Submission to the Special Rapporteur on the Human Rights of Migrants

27 January, 2012

Ms. Katarina Månsson and Ms. Federica Donati
Special Rapporteur on the Human Rights of Migrants
Office of the High Commissioner for Human Rights
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Re: Detention of Refugees and Asylum Seekers in Tanzania

Dear Ms. Katarina Månsson and Ms. Federica Donati,

We, the undersigned human rights organization, write to express concern about the detention of refugees and asylum seekers in Tanzania. While we acknowledge that the Tanzanian government does not detain refugees and asylum seekers as a matter of principle or law, we have become aware of numerous procedural failures that threaten the human rights protections of these vulnerable populations. We are particularly concerned with the threat of arbitrary arrest and unlawful detention of newly arriving refugees and asylum seekers whom the government fails to screen from among mixed migration flows. This carries with it the threat of refoulement, and exposes vulnerable women, children, the elderly, and survivors of torture or trauma to detention conditions which fall below international standards of access to health, safety and dignity of the person.


While the protections afforded by these international instruments are quite robust, unfortunately they are not always realized in practice. The Tanzanian government has passed important legislation protecting refugee and asylum seeker rights, however procedural failures in implementing these laws often expose these vulnerable populations to loss of family unification,

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1 For a complete list of Tanzania's current treaty obligations, see United Republic of Tanzania, National Report Submitted In Accordance With Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1, A/HRC/WG.6/12/TZA/1.

2 Id.
inhumane prison conditions, assault, exploitation, denial of access to adequate health care, and—in extreme cases—even refoulement.

We therefore respectfully request that you use your office as the United Nations recognized expert on the human rights of migrants to call upon the government of Tanzania, and all organs of the United Nations, to take immediate measures to protect the rights of at-risk refugees, migrants and asylum seekers, to shore up existing legal and procedural frameworks, and to prevent further violations of domestic and international human rights laws, giving special attention to the following areas of concern:

1. Arbitrary Detention and Arrest

Refugees, migrants and asylum seekers in Tanzania report an alarming rate of detention. In a 2011 survey of 122 refugees and asylum seekers living in Dar es Salaam, nearly 40% of respondents reported having been arrested and detained at least once.\(^3\) Some reported being arrested more than six times.\(^4\) Fear of the police and immigration officials was endemic among those surveyed and more than half of those arrested report being exhorted for money in exchange for release from detention.\(^5\) Only 14 percent of 122 respondents report having any contact with UNHCR prior to arrest or detention.\(^6\)

Tanzania’s Refugee Act of 1998 (“1998 Act”) provides a clear procedure for processing asylum claims and for distinguishing verifiable refugees from illegal migrants. Under the 1998 Act, migrants are given seven days to report to the nearest authorized officer claiming asylum without threat of arrest.\(^7\) Once an individual reports his or her presence to the authorities and claims asylum, however, the 1998 Act requires a series of steps which the government must take in order to protect asylum seekers from arbitrary arrest and detention. These include:

- referring the asylum seeker to an officer authorized to process asylum applications—this provision applies to all non-authorized government actors including, importantly, police and border officials;\(^8\)
- providing the asylum seeker with an asylum petition and allowing the asylum seeker to make a statement and submit evidence in support of his claim;\(^9\)
- interviewing the asylum seeker and reducing the interview to writing;\(^10\)

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\(^4\) Id.

\(^5\) Id.

\(^6\) Id.

tdoc&docid=3ae6b50bf [last visited Jan. 24, 2012]. Section 9(1) states: “Any person entering or who is within Tanzania, whether lawfully or otherwise and who wishes to remain in Tanzania as a refugee within the meaning of section 4 shall immediately and not later than seven days after entry, unless he can show reasonable cause for delay, present himself or report to the nearest authorized officer, village Executive Officer, or a justice of peace and apply for recognition as a refugee.”

\(^8\) Id. at Sec. 9(4).

\(^9\) Id. at Sec. 9(5)(a).
• reading the interview transcript back to the asylum seeker and allowing the asylum seeker to make corrections;\textsuperscript{11}

• signing the written interview transcript together with the asylum seeker to verify its accuracy;\textsuperscript{12}

• transmitting all evidence and transcript to the Director for Refugee Services\textsuperscript{13}.

The Director must then submit the evidence and transcript to the National Eligibility Committee (NEC) or authorized Ad-Hoc Committee, who must consider the application within a period of no more than 60 days from the time of the asylum seeker’s initial application unless the Director otherwise extends the 60-day period for “reasonable cause.”\textsuperscript{14} The Committee must review the materials and may conduct an investigation of the asylum claim before making a recommendation to the Minister for Home Affairs, who must “without delay” decide on the merits of the asylum application and render a decision to the asylum seeker and UNHCR representative.\textsuperscript{15}

It is only after all of these procedural safeguards have taken place that an asylum seeker may be arrested or detained non-arbitrarily.\textsuperscript{16} Yet within Tanzania such procedures are the exception, not the rule. Asylum interview transcripts are routinely neither reduced to writing nor shared with the asylum applicant. Asylum seeker petitions are frequently rejected out of hand by a Ministry of Home Affairs (MHA) official without ever forwarding the petition to the Director. For those petitions that are forwarded to the Director, they are rarely, if ever, considered within the 60-day statutory period. Some asylum seekers report waiting over one year to have their asylum petition heard. It is commonly acknowledged within the Ministry of Home Affairs itself that NEC infrequently meets to decide asylum claims.

Furthermore, those migrants who are afforded the protections of asylum seeker status are then required, via Section 17 of the 1998 Act, to reside in designated areas for an indefinite period of time unless provided a permit to leave the camp. Such permits are, in practice, difficult to attain. Failure to abide by this provision of the 1998 Act is, itself, a legal ground for arrest and detention even for registered refugees and asylum seekers.\textsuperscript{17}

This clear breakdown of procedural protection exposes refugees and asylum seekers to routine arrest and detention for immigration infractions over which they often have little or no control. Many asylum seekers, being cognizant of this procedural breakdown, choose simply not to present themselves to the proper authorities at all. Instead, they choose to take the risk of arrest

\textsuperscript{10} Id. at Sec. 9(5)(b).
\textsuperscript{11} Id. at Sec. 9(5)(a).
\textsuperscript{12} Id.
\textsuperscript{13} Id. at Sec. 9(5)(c).
\textsuperscript{14} Id. at Sec. 5(d).
\textsuperscript{15} Id. at Sec. 9(6).
\textsuperscript{16} Id. at Sec. 9(3). “Without prejudice to the provision of this section no person claiming to be a refugee within the meaning of section 4 shall merely for reasons of his illegal entry be declared a prohibited immigrant, detained or penalized in any other way save that any person who after entering Tanzania fails to comply with subsection (1) of this section shall be guilty of an offence.” Id.
\textsuperscript{17} Tanzania Refugee Act, 1998 [sec. 17(6)].
for failure to report rather than the near-certain detention or restrictions on the freedom of movement that accompany the formal Refugee Status Determination (RSD) system.

The experiences of several individuals speak to the vulnerability of refugees, migrants and asylum seekers under this current legal framework. These experiences demonstrate the very real danger of arbitrary arrest and detention both upon one’s arrival to Tanzania and during the course of one’s stay in Tanzania:

- A Kenyan family reported to Refugee Services Department officials only to be denied asylum seeker status by the attending MHA officer. The attending MHA officer listened to the family’s story but then refused to forward the petition to the Director or issue the family documents which would allow them to report to a refugee camp as required under the 1998 Refugee Act. The family was without asylum seeker status for over one month before MHA acted on repeated requests for an asylum petition at the request of a legal aid provider.\(^{18}\)

- Several migrants report being arrested by police or immigration officials without being referred to an officer authorized to process their asylum petition. While being held in detention, migrants and asylum seekers have individually reported being extorted for money in order to obtain their release. A common narrative is that, after being arrested for failure to produce proper immigration documents, migrants are detained until friends or family are able to pay for their release. Migrants report bribes ranging between 15,000 Tanzania Shillings (approx. $9.50 USD) and 300,000 Tanzania Shillings (approx. $187.00 USD).

- A Congolese family of registered refugees reported leaving the Nyarugusu camp following serious protection concerns. Arriving in Dar es Salaam, the husband reported “My wife and children were easily identifiable as foreigners because of their Swahili accents. Even neighbors discovered that we were refugees. Three months after we arrived, we were visited by armed police. They wanted to know who we were. My children told the truth, that they are from Nyarugusu camp. We came to Dar illegally and we hid ourselves in order to be secure. After discovering the whole truth about us, the police asked us for money so they would not put me in jail. I paid 285,000/= for us to be released.”\(^{19}\)

2. Heightened Risk of Detention of Congolese Asylum Seekers

Recently, we have received reports that newly-arriving asylum seekers from the Democratic Republic of the Congo (DRC) are being told by MHA officials that Tanzania is “no longer receiving refugees” from the DRC. We are currently in communication with government officials in an attempt to confirm this information. While this issue has come to our attention only recently, if part of a government policy to systematically deny certain groups of migrants for asylum based upon their country of origin, the government would be violating its duties of

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\(^{18}\) Asylum Access Tanzania, Client File 0286.

\(^{19}\) Interview 0036, collected for Asylum Access Tanzania, No Place Called Home: A Report on Urban Refugees Living in Dar es Salaam (2011).
non-discrimination and would be putting such asylum seekers at a heightened risk of arrest, detention and refoulement.

The following example demonstrates these recent reports:

- In 2012, a newly-arrived Congolese man reported to UNHCR and received a referral letter to visit MHA to begin the asylum seeker process. When he reported to MHA he was told that MHA is no longer accepting Congolese refugees and that he should go back to his own country. The asylum seeker was then instructed to leave the MHA premises immediately. An MHA threatened to call the police to have the asylum seeker arrested. The asylum seeker left MHA and has been living in Dar es Salaam since that time without any form of protection and is under constant threat of arrest and detention.  

3. Inhumane Detention Conditions

Not only are refugees, migrants and asylum seekers in Tanzania being detained at an alarming rate, there is also reason to believe that inhumane conditions of detention violate Article 7 of the ICCPR. Numerous studies have focused on prison conditions within Tanzania. Among other things, these studies report prisoner abuse, lack of access to adequate medical care and overcrowding.

According to the Legal and Human Rights Centre’s 2010 human rights survey, at least two prisoners died in the hands of prison officers between January and July 2010. In one incident, prison officers ignored the victim’s cries for help as he was brutally beaten to death by other inmates. In another case, a seriously ill inmate died in a field when he was forced to carry out farming duties.  

The availability and nature of medical care is also far from being regarded as sufficient. A number of inmates from multiple prisons have complained of lack of access to essential medicines for malaria, typhoid and water borne diseases. In at least one prison it has been reported that there is no medically trained doctor or nurse who can attend prisoners in times of sickness. Other prisons may have only one nurse who is tasked with serving the entire prison

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20 Asylum Access Tanzania, Client File 0308.
23 LEGAL AND HUMAN RIGHTS CENTRE, TANZANIA HUMAN RIGHTS REPORT 2010, p. 240
24 Id.
25 Id.
28 Tanganyika Law Society Report, p. 19
Prison overcrowding is endemic and commonly acknowledged as a major problem. Almost all prisoners in Tanzania live in rooms of more than 50 prisoners without adequate sleeping facilities, access to light, or privacy. This contributes to the absence of proper hygiene. Prisoners report appalling hygiene conditions, including incidences of lice and bedbugs due to poorly maintained bedding and clothing and acute shortages of soap; lack of sanitary pads for female prisoners to use during menstruation; and the use of buckets as toilets.

Because refugees, migrants and asylum seekers in Tanzania are housed in the same prisons as common criminals, there is reason to believe that they are also being subjected to such conditions. The following example further illustrates the problem of inhumane prison conditions:

- In late 2009, an eastern European asylum seeker was arrested in Tanga and spent 25 days in jail. While there, he reported “It was torture—extremely difficult conditions! I was taken to a cell with no light. I couldn’t even see where I was staying, how big the room was, or how many other people were in the cell with me. But once the door shut and I could hear the breathing of other bodies. And the smell. The smell was unbearable. There was no toilet, so people were defecating in the corner. No one had showered for days. There was not enough room for everyone to sleep, so we had to take turns sleeping. And even then, we had to sleep on our side to make enough room for everyone. But I could not sleep because the person sleeping next to you might take advantage of you [rape you]. You could hear such things happening in the night. No, I cannot even talk about it. I cannot talk about it. The things I have seen are indescribable. It is too difficult here, I would rather go back to my home and be imprisoned for a crime I didn’t commit than remain here.”

4. Detention of Vulnerable Individuals

The duty to protect vulnerable individuals from detention is recognized and urged in a wide range of international instruments. For example, the CRC prohibits “arrest, detention or imprisonment of a child” except as a “measure of last resort and for the shortest appropriate period of time.” The UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers likewise urge states not to detain asylum seeking minors for any reason. This duty to protect vulnerable individuals is repeated with respect to the elderly, survivors of torture or trauma, women, adolescent girls, pregnant women or nursing mothers, and stateless persons.

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29 Id. at 20
30 LEGAL AND HUMAN RIGHTS CENTRE, TANZANIA HUMAN RIGHTS REPORT 2010, p. 240
31 Tanganyika Law Society Report
32 Asylum Access Tanzania, Client File 0281.
33 CRC at Art. 37(b).
34 “Minor” children are defined as any person under the age of 18 years. UNHCR’s Revised guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers, Guideline 6, 26 February 1999.
Yet, we have evidence that vulnerable groups are not being detained as a “measure of last resort” in Tanzania, but rather as part of routine migration enforcement. The following examples illustrate this problem:

- In 2010, a Congolese woman and her minor child were detained twice. “The first time, I was walking on the street and came across the police and they asked for our passports. Since I didn’t have documents, they asked for money to let me go. They took me to jail, and I had to stay there for one night before they released me the next day. I did not pay a bribe for them to release me. The second time, they arrested me in the morning and I spent the entire day in jail. They asked me for a bribe of Tsh. 30,000, and I told them I barely had money to eat. I had a small child with me, so I think they took pity on me and released me by late evening without me paying anything.”

- In 2005, a Congolese couple reported being arrested upon their arrival to Dar es Salaam. The husband had been tortured while in the DRC to the point where he was no longer able to speak properly. The wife had been gang-raped by a group of Congolese soldiers and became barren as a result. Once in Dar es Salaam, both were arrested on immigration-related charges and placed in detention for over one week while awaiting trial.

5. Detention Based On Freedom of Movement Restrictions

Freedom of movement and residence is among the most fundamental of refugee and asylum seeker protections. Tanzania’s Refugees Act of 1998 specifically limits refugee and asylum seeker freedom of movement by imposing fines and possible criminal detention for irregular movement of individuals away from designated areas without a permit.

Meanwhile, conditions within designated areas (refugee camps) have been documented to be below the minimum standards of health and safety afforded by international norms. Cases of homicide, rape, assault, and theft are common within the camps. UNHCR has also observed that encampment leaves refugees with little prospect of earning a livelihood or growing food and that encamped refugees remain dependent on humanitarian assistance.

35 Interview 0107, collected for ASYLUM ACCESS TANZANIA, NO PLACE CALLED HOME: A REPORT ON URBAN REFUGEES LIVING IN DAR ES SALAAM (2011).
36 Interview 0069, collected for ASYLUM ACCESS TANZANIA, NO PLACE CALLED HOME: A REPORT ON URBAN REFUGEES LIVING IN DAR ES SALAAM (2011).
No asylum seeker or refugee shall be allowed to leave a designated area as directed under this section unless he has sought and obtained a permit from Director or Settlement Officer as the case may be, and, subject to such terms and conditions as the Director or a Settlement Officer may prescribe in the permit.
Exceptions are allowed only in cases of refugees undergoing resettlement interviews or processing, needing specialized medical or psychological care, pursuing further education or facing serious security threats in the camps. Human Rights Watch, World Report 2002 at 160.
38 LEGAL AND HUM. RTS. CTR & ZANZIBAR LEGAL SERVS. CTR., TANZANIA HUMAN RIGHTS REPORT 193 (2010).
Moreover, confinement in the camps can last for years since the National Eligibility Committee has not met to determine the eligibility of encamped refugees since 2009. Given these conditions, many refugees and asylum seekers avoid encampment to look for better livelihood prospects. But, despite being refugees or asylum seekers those choosing to settle outside the camps are deemed “irregular” or “illegal” migrants and live under constant fear of arrest, detention and deportation.

The following examples illustrate this problem:

- A Congolese asylum seeker living in Dar es Salaam reported, “In 2002, I was arrested during a musical performance for being here illegally and was imprisoned for 6 months. In 2004, I was arrested while working in a salon cutting hair. I was imprisoned for 6 months again. When I was released, I was given a notice that I had to leave the country within 2 weeks.”

- Another Congolese asylum seeker living in Dar es Salaam stated, “I have been arrested more than 10 times. When you have some money, you give it and get out. They [police] detained me for one week in Magomeni, while they were doing the investigation, then they took us to Ilala, where we met one of the pastors of a church, who talked to them and gave them some money, and they released us.”

6. Deportation-related Detention

The non-derogable nature of the right to life, liberty, and security of the person, underscores the importance of States to provide fair, efficient refugee status determination procedures for refugees and asylum seekers which minimize the risk of refoulement. The paramount status of this principle is recognized by the Tanzanian government, which has stated in its national refugee policy that “the primary principle of refugee protection is that no one is returned to a country of origin where he or she would face serious harm.” However, as has been mentioned above, the way in which refugee status determination is conducted under Tanzanian law and practice falls short of providing the due process protections against non-refoulement required by international law.

For example, asylum seekers are not to be deported under international law until their claim for asylum has been determined. Under the 1998 Act, it is the duty of the Director of Refugee Services to ensure that this norm is respected. However, there are documented cases of asylum
seekers presenting themselves to MHA officials in Kigoma with valid asylum seeking documents and being placed by such officials directly in detention and deportation proceedings. By detaining these asylum seeking migrants and placing them in deportation proceedings, MHA officials are in breach of their obligations under Tanzania’s own domestic law and risk violating the non-derogable international norm of non-refoulement.

The following examples highlight the risk of refoulement to refugees, migrants and asylum seekers residing in Tanzania:

- A Congolese asylum seeker was arrested by police and immigration officials and placed in deportation proceedings. He reported, “I was arrested [in September 2010], three days after I arrived. I was asking for information, some men told me that they knew an Indian man who was looking for a teacher for his students but they said I had to give them 50,000 Tshill. So I gave them the money. They came back with the immigration officer who arrested me and took me to Posta. I was there two days, then I was transferred to the court, I told them my story, and they told me to stay in prison for 5 days. After 5 days they brought me back and they decided to imprison me for 12 months in prison. After that they said they will deport me. But I was released on the 22nd. I was told to report to them every day, I did this for one month. After that they were asking for bribes all the time. That is when I decided not to go back anymore. That is when I started to contact the government and UNHCR.”

- A Kenyan family received asylum seeker status from MHA officials in Dar es Salaam and reported, as required under the 1998 Act, to Refugee Services authorities in Kigoma to be admitted to a refugee camp. Upon arriving, however, the family was transported to a nearby detention facility and placed in deportation proceedings. There, the family was asked for money from detention officials in order to guarantee their admittance to Nyarugusu camp.

7. Recommendations

1. To visit refugees and asylum seekers, legal advocates, and civil society organizations in Tanzania and conduct an investigation into Tanzanian detention practices;

2. To encourage the Government of Tanzania to adopt a legal framework that respects the rights of refugees, migrants and asylum seekers consistent with the International Detention Coalition (IDC) Standards on the Detention of Refugees, Asylum Seekers & Migrants, including:
   - A presumption against the detention of refugees, asylum seekers and migrants;
   - Vulnerable individuals should not be placed in detention;

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45 Asylum Access Tanzania, Client File 0282.
• Children should not be placed in detention for migration-related purposes nor separated from their caregivers;
• Asylum seekers should not be detained or penalized for entering a country irregularly or without proper documentation;
• Asylum seekers should not be detained with criminals;
• Asylum seekers must have the opportunity to seek asylum and have access to asylum procedures;
• Governments should implement alternatives to detention that ensure the protection of the rights, dignity and wellbeing of individuals;
• No one should be subject to indefinite detention;
• No one should be subject to arbitrary detention;
• Detention conditions must comply with basic human rights standards;
• Governments should respect the right to refugee freedom of movement and seek alternatives to encampment-based refugee policies;

3. To support the government in its attempts to implement alternatives to detention in Tanzania.

We wish to express appreciation for your advocacy in support of the fundamental rights of refugees, migrants and asylum seekers in Tanzania, and remain willing to support your efforts in any way possible.

Sincerely,

Janemary Ruhundwa
Country Director
Asylum Access Tanzania