



THE SUDD INSTITUTE

RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

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Weekly Review

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Kenya's Crackdown on the South Sudanese

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Like the rest of the world, South Sudanese in Kenya were shocked when the Kenyan police started storming their residences, arresting and detaining many of them in police center in Nairobi, Nakuru, Lodwar, Eldoret, and Nyeri, among others. This came following a strongly worded statement by Kenya's Cabinet Secretary for the Interior, Fred Matiangi, concerning what he described as "illegal immigrants," or foreigners working in Kenya without employment permits. In a government's initiative that reflects a routine economic policy enforcement, Dr. Fred Matiangi announced plans to issue electronic work permits to foreigners working in the country¹. Secretary Matiangi also warned any Kenyans who employ undocumented foreigners. This position also reflects Kenya's prior announcements that Kenya should not employ any foreign nationals in any occupations for which qualified Kenyans can be found.

South Sudan and Kenya have longstanding bonds, owing partly to historical connections and geographical proximity. Several of Nilotic communities who currently inhabit various parts of Kenya trace their heritage to South Sudan. Frictions/conflicts with the Arab tribes north and west of the Sudan have further solidified these bonds over the years. Accordingly, South Sudan, as a region of the Sudan, explored ways of joining East Africa on the eve of the Sudanese independence in 1956. During the Sudanese civil wars, Uganda and Kenya, with international humanitarian assistance, graciously hosted thousands of displaced South Sudanese, protecting them and decently educating their children. More specifically, Kenya hosted tens of thousands of the South Sudanese between 1992 and 2008, many of whom resided in Kakuma camp, northwest of Turkana County. Evidently, the Kenyan police did not treat the South Sudanese as they did their own. They often harassed the South Sudanese, even when they carried legitimate UNHCR documents, extorting money from them and threatening them with violence or jail. These experiences, which occurred during President Daniel Arap Moi's era, affected a fraction of the South Sudanese who traveled between towns, especially between Kakuma and Nairobi. These police harassments of the South Sudanese nearly disappeared when Mwai Kibaki became president.

This history of mixed cordial coexistence and Kenyan brutality toward South Sudanese has been subject of popular discussions among the citizens of both countries. South Sudanese have sometimes lamented their experiences of rough treatment by the Kenyan police and the Kenyans expressing disdain toward South Sudanese for a variety of perceptions about them. This debate came to a head beginning August 24, 2018, when the Kenyan government declared a crackdown to arrest South Sudanese. The police rampage against the South Sudanese, however, not only rekindled such unflattering memories, it equally poses grave threats to the two nations' diplomatic future.

This policy shake-up, necessary as that is for economically distressed Kenyans, however, turned violent against South Sudan's nationals, who escaped an intractable political instability back home. Scores of them were rounded up, even from their legally acquired rental homes, in churches, on the streets and night clubs, all treated uniformly, whether they had a visa or not. Nationals of other countries such as Canada, the United States or Australia, who happen to be of South Sudanese origin, were also arrested, even as many of them protested and tried to show that they were in the country legally.

The arrests were reportedly violent, with suspects beaten, threatened, and/or forced to pay bribes. A young South Sudanese, who was presumably tortured in detention in Lodwar, died¹. The arresting police officers were reportedly unwilling to verify the status of those individuals on spot so as to avoid detaining those with a documented status. The officers insisted that the verification be performed only at the police stations and not at the moment of the arrest. Subsequently, those arrested in the evenings or on weekends ended up in detention cells until the next business day when senior officers reported to work. This has meant that whether or not people have legal status, once arrested, they had to spend the night in jail. The result is that many innocent people, including infants as old as 90 days, were unnecessarily subjected to the violence that has accompanied these arrests. Horrific photos of these families and wailing children held for hours on end appeared in the media.

While it is the right of the government of Kenya, as it is for all governments, to enforce its labor laws, what is shocking about this particular intervention was the brutality of its enforcement on the people least relevant/problematic. None of the South Sudanese arrested was found working or looking for a job in Kenya, as South Sudanese are not really in Kenya to look for employment, but mainly fleeing insecurity, and lack of educational and health services in their war-torn country. Of all the foreigners who live in Kenya, South Sudanese are the least likely to look for jobs or to get any. Almost all of them live on remittances from home and from their relatives in the Diaspora, especially from North America and Australia. Some of them are spouses and children of the Diaspora in the global north. Majority are refugees living in Kakuma but who sometimes send family members to Nairobi to procure supplies for their families in the refugee camps. And by this action, Kenya is breaking its Refugee Act, 2006 (Articles 3

¹ The National Courier

and 11)² and the 1951 UN Refugee Status Convention to which it is a signatory³. As well, Kenya violates Article 104 of the East Africa Community (EAC)'s Treaty, 2000, which guarantees the right of free movement, labor, and of establishment and residence of persons from member states in the 'Community.'⁴

2 Is Kenya Ungrateful?

Being seekers of safety and services, especially education, which the South Sudanese handsomely pay for has often attracted rogue elements from the Kenyan police. At least this was the case throughout the 1990s and early 2000s. It was only when the political climate improved in Kenya to coincide with the end of the Sudan's civil war that police brutality against South Sudanese in Kenya subsided. But when the Ministry of Interior issued these recent orders to "clean" Kenya of illegal immigrants "who have become a national security risk," as Secretary Matiangi stated, the police took advantage of them to extort monies from ordinary South Sudanese, even those with a legal status. The heavy-handed response the police used has resulted in some of the victims being coerced into paying bribes in order to avoid spending the night in crowded jail cells. Those without the means to buy their way out of this extortionary measure remain in jails to date. Notably, these arrests were not supervised by any judicial authorities and no due process of the law was ever followed.

This experience has been decried by South Sudanese all over the world, many of them invoking what they see as Kenya being ungrateful for what South Sudan has contributed to Kenya since the 1990s. They see Kenya as one neighbor that has equally offered help to South Sudan as it benefited from the South Sudanese crises. During the liberation war, 1983-2005, as referenced elsewhere, Kenya hosted tens of thousands of the South Sudanese, who stimulated the local economy through increased purchasing capacity and consumption. Kenya was the primary beneficiary of the humanitarian efforts to serve war-affected South Sudanese, whether through employment of Kenyans in the massive NGO sector, or in the UN operations from Lokichogio into South Sudan, or through private business operated to cater to all these efforts. At that time, South Sudanese were not allowed to get jobs with the humanitarian agencies, until about 1995, as the SPLA feared that such employment would attract South Sudanese away from the battle fields and into salaried employment. The Kenyans filled the vacuum in their thousands. To date, a lot of these Kenyans have not returned home for employment; employed as expats, their average earnings are relatively higher than an average Kenyan makes back home. Many South Sudanese contend that this has aided in spurring the Kenyan economy. When the war ended in 2005, Kenyan businesses, banks, construction companies, transport companies, and security companies, flocked to South

² http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/RefugeeAct_No13of2006.pdf

³ <http://www.unhcr.org/4ec262df9.pdf>

⁴ http://www.wipo.int/edocs/lexdocs/treaties/en/eac/trt_eac.pdf

Sudan and spread all across the country. These channels, too, have made the country billions of dollars, much of it repatriated back to Kenya (Khoudour & Andersson 2017)⁵.

3 Concluding Remarks

What can the governments of the two countries do to address this situation? There are now many voices within South Sudan that are calling for a retaliatory expulsion of Kenyans from South Sudan or imposition of commensurate restrictions on their access to employment opportunities. On the Kenya side, apart from the exploitation of this policy by elements in the law enforcement agencies, there seems to be a number of Kenyans who hold grudges against South Sudanese and who are calling for even more stringent restrictions. This is tragic for the future of cooperation between the two countries, especially as there are no signs that this situation is being managed in ways that could calm the passions. This situation is likely to escalate to levels where more innocent people on both sides could become victims, as the expulsion of Kenyans would not undo the injustice the South Sudanese have already experienced in Kenya, and the ordinary Kenyans becoming unfriendly to South Sudanese would not be of benefit to any Kenyan working in South Sudan.

The two governments should do first things first. South Sudan government needs to request a high-level meeting with the Kenyan authorities, ask Kenya to halt the arrests, work on releasing those detained, especially the very young among them, and investigate the reported abuses to ensure that any excesses that have occurred be punished. On the Kenya side, Nairobi needs to ask Juba to assist in regulating population movement, especially the movement of non-refugees and to ensure that Juba issue documents for its nationals residing in Kenya. In this way, it would be easier for Kenya to control crime, apprehend any suspects with ease and to follow due process of law in such cases. This needs to be followed by official statements from both governments to clarify the nuances surrounding the current incident and to urge the public to refrain from sensationalism and leave this in official hands.

The government in Juba, despite the daunting task of building its nascent institutions, has to realize that in diplomatic terms, South Sudan is an equal member of the community of nations, a member of regional organizations, the African Union, the EAC and IGAD, and as such, it deserves to be consulted on any actions of such serious consequences to its nationals as in the case of a recent police crackdown in Kenya. Perhaps as the proverbial new kid on the block, South Sudan has allowed herself to be bullied by her immediate neighbors on numerous occasions since it became independent in 2011. Like all the bilateral diplomatic crises that have occurred over the years between South Sudan and its immediate neighbors, and which authorities in Juba have handled in ways that have left a lot to be desired, this incident is yet another one where South Sudanese authorities either do not know what to do or lack confidence to stand up to Kenya.

⁵[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DEV/DOC\(2017\)1&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DEV/DOC(2017)1&docLanguage=En)

Lastly, the action of the Kenyan police deals a serious blow to international and regional conventions on human rights and privileges. Thus, Kenya ought to observe her international and regional commitments and South Sudan has the responsibility to protect its nationals. Failure to exercise these responsibilities risks allowing xenophobia to grow in both countries, of course, to the detriment of mutual cooperation.

About Sudd Institute

The Sudd Institute is an independent research organization that conducts and facilitates policy relevant research and training to inform public policy and practice, to create opportunities for discussion and debate, and to improve analytical capacity in South Sudan. The Sudd Institute's intention is to significantly improve the quality, impact, and accountability of local, national, and international policy- and decision-making in South Sudan in order to promote a more peaceful, just and prosperous society.

Author's Biography

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