no clear path to access available services, legal documentation or livelihood opportunities. Some are able to find their way to their respective ethnic community hubs; others, however, scatter and rapidly become absorbed in the urban sprawl and become, to all extent and purposes, invisible to UNHCR, NGOs and the GoK. (s. 19)

The extent to which new arrivals are able to cope with their immediate challenges can determine the nature of their Nairobi existence for many years to come. They may negotiate adequate protection for themselves or be pulled into a cycle of exploitation and a constant struggle for survival. Key protection threats that negatively affect the ability of newcomers to thrive include police harassment, theft, security threats (including from government agents), gender-based violence, physical assault, socio-economic difficulties and resulting economic exploitation and registration challenges. (s. 19)

Kan en person från Somalia, som är född och uppvuxen i Kenya, få medborgarskap i Kenya?

Regler för medborgarskap från kenyansk regeringssida.

Republic of Kenya. Immigration Department, *Requirements for citizenship*, http://www.immigration.go.ke/index.php?option=com_content&view=category&id=45&Itemid=123

The Kenya Citizenship and Immigration Act, 2011 [Kenya], 30 August 2011
<http://www.refworld.org/docid/4fd9a3082.html>
http://www.immigration.go.ke/images/stories/Kenya_Citizenship_and_Immigration_Act_2011.pdf

Open Society Foundations (2011):

“Non-indigenous people” like Kenyans of Somali, Arab, Nubian, Asian, Duruma, Digo, and a range of other ethnic backgrounds are systematically vetted before they acquire recognition of nationality simply because of their race. Vetting is a process by which certain individuals are brought before a committee charged with determining whether the person is Kenyan or not.

Freedom House (2012):

Ethnic Somali Kenyans have suffered particular neglect and abuse. Somali Kenyans are the only ethnic group required to produce two identification cards to prove citizenship. They also face unequal economic opportunities due to scant government development efforts in the North Eastern Province and discrimination in hiring for jobs within the police, military, and civil service.

Chatham House (2011):

The Kenyan-Somali population was boosted by people who came from Somalia as colonial employees or independent traders and settled in Kenya.¹⁶ Later, more Somalis fleeing Siyaad Barre's regime in the 1970s and 1980s made the country their home. Most of them became Kenyan citizens. Before the current crisis, the official (although unlikely to be the total) number of ethnic Somalis living in Nairobi and Mombasa was around 13,000, according to the 1989 census. (s. 5)

Thus, despite the Kenyan government's attempts to contain Somali refugees in the remote camps, many managed to move into cities and towns such as Nairobi, Garissa, Mombassa, Eldoret and Kisumu. Many refugees were eventually granted citizenship, although owing to political sensitivities their numbers are not publicly available. The Eastleigh neighbourhood of Nairobi, located east of the city's central business district (see map on p. 2), became the most popular destination for both Kenyan-Somalis and refugees from Somalia. (s. 6)

Kenya National Commission on Human Rights och UNHCR (2010):

Thus far various researches have established that the following communities may be at risk of statelessness in Kenya: the Galjeel, Nubians, Pembans, Kenyan Somali in border areas, and people of Mozambican origin living in the coastal region and those from Zimbabwe who settled in Kenya in the late 1960s as well as people from Arab communities of Yemeni and Omani descent. (s. 41)

Equal Rights Trust (2012):

Section 2.2.2 reports that the Somali population – a group including both Kenyan citizens and refugees – suffer a range of discriminatory treatments and inequalities, largely arising from actions of the state. The section claims that there is substantial evidence that Kenyans of Somali origin suffer direct discrimination in respect of citizenship and access to identity documents.

Se sid. 78 ff 2.2.2 *Kenyan Somalis and Somali Refugees*.

Minority Rights Group International (2012):

Kenya is a country of great ethnic, linguistic, cultural and religious diversity. Ethnic/national minorities, such as the Nubians and Somalis, are not recognized as such by the Kenyan government and have problems accessing citizenship documents.

En artikel i Aljazeera belyser diskrimineringen av somalier.

Swanson, Will, *Kenyan-Somalis speak out. Members of Nairobi's Kenyan-Somali community share stories of fear and discrimination*, Aljazeera, 2013-12-25,

<http://www.aljazeera.com/programmes/aljazeeracorrespondent/2013/11/kenyan-somalis-speak-out-2013111494126721511.html>

Denna sammanställning av information/länkar är baserad på informationssökningar gjorda under en begränsad tid. Den är sammanställd utifrån noggrant utvalda och allmänt tillgängliga informationskällor. Alla använda källor refereras. All information som presenteras, med undantag av obestridda/uppenbara fakta, har dubbelkontrollerats om inget annat anges. Sammanställningen gör inte anspråk på att vara uttömmande och bör inte tillmätas exklusivt bevisvärde i samband med avgörandet av ett enskilt ärende. Informationen i sammanställningen återspeglar inte nödvändigtvis Migrationsverkets officiella ståndpunkt i en viss fråga och det finns ingen avsikt att genom sammanställningen göra politiska ställningstaganden. Refererade dokument bör läsas i sitt sammanhang.

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