

Asylum Under Threat

Assessing the protection of Somali refugees in Dadaab refugee camps and along the migration corridor



Refugee Consortium of Kenya

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**A publication of the Refugee Consortium of Kenya with the support of the Danish
Refugee Council
June 2012**

Photographs on cover page courtesy of Brendan Bannon/IOM/UNHCR and IRIN.

**Printed and Bound in Kenya by:
Pann Printers Limited.**

Acknowledgements

This report was commissioned by the Refugee Consortium of Kenya (RCK) with the financial and technical support of the Danish Refugee Council (DRC). The report was compiled and written by Katherine Grant, Rose Wangui Kimotho and Erick Gerstner, drawing on field surveys and an extensive desk review of the legal and policy frameworks on refugee protection.

The research and compilation of this report was overseen and reviewed by the Study Advisory Group (SAG), consisting of staff from the Danish Refugee Council and the Refugee Consortium of Kenya. In particular, the consultants would like to thank Lucy Kiama, the Executive Director of RCK, Peter Klansoe, the Regional Director of the DRC for their professional guidance throughout this study. We give special acknowledgements to the SAG members who include, Roel Debruyne (DRC), Simon Konzolo (RCK), Leila Muriithia (RCK), Riva Jalipa (RCK), Rufus Karanja (RCK) and Omolo Joseph (RCK) for reviewing and giving guidance on documents in the study and offering technical, logistical and administrative support.

The consultants extend their gratitude to the RCK staff in Dadaab, as well as the RCK protection monitors in Dadaab for their support during the survey. Further, the consultants would like to offer appreciation to the staff of DRC and UNHCR in Dadaab Main Office, and for the UN and NGO staff who gave their time to be interviewed.

The research team would like to thank all the refugees and asylum-seekers interviewed for this research, in Dadaab refugee camps and Eastleigh, Nairobi.

We also appreciate the Kenya government officials in Dadaab and Nairobi and other partners who agreed to be interviewed for this research, in particular Hon. Gerald Otieno Kajwang, the Minister, Ministry of Immigration and registration of Persons, Mr. Badu Katelo, the Acting Commissioner, Department of Refugee Affairs and representatives from the Ministry of Provincial Administration and Internal Security, the District Commissioner, District Children's Officer, and the police in Dadaab town.

ACRONYMS

ADD	Action on Disability and Development
BID	Best Interest Determination
BPRM	Bureau of Population, Refugees and Migration
CEDAW	Committee on the Elimination of Discrimination Against Women
CFS	Child Friendly Space
CIC	Committee for the Implementation of the Constitution
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DANIDA	Danish International Development Assistance
DEVAW	Declaration on the Elimination of Violence against Women
DFID	Department for International Development (UK)
DMO	Dadaab Main Office
DRA	Department of Refugee Affairs
DRC	Danish Refugee Council
ECHO	European Commission Humanitarian Office
FGM	Female Genital Mutilation
HI	Handicap International
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IED	Improvised Explosive Device
IOM	International Organization for Migration
IRIN	Integrated Regional Information Network, Humanitarian News and Analysis, a service of the UN Office for the Coordination of Humanitarian Affairs
KLRC	Kenya Law Reform Commission
LWF	Lutheran World Federation
MSF	Medecins Sans Frontieres
NRB	National Registration Bureau
NRC	Norwegian Refugee Council
OAU	Organization of African Unity
PSEA	Prevention of sexual exploitation and abuse
UN OCHA	UN Office of the Coordination of Humanitarian Affairs
RCK	Refugee Consortium of Kenya
TFG	Transitional Federal Government (Somalia)
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
WFP	World Food Programme

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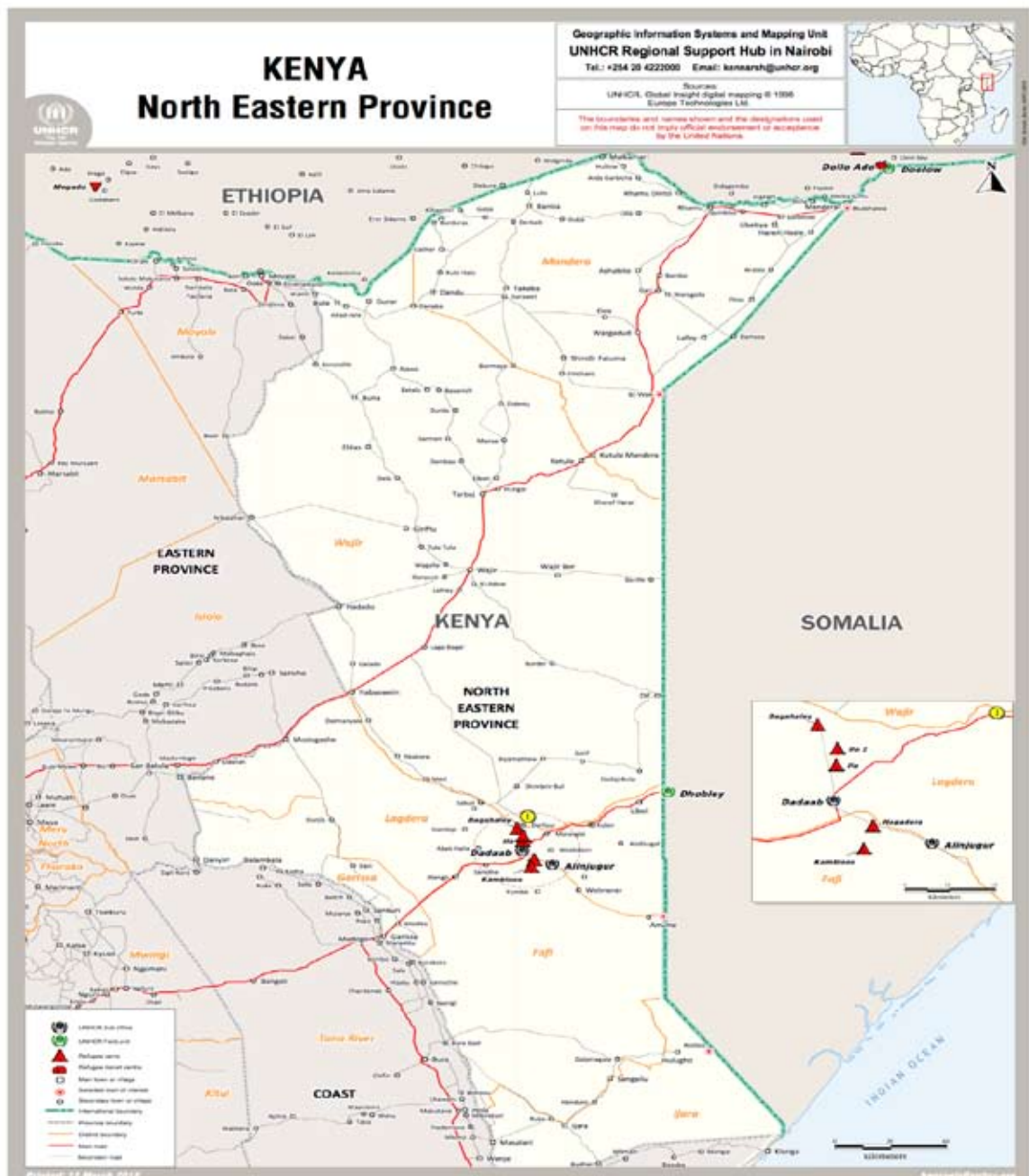
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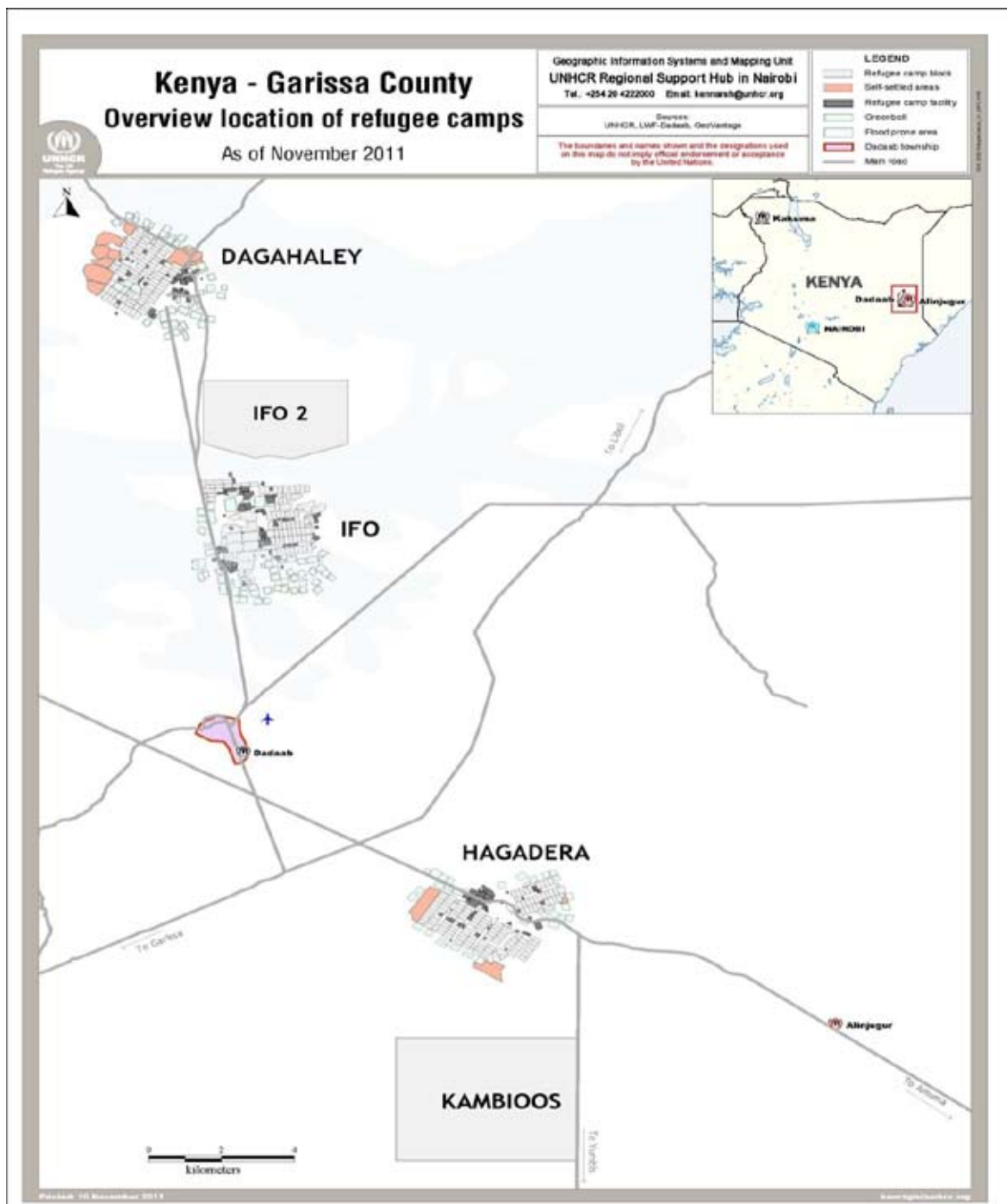
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1. Executive Summary

Introduction

For more than a generation, the government and people of Kenya have been generously providing asylum for hundreds of thousands of refugees from across the region. Few countries in Africa can claim as flexible and as accommodating an asylum regime as Kenya has made available to those escaping persecution or war in neighbouring states. Amongst these, Somalis have figured prominently: for over twenty years, Somali civilians have been fleeing the conflict that has gripped much of their country. The world's biggest refugee camp, hosting the largest Somali population outside Somalia, is in Dadaab in North Eastern Kenya, a group of five settlements that have been home to refugees since 1991.

Dadaab is, however, an imperfect safe haven, and its long history of insecurity has been widely documented. Since they opened, the camps have been the scene of sexual violence, banditry and attacks on both refugees and humanitarian aid workers. Conditions for the camp residents, and on the broader macro-political level for refugees across Kenya, have deteriorated considerably in the past year. Consequently, Somali civilians currently seeking asylum in Kenya are encountering an increasingly fragile protective environment. During 2011, approximately 150,000 Somalis crossed the border and sought asylum in Dadaab. This influx has overwhelmed the already stretched resources of the humanitarian agencies, and worsened the state of overcrowding throughout the camps. Incidents of violence against police and refugees are on the rise, and levels of protection and security have been heavily undermined. Registration of new arrivals has been suspended, with the border and Liboi transit centre still officially closed.

In recent months the Kenyan government has been increasing its public rhetoric around an imminent return of refugees to Somalia, in light of progress made by the Kenyan military in 'liberating' areas from Al Shabaab control. Although there have been some positive developments inside Somalia, the situation remains too unstable for a mass repatriation. The report survey also indicates that the majority of camp residents would not willingly return to Somalia under current circumstances.

These compound threats to the protection of Somali asylum-seekers and refugees come as the national legal framework on refugee protection, the 2006 Refugees Act, is under review in line with the new constitutional dispensation. Other structural adjustments in the system of refugee protection are underway: the Government of Kenya is increasingly assuming responsibilities from UNHCR, such as reception and registration of refugees and asylum seekers (as from March 2011), and anticipates assuming refugee status determination in 2013.

From a legal standpoint, Kenya's obligations towards refugees are clear. Kenya is signatory to the 1951 UN Convention Relating to the Status of Refugees and a range of other international human rights treaties that describe the basic rights of individuals in need of protection and asylum. Kenya's constitution defines the rights and freedoms to be enjoyed by all persons in the country, and the 2006 Refugees Act domesticates many of the 1951 Convention standards for refugee rights. However, several of the key provisions of the law have not been applied in practice, and there is still no comprehensive refugee policy determining their actual implementation.

This report by the Refugee Consortium of Kenya (RCK) examines the policy and practice of Kenya's refugee protection framework. Although much has been written on the situation in the Dadaab camps, there has been no holistic examination of the legal and policy backdrop to refugee protection in Kenya. The purpose of the study, therefore, is to establish the range of rights to which refugees and asylum-seekers in Kenya are entitled under national law (as well as international and regional legal frameworks), and to identify and assess the current implementation gaps. The research aims to examine the key protection priorities for the Somali refugee caseload in Dadaab and on the migration corridor, and make recommendations to stakeholders on the practical application of the laws relating to the treatment of refugees.

1.1 Key Findings and Conclusions

Key survey findings

Motives for flight: 43% of surveyed new arrivals said that they had come to the camps as a result of the drought and famine, in search of livelihoods, resettlement, family members or some combination of these reasons. Has the 2011 Somalia famine undermined *prima facie* refugee status for Somali immigrants?

A long road and a mixed reception: 61% of asylum-seekers who have crossed the border since the beginning of 2011 said that it had taken them two weeks or longer to get from the border to Dadaab. 27% of surveyed refugees who met police on the road during 2011 reported arrest, threats or extortion.

Security in Dadaab: 56% of all respondents felt unsafe in the camps, 23% of these because of the increase in bombs and IEDs in the camps, and 13% because of the presence of Al Shabaab elements. 10% of interviewees felt there was insufficient police presence in the camps, and yet 11% feel the police themselves pose a threat to the security of the camp population.

Gender-based violence in the camps Across the four camps, 14% of respondents said that they had themselves been exposed to gender-based violence of one form or another, whilst 31% said they knew of somebody else who had had such an experience

Children at risk 12% of respondents listed fear of recruitment (particularly of children) as a key concern in the camps.

Durable solutions 86% of the survey interviewees said they would like to be resettled if the current situation continues inside Somalia, although only 59% listed it as a preferred option to repatriation if conditions would improve.

Despite the strengths of the current 2006 Refugees Act, which adheres closely to the standards set in the 1951 Convention, central aspects of the law have not been put into policy or practice. This has led to a number of shortcomings in the protection of refugees. These include restrictions on the rights of refugees to movement and place of residence; the lack of a clear refugee policy; the closure of the Somalia/Kenya border; the current suspension of registration in the Dadaab camps; and continued gaps in the capacity, training and autonomy of the Department of Refugee Affairs (DRA). Additionally, the draft 2011 Refugees Bill threatens to restrict further the rights of refugees and asylum-seekers in the country.

In the context of the 2011 famine and refugee crisis, the continued refusal by the Government of Kenya to open the border and the lack of access to nutrition, health, water, transport and other essentials at Liboi was an extraordinary protection failure, contributing for several months to excess mortality in the first days of arrival in the camps. It also exposed new arrivals to protection violations and criminal activity on the road to Dadaab and other destinations, including arrest, detention and extortion by Kenyan police. More than a quarter (27%) of refugees interviewed in the survey for this report who met police on the road during 2011 reported arrest, threats or extortion. Although refoulement was not widely reported, newly arrived Somalis continue to face regular abuse of their rights to seek asylum.

The camps at Dadaab continue to be the scene of significant insecurity, violence and protection concerns for the refugee population. These concerns have been exacerbated by the massive influx of 2011, and the spate of security incidents against police, humanitarian workers and refugee community leaders towards the end of the year. The attacks within the camps may in part be due to the lack of screening at the border; surveyed refugees described their concerns over Al Shabaab presence in the camp, risks of recruitment from the camp, and over their exposure to general criminality.

UNHCR is investing millions of dollars, with donor support, in strengthening and improving police presence in the camps, but the police are not trusted by the refugee population and are seen as perpetrators of violence in the camps themselves. Increasing the numbers of police in the camps is not enough: investigating and addressing police impunity for abuses in the camp, ensuring comprehensive training on refugee law for all police recruits and accelerating countrywide police reform are also urgently needed.

Women and children have particular and pronounced protection needs in the camps – especially with regard to entrenched sexual violence, which the RCK survey confirms is still widespread, and mostly goes unpunished. A stricter application of the relevant Kenyan legislation – the Children’s Act, the marriage laws, the FGM Act and other criminal laws – is an important responsibility of the Kenyan government, and could provide UNHCR and partner agencies with the impetus for better programming on prevention and response.

Other vulnerable groups, such as the elderly and persons with disabilities, also struggle to access basic services and protection. For other groups, the right to education and access to justice in the camps are compromised in the context chronic overcrowding, compounded by significant gender disparities. The lack of opportunity for refugees to work in the camps, both in policy and in practice, continues to cause frustration and generate further protection risks.

The survey found that a minority of refugees in the camp (14%) would be willing to repatriate to Somalia now. Most dream of resettlement to a third country, but this is a solution that reaches only a few thousand refugees per year. In the meantime, the insecurity and poor protection of the camp causes many refugees who have the means to leave the Dadaab camps. In urban centres, despite discrimination and police harassment, Somalis are finding ways to sustain themselves economically and to integrate. Gradual steps towards enabling refugees to work, move freely and access more solid identity documentation will facilitate this process of integration. This is particularly necessary

in light of the increasingly hostile public rhetoric towards a Somali minority perceived as linked to extremism and insecurity.

Integration in North Eastern Kenya, where a significant Somali-Kenyan population already exists, may ultimately be a durable solution for some of the long-term residual population. Providing refugees in the camp with better opportunities for self-reliance, employment and education is a vital first step. At the macro-level, high-level engagement on the part of government, development agencies and donors with a long-term decentralized strategy for peace, security and development in North East Kenya is a necessary next step.

Voluntary repatriation remains the most likely option for the majority of Somali refugees in Kenya and is the solution that the Government of Kenya is strongly advocating. This is also the preferred approach according to the traditional conception of durable solutions for refugees. Though peace has not returned to Somalia, key actors (UNHCR, donors and the Government of Kenya) should start planning and budgeting for a phased voluntary return process for the coming three to five year period

UNHCR will have to be creative in its construction and presentation of a narrative of repatriation to the residents of Dadaab. Somalis have a unique relationship with displacement and residence, adaptation and integration. A simple one-way, mass return to Somalia for those in Dadaab is unlikely to prove viable after such a long refugee history. Durable solutions will have to be multiple, flexible, and consultative, even if the necessary peace and stability is finally established in Somalia.

Expanded findings, conclusions, and recommendations are included at the end of the report.

2. Introduction

2.1 Background

For over twenty years, Somali civilians have been fleeing the conflict that has gripped the central and southern regions of their country. Since 2006, when the Islamic Courts Union began its ideological and military opposition to the fragile Transitional Federal Government (TFG), and Ethiopian troops entered Mogadishu in defence of the government, the conflict has spread throughout much of Somalia. With the evolution of the more radical anti-government movements such as Al Shabaab and Hizbul Islam, as well as other groups allied to the government like the Ahlu Sunna wal Jama, the war has greatly intensified, bringing death, injury and displacement to the civilian populations of Mogadishu and other urban centres such as Kismayo and Baidoa.

It is estimated that approximately one million Somalis are living outside Somalia, across many countries of the developed world, as well as in camps in Ethiopia and Kenya¹. The world's largest refugee complex, and the one housing the largest Somali population outside Somalia, is Dadaab. This group of five camps has been a home for refugees since 1991.

Located in an under-developed and neglected region of Kenya, Dadaab has always been a place of imperfect protection, with a highly volatile security context. Since their inception, the camps have been the scene of sexual violence, banditry and attacks on both refugees and humanitarian workers. However, conditions for the camp residents, and on the broader macro-political scene for refugees across Kenya, has deteriorated considerably in the past year. Consequently, Somali civilians seeking asylum in Kenya are now encountering an even more fragile protective environment.

As of the end of April 2012, Dadaab hosts a population of 464,364 refugees². An additional caseload of over 4,000 has not been registered for assistance or protection, since the suspension of registration by the Government of Kenya in October 2011. The suspension followed a series of kidnappings and abductions of aid workers from the camp, and two tourists from the coast, which contributed to Kenya's decision to initiate a military incursion into Somalia with the objective of fighting Al Shabaab militants. There have since been several security incidents in the camps, involving attacks on Kenyan police with improvised explosive devices (IEDs) and hand grenades. So far, six policemen have lost their lives as a result.

In 2011, due to severe famine in Somalia, nearly 150,000 Somalis crossed the border, despite it being officially closed since 2007, and sought asylum in Dadaab. In July 2011 alone, over 40,000 Somalis arrived at the camps, the highest monthly arrival rate in their history. This influx overwhelmed the already stretched resources of the humanitarian agencies, and worsened the state of overcrowding throughout the camps. In response to the crisis, the Government of Kenya, after months of equivocation, recognized and allowed the use of Ifo 2, a fourth camp that UNHCR had prepared for new arrivals. However, the government has not moved further to officially recognize Kambioos camp, the fifth camp of the complex, in which more than 13,000 refugees have been registered³

1 Sheikh, H. & Healy, S. (2009). *Somalia's missing million: The Somali diaspora and its role in development*. UNDP Somalia.

2 UNHCR (2012, 22 April). Retrieved from <http://data.unhcr.org/horn-of-africa/region.php?id=3&country=110>

3 Ibid.

but where an estimated 20,000 refugees in total are settled with access to only limited services and protection. The relationship between the police and the camp population is tense, compromising the provision of security to an already vulnerable camp population. Reports of violence, extortion and other human rights violations against resident refugees are on the increase.

It is in this context that the Refugee Consortium of Kenya (RCK) has undertaken to examine Kenya's refugee protection framework, as it applies in policy and practice. The increased challenges Somali asylum-seekers and refugees have been facing since last year arise as the national legal framework on refugee protection, the 2006 Refugees Act, is under review in line with the new constitutional dispensation. The 2011 Refugees Bill threatens to formalize a stricter refugee management system, leading to a reduced asylum regime. Other structural adjustments in the system of refugee protection are underway: the government is increasingly assuming responsibilities from UNHCR, such as reception and registration of refugees and asylum seekers (as of March 2011), and anticipates to assume refugee status determination in 2013.

Much has been written on specific protection challenges on the ground in Dadaab, often focused on a particular constituency amongst the refugee population, or on an individual set of related human rights violations. Missing from the literature is a holistic examination of the legal and policy backdrop to refugee issues in Kenya, with a view to establishing the range of rights refugees in this country are entitled to, and how gaps in implementation undermine their realization in practice. It is only once these gaps have been comprehensively analyzed that recommendations can be made for the strengthening of these provisions to better protect refugees.

With this research, RCK interrogates the roles and impact of state and non-state actors in the refugee protection regime in Kenya. This report examines existing protection measures and how they provide, or fail to provide, for emerging gaps. It also makes recommendations on how best to address some of the most egregious protection shortcomings, as the outlook in general gets more troubled for refugees across Kenya.

2.2 Research issues and conceptual framework

The purpose of the study is to assess the application of protection provisions for incoming and long term refugees in the Dadaab camps, as informed by national, regional and international legal frameworks in addition to analyzing protection gaps and recommended options for mitigation.

The immediate objectives of the study are:

- To establish the rights of refugees and asylum-seekers in Kenya that are provided within the national, regional and international legal frameworks
- To identify the priority areas for the protection of refugee men, women, girls and boys deriving from these rights
- To assess gaps in the implementation of protection provisions and the realization of rights in the Dadaab refugee camps, and on the migration corridor (between the Somali border, the Dadaab camps, Garissa and other urban centres)
- Based on these protection gaps, to provide recommendations for the Government of Kenya and other key stakeholders for improved protection of Somali refugees in the Dadaab camps

These research objectives are grounded in the broader discourse around the rights of refugees to protection, and Kenya's own position within the community of states who participate in providing international protection to refugees. By signing and ratifying the 1951 Convention and other related international and regional instruments, Kenya has agreed to provide protection to those seeking asylum on its territory.

Refugee protection is understood in this research to mean the assurance of and access to basic human rights of people displaced to a country other than their own. Three main conceptual components make up the refugee protection regime: asylum, protection and assistance and burden-sharing⁴. The element of *asylum* assumes that refugees will not be returned involuntarily to a country where they could face persecution. *Assistance* is provided by the host state, and by other refugee stakeholders, such as UNHCR, to ensure refugees and asylum-seekers are able to access their basic human rights. In the longer-term, protection also includes the search for appropriate durable solutions for refugees, by repatriating voluntarily to their homeland, integrating in countries of asylum or resettling in third countries⁵. And *burden-sharing* consists of the funding and coordinating of assistance, as well as resettlement of refugees in third countries.

The report has used the term 'asylum-seeker' to refer to Somalis who cross the Kenyan border intending to register as refugees in Kenya, whilst the term 'refugee' is used to refer to Somalis who have succeeded in registering, either in the Dadaab camps or elsewhere. Somalis are recognized as refugees on a *prima facie* basis, meaning they are not required to undergo refugee status determination interview on the basis of an individual claim, but rather are recognized as refugees on the basis of nationality. This is because of the extreme nature of the conflict and other drivers of displacement in Somalia.

All three of these elements apply to the protection regime provided to Somali refugees in Dadaab. Kenya has been allowing Somalis (and other nationalities) refugee status in Kenya, and providing a framework and environment for the delivery of assistance to these refugees in the camps. UNHCR, donor governments and a host of partners have been funding and implementing the delivery of this assistance, and third countries have been receiving thousands of resettled refugees every year, thus sharing the burden of providing protection. This research examines the quality and scope of the protection framework as applied for Somali refugees in Dadaab, and particularly the extent to which it meets the legal obligations of the Kenyan government.

2.3 Methodology

This report is based on research carried out between February and April 2012 in Kenya. The research team relied on a combination of primary and secondary sources of information and data. In terms of primary research, extensive discussions and interviews were conducted with key stakeholders to the refugee protection process, both in Nairobi and Dadaab Main Office (DMO), where most of the agencies delivering services to the refugee population in the camps are based. In Nairobi, more than 14 key donors and agencies (UN and non-governmental) were interviewed; in Dadaab, the team met with 16 organizations (national and international) working in the camps.

The secondary sources consisted of existing literature concerning refugee protection globally, in Kenya, and specifically in Dadaab – evaluations, strategies, reports, policies, agreements, studies

4 Skran, C. (1995). Refugees in inter-war Europe: The emergence of a regime. Cited in Betts, A. (2006). Conceptualizing interconnections in global governance: The case of refugee protection. Refugee Studies Centre, Oxford University.

5 UNHCR. *Protection: A Safety Net*. Retrieved from <http://www.unhcr.org/pages/49c3646cc8.html>

and other non-academic material, much of it developed and shared by agencies and organizations working directly with refugees in the Dadaab camps. The study also reviewed the national laws, policies and regulations governing refugee management and protection in Kenya, as well as the international and regional legislative and human rights frameworks.

The researchers also consulted government representatives in Nairobi and Dadaab from the police, the Department of Refugee Affairs (DRA), the National Registration Bureau (NRB), the Ministry of Immigration and Registration of Persons, the Ministry of Provincial Administration and Internal Security, and the Dadaab-based District Commissioner.

The camp-based survey

To ensure the report's findings and information are both accurate and up-to-date in the current fast-changing refugee protection environment in Kenya, the research team carried out a survey in four of the five camps of Dadaab, in which 761 refugee residents of the camps were interviewed. The survey tool, a questionnaire with multiple-choice questions - and for some questions, room for narrative responses - was developed in consultation with the Study Advisory Group, consisting of staff members from RCK and the DRC. The RCK Dadaab office provided a team of 15 protection monitors. This team was trained in interview techniques and the use of a survey tool designed to capture information on the key protection challenges experienced by refugees, both in the context of their travel to the camps and during their residency there. The tool was then field-tested in the camps for two days, and subsequently refined and adapted in response to the practical experiences of the protection monitors with the form. The protection monitors then spent 14 days conducting one-on-one interviews with refugees in the camps.

The criteria for selection of respondents were structured to ensure a good representation of both female (62%) and male (38%) respondents, with a significant proportion (19%) of those interviewed under eighteen. The monitors also ensured that they captured a range of reflections and inputs from both 'long term' refugees, who had lived in the camp for many years, and those who had arrived more recently. The concept of 'older caseload' and 'new arrivals' was used to disaggregate answers from refugees who had arrived in Dadaab at any point since its creation until the end of 2010 (55% of the respondents), and those who arrived in the camps between January 2011 and March 2012, when the survey was rolled out (45% of the respondents).

The survey results were analyzed along four key axes of disaggregation: camp residency, age (over 60s, adults, and under 18s), sex of respondent and length of stay in the camp. The results have been used to inform the report section by section. This is to ensure that the perspectives of the refugees on their experiences - their reasons for seeking asylum, their security and protection en route and in the camps, their expectations and hopes for durable solutions - are adequately reflected throughout. In addition, six focus group discussions (FGDs) were also carried out with groups in the camps, and one with the host community.

The survey was limited by the fact that RCK had no trained monitors based in Kambioos camp by the start of the study: very few agencies have staff based in Kambioos, because it is still not an officially recognized camp. This is a significant gap, as by all accounts generalized insecurity and specific protection violations are more extreme and widespread in Kambioos than in any other camp. Thus, it would have been informative to have firsthand information on the principal constraints, fears and protection problems faced by the residents. Additionally, insecurity along the corridor prevented researchers from interviewing refugees and agencies along the transit town of Liboi and Garissa.

3. The legal and policy framework for protecting refugees

3.1 International and regional benchmarks for the protection of refugees

At an international level, the *1951 UN Convention Relating to the Status of Refugees* is the primary international legal framework for the protection of refugees, grounded in Article 14 of the 1948 Universal Declaration of Human Rights. It spells out the kind of legal protection, social services and other forms of assistance a refugee should receive from the host state, as well as their basic human rights, such as freedom of religion, movement, education, health, access to justice and accessibility to travel documents. Over sixty years on, the Convention continues to be the main authority in refugee protection, but has been augmented by regional mechanisms such as the 1969 OAU Convention Relating to the Specific Aspects of the Refugee Problem in Africa.

Regionally, this framework has been confirmed by the *1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa*. This accepted the definition of the 1951 Refugee Convention and expanded it to include those compelled to leave their country owing to external aggression, occupation, foreign domination or events seriously disturbing public order. At the time of adoption, the concern of the African states was in regard to refugees from territories that were still under colonial rule or occupation⁶. The African Union's definition also recognizes non-state groups as perpetrators of persecution, and does not demand that a refugee shows a direct link between herself or himself and the future danger. It is sufficient that the refugee considers the harm sufficient to force her/him to abandon their home.

Unlike the 1951 Convention, the OAU Convention is much leaner on the rights of refugees. However, the lack of specific enumeration of rights does not negate the rights recognized by the 1951 Convention because the 1969 Convention is modelled as a 'regional complement' to the latter⁷ and thus must be read together with the 1951 Convention. In essence, the OAU Convention adds on specific aspects of refugees in Africa without subtracting from the 1951 Convention: hence all rights accruing to refugees by virtue of 1951 Convention apply to refugees whose host countries are Member to the OAU Convention.

In addition to the two refugee conventions, other international and regional documents also contain provisions that have been used to protect refugees. Some of these are particularly pertinent to specific aspects of the refugee experience: the separation of political dimensions such as conflict from a state's obligation to protect, for example, and the particular vulnerability of certain groups such as women and children.

Of special relevance to Somali refugees in Kenya, given the current state of conflict between their country of origin and host state, is the *1949 Geneva Convention relative to the Protection of Civilian Persons in Times of War*. Articles 44 and 70 provides that refugees should not be treated as "enemy aliens" merely on account of their nationality to the enemy state. Similarly, Article 73 of the 1977

6 Okoth-Obbo, G. (2001). Thirty years on: A legal review of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. *Refugee Survey Quarterly*, Vol. 20, No. 1.

7 The Convention contains several articles referring to this relationship: preamble para 7, para 10, Article VIII(2).

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1) provides that “persons who, before the beginning of hostilities, were considered as stateless persons or refugees ... shall be protected persons...in all circumstances and without any adverse distinction.”

Other instruments relate to the rights of non-citizens in states and therefore by extension the rights of refugees. *The 1966 International Covenant on Civil and Political Rights*, one of the core treaties in international human rights law, stipulates that states should ensure the civil and political rights of all individuals within their territory and subject to their jurisdiction (Article 2). The Covenant also guarantees freedom of movement and prohibits forced expulsion in articles 12 and 13 respectively.

Another treaty of importance, in relation to the potential risk of forced repatriation to an insecure or hostile environment such as Somalia, is the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 3 prohibits state parties from refouling a person to another state where there are substantial grounds for believing they would face torture, such as a consistent pattern of gross violations of human rights⁸.

More generally, the right to seek asylum has been affirmed at a regional level with the African Charter on Human and Peoples’ Rights. This provides in Article 12(3) that ‘every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.’ The charter recognizes the right to leave and return to any country, including the country of origin, subject to legal restrictions for the protection of national security, law and order, public health and morality⁹.

There are also a number of treaties relevant to the protection of vulnerable groups within a broader refugee population, such as women and children. This includes the 1989 Convention on the Rights of the Child (CRC), which outlines in detail the expected protection and assistance that a refugee child should receive, and the equivalence of their rights in this regard to those of any child¹⁰.

Similarly, the 1993 Declaration on the Elimination of Violence against Women (DEVAW) recognizes in its preamble the particular vulnerability of refugee women. While declarations are not binding, the DEVAW has become important in defining and understanding issues of violence against women. At a regional level, this is reinforced by the 2003 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol): specifically the inclusion, in its definition of violence against women, of arbitrary restrictions on or deprivation of fundamental freedoms, in private or public life, in peace time and during situations of armed conflict or war (Article 1(j)). The

8 The monitoring body of this convention, the Committee Against Torture, has established some fundamental principles relating to the expulsion of refused asylum-seekers. It offers important protection to refugees and their right not to be returned to a place where they fear persecution.

9 OAU. (1981). African Charter on Human and People’s rights (Banjul Charter). Article 12(2).

10 Article 22 of the *1989 Convention on the Rights of the Child* stipulates that “States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee ... shall ... receive appropriate protection and humanitarian assistance in the enjoyment of ... rights.... States Parties shall provide ... cooperation in ... efforts ... to protect and assist such a child and to trace the parents or other members of the family of any refugee child ... for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child ... deprived of his or her family environment”.

reference to situations of armed conflict is important, because it brings within the protocol female asylum-seekers and refugees, as well as other categories of war-affected women¹¹.

More generally, right to asylum remains within the broader human rights frameworks and as such any deficiency within the refugee-protection specific layout would be responded to through well-established rules of international human rights.

3.2 Kenya's obligations towards refugees: the national legal framework

Kenya is signatory to the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol as well as to the 1969 OAU Convention Governing Specific Aspects of the Refugee Problem in Africa¹². Importantly, Kenya did not enter any reservations in regard to any of these treaties, thus taking on all the legal obligations to protect refugees under the terms therein. In addition, while Kenya is a state party to various complementary human rights treaties applicable to refugees and bears international legal obligations under these conventions, there is also a national law relating to refugees.

The Constitution of Kenya 2010

The Constitution of Kenya is the supreme law of the land that binds all persons and state organs¹³. Significantly, Article 2 (5) of the Constitution of Kenya 2010 in turn states that the general rules of international law shall form part of the law of Kenya. Article 2 (6) then states that any treaty or convention ratified by Kenya shall form part of the law. A plain reading of this article implies that, by virtue of this provision, treaties and conventions ratified by Kenya do not now have to be domesticated for them to have the force of law. However, it is arguable whether treaties relating to human rights and fundamental freedoms are self-executing, as another constitutional provision requires the State to legislate international obligations in respect of human rights and fundamental freedoms¹⁴.

Whereas there was already refugee legislation in place prior to the promulgation of the Constitution, the interpretation of provisions may influence the respect of rights of refugees that may not be provided for in the existing law, but are recognised in international frameworks¹⁵. Most pertinently, in respect to the 2011 Refugees Bill currently under consideration, constitutional provisions on international treaties may be used to enhance the existing national law. There could even be room

11 In particular, Article 4 (k) requires State parties to 'ensure that men and women enjoy equal rights in terms of access to refugee status determination procedures and that women refugees are accorded full protection benefits and guarantees provided under international refugee law, including their own identity and other documents.' Article 10 (2) (c) and (d) require state parties to ensure the participation of refugee women in processes and structures concerned with the protection of refugees, including in refugee camps and settlements. Article 11 (3) and (4) call on State parties to ensure the physical protection of women asylum-seekers and refugees by ensuring that perpetrators of all forms of violence against women are brought to justice. Article 11 (4) requires states to protect children, especially girls, against recruitment into the armed forces.

12 Kenya ratified the 1951 Convention and its 1967 Protocol in 1981 and the 1968 OAU Convention in 1972.

13 Government of Kenya (2012). Constitution. Article 2(1).

14 Article 21(4) of the Constitution provides: "The State shall enact and implement legislation to fulfill its international obligations in respect of human rights and fundamental freedoms."

15 Article 19(3) (b) and (c) provides that the rights and fundamental freedoms in the bill of rights do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognized or conferred by law, except to the extent that they are inconsistent with this (the bill of rights); and subject only to the limitations contemplated in this Constitution.

for litigation brought by individuals or by non-governmental entities against the government if the law - existing or revised - fails to meet the standards set by the constitution.

Equally, the Bill of Rights under the Constitution may positively influence the protection of refugees. The Bill of Rights is comprehensive and covers civil, political, economic, cultural as well as group rights. Asylum-seekers and refugees are also set to benefit from its progressive provisions in as far as they apply to all persons¹⁶, for benchmarks are provided against which the enjoyment of human rights in Kenya is to be measured. And whereas many rights and freedoms may be limited, any such limitation shall only be by law, and only to the extent that is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom¹⁷. Thus, for instance, for the policy of refugee encampment to be lawful, beyond description in law, it must also meet the test established by the limitation clause; otherwise it is null and void.

Article 43 on economic and social rights is also important. This article establishes six rights accessible to all: the highest attainable standard of health, including the right to health care services and reproductive health; accessible and adequate housing, and to reasonable standards of sanitation; freedom from hunger, and access to adequate food of acceptable quality; clean and safe water in adequate quantities; social security; and education. Services in respect of those rights have to adhere to the minimum core content of each right as established by the UN Committee on Economic and Social Rights. The current situation for refugees at the camp level would not meet these minimum standards, and to this extent the Bill of Rights could be invoked in holding the government of Kenya to its constitutional responsibilities towards refugees.

Whereas the constitution plays a crucial role in describing the rights and responsibilities of all in Kenya, including refugees, the specific frameworks for asylum-seekers and refugees give a more detailed account of which freedoms refugees in the country are able to exercise, and how far Kenya is adhering to international standards.

The Refugees Act 2006

Prior to 2006, Kenya did not have refugee-specific legislation, and refugee affairs were administered under the general framework of immigration-related laws, notably the Immigration and the Alien Restriction Acts (both now repealed Cap 172 and 173 respectively). From 1992, on the invitation of the government, UNHCR assumed overall responsibility for refugee protection. This included the receipt of asylum applications and refugee status determination, resulting in the granting of refugee status based on UNHCR's mandate.

Under this regime, UNHCR recognized two classes of refugees: mandate and *prima facie*. Mandate status applied to those refugees who had undergone some form of individual refugee status determination (RSD), whereas *prima facie* status primarily applied to persons from Somalia and South Sudan - both regions affected by generalized conflict. *Prima facie* refugees primarily resided in camps, though over time even some mandate refugees were sent to the camps. Moreover, prior to the year 2000, there was no systematic registration of refugees by the government and thus

16 The Bill of Rights applies to all persons, with the exception of Article 35 on access to information, Article 38 on political rights and Article 39(3) on the rights of Kenyan citizens to enter, remain in and reside anywhere in Kenya.

17 Government of Kenya (2012). Constitution Article 24(1).

refugees could not access the right to identity documents. But this changed in 2000, when the government through the National Registration Bureau commenced registration and issuance of refugee identity cards¹⁸, a practice that has now been standardized under the Act.

In November 2006, after almost two decades of civil society-led advocacy, the Refugees Act¹⁹ was passed by Parliament, and in December 2006 received presidential assent. Commencing on 15 May 2007, the Act was significant for a number of reasons. Most importantly, it allowed the Kenyan government to formally assume overall responsibility for the management of refugee matters through the creation of an institutional framework, including the administrative processes on refugee status determination. Moreover, the law was also to serve as a guide to all stakeholders on how to deal with refugee matters in Kenya.

In its definition of a refugee, the Refugees Act categorizes refugees as either statutory or *prima facie*. In regard to statutory refugees, the Act adopts the definition from the 1951 Convention with the addition of sex as a ground for persecution. On the other hand, the definition of a *prima facie* refugee follows the expanded refugee definition under Article I (2) of the 1969 OAU Convention. Further, the Act provides that the Minister may declare *prima facie* status to any class of persons. The use of the term may imply that the minister is at liberty to declare *prima facie* - but it is unclear what happens if he does not make such a declaration. Who is not a refugee is defined in similar terms as those of the 1951 Convention.

The refugee management institutional and protection framework

The Act establishes the Department of Refugee Affairs (DRA)²⁰ within the Ministry of State for Immigration and Registration of Persons, replacing the Refugee Secretariat which had been set up under the Ministry of Home Affairs. The DRA is headed by a Commissioner of Refugees²¹ and is charged with overall responsibility for all administration, coordination and management of refugee matters. The Act and its implementing regulations, the Refugees (Reception and Adjudication) Regulations of 2009, spell out the asylum application procedures as well as the rights and duties of refugees.

The right to seek asylum

Article 14 of the Universal Declaration provides that ‘Everybody has the right to seek and enjoy asylum.’ While this does not translate to an automatic right to asylum, the granting of which remains a national prerogative, states are expected to put in place fair refugee status determination procedures that are accessible to asylum-seekers. Specifically the OAU Convention in Article I (1) urges member states to ‘use their best endeavours consistent with their respective legislations to receive refugees and in Article II (2) recognizes that ‘the grant of asylum is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any member state.’

18 Interview with government official, Nairobi, April 2012.

19 Though named the Refugee Act, the provisions of this law apply both to refugees and asylum-seekers.

20 Government of Kenya. (2006). Refugees Act. Section 6.

21 Government of Kenya. (2006). Refugees Act. Section 7.

Section 11 of the Refugees Act 2006 provides that those who come to Kenya seeking protection as refugees must be allowed to do so regardless of whether or not their entry into Kenya was by legal or illegal means. However, once they are within the Kenyan territory, it is the responsibility of every asylum-seeker to report his/her presence to the Appointed Officer. This must be done within 30 days. Section 11 (2) of the Act also recognizes that persons that are already lawfully in Kenya can apply for refugee status and requires that they surrender other permits issued under the immigration laws for cancellation in exchange for the Asylum Pass. Essentially, this section is a codification of the non-criminalization principle that provides that asylum-seekers should not be penalized for failing to conform to the set immigration procedures. Furthermore, the refugee status determination procedure should be independent of immigration regulations and procedures regarding entry.

With regard to asylum applications and procedure, the Act and its implementing regulations, the Refugees (Reception and Adjudication) Regulations of 2009, outline the procedure for individual status determination. Under the Act, the function of refugee status determination is to be carried out by the DRA, with the Refugee Affairs Committee²² being responsible for issuing first instance decisions which can be appealed to an independent Refugee Appeals Board²³. However, both the Act and the Regulations are silent on the process to be followed in the case of *prima facie* refugees, a classification to which Somali refugees in Kenya belong.

Non-refoulement

Related to the right to seek asylum is the right not to be forcibly returned (*non-refoulement*). *Non-refoulement* has been referred to by UNHCR as the cornerstone of asylum and international refugee law. Enshrined in Articles 33 and II (3) of the UN Convention and the OAU Convention respectively, the principle prohibits the return of persons to countries or territories where their lives or freedom may be threatened for reasons of race, religion, nationality, political opinion or membership of a particular social group.

Furthermore, forcible return is also prohibited if a person would be in danger of being subjected to torture, inhuman or degrading treatment. This prohibition is explicitly or through interpretation provided by a range of international instruments²⁴. *Non-refoulement* also applies to asylum-seekers, meaning that persons wishing to seek asylum must not be turned away at the borders or

22 Established under Section 8 of the Refugees Act, the Committee's functions include assisting the Commissioner in the recognition of refugees under the Act. It comprises members drawn from the following government ministries: Provincial Administration & Internal Security, Foreign Affairs, Local Government, Attorney General's Office, Public Health and Sanitation, Finance, Planning. It also draws members from the departments of Immigration and Police, the National Security Intelligence Service, National Registration Bureau and a representative from the host community and civil society.

23 Established under Section 9 of the Refugees Act. Members are appointed by the minister in charge of immigration, comprising specialists in refugee law, immigration, foreign affairs, national security, local administration and refugee affairs.

24 For example, the Convention against Torture, and other Cruel, Inhuman or Degrading Treatment (CAT) (Article 3), the Fourth Geneva Convention of 1949 (Article 49 para. 4), the International Covenant on Civil and Political Rights (ICCPR) (Article 7), the Declaration on the Protection of All Persons from Enforced Disappearance (Article 8), and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Principle 5). As a signatory to the CAT, Geneva Conventions and ICCPR, Kenya has legal obligations not to violate the terms of these instruments. The declarations and principles do not have the force of law but have undeniable moral force and provide practical guidance to states on their conduct. Retrieved from <http://www2.ohchr.org/english/law/>

at any time before their status has been determined. This also means that states should have in place procedures or arrangements for identifying asylum-seekers and refugees so as to ensure that anyone deserving of international protection is granted it.

Section 18 of the Refugees Act conforms to this principle through the following provision:

No person shall be refused entry into Kenya, expelled, extradited from Kenya or returned to any other country or subjected to similar measure if, as a result of such refusal, expulsion, return or other measure, such person is compelled to return or remain in a country where -

- (a) *The person may be subject to persecution on account of race, religion, nationality, membership of a particular social group or political opinion; or*
- (b) *The person's life, physical integrity or liberty would be threatened, on account of external aggression, occupation, foreign domination or events seriously disturbing public order in part or the whole of that country.*

However, Article 33(2) is clear that *non-refoulement* 'may not be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.'²⁵ The principle of *non-refoulement* is not therefore absolute - national security and public order are allowable exceptions²⁶ - but importantly, the individual and not the group is the target for the application of these exceptions. Hence, a state is precluded from turning away or denying entry to whole groups of people, as Kenya has sometimes done. Section 18 of the Refugees Act also codifies the *non-refoulement* principle in terms of the individual. Even in the event that the minister declares a certain class of persons to be *prima facie* refugees, exclusion from that class is on an individual basis²⁷.

Basic standards of treatment

Once granted admission into Kenya, asylum seekers and refugees have a number of rights and responsibilities. The Refugees Act, with the exception of the right to identification documents²⁸ and wage-earning employment²⁹, does not detail what these rights are. However, it provides in general terms for recognised refugees and their families to be entitled to the rights and subject to the obligations contained in the international conventions to which Kenya is a party³⁰.

The 1951 UN Convention prescribes what can be viewed as minimum rights to which Convention refugees are entitled. These can be clustered as follows:

25 Government of Kenya. (2006). Refugees Act.

26 Goodwin-Gill, G. S. & McAdam J. (2007). *The Refugee in International Law*, pp.234-235. Oxford University Press.

27 Section 3(3) of the Refugees Act provides as follows. If the minister considers that any class of persons are *prima facie* refugees as defined in subsection (2), the minister may declare such class of persons to be *prima facie* refugees and may at any time amend or revoke such declaration. Section 3(4) then goes on to state. 'If the minister under subsection (3) expressly excludes or exempts *any person* from a declaration that a class of persons to which that person is a member are refugees, such exclusion or exemption shall not preclude the person concerned from applying under subsection (2) for recognition of their status as a refugee.'

28 Section 14 (a) provides that 'every refugee and asylum seeker shall be issued with a refugee identity card or pass.'

29 Section 16(4) provides that in respect of wage earning employment refugees shall be subject to the same restrictions as imposed on persons who are not citizens of Kenya.

30 Government of Kenya. (2006). Refugees Act. Section 16 (1)(a).

Those that require refugees to receive the same treatment as nationals of the receiving country:

- *free exercise of religion and religious education*
- *access to the courts, including legal assistance*
- *access to elementary education*
- *access to public relief and assistance*
- *protection provided by social security*
- *protection of intellectual property, such as inventions and trade names*
- *protection of literary, artistic and scientific work*
- *equal treatment by taxing authorities*

Those that require refugees to receive the most favourable treatment provided to nationals of a foreign country:

- *the right to belong to trade unions*
- *the right to belong to other non-political non-profit organizations*
- *the right to engage in wage-earning employment*

Those that require refugees to receive the most favourable treatment possible, which must be at least as favourable to that accorded to nationals of a foreign country generally in the same circumstances:

- *the right to own property*
- *the right to practice a profession*
- *the right to self-employment*
- *access to housing*
- *the right to choose their place of residence and to move freely within the country*
- *access to higher education*

In addition to these, all refugees also have the right to return to their countries of origin.

Whereas the above rights were crafted in respect of refugees recognized under the 1951 Convention and thus implicitly refugees whose status has been individually determined, scholars have argued that these rights are applicable to prima facie refugees. Because prima facie refugees are refugees within the meaning of the instrument of recognition, as such they are entitled to all the rights applicable in the instrument of recognition³¹. Given that the 1969 Convention adopts the rights in the 1951 Convention, it follows that refugees recognized within the expanded definition of the former are entitled to the rights in the latter. Consequently, Somali refugees in Kenya are entitled to the rights enumerated in the 1951 Convention.

Importantly, Article 3 of the UN Convention and Article IV of the OAU Convention oblige member states not to discriminate refugees in the application of the provisions of the respective conventions.

31 Rutinwa, B. (2002). Prima Facie status and refugee protection. UNHCR New Issues in Refugee Research, Working Paper No. 69 (October 2002)

The principle of non-discrimination requires that all refugees be treated equally, irrespective of their race, religion, nationality, membership of a particular social group or political opinion. This principle also cuts across other human rights instruments such as the ICCPR, International Covenant on Economic, Social and Cultural Rights (ICESCR), CRC, Convention on the Rights of Persons with Disabilities (CRPD), and the Committee on the Elimination of Discrimination Against Women (CEDAW), all of which are also applicable to refugees and to which Kenya is signatory.

The duties of refugees

Generally, refugees, like other aliens, have a duty to respect the laws of the countries in which they find themselves. For example, Article 2 of the 1951 Convention provides that ‘every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.’³² This is echoed in the terms of the OAU Convention. In particular, refugees are obliged to abstain from any subversive activities against any Member State of the OAU and on their part signatory states are obliged to prohibit refugees residing in their respective territories from attacking any State Member of the OAU. The essence of these provisions is to ‘depoliticize and cohere the grant of asylum’³³ rather than bar refugees from holding political opinions. That said, in exercise of their political opinions, refugees cannot take up arms or be active combatants because in so doing they will compromise their civilian nature, resulting in loss of international protection.

While these are also imputed duties of Section 16 of the 2006 Refugee Act, which imports the rights and obligations contained in the international conventions to which Kenya is a party, the Act also includes the provision of truthful information on registration, attendance of the status determination interview, compliance with fingerprinting and photographing requirements, and surrender of any permits issued prior to the application for asylum.

3.3 Assessing the implementation of the Refugees Act 2006

Access to asylum and non-refoulement

As mentioned above, Section 11 of the Refugees Act allows persons who seek asylum, having entered Kenya lawfully or unlawfully, to notify the authorities within 30 days. This section is construed to protect asylum seekers from being penalized for illegal entry or presence. In practice, asylum seekers coming into Kenya report their presence to either UNCHR or DRA in four main locations: Nairobi, Dadaab, Kakuma and Lokichoggio. In addition, DRA has an office in Malindi, and there are plans to open offices in Wajir, Mombasa and Nakuru³⁴. Furthermore, the Act envisages that in addition to the Commissioner for Refugees, the minister shall appoint by way of gazette other public officers (‘appointed officers’) to whom asylum seekers can report their presence. The minister is yet to make such appointments, and for now asylum seekers are limited to reporting their presence in only those five locations.

32 1951 Convention

33 Okoth-Obbo, G. (2001). Thirty years on: A legal review of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. *Refugee Survey Quarterly*, Vol. 20, No. 1.

34 Interview with senior government official, March 2012.

Moreover, asylum seekers, especially those without any legal papers and including those of Somali origin, are still subject to arrest and prosecution. UNHCR and partners have been training judges, magistrates and police on aspects of refugee law with the aim of curbing this problem. Nevertheless, for Somali asylum seekers, there is a preliminary and more difficult hurdle, one related to entry. As mentioned above, anyone with a well-founded fear of persecution ought to be allowed to seek asylum. Whether or not their status as a refugee is recognized should be based on an examination of their claim – so persons wishing to seek asylum must not be turned away at the borders or at any time before their status has been determined. This means that states should have in place procedures or arrangements for identifying asylum-seekers and refugees. However, Kenya's practice in this area and particularly concerning Somali refugees has not always been in keeping with the law. Over the years, measures contrary to the conventions and to the law that have been applied by Kenya range from straightforward *refoulement*³⁵, to more subtle actions such as border closure and increased policing of border areas by security forces.

Identity documents and refugee status determination

Section 14 of the Act provides that every asylum seeker and refugee has the right to identification documents. The process and specific documents is expounded in the Refugees (Reception, Registration and Adjudication) Regulations of 2009. In a bid to enforce this particular provision, in March 2011 the DRA took over the registration of refugees and asylum seekers. But despite this, the provisions of the law are not being fully implemented. While the DRA has been registering all refugee above 18 years of age with a view to issuing them with refugee identity cards, refugees below 18 years are not being issued with refugee identity passes, as required by law, nor are unaccompanied and separated children being registered using the right instruments that are supposed to aid in tracing. While the National Registration Bureau has continued to produce refugee identity cards, distribution by DRA has not been systematic. Currently there are approximately 60,000 undistributed cards and DRA has cited insufficient capacity to do so³⁶. The non-availability of refugee cards among a significant portion of refugees means that it will take longer for them to be widely recognised and accepted, both as a tool of protection and as a conclusive document of identification.

For asylum seekers, DRA has been issuing the asylum seeker passes within the specified form. This means that groups assessed as *prima facie* refugees are now first registered by DRA – a process that involves photographing, fingerprinting and recording of civilian data - before undergoing the UNHCR registration process. *Prima facie* refugees above the age of 18 years also have their identity cards processed during the registration process. It can therefore be concluded that the *prima facie* status is now granted by the government, based on the fact that DRA is the first point of contact for the registration of *prima facie* refugees. However, for the Dadaab camps, that situation has since changed and at present there is no registration of new arrivals of Somali origin. Currently there are more than 4,000 asylum seekers at a reception centre in Dagahaley camp who have only received a token to aid in accessing food and non-food items. It is not clear when the registration will reopen, and so for now the asylum seekers remain in limbo.

35 In July 1993, Kenyan government authorities in Mandera forced back across the border about 1,300 Somali refugees at gunpoint. See Okoth-Obbo, G. (2001).

36 Interview with government official in Dadaab, March 2012.

However, this process does not include certain procedures, some of which are set out in the Act. The Regulations stipulate screening of asylum applicants for purposes of identifying combatants and vulnerable persons. The Regulations define ‘combatant’ as a member of a regular or irregular armed group, or a person who has been participating actively in military activities or recruitment. The wording here is unclear because it seems to include persons who were combatants in the past, yet combatants who have laid down arms are also entitled to asylum. Nonetheless, this aspect of the law is not being implemented, leaving the camps at risk of infiltration by armed groups/militias. Vulnerability screening on the other hand has been left to humanitarian actors³⁷. Other than those two purposes, screening is also important to identify persons who have left their country for non-asylum reasons and who do not qualify for the international protection accorded to refugees. This category of persons includes economic immigrants, as well as those who may have left due to drought-related reasons - a significant constituency amongst Somali refugees in Dadaab.

UNHCR is still responsible for processing individual asylum claims, as DRA lacks the capacity to carry out this function itself. However, the Refugee Affairs Committee has been set up and meets regularly to deliberate on refugee matters³⁸. However, because the DRA is yet to assume the RSD role, the Committee has not had an opportunity to consider asylum applications. Consequently, the Refugee Appeals Board has still to materialise as there are no appeals to be considered. In sum, half a decade after the Refugees Act, the government of Kenya has not yet operationalised procedures for individual status determination, nor put mechanisms in place for *prima facie* recognition.

While neither of the Conventions explicitly deals with asylum procedures, these are essential and implicitly required³⁹ to give effect to the right to asylum in compliance with their obligations. Moreover, it is through the application of asylum procedures that asylum seekers are recognized as persons falling within the refugee definition. Thus it is necessary that Member States have in place efficient asylum procedures, both for their own interests as well as that of the applicants. These should have procedural safeguards, both in law and in practice, to ensure the right to asylum and protect persons deserving of protection from being refouled. However, while pursuing cost effectiveness, states should be careful not to set too short time limits that may compromise the quality of the examination procedure and hence that of the outcome⁴⁰. While each Member State sets its own procedure, including the applicable time limits, available jurisprudence on the issue is consistent that the time limits should be reasonable and that mechanical application of time limits may be at variance with international protection.⁴¹

Moreover, within the examination process, applicants are entitled to a number of rights, include the right to confidentiality, notification and appeal, as well as specific support such as legal assistance and translation⁴². When insufficient time is granted during the process to exercise these rights

37 Interview with government official, Dadaab, March 2012

38 Interview with government official and member of the Refugee Affairs Committee, Nairobi, April 2012.

39 UNHCR (2010). *UNHCR Statement on the right to an effective remedy in relation to accelerated asylum procedures*.

40 UNHCR (2010). *UNHCR Statement on the right to an effective remedy in relation to accelerated asylum procedures*.

41 See for example, *Jabari v Turkey*, Appl. No. 40035/98, Council of Europe: European Court of Human Rights, 11 July 2000. Retrieved from <http://www.unhcr.org/refworld/docid/3ae6b6dac.html> [accessed 14 February 2012]

42 To list them more comprehensively, these include the right to be informed in a language they understand of the procedure to be followed, their rights and obligations during the procedures and the consequences of not complying with their obligations, the right to a personal interview, the right to information, the right to legal assistance and representation, the right to be interviewed by a person of the same gender, the right to be interviewed in a language that one understands, the right to receive the services of an interpreter, the right to confidentiality, the right to lodge an appeal, and the right of notification.

or to benefit from them, their effectiveness is undermined or negated.⁴³ Conversely, when legal or administrative decisions take too long, rights are undermined - as is the situation with asylum seekers at the Dagahaley reception centre.

It has also been a matter of concern that UNHCR which has the mandate to oversee the implementation of the refugee conventions has still not offered any guidelines in regard to the *prima facie* status. The UNHCR Handbook on RSD, mentioned earlier in this report, dwells mainly on status determination under the UN Convention. Such guidelines would go a long way in helping countries like Kenya and other similarly placed states put in place systems that secure the asylum space to manage migratory flows in asylum-seeking contexts.

Encampment policy and freedom of movement

Until the mid-2000s *prima facie* refugees primarily resided in camps, while convention refugees could get authorization to stay in the urban areas - the so-called 'urban mandate'. Over time, even asylum seekers of other nationalities and mandate refugees were sent to the camps, but some still remain in Nairobi⁴⁴. During interviews with the DRA Officers in Nairobi and Dadaab, it was confirmed that the Government pursues an encampment policy in respect of both refugees and asylum seekers. In the words of one official, encampment has been established through practice - '*kuzoea ni kama sheria*'⁴⁵. However, not all asylum seekers or refugees live in the camps, and there are those that still enjoy the urban mandate - mainly the pre-mid-2000s non-Somali, non-South Sudanese caseload and a smaller post-mid-2000 caseload whose urban mandate is for education or security reasons - and an even larger number living in the urban areas without authorization⁴⁶. The reasons for leaving the camps are varied, but most are connected to livelihood opportunities and better security.

The Constitution in article 39 (3) reserves the right to choose a place of residence for Kenyan citizens only. The national refugee law does not expressly provide for encampment but makes reference to designated places of residence. Section 16(2) (a) and (b) states that the 'Minister may by notice in the Gazette, in consultation with the host community, designate places and areas in Kenya to be transit centres for purposes of temporarily accommodating persons who have applied for recognition as refugees or members of the refugees' families while their applications for refugee status are being processed; or refugee camps'. Furthermore Section 17(f) empowers Refugee Camp Officers to issue movement passes to refugees wishing to travel outside of the camps. Finally, Section 25(f) makes unauthorized residence out of the camp an offence punishable by a fine of up to KES 20,000 and/or imprisonment for six months⁴⁷. However, the Minister is yet to designate the actual location of these camps. This policy is further entrenched through documentation, with the place of residence indicated on the face of the refugee identity card.

43 UNHCR (2010). *UNHCR Statement on the right to an effective remedy in relation to accelerated asylum procedures*.

44 For discussions about the urban refugees in Kenya, see Pavanello, S. et al. (2010). *Hidden and exposed: Urban refugees in Kenya*. Humanitarian Policy Group Working Paper.

45 Translates to 'Customary practice is like law'. Interview with government official in Dadaab, March 2012

46 According to 2009 figures from UNHCR, there are about 46, 000 registered refugees and asylum seekers of which about 20,111 are of Somali origin. This figure does not include many thousands of unregistered refugees. Estimates indicate that there could be as many as 100,000 refugees and asylum seekers in Nairobi of which about 60,000 are Somali refugees in the Eastleigh District of Nairobi. See Pavanello, S. et al. (2010).

47 Government of Kenya (2012). Constitution, Article 25(f).

Restriction of movement is generally not contrary to the 1951 Convention. For asylum seekers, article 31 (2) allows restrictions that are necessary until one's status is regularized, a not uncommon caveat in other jurisdictions⁴⁸. But with regards to refugees, restriction of movement should only be in the same terms as other aliens in similar circumstances⁴⁹. Read together with the Kenyan constitutional provisions, encampment is not illegal *ab initio*. The question is: given that other aliens are not subject to similar restrictions, does the restriction on refugees as a category amount to discrimination within the meaning of article 27(4) of the Constitution?

A majority of Somali refugees are confined to camps from where they receive humanitarian assistance. Others have made their way to Nairobi and other urban areas in the country, but without express permission to change their residence they are subject to ongoing harassment by the police⁵⁰. Encampment in designated areas has meant that refugees, unlike other aliens in Kenya, do not have the right to choose their place of residence and their freedom of movement is severely curtailed. As movement is an enabler, rather than an end in itself, the lack of freedom of movement negatively impacts on the enjoyment of other rights as well. These include employment, self-employment, practice of profession, higher education and even access to courts, as refugees have to wait for the monthly mobile court sittings in the camp.

As stated earlier, refugees who wish to travel outside of the camps are required to obtain a movement pass from the DRA. This allows an asylum seeker or refugee to travel outside of the camp for a limited duration of time. The Regulations provide that movement passes will be issued to refugees with valid reasons, but fall short of indicating what such valid reasons might be. However, the DRA website lists some of the following: medical grounds, education, resettlement, and business. This restricted list also appears to acknowledge the importance of movement passes in enabling the enjoyment of certain rights by refugees. Most importantly, the movement pass in of itself is meant to promote and secure the enjoyment of the freedom of movement. But in the case of Dadaab, the process has been securitized: the focus is on the restriction, not the right of movement. Applications for movement passes have to be screened by a locally constituted security committee chaired by the local district officer, who then agrees to allow or disallow the travel. This process, which is not provided in law, undermines movement and occasions delays - meaning refugees may be forced to take the risk of travelling without the requisite authorization. The obvious outcome of this illegal government action, then, is the exposure of refugees to police harassment and extortion. To avoid this, refugees with the help of local residents have found alternative routes that bypass police road blocks. Thus it is not uncommon to find a significant number of refugees in urban areas without movement passes.

Access to other rights by refugees

Access to rights by refugees is dependent on the capability of host states, who are free to prescribe the conditions under which asylum is to be enjoyed⁵¹, though bearing in mind their obligations in accordance to international refugee law and other human rights frameworks. At a minimum, such

48 For instance, according to the EU Reception Conditions and Directives, asylum seekers do not have to be granted complete freedom of movement in the Member State, and may be assigned an area in which they are permitted to move.

49 United Nations. (1951). Convention Relating to the Status of Refugees.

50 Pavanello, S. et al. (2010).

51 Goodwin-Gill, G. S. & McAdam J. (2007).

conditions should conform to the standards set down by various Executive Committee Conclusions. For instance, Conclusion No. 93 of 2002 stipulates, amongst other requirements, that asylum seekers have access to assistance for basic support needs such as food, clothing, accommodation, medical care, and respect for privacy; that reception arrangements are sensitive to gender and age - in particular, the educational, psychological, recreational, and other special needs of children; that the specific needs of victims of sexual abuse and exploitation, trauma and torture be recognised; and that family groups be housed together.

In the case of Kenya, the role of refugee management and coordination of assistance is largely borne by UNCHR and the international community. While this does not mean that UNCHR and partners wholly assume the responsibility for human rights, there is a degree of shared responsibility, especially with regard to delivery of humanitarian assistance, and in supporting the government to meet its obligations.

Humanitarian Aid and Rights

Other rights - housing, health, food, safe and adequate drinking water - are provided as part of the humanitarian assistance for refugees. However, their adequacy and suitability has sometimes been questioned. For instance, dilapidated housing is common in the camps and food assistance is not sensitive to cultural and age-diversity preferences and requirements. Moreover, the standard of assistance over the last two decades has been confined to basic care and maintenance, with little if any progressive improvement. This raises the question as to whether refugees in the camp are entitled to progressive realization of rights, especially those of an economic and social nature. From the foregoing, refugees in Kenya have not been able to fully access the rights enumerated in the 1951 Convention, with the possible exceptions of the right to practice religion, including religious education, the right to elementary education and the right to refugee relief assistance.

3.4 The Refugees Bill, 2011

There have been proposals to repeal the 2006 Refugee Act and towards this end a draft Refugees Bill 2011 is currently under discussion. The Bill is yet to be published as a Government document, and thus as of yet is neither official nor final. Generally, the proposed bill re-enacts most of the provisions of the current law. However, it does include a number of proposed changes that refugee advocates see as potentially restrictive to the current asylum climate. In particular, it risks undermining the gains made in the 2006 law, whose main shortcomings are not in the letter of the law but the lack of implementation. As part of the process, civil society and UNHCR have called on the government to ensure that protection standards are not diminished below those of the 2006 Act, while at the same time arguing for progressive adoption of international standards and best practices.

Some of the main changes proposed by the bill and their potential impact on the asylum climate are the following:

- The 2006 Act provides a period of 30 days within which an asylum-seeker has to register as a signal of his/her intention to seek asylum. The proposed bill seeks to remove the timeline and substitute it for 'without unreasonable delay' – a gauge which is both subjective and undefined. **The introduction of discretion is a concern as it is a potential avenue for abuse.**

- Limitations on movement will be severely curtailed by the new bill. It is proposed that in future a refugee's place of residence be indicated in refugee identity documents. While the current documentation indicates the place of issue, it does not specify the place of residence. **Given the serious restrictions on refugee movement that already exist and the abuse of refugees in the exercise of this right, this measure will only serve to solidify their constraints.**
- The bill provides that the granting of refugee status may be cancelled or revoked if within five years of recognition a refugee is convicted of an offence and sentenced to three years or longer. **This creates an unnecessary nexus between the commission of crime and refugee status.**
- Under this law, a Kenya Citizenship and Immigration Board will be created to oversee the Service. It is envisaged that the Board or a committee of the Board will handle RSD-related appeals. Further, appeals lie to the Appeal Tribunal and ultimately to the High Court (Clause 21 of the proposed Refugees Bill 2011 and section 21 of the Kenya Citizens and Foreign Nationals Management Service Act).

There has, importantly, been debate about whether the timing of the review is appropriate in light of recent political developments around Somalia - in particular, the fact that Kenya is at present militarily engaged in Somalia against Al Shabaab. While the Kenyan Government wants to tighten control of asylum and refugee management, UNHCR and other humanitarian and civil society advocates are concerned that the bill is part of a wider and incremental shift towards a leaner and more restrictive asylum regime. In the context of the current tide of public distrust and suspicion towards Somali migrants, the passage of such a bill will contribute to the further marginalization of Somali refugees in Kenya.

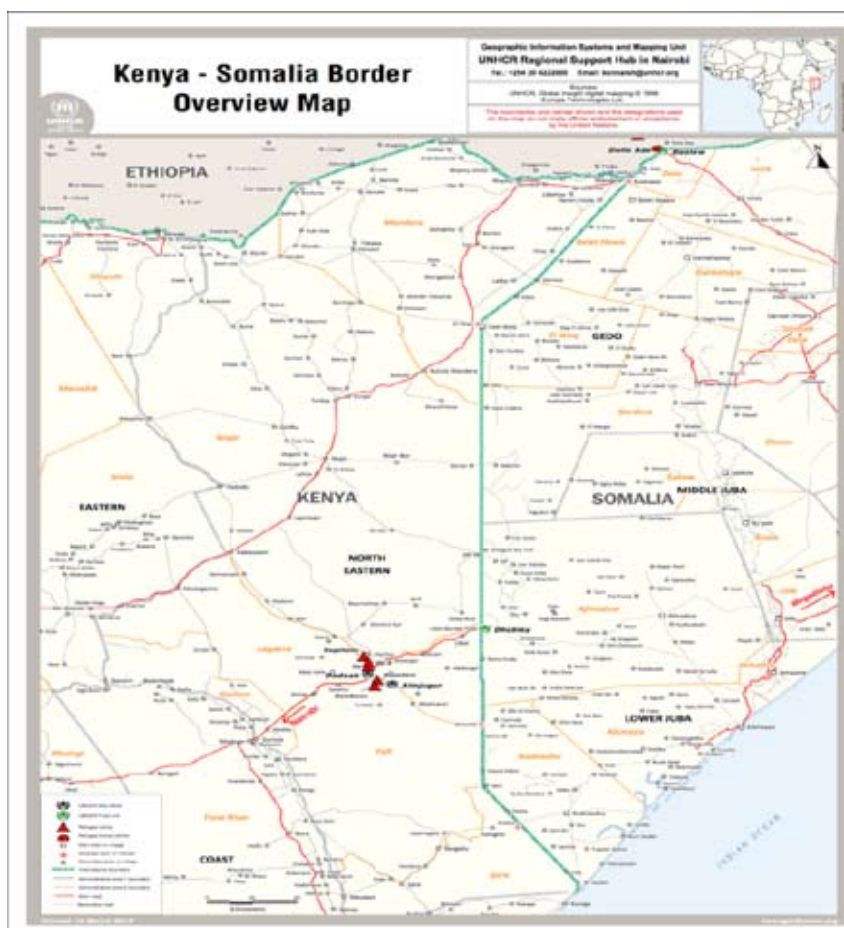
4. The Migration Corridor

“I encountered many different problems coming over the border from Somalia, but the most painful was the moment when we were attacked by bandits, and all the girls in my group were raped. I was one of them. There was nothing we could do about it. Later, we found our way to the hospital in Hagadera camp and got some medication”.

Female respondent in RCK survey, who arrived in Hagadera in early 2011

4.1 Transit route of Somali asylum seekers to North East Kenya

Kenya has been host to refugees from neighbouring Somalia since the late 1980s. The great majority of these refugees entered the country over the 682 km-border between Somalia and Kenya. Even though the Dadaab refugee camps, 89 km from the border in North East Kenya, are largely financed and managed by UNHCR and its partners, the Kenyan government and people have made significant



Map 3: Kenya Somalia border overview map, UNHCR 2012

contributions to hosting hundreds of thousands of Somalis both in the camps and elsewhere in the country. This refugee emergency has been compounded by the protracted southern Sudanese refugee presence in Kakuma camp in the northwest of the country. Arguably, more could have been done by the international community and key donors to support the government of Kenya, given the obligations in the key international legal instruments and the need for meaningful burden-sharing.

4.2 The impact on asylum-seekers of the closure of the border and the Liboi transit centre

At the beginning of 2007, the Government of Kenya took the decision to close the Kenya/Somalia border. This was in response to heightened conflict and political instability within Somalia, caused by the emergence of the Islamic Courts Union and the arrival of Ethiopian troops in Mogadishu in December 2006. Citing national security concerns, the Ministry of Foreign Affairs declared that it was not possible to distinguish genuine refugees or asylum seekers from insurgents. Security was strengthened on the border in the form of increased numbers of police and military, and for the past five years the 682 km-long border has stayed officially closed.

Given Kenya's experience of terrorist attacks and extremism in the 1990s, their concerns with regard to national security are entirely understandable. However, wholesale closure of the border, in the context of a continuing conflict inside Somalia, is not in line with Kenya's own legal obligations. Over the past few years, this has elicited repeated protest from human rights and refugee organizations, who have applied near constant pressure on the government to rethink the closure, particularly as the situation inside Somalia has continued to deteriorate and displacements increase. The position of UNHCR Somalia office has been clear and consistent - Somali civilians from Southern and Central Somalia remain at substantial risk of death and injury from indiscriminate bombardment, conflict and displacement. To this extent, the continued refusal of the Kenyan government to formally re-open the border has remained a key advocacy point for donors and other members of the international community.

In addition, the closure of the border has not had the intended effect of reducing the numbers of incoming asylum seekers, and in the intervening five years, over three hundred thousand have crossed the border and made their way to Dadaab⁵². The Kenyan authorities have mostly remained oblivious to the fact that the closure, whilst making no dent on the numbers of those coming, has severely impaired their capacity to carry out security screening and monitoring of new arrivals. Following the government's decision, UNHCR was not able to keep open its transit centre in Liboi - about 18 km from the border and 80 km from the Dadaab camps - where asylum seekers were screened for purposes of vaccination and vulnerability identification before being transported to the camps⁵³.

The human rights and humanitarian implications of this have been severe generally, and most egregious during the 2011 famine in Somalia, when approximately 150,000 Somalis entered Kenya. This was exacerbated by the lack of nutritional, medical and transport assistance at Liboi.

4.3 The 2011 Somalia famine and refugee influx

During 2011, famine was declared in five regions of Central and Southern Somalia. Hundreds of thousands of Somalis made their way to Mogadishu and over the borders into Ethiopia and Kenya. By July, around 1,500 new arrivals were presenting themselves daily in the Dadaab camps. Despite the efforts of UNHCR and partners, the systems for registration and food distribution were entirely

52 UNHCR. (2011, July 11). "We're in a crisis right now": World's biggest refugee camp sees alarming spike in child deaths.

53 Amnesty International. (2010). From Life without Peace, to Peace without Life. Retrieved from <http://www.unhcr.org/4e1ab6586.htm>

overwhelmed, leaving tens of thousands unsupported and unprovided for in the outskirts of the camps for many weeks.

During this period, the Kenyan government did not alter their official position on the border closure, but no formal efforts were made to intercept the vast numbers of exhausted and starving asylum-seekers and send them back. Although the government did not re-open the Liboi transit centre, despite significant pressure from the international community, no aggressive measures were taken to prevent border crossings - a tacit recognition of the overwhelming humanitarian imperative of the famine.

There was significant equivocation from different parts of government about this issue. In August 2011, Badu Katelo, the Commissioner for DRA, told IRIN that the Liboi transit centre would reopen in the coming weeks, along with security screening and other humanitarian monitoring processes⁵⁴. UNHCR also indicated, throughout July and August 2011, that they were expecting the Liboi transit centre to be up and running again within a short space of time⁵⁵. Yet despite these assurances and expectations, the centre remained closed throughout the refugee emergency, and remains so at the time of writing of this report.

The impact of the continued refusal to re-open the transit centre was apparent from the Dadaab survey. It took some families several weeks to get from the border to the camps: of the 107 respondents who had crossed the border since the beginning of 2011 and had ended up in Ifo 2 camp (where many new arrivals were re-located after a long wait in the outskirts of the camps), 61% said that it had taken them two weeks or longer to get from the border to Dadaab. As a direct result of this, high numbers of children died within their first 24 hours in the camps in July and August 2011, as noted by UNHCR, its medical partners and journalists⁵⁶. Many of these could have been saved if they had found nutritional and health assistance at the border, and had been able to benefit from the transportation services that UNHCR and IOM stood ready to provide.

On top of this, leaving asylum-seekers to make their own way on foot to the camps exposed them to considerable protection challenges. The actions of the police are covered in the following section, but Dadaab camp residents interviewed in the survey for this research also talked of their constant fear of, and encounters with, bandits who robbed and in some cases raped them, the struggle with transport costs and lack of food, and even the threat of wild animals.

54 Kenya-Somalia: border town feels the refugee pressure. (2011, August 29). *IRIN*. Retrieved from <http://irinnews.org/Report/93611/KENYA-SOMALIA-Border-town-feels-the-refugee-pressure>

55 Ibid, and personal interaction with UNHCR officers in Dadaab July – August 2011.

56 For example, Davis, K. (2011, July 14). Kenya's Dadaab refugee camp is a haunting place. *The Guardian*. Retrieved from <http://www.guardian.co.uk/commentisfree/2011/jul/14/dadaab-camp-kenya-drought>. See also, UNHCR concerned about rising malnutrition levels among new Somali refugees. (2011, July 5). UNHCR. Retrieved from <http://www.unhcr.org/4e12fe0d6.html>. Weak with hunger, Somali children dying in refugee camps. (2011, July 7). AlertNet. Retrieved from <http://www.trust.org/alertnet/news/weak-with-hunger-somali-children-dying-in-refugee-camps>

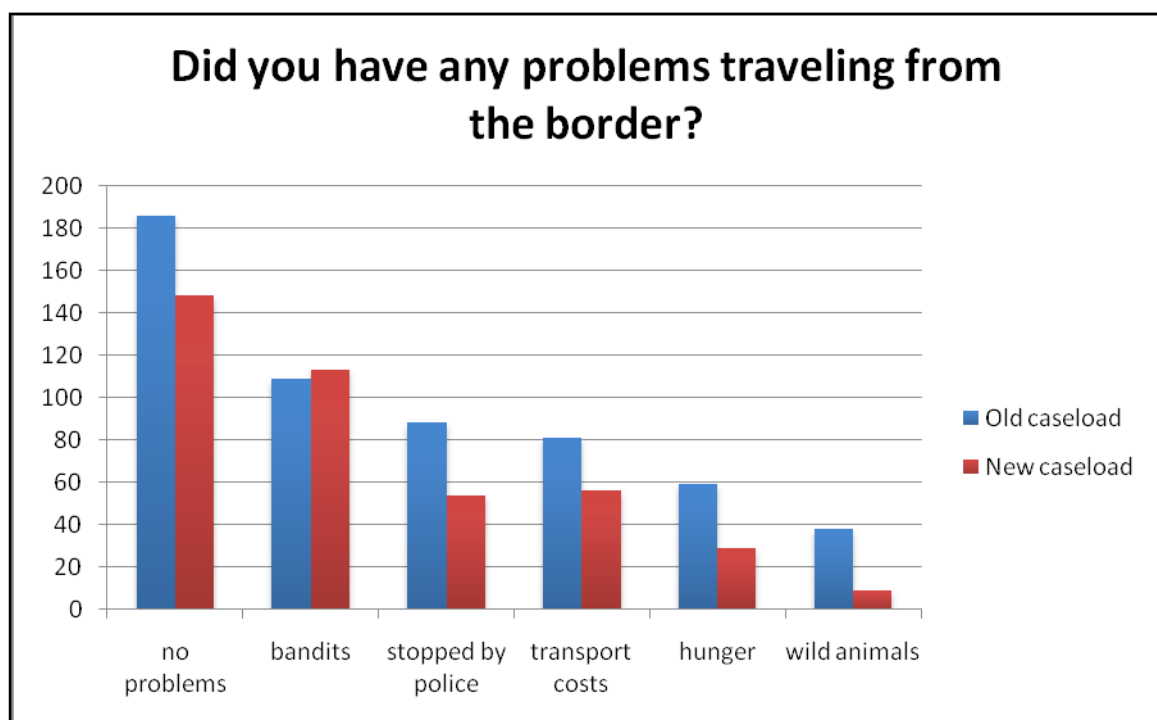


Table 1: Problems encountered by asylum-seekers travelling from the border to Dadaab camps

During July 2011, IOM recommenced some transport services from the border, but these were ad hoc, unofficial pick-ups of identified groups from a variety of towns and villages along the border areas. These movements took place with the active participation of the Liboi-based District Commissioner, but because of governmental sensitivities around the reinstating of services associated with an open border, and UNHCR’s anxiety that transportation of asylum seekers from border areas might be perceived by the government as actually bringing new arrivals over the Somali border, the transport service was never systematic, and reached only a fraction of the incoming caseload⁵⁷.

Another detrimental effect of the government’s refusal to allow the resumption of services at the border was the heavy burden that this put upon local communities living between the border and Dadaab, who were themselves suffering greatly under the impact of the drought. Many communities, families and individuals along the Liboi – Kulan – Dadaab corridor over-extended themselves to host incoming asylum seekers and provide them with basic food and shelter as they made their way towards the camps. 67% of those interviewed in the research survey said that they had encountered hospitality and received assistance from families or communities on the way. Being from the same ethnic, clan and language background, there was much sympathetic feeling amongst those living in areas of North East Kenya for the Somali refugees⁵⁸, but taking responsibility for providing water and food to these desperate families was also beyond many of the local communities. Several agencies worked to mitigate the impact of the influx on these communities by providing additional services to them - for example, the Danish Refugee Council’s water trucking and construction of boreholes around Kulan and other settlements to ensure adequate water supplies. Some of the agencies in the Kenya Nutrition Cluster, in particular Medecins Sans Frontieres, also monitored the routes that

⁵⁷ Interview with international organization representative, Dadaab. March 2012.

⁵⁸ Interview with international organization representative, Dadaab. March 2012.

asylum-seekers were using to avoid the Liboi crossing, intervening to support the new arrivals, as well as local families, with high-impact nutrition interventions.

It is unusual for UNHCR and its partners not to be able to mount an operation at the border of a receiving country where a massive refugee influx is occurring, if that country is signatory to the 1951 Convention and there are no overwhelming security constraints to an international presence (as there were not, at the height of the 2011 emergency). Efforts made by local and international organizations, and a limited number of individuals within local government, did identify some new arrivals during the worst months of the humanitarian crisis and reach them with nutrition, water and transport services. There was also some assistance extended to hard-hit host families along the migration corridor. Despite this, the government's decision to keep the border and the transit centre closed - at the precise moment Somali asylum seekers most needed concerted, multi-sectoral protection and support - had a devastating impact.

The rationale provided for preventing the humanitarian agencies from mounting a systematic response at the border continues to be national security. However, the transit centre at the border would have been the ideal context in which to run screenings of all incoming Somalis, thus answering the government's security concerns. Instead, no screening of new arrivals took place at all - neither for security, vulnerability, nor illness⁵⁹. To this extent, the Kenyan government has doubly failed: in its legal obligations towards the Somali nationals seeking asylum on its territory, and its responsibilities towards the safety of its own citizens by ensuring the necessary screening mechanisms are in place.⁶⁰

Concerted advocacy has been undertaken by donor governments, in particular the United States, to point out the safety and security benefits that a border screening procedure for asylum seekers would bring.

4.4 Police arrest, detention and harassment of asylum-seekers

On top of the several different forms of violence and criminal activity that incoming refugees have been exposed to in the course of their journey from the border to the camps at Dadaab, one of the most alarming, and with the most serious implications for the Kenyan government, is the often-reported allegation of harassment by police of refugees in areas near the border and in various parts of North East Kenya.

There are several reasons for arrest and detention of refugees by Kenya police, ranging from basic extortion, through ignorance on the part of both asylum-seekers and the police of the correct procedures, to ineffective application of the refugee law. The 2006 Refugees Act states that asylum-seekers have a period of thirty days once they have crossed the border in which they must find their way to a registration point and make their intention to seek asylum known to the government of Kenya. Most commonly, this point of registration will be the Dadaab camps, but some asylum seekers make their way directly to Garissa and onwards to other destinations, such as Nairobi. Because

59 This was despite the fact that there had been cholera outbreaks in Mogadishu, the Somali capital, and potential concerns that refugees entering Kenya across the Liboi border could be carrying the disease.

60 This was acknowledged by a senior government representative in a recent interview in Nairobi. The official stated that a thorough screening procedure at well-managed border checkpoints would provide more meaningful security than an officially closed yet highly porous border.

those seeking asylum usually cross the border from Somalia with little or no documentation, it is not easy for police in border areas to know how long a group has in fact been in the country. Moreover, many of the police serving in North Eastern Kenya have had insufficient training on refugee matters, and are not even familiar with the refugee law. Concerted training efforts by UNHCR and RCK have sought to address this in recent years, but the high rotation of junior police officers in the border areas has meant that capacity-building has not always been able to keep pace with the arrival and deployment of new staff.

In the monitoring reports of RCK's several missions to border towns during 2011⁶¹, it is clear that many⁶² asylum-seekers are arrested by the police, arraigned in court, and in some cases convicted for travelling without a movement pass or for failing to immediately seek registration. RCK's reports describe a patchy response by law enforcement officers, consisting of fines or detention, when valid documents are unable to be produced. The reports present a picture of a local administration system struggling to enforce the law and manage large numbers of unregistered Somalis passing through places such as Garissa, Wajir or Mandera. However, RCK reports almost exclusively contain interviews with those in positions of authority, such as district officers, police commissioners or magistrates, and are therefore unlikely to bear witness to the more extreme abuse and extortion.

During 2010, both Human Rights Watch and Amnesty International reported multiple cases of arrest and detention of legitimate asylum-seekers in the first few days after their crossing of the border. These individuals were interviewed in person and attested to security forces and police justifying the arrests with reference to the 1967 Immigration Act, which prohibits unlawful entry to Kenya. Such arrests, detention and conviction in court are illegal because section 13 of the Refugees Act disbars prosecution under the Immigration Act and Alien Restrictions Act for unlawful presence.

In the course of these arrests, some individuals have described shocking levels of violence, including several cases documented by Human Rights Watch, rape of the women in the group by police. There have also been reports of anti-Somali insults by the police, and accusations of association with Al Qaeda, Al Shabaab and terrorism⁶³.

As mentioned above, considerable work has been done by UNHCR and its partners to improve the performance of police who come into contact with asylum seekers and refugees: since 2010, hundreds of police officers have been trained by UNHCR, RCK, Kituo cha Sheria and other organizations. However, more remains to be done. According to the Dadaab survey for this report, 26% of respondents who came to Dadaab between 1991 and 2010 and who had met and been checked by police on their journey from the Kenyan border to the camps said that they had experienced arrest, harassment or extortion. Of the respondents to the survey who had arrived since the beginning of 2011, and who had encountered police at some point in their journey, 28% spoke of being arrested, harassed or asked for money to avoid detention. This indicates that the impact of police training has been minimal in changing their behaviour towards asylum-seekers, and that more fundamental, system-wide police reform will be necessary to ensure adherence to the law and adequate protection of newly-arrived asylum seekers.

61 RCK. Monitoring Report in Garissa and Mwingi, 29th June- 1st July 2011. RCK Protection Monitoring in El Wak, Wajir and Mandera, 6 – 11 June 2011.

62 RCK were told of an average of 3 – 5 refugees arrested per day (down from an earlier average of 5 – 10 per day), and a total number of 100 refugees in prison in Garissa at the time of one visit.

63 Human Rights Watch. (2010). *Welcome to Kenya: Police Abuse of Somali Refugees*.

4.5 Refoulement of Somali refugees

In some cases, the border closure has given police the opportunity to send back groups to Somalia, breaching the fundamental principle of non-refoulement. In several important instances documented since the border was closed, the Government of Kenya has been responsible for sending back large groups of asylum-seekers: at the time of the border closure itself, when approximately 360 asylum-seekers were sent back from Liboi; in 2009, when 93 asylum-seekers were sent back from border areas; and from Mandera in October 2010, when a group of some 8,000 asylum-seekers were pushed back to Somalia, despite the fact that they were fleeing fighting in Belet Hawa⁶⁴; and in eight separate instances between September 2009 and March 2010, in which 152 individuals are alleged to have been sent back to Somalia⁶⁵.

Although these incidents indicate that actual numbers of unrecorded refoulements are far higher, several of the agencies working in Dadaab refugee camps said they did not think that forced, mass deportations were occurring in the same way in recent months⁶⁶. UNHCR has protection monitors who visit the border, and funds the Refugee Consortium of Kenya to monitor border areas as well. However, these missions are intermittent and so there is no constant surveillance of the routes that newly-arrived asylum seekers take to come into the country. To this extent, the real numbers of Somalis who are sent back to the border are unknown, but it would appear more likely that arrest and detention and/or fining of refugees is a more common response by the police than deportation.

4.5 The impact of heightened national security concerns on new arrivals

Even though asylum-seekers are still able to get across and make their way to Dadaab, recent levels of attention paid by the government of Kenya to issues of national security and the threat posed by groups operating inside Somali territory has had a markedly negative effect on the asylum space, and made the already difficult circumstances that Somali asylum-seekers find in Kenya almost intolerable. Kenya's legitimate concerns about keeping its citizens safe in the context of repeated threats has exacerbated an existing generalized xenophobia to Somalis inside Kenya, which inevitably impacts negatively on Somali asylum-seekers. This is evidenced by the regular police swoops in areas such as Eastleigh after a security incident, during which hundreds of Somalis are usually arrested, detained, beaten and sometimes deported⁶⁷.

There is deep division within the Kenyan government on the extent to which asylum-seekers and refugees should be actively protected from this growing hostility. The DRA, and the Minister for Immigration, are of the opinion that the border should be re-opened, and that decisions over the nature and scale of border screening and registration operations fall clearly within their mandate. They have however been frustrated in the implementation of their obligations by the repeated blocks that emanate from the Ministry of Internal Security and Provincial Administration, who have been able to overrule DRA advice on the border, citing reasons of national security⁶⁸.

64 Ibid.

65 Ibid.

66 Interviews with service providers, Dadaab.

67 Human Rights Watch. (2010). Welcome to Kenya: Police Abuse of Somali Refugees.

68 Interviews with senior government representatives.

Similar arguments have prevailed for the continued refusal to re-open a transit centre at Liboi, or to re-commence the refugee registration process. In a recent interview, the Minister of Immigration and Registration of Persons, Otieno Kajwang, spoke of a 'conflict of opinion' inside government concerning several of these issues⁶⁹: whereas the Ministry of Immigration and Registration of Persons and particularly DRA see the protection of asylum-seekers fleeing conflict as a priority, the Ministry of Internal Security and Provincial Administration has deemed the flow of people over the Somali border as a threat to national security. A representative from the Ministry of Internal Security and Provincial Administration was more guarded about discussing the perceived threats to security that the refugees are purported to pose, and suggested that the Ministry played no role whatsoever in decisions around the border, registration of refugees, or the status of new camps such as Kambioos⁷⁰. This is refuted by DRA, who assert that decisions are taken by the Provincial Security Committee based in Garissa, whose line of authority is directly from the Ministry of Internal Security and Provincial Administration.

Unfortunately for the asylum-seeking population of Somalia, 2012/2013 is an election season in Kenya, and the issue of national security, the threats emanating from Al Shabaab, the possible infiltration of terrorists across the Kenya/Somalia border, and by extension the entire Somali community in Kenya (including refugees), may well become a campaign issue. Local elections also threaten to politicize the refugee issue as a greater population by area (in North East Kenya, for example) means a greater allocation of national resources. There are therefore questions about the integration of Somali refugees into the national census.

The parts of the Kenyan government with a mandate for refugees have an opportunity to reduce the impact of this rhetoric by carrying out public relations, civic education and other interventions with the public to act as a counterweight to the growing image of Somali refugees as a threat to security in Kenya. The DRA has been supported to undertake public awareness raising under their capacity-building agreement with DANIDA⁷¹, but specific constituencies of the Kenyan population – police, other service delivery officers in government, students, business people and so on – may need further targeting with information and advocacy to counteract the generalized and increasing hostility to Somalis in the country.

69 Interview with Minister of Immigration and Registration of Persons, March 2012

70 Interview with government officer in Ministry of Internal Security and Provincial Administration.

71 Interview with Danish Embassy staff, March 2012.

5. A place of refuge: Protection and security inside Dadaab camps

Security in Dadaab has been a major challenge since the creation of the refugee camps, with several hundred thousand refugees living mostly in makeshift housing, a limited security presence in the camps, a porous Somali border nearby, and frequent incidents of banditry in the area. In 1996, five years after the camps' creation, a study was conducted on the risks posed to women collecting firewood in Dadaab, in particular the high risk of sexual assault⁷². More than fifteen years later, this is still a real concern. Violence has been a feature of everyday life in Dadaab, perpetrated by refugee on refugee, by members of the host community, and even by members of the security services and armed forces. Most recently, violence has been carried out by members of the refugee community, or individuals hiding amongst them, against the security forces.

With a population already three times bigger than the original planning figures, further increased by the influx of 2011, the camp's police and security presence has not grown commensurately. A

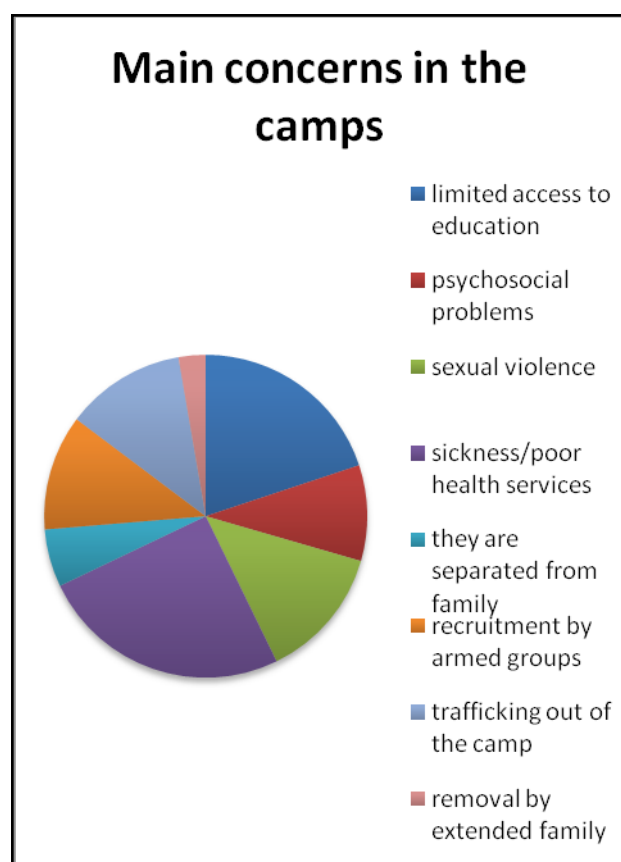


Table 2: Main concerns in the camps, RCK 2012

significant additional security presence has been planned for the camps under UNHCR's Security Partnership Project (SPP), but the camps remain an environment in which refugees, particularly the most vulnerable, face acute protection challenges. As shown by the chart below, a primary concern expressed by the refugee families themselves is still access to basic services - the fundamental capacity to stay well, access food and water, and educate children. But protection-related anxieties are also an important preoccupation for Dadaab residents, and a better understanding of this is important for decisions about how funds are spent, and human resources prioritized.

UNHCR has been facing funding constraints since 2012 began. The budget spent in Dadaab during 2011 was \$101,000,000 whereas the projected budget for 2012 is \$49,000,000. This represents a 47% reduction in budget over last year, whilst there is a 53% bigger refugee population in the Dadaab camps than at the beginning of 2011. The 2011 budget had

to cover the provision of non-food items, shelter and other items distributed on arrival to a large, newly arrived camp population; nonetheless, there are still unresolved shortfalls in the funding projections for activities in the camps, a source of real concern to both UNHCR and its partners⁷³.

⁷² Hoerz, T. (1996). *Firewood Collection and Violence against Women in Dadaab - A Series of Proposals for Mitigation*. Refugee Studies Centre.

⁷³ Interview with BPRM staff member, April 2012.

In a context like this, where programme rationalization is an inevitability, life-saving assistance such as food, health and water will be assured. The area of intervention that is most likely to be deprioritized is protection, in all its forms. Compared to sectors such as health or water, protection is very dependent on human resources, and does not require elevated levels of hardware or funding. Despite this, protection partners are in need of more support if they are to invest in longer-term systems to strengthen the capacity of refugees themselves to prevent and respond to protection violations. This funding may come from UNHCR, or directly to implementing partners from donors.

In the current compromised security climate, some responsibility for service delivery has been handed over to refugee incentive workers. Although brought about by force of circumstance, this may ultimately lead to important and positive developments in the empowerment and capacity-building of parts of the refugee population. Security scenarios for the coming year in Dadaab, and the implications on programme delivery, are described in the draft UNHCR Operational Continuity Plan, in which increasing reliance on refugee workers is explored. There are many activities and tasks in the camp of which refugees are ready to take over management, so to this extent offering the residents of Dadaab a chance for greater self-reliance, however small, is a positive development.

“Yes, sometimes the provision of food aid by the agencies is exploitative. Not only the refugee incentive workers, sometimes the food aid personnel exploit refugees. Some refugee incentive workers lead a lavish lifestyle – which raises eyebrows as they are paid so little. There is a link between incentive workers, some refugees, and food aid personnel that allows them to steal food and underserve the population”

Focus Group Discussion, Ifo camp RCK 2012

However, the one area which will continue to require an international staff presence, as well as the technical expertise and independence of the UN agencies and NGOs, is the area of protection. As security conditions deteriorate, so protection violations get worse. These violations may even be carried out by groups or individuals supposed to be providing security. Clearly, then, there are a number of important areas - independent monitoring and reporting of protection violations and trends, accountability and justice for victims of crime or violence, advocacy with government authorities and other groups - which cannot be handed over to members of the refugee community themselves.

Even in the context of service delivery in other sector areas, such as food and shelter items distribution, or in management of water points, the growing responsibilities of refugee incentive workers may lead to protection violations, such as sexual exploitation and abuse, discrimination against minorities or against those living with disabilities⁷⁴. An effective collaboration between UNHCR and all agencies involved in providing protection in the camps, in services, awareness, training, or advocacy, will be crucial to ensure that information is available to refugees about how they can report incidents in safety, with systems in place to minimize abuse and violence in the camps.

74 Interview with service providers in DMO, March 2012. Incentive workers are paid less than 100 US dollars a month, so the temptation to abuse the system is higher for them, especially with a reduced level of NGO oversight. The survey indicates that in some cases, this has led to incentive workers involving themselves in exploitation.

5.1 Protection from what? The causes of flight

Some of the protection problems in the camp are connected with the experience the refugees had in Somalia that caused them to leave in the first place. The great majority of survey respondents indicated that they had left Somalia for a combination of reasons, as shown in the table below. The majority of refugees came to Kenya as a direct consequence of the impact of the war, the threat it posed to family members (for example through forcible recruitment), or the fears that they experienced in the context of the takeover of their home areas by Al Shabaab. Refugees interviewed in Eastleigh as part of this research had, time and again, overwhelmingly compelling reasons to justify their flight from Somalia, borne of their exposure to a conflict that has affected lives all over the country in disturbing and tragic ways. To this extent, Somalia's troubled history has justified the

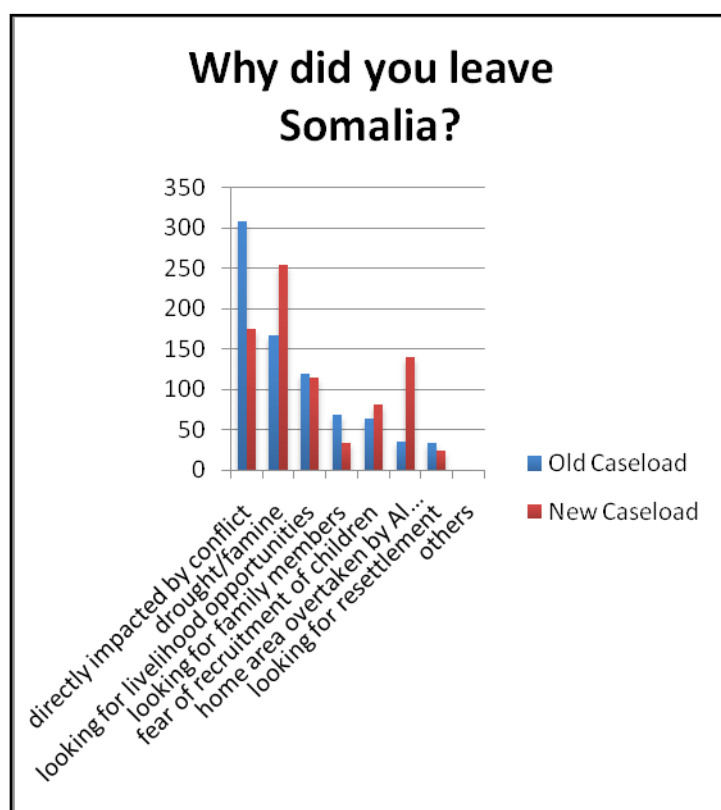


Table 3: Reasons for leaving Somalia, RCK 2012

resettlement, family members or some combination of these reasons – without making reference to any additional conflict-related or persecution-related motive for leaving⁷⁵.

This is a crucial piece of the asylum problematic for Somali refugees in Kenya, as it implies that – beyond the compelling humanitarian reasons to respond to the influx of 2011 – a significant proportion of the new arrivals to the camp would not qualify for refugee status under the international framework, nor, therefore, under Kenyan refugee law.

This adds a level of complexity to the debate as to how the government of Kenya should honour its responsibilities to Somali refugees. Under the *prima facie* status applied to Somalis in the country

application of *prima facie* refugee status in Kenya, since most asylum-seekers would be able to account, in the context of an individual status determination interview, for an experience which would entitle them to international protection either under the 1951 Convention or the AU 1969 Convention.

During 2011, however, the famine that gripped Somalia was undoubtedly the primary driver of the massive levels of displacement inside Somalia and across the borders into Kenya and Ethiopia. Although there were many people still being displaced by direct contact with the conflict, 43% of respondents to the survey who had arrived during 2011 or 2012 said that they had come to Dadaab as a result of the drought and famine, in search of livelihoods,

⁷⁵ An argument could be made that a famine constitutes an “event seriously disturbing public order” and thus a grounds for asylum under the OAU 1967 Convention, but this is well beyond the reach of the 1951 Convention.

since 1991, each individual claim to asylum is not scrutinized, and this may have contributed to an attitude amongst law enforcement authorities that the documentation issued to Somalis, which should protect them from harassment and arrest, does not hold much meaning. *Prima facie* status has allowed enormous numbers of Somalis, seeking asylum or not, to take up residence in Kenya under varying conditions, and has contributed to resentment amongst the Kenyan population about their domination of certain quarters of Nairobi, and certain arenas of business and commerce. It is arguable that for Somalia, a country beset by multiple layers of crisis, the blanket granting of refugee status to its citizens is eroding the credibility of real asylum-seekers whose experience locates them centrally in the refugee definitions that apply in Kenya.

5.2 Security, law enforcement and violence inside the camp

The worsening of security in Dadaab for field workers, Kenyan police, and most of all refugees, was catalyzed by a number of inter-linked incidents in the second half of 2011. On 11th September, a British man was killed and his wife kidnapped north of Lamu island and close to the Somali border⁷⁶. Ten days later, a Care Kenya driver was abducted from the Dadaab camps⁷⁷. On 1st October 2011, a French tourist was abducted from an island near Lamu⁷⁸, followed by the kidnapping of two MSF Spain workers in Dadaab on 13 October⁷⁹. The security situation for NGOs and UN agencies working in Dadaab changed drastically as a result of this kidnapping, and had serious repercussions on the provision of services in the camps in the following months.

As a response to the kidnappings, and the perceived assault on the Kenyan economy that tourists attacks represented, Kenyan military forces entered Somalia to pursue militants on 16 October, 2011⁸⁰. Almost immediately following Kenya's military intervention, Al Shabaab issued threats on Nairobi and other strategic targets in Kenya⁸¹. The kidnappings in Dadaab, combined with the Kenyan cross-border military operation, as well as the targeting of community leaders, drastically altered the security situation in the refugee camps. Subsequent to these events in late 2011 and 2012, several security incidents, involving IEDs and grenades, chiefly targeting Kenyan security forces, have taken place in Dadaab as well as other parts of North Eastern Province. These incidents have had serious repercussions for the refugee community and their security in the camps.

Agencies

Subsequent to the kidnappings of MSF Spain personnel in October 2011, MSF Spain halted non-lifesaving activities completely in Ifo 2 West and East, resulting in a gap in healthcare provision⁸².

76 Briton killed and wife kidnapped in Kenya. (2011, September 11). BBC News. Retrieved from <http://www.bbc.co.uk/news/world-africa-14872980>

77 Somali famine: Care aid driver abducted in Kenyan camp. (2011, September 21). BBC News. Retrieved from <http://www.bbc.co.uk/news/world-africa-15006813>

78 Gettleman, J. (2011a, October 1). Somali Gunmen Abduct Elderly Tourist in Kenya. *New York Times*. Retrieved from <http://www.nytimes.com/2011/10/02/world/africa/somali-gunmen-grab-wheelchair-bound-french-tourist-in-kenya.html>

79 Two Spanish aid workers kidnapped in Kenya. (2011, October 13). AFP. Retrieved from http://www.google.com/hostednews/afp/article/ALeqM5ibvL43EthA_-TR_hWdYW5Up9B_DA?docId=CNG.9a36daffa5420a1b7ebbb0dad8ac623c.601

80 Gettleman, J. (2011b, 16 October, 2011). Kenyan Forces Enter Somalia to Battle Militants. *New York Times*. Retrieved from <http://www.nytimes.com/2011/10/17/world/africa/kenyan-forces-enter-somalia-to-battle-shabab.html>

81 Ombati, C. (2011a, October 19). Kenya's security on alert following al-Shabaab threat. *The Standard*. Retrieved from <http://www.standardmedia.co.ke/archives/InsidePage.php?id=2000045117&cid=4&>

82 Interview with MSF Spain Kenya Country Director March 2012.

A slew of security incidents took place in the weeks directly following the kidnapping and Kenya's military action in Somalia, including the recovery of several AK-47 rifles and hundreds of rounds on 30th October; an INGO vehicle being shot at by suspected bandits near Dadaab on 2nd November; an explosion of what appeared to be an anti-personnel mine on 4th November; a police escort vehicle striking an IED which did not detonate between Hagadera and Dadaab on 5th November; and a hand grenade thrown into a church in Garissa, killing two people and injuring three, on the same day⁸³.

Since October, NGOs and agencies have operated in Dadaab with extreme caution, temporarily halting all but life-saving assistance, mainly water, food and health services, and restricting movement of Kenyan and expatriate staff. Among the activities temporarily halted in November and December 2011 were the protection monitoring activities of Refugee Consortium of Kenya.⁸⁴ While the security concerns of the agencies were real, their reduced presence in the field left refugees more vulnerable. Even though security in Dadaab remains extremely fragile – there were a series of incidents involving the successful detonation or early discovery of IEDs in Hagadera, Dagahaley and elsewhere during May 2012 – UNHCR and partner agencies have been able to resume their regular activities with daily visits to the field.⁸⁵

Police

Following the incidents of October and early November 2011 and with support from UNHCR, the Government increased the overall police presence in the camps with 92 officers, creating a new police station in Dagahaley and providing the police with vehicles and VHF systems⁸⁶.

Following three IED attacks in December 2011, killing and injuring several police officers, the police launched a series of counter-measures, which punished the refugee population both directly and indirectly⁸⁷. The government imposed curfews, travel restrictions and initiated police swoops, with the aim of flushing out Al Shabaab members, or refugees with knowledge of the incidents⁸⁸. Ifo, Ifo 2, Hagadera and Kambioos were most affected while Dagahaley remained relatively calm. Reports included looting, vandalism, arbitrary detention, extortion and 160-170 confirmed hospital cases, including beatings and broken bones⁸⁹. Human Rights Watch furthermore reported at least one rape and several attempts at rape, and over 50 cases of refugees who had money or property looted or destroyed.⁹⁰ According to the member of parliament for Dadaab, Farah Maalim, the police "looted 38 million Kenyan shillings [about USD\$450,000] worth of money and goods in a matter of hours."⁹¹ Following each incident, indiscriminate arrests took place of 20-30 refugees who were detained for one or two nights. People living with disabilities stated they were particularly vulnerable during these sweeps, as they were often trampled on by people running from the police⁹². Most of these

83 UNHCR. (2011). Situation report Dadaab refugee camps - 9 November 2011.

84 Human Rights Watch. (2012). *Criminal Reprisals - Kenyan Police and Military Abuses against Ethnic Somalis*. Retrieved from <http://www.hrw.org/reports/2012/05/04/criminal-reprisals>

85 UNHCR. (2012a). Thriving after a crisis: Security and empowerment in Dadaab. Retrieved from <http://www.unhcr.org/4f9947df6.html>

86 Ibid.

87 UNHCR. (2012b). *Participatory assessment 2012 - Adapting to a challenging environment*. Dadaab, Kenya.

88 Ibid.

89 Interview with UNHCR field officer, DMO, March 2012.

90 Human Rights Watch. (2012). *Criminal reprisals - Kenyan police and military abuses against ethnic Somalis*. Retrieved from <http://www.hrw.org/reports/2012/05/04/criminal-reprisals>

91 Ibid.

92 Ibid.

reports are based on interviews with refugees as well as hospital reports from the camps, as there was limited agency and NGO monitoring at the time.

Human Rights Watch has reported incidents of rape, beatings, looting, and arbitrary arrests of civilians following the attacks of suspected Al Shabaab sympathizers, largely Kenyan Somalis as well as Somali refugees, both in Garissa as well as the camps⁹³. On 24th November, following two grenade attacks on civilian targets in Garissa and an IED targeting a military convoy in Mandera, police and soldiers rounded up hundreds of suspects in both towns. Some were beaten so severely they suffered broken limbs⁹⁴. Explosions in Wajir in early December were similarly followed by arbitrary arrests and beatings lasting three days⁹⁵.

The District Commissioner argues that the police operations and arrests in the camps have reduced the levels of Al Shabaab activity in the camps and led to intelligence which has directly resulted in military success on the other side of the border⁹⁶. A senior government representative confirms that heightened vigilance of police in the camps has helped improve security⁹⁷, although a spate of incidents in May 2012 makes this assessment appear optimistic. There is need for continued alert. 1,500 recruits have been added to the police force in Dadaab, but there are still far too few police officers for a population of the size currently in the camps⁹⁸.

Kenya's security forces have every reason to be concerned about the threat against their forces, as well as the general risk from Al Shabaab in Kenya. However, their response to these attacks has left the relationship with the refugee community in Dadaab strained, and is ultimately detrimental to their own security. The research survey conducted in March 2012 found that the two most significant safety concerns among refugees in the camps were IEDs and the presence of Al Shabaab in the camps - concerns shared by the Kenyan Government and police. 10% of respondents stated there was insufficient police presence in the camps and 7% stated that police were a threat to security.

Security in the camps

Security for refugees in the Dadaab camps has always been of great concern. Incidents of banditry and shootings, tensions between refugees and the local community, small arms filtering into the camps, and attacks and rapes on women while collecting firewood have been reported for many years. The security situation in the camps over the past year has been aggravated by overcrowding in the camps due to the 2011 influx, kidnapping of humanitarian aid workers, IED attacks targeting the Kenyan police forces, reported increase in Al Shabab elements in the camps, as well as attacks on refugee leaders trying to ensure safety in the camps.

93 Ibid.

94 Ibid.

95 Ibid.

96 Interview with senior government representative, March 2012.

97 Interview with senior government representative. March 2012.

98 Interview with senior government representative. March 2012.

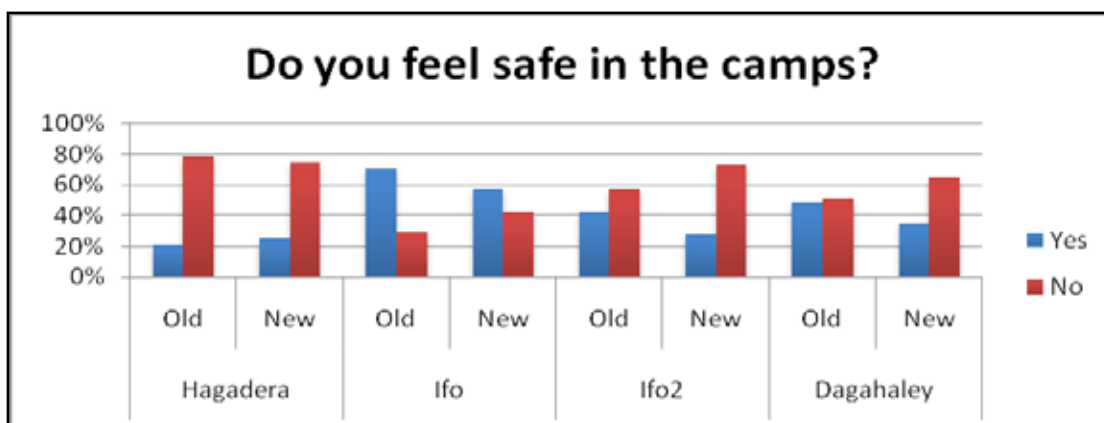


Table 4: Perceived security in the camps, RCK 2012

The research survey found that 56% of all respondents felt unsafe in the camps. Ifo was perceived to be the safest camp, with only 33% of respondents feeling unsafe, and Ifo 2 and Hagadera were perceived as the least safe camps. New arrivals, or refugees arriving after January 2011, felt most unsafe in Hagadera and Ifo 2, followed by Dagahaley.

When asked as a follow-up question why they perceived the camps to be unsafe, the top five answers were:

1. *Bombs and explosives (23%)*
2. *Presence of Al Shabaab in the camps (13%)*
3. *Insufficient services (12%)*
4. *Threat of violence against women (10%)*
5. *Insufficient police presence (10%)*

All camps ranked IEDs as the top threat, no doubt due to the timing of the field research closely following the IED incidents of November and December 2011. Hagadera and Ifo followed the above ranking quite closely, though Ifo 2 and Dagahaley showed other perceived threats. Dagahaley ranked the threat of violence against women and insufficient presence of agencies in their top three. Refugees in Ifo 2 perceived themselves or their children to be at risk of recruitment and also felt there was an insufficient police presence, likely due to the fact that the Ifo police station also serves Ifo 2. Women also followed these lines quite closely, but ranked “police are a threat to security” as their number three threat.

Due to the increasing tensions and incidents of violence in the camps, security was a key issue under investigation in the UNHCR Participatory Assessment of 2012. In fact, security was such an issue that it affected the methodology of the assessment itself. In previous years, Multi Functional Teams (MFTs) would go into the blocks in order to interview respondents. This year, UNHCR conducted structured focus group discussions outside the blocks⁹⁹. The community named harassment and arbitrary arrests by the police, banditry and inadequate livelihoods as the major sources of insecurity in the camps. New arrivals in Ifo 2 West and East and Kambioos felt they were especially vulnerable to insecurity due to the state of their tents, many of which are torn and impossible to lock.

99 UNHCR. (2012).

Other major findings of the 2012 Participatory Assessment include :

- Lack of security screening of new arrivals leads to individuals entering the camps with weapons.
- Limited opportunities for youth have resulted in the formation of gangs who are involved in robberies and burglaries at night. Students have reported that they stopped attending evening remedial classes due to harassment from gangs and the police.
- Some insecurity stems from limited resources in the camps. For example, in Kambioos many cases of theft occur directly after the food distribution.
- Minorities stated that cultural intolerance within the Somali community led to inter-community strife.
- Women reported they were vulnerable to GBV when trying to find firewood, as they have to walk for long distances and sometimes spend the night outside the camps.
- The men and Community Peace and Protection Teams (CPPT) stated that police were reluctant to act on reported cases, leading perpetrators to act with impunity.

While security is an issue in all camps in Dadaab, Kambioos is a special case. Kambioos was initially planned as an ideal camp to house up to 240,000 refugees on a massive plot of land, but it has not fulfilled its early promise. Whereas Ifo 2¹⁰⁰ was finally opened after a visit in July 2011 by Prime Minister Raila Odinga (despite on-going contradiction and ambivalence on the part of the government), Kambioos has still not been officially recognized as a camp. However, as new arrivals are no longer being received in Ifo 2, discussions with the government have been renewed on opening Kambioos. There are now more than 12,000 registered refugees settled in Kambioos, who have not realized the same rights as the rest of the Dadaab population; plot sizes have been reduced from 10x14 metres to 8x12 metres, and refugees enjoy very limited access to services¹⁰¹. For example, the food distribution for Kambioos takes place in Hagadera and people have to be transported from the camps to receive their food¹⁰². There is no regular police presence in Kambioos and refugees have to go to the police station in Hagadera to report any incident¹⁰³. Police have not been willing to provide escorts to Kambioos, creating boundaries for NGOs to effectively work there due to the current security climate.

The poor security situation in the camps appears to have contributed to onward movement from Dadaab. At the height of insecurities in November-December 2011, there were reports of spontaneous returns to Somalia, the key motivations for which were insecurity in the camps, deterioration of services due to agencies' inability to access the camps, and lack of registration¹⁰⁴. A number of refugees have also moved to urban areas such as Garissa or Nairobi in order to avoid the insecure environment in the camps¹⁰⁵, although exact numbers are unknown as UNHCR do not have any kind of accurate monitoring of numbers of new arrivals in urban centres¹⁰⁶.

100 A camp designed to house 80,000 new refugees that UNHCR had spent \$10,000,000 establishing with shelter, water facilities, and even schools.

101 Interview with NRC, March 2012

102 Ibid.

103 Interview with UNHCR officer, DMO, March 2012.

104 Interview with UNHCR officer, DMO, March 2012.

105 Interview with refugees in Eastleigh, March 2012.

106 Interview with UNHCR officer, Nairobi. April 2012.

5.3 Registration

The legal and policy framework

A key protection service offered in Dadaab until October 2011 was that of registration. Registration of arriving asylum-seekers by national authorities in a country of asylum constitutes the bedrock of the process of humanitarian service provision and protection. Identification and documentation is a fundamental right, as well as a practical means for refugees to avoid harassment and discrimination. Furthermore, it can be critical in determining their ability to gain access to humanitarian goods and services - a potentially life and death issue, particularly in the early weeks of their stay in a new country. Defining who is a refugee is therefore central to refugee protection. Proper categorization facilitates and justifies aid, and is an indicator of the appropriate rights and duties analogous with that status¹⁰⁷.

The duty of the government to discharge this responsibility has been stressed by leading commentators on refugee law. 'Article 27 of the 1951 Convention lays down an unequivocal obligation on Contracting States to "issue identity papers to any refugee in their territory who does not possess a valid travel document." The duty is subject to no exception, and the travaux préparatoires make it clear that every refugee was intended to benefit¹⁰⁸.' The 1969 OAU Convention is however silent on the topic of documentation, other than on the issuance of Conventional Travel Documents¹⁰⁹. However, in Kenya, prior to the enactment of the 2006 refugee law, there was no separate legal framework for the registration of refugees other than that which dealt with foreigners/aliens/immigrants. The identity documents that were issued by the government were limited to the Kenya national identity card (ID) and passports for citizens, and an Alien Certificate for all other aliens who were legally in Kenya.

However, since many asylum-seekers arrive in Kenya without any documentation at all and without following the established immigration criteria, the issuance of identity papers was seen as necessary to distinguish their legal status from other categories of persons within Kenya's jurisdiction. Most importantly, though, it serves to confirm their identity in the absence of documentation from their countries of origin. In 2004/2005, before the enactment of the refugee law, the then Refugee Secretariat and UNHCR partnered with the National Registration Bureau to register all refugees in Kenya, taking fingerprints, photographs and basic bio-data. During this exercise, the main document of reference for camp-based refugees was the UNHCR-issued Ration Card. The result of this was that all refugees above the age of eighteen years were issued with identity documents valid for 10 years. A significant proportion of the existing case load was registered through this initiative.

Since 2006, the issuance of identity papers to refugees and asylum-seekers is covered by sections 14 and 15 of The Refugees Act¹¹⁰, with the procedure provided for by the Refugees (Reception

107 Goodwin-Gill, G. S. & McAdam J. (2007).

108 Goodwin-Gill, G. S. & McAdam J. (2007). *The Refugee in International Law*, p.515. Oxford University Press.

109 The full text of the provision, Article 6, is as follows:

Subject to Article III, Member States shall issue to refugees lawfully staying in their territories travel documents in accordance with the United Nations Convention Relating to the Status of Refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require. Member States may issue such a travel document to any other refugee in their territory.

110 The full text of the provision, Section 14, is as follows: Every refugee and asylum-seeker shall-

(a) Be issued with a refugee identity card or pass in the prescribed form: and

(b) Be permitted to remain in Kenya in accordance with the provisions of this Act Section 15 (1) A member of the

and Adjudication) Regulations of 2009. The effect of the Refugees Act on the refugee registration process was to anchor that which was already taking place, in law, and to properly distinguish the resultant documentation. Sections 14 and 15 of the Act provided for a Refugee Identity Card for refugees over the age of eighteen and a Refugee Identification Pass for those below the age of eighteen. However, whereas the issuance of identification documents continued even after the Act, the Regulations gazetted the Refugee Identity Card (though not yet for those under 18 years) only in 2009. As a result, there are refugees who hold blue Alien Certificates specifically issued to refugees, whilst other refugees hold Refugee Identity Cards.

The main identification documents that an asylum-seeker is now eligible to receive are:

- (a) *Before the granting of refugee status:* An Asylum-Seeker's Pass, issued to an asylum-seeker and his/her family
- (b) *After granting of refugee status:* A Refugee Identity Card (or pass if the refugee has not attained the age of eighteen years). This document substitutes the Asylum-Seeker's Pass, which the refugee is required to surrender to the issuing officer. Female asylum-seekers are issued with a document in their own names. Neither the Act nor the Regulations prescribe a time frame within which the identity documents will be issued.

Registration in practice

Since March 2011, when the government took over refugee registration from UNHCR, the DRA is the first point of contact for an arriving asylum-seeker. DRA registers the refugees and issues them with 'Form 1', the application for refugee status. As part of this process, the DRA collects basic biodata on each person and their place of origin, and also takes their photograph and fingerprints. In addition, those that are over 18 years have their basic data and fingerprints taken by the National Registration Bureau prior to the provision of a refugee ID card. As the cards are not issued immediately, all asylum-seekers are given a waiting slip to collect the cards at a later date. With the Form 1, which serves as proof of registration, the refugees then go to UNHCR where they are then also registered¹¹¹ in the UNHCR database and issued with ration cards. This allows them to access the humanitarian aid and services provided by UN agencies, NGOs and others in the camps.

Unlike the government registration, after which each person gets an individual document, this registration is household-based: while data regarding all the individual members is collected, a household is registered as one unit and issued with a single ration card, usually to the head of family. Individuals are at liberty to request for separation of cards and these are quite common. Registration is usually carried out by UNHCR staff as soon as possible after arrival at the camps. This process is fairly accessible to all, with the most vulnerable being given priority. Moreover, the

family of a refugee who has entered Kenya shall, subject to subsection (2) and (3) and any other provisions of this Act-

- (a) Be issued with a refugee identity card in the prescribed form on attaining the age of eighteen years;
- (b) Be issued with a refugee identification pass if below the age of eighteen years; and
- (c) Subject to subsection (2) and (3), be permitted to remain within Kenya for as long as the refugee concerned is permitted to so remain Provided that such a member of the family has not been excluded under Section 3(3)

111 The UNHCR registration process is similar: collection of bio data, photographs, taking of fingerprints. In addition, there is iris recognition.

registration process also offers an opportunity for the identification of vulnerable persons/groups and appropriate referral for assistance.

Unfortunately, issuance of the government refugee identity cards has not kept pace with registration, mainly because of the capacity of the government to produce the cards. In fact, identity cards have only been issued to those that were registered in 2004/2005¹¹² : everyone registered after that has a waiting slip. According to DRA, the registration of the pre-2007 caseload is complete, but there are still 60,000 of the cards yet to be distributed (section 3.3). Distribution of the cards was interrupted by the general insecurity in the Dadaab camps in late 2011, resulting in the scaling down of all interventions.

During the registration exercise, it became clear that there were persons in the UNHCR refugee database that were also in the national database for Kenyan citizens¹¹³. These individuals, all of Somali extraction, could be Kenyan citizens from the host community who have registered as refugees¹¹⁴ in order to access humanitarian assistance and perhaps to become eligible for resettlement. They could also be Somali refugees who have bought Kenyan ID cards in order to integrate more fully into Kenyan life outside the camps. As a way of dealing with issues of double registration, the DRA in Dadaab is providing for voluntary de-registration. This is a purely voluntary exercise and no legal sanctions have been instituted so far, as they want to encourage as many people as possible to come forward. This may soon change, since the Minister for Immigration recently announced that the government is drafting a law to criminalize false registration as a refugee¹¹⁵. Sensitization is also being undertaken to instil in people the need to be truthful in the registration process¹¹⁶.

Suspension of registration

Most recently, in October 2011, following a series of kidnapping incidents in Dadaab camps, and the military incursion by the Kenyan Defence Force into Somalia in pursuit of Al Shabaab¹¹⁷, registration of the newly-arrived asylum-seekers by DRA was suspended. The impetus for this suspension comes from the Ministry of Internal Security and Provincial Administration, rather than DRA, and is a result of heightened security concerns on the part of the Government of Kenya. Currently there are more than 3000 asylum-seekers at a reception centre in Dagahaley camp who have only received a token to enable them to access basic food and non-food item distribution. DRA have said repeatedly in recent weeks that registration will soon begin again, but so far there has been no change in the government's policy. In interviews for this research, representatives from DRA, the Ministry of Immigration and Registration of Persons, and from the Ministry of Internal Security and Provincial Administration were unable to confirm when the registration would reopen.

The impact of this suspension is extremely significant. First, it contradicts Kenya's own refugee law, as well as its obligations under the 1951 Refugee Convention. Secondly, it has made it impossible for

112 Interview with UNHCR staff member, April 15, 2011.

113 Kenya National Commission on Human Rights. (2007). *An identity crisis? A study on the issuance of national identity cards in Kenya*. Retrieved from <http://www.knchr.org/dmdocuments/Final%20IDsReport.pdf>

114 Interview with DRA official in Dadaab, March 2012.

115 Kenyan government to crack down on fake refugees. (2012, April). *Sabahi*. http://sabahionline.com/en_GB/articles/hoa/articles/features/2012/04/26/feature-01

116 Interview with Refugee Camp Officer on March 8, 2012 in Dadaab.

117 Kenya has based these operations on the right to self-defence, as provided by Article 51 of the United Nations Charter.

desperate new arrivals to access key services for which they are eligible. Although the government registration and issuance of refugee IDs does not in and of itself provide significant legal or practical protection¹¹⁸, it is a prerequisite for UNHCR registration. Consequently, UNHCR has not been able to issue ration cards since the suspension of registration.

This of course has a huge impact on what services a newly-arrived asylum-seeker can access. Right now in Dadaab, new arrivals can receive a very basic initial food basket, but without registration they cannot get shelter assistance or enrol their children in schools. The vulnerability screenings that were in place at the point of UNHCR registration are no longer functioning. This means that unaccompanied children, elderly or handicapped individuals, and others with special needs are not being identified, profiled, and referred to services. For instance, one UNHCR officer said that since the suspension of registration, there have been fewer reports of gender based violence, due to in part to the fact that the emergency vulnerability screening for new arrivals was no longer taking place¹¹⁹.

And vitally, without even basic registration, the Government of Kenya will not be able to maintain vigilance as to the identity and intentions of incoming Somalis to the camp. The Regulations require the Commissioner to put in place screening mechanisms to separate combatants¹²⁰ from civilians. Any attempt to strengthen intelligence on the movement of combatants or terrorist elements will be entirely undermined by the current freeze on registration. Rather than removing the registration process, which has excluded the innocent and deserving from accessing their basic rights as refugees, the significant security threat in and around the camps would be better tackled through the effective screening of new arrivals. The gathering of biometric data helps to undermine basic criminal activity as well as more complex threats such as terrorism. This could make an even more robust contribution to national security if it could take place at the border at the Liboi transit centre, rather than on arrival in the refugee camps. In light of these facts, the government's claim that the suspension of refugee registration is for purposes of national security is baffling.

Whilst the war is still far from over in Somalia, this gesture by the Government of Kenya - both symbolic and actual – demonstrates a fundamental disintegration of hospitality, human empathy and legal accountability for Somali families with no alternatives back home. This message was certainly well-understood inside Somalia, as numbers of asylum-seekers arriving in Dadaab fell within the week from more than 1,000 per day at that period to less than fifty a day.

UNHCR and DRA have not yet measured the impact of this suspension on the numbers of asylum-seekers finding their way to Nairobi and other urban centres, where registration is still available. Although registration anywhere outside the refugee camps does not provide access to services, it is nonetheless a perplexing policy contradiction on the part of the government to suspend registration in the primary place where the refugees ought – according to the encampment policy - to be accommodated, and yet to maintain and even expand registration in cities where monitoring

118 In the words of one DRA official, the refugee identity card is the 'lowest form of certificate, after the Kenyan national ID and the Alien Certificate and any other form of legal documentation. It limits ownership of goods, is not recognized for most business transactions and is not an identification document for purposes of taxation'. In light of the encampment policy, a refugee ID confers few rights or advantages to the holder. For instance, holders of refugee ID cards must still apply for movement passes and are not guaranteed non-harassment by the police.

119 Interview with UNHCR GBV focal point at Dadaab, March 2011

120 The Regulations define 'combatant' as a member of a regular or irregular armed force or armed group or a person who has been participating actively in military activities or recruitment to military activities.

and screening of the caseload is so much more difficult. The implication is that the suspension of registration in Dadaab is part of a more alarming long-term government strategy to disable incrementally the asylum regime in Kenya for Somali refugees.

UNHCR, donors, and other members of the international community are doing fairly consistent advocacy around the immediate resumption of registration, but the final decision lies beyond DRA and with an inter-ministerial committee with representation from various ministries, including the Ministries of Defence, Immigration, Internal Security and Provincial Administration, as well as the police. However, of key importance in the final decisions around refugee matters is the Ministry of Provincial Administration and Internal Security. While there appear to be many within government who are sympathetic to the urgent need to recommence the registration process, with the current security tensions as they are, these decisions are ultimately not legal but political¹²¹. And so, for the time being, registration remains frozen, with no clear answer as to how long those seeking asylum in Dadaab must wait to see an improvement in their bleak prospects.

It might be helpful to the case for recommencing registration to consider altering the process by which Somali asylum-seekers are granted refugee status in Kenya, replacing the *prima facie* status with a requirement for interview to determine eligibility against the mandate of the 1951 Convention or the 1969 OAU Convention. This would not compromise the fundamental right of each Somali arriving in Kenya to make a case for the granting of asylum, nor would it justify the blanket and illegal policies currently in place around border closure and non-registration in the camps.

The major impediment to such a process would be the enormous amount of extra time, manpower and financial resources required of both UNHCR and DRA to ensure adequate and timely processing of the many applications that the Somali caseload would generate. Given the current backlogs in processing of RSD cases, imposing comparable requirements on the Somali asylum-seeking population, both in Dadaab and elsewhere in the country, would leave thousands of Somalis exposed for months or years whilst they wait for processing and documentation.

121 This situation is not unique to Kenya. George Okoth-Obbo states that '*It is known that the refugee question in Africa has tended to be heavily influenced by sensitive political and security questions, if this is not an understatement!*'. Okoth-Obbo, G. (2001). Thirty years on: A legal review of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. *Refugee Survey Quarterly*, Vol. 20, No. 1.

6. Gender-based violence

“I knew a young girl who was raped just recently. She was out in the afternoon looking after her family’s goats on the outskirts of Hagadera camp. She was only ten years old. The incident was reported to family, UNHCR, the NGOs doing work in health, and the police. But action was not taken quickly, and the man has escaped. Nobody knows where he is now.”

New arrival, Hagadera camp, March 2012

Gender-based violence has been defined as “an umbrella term for any harmful act that is perpetrated against a person’s will, and that is based on socially-ascribed gender differences between males and females”. Even though GBV can be perpetrated against women or men, boys or girls, it is widely accepted that regardless of cultural context, women and girls are disproportionately vulnerable.

The 1951 Refugee Convention makes no specific mention of the additional protection needs of women and girls on the basis of gender-based violence, but the 2003 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) recognizes the extra vulnerability of women in situations of humanitarian crisis. The protocol includes in its definition of violence against women deprivations of fundamental freedoms during situations of armed conflict or of war (Article 1(j)). The reference to situations of armed conflict is important here, because it brings within the protocol women asylum-seekers and refugees as well as other categories of war-affected women.

Kenya has ratified the key international legal instruments, and has in recent years taken significant steps towards the legal protection of women and gender equality. Several of the principles of the international frameworks are found in the constitution and in national laws. Sexual violence - including rape, defilement, sexual harassment and indecent assault - has been criminalized under the Sexual Offences Act of 2006 and the Penal Code Cap 63. There is a Domestic Violence (Family Protection Bill) 2007 in draft. Women are now able under the Citizenship Act to pass citizenship to a foreign husband or to her children.

More recently, in 2011, female genital mutilation was made illegal under the FGM Act, an important commitment by the Kenyan government towards reducing and ultimately eradicating the practice. FGM is a deeply-held cultural practice for several groups in Kenya, and approximately 27% of women and girls in Kenya have been cut. The practical implementation of this law will be a challenge, but in principle the law applies as much in the Dadaab refugee camps – where FGM is almost universally practiced - as anywhere else in Kenya.

With regard specifically to the protection of refugee women, Section 23 (1) of the Refugees Act provides that: ‘The Commissioner shall ensure that specific measures are taken to ensure the safety of refugee women and children in designated areas.’ This provision specifically addresses issues of the physical safety of women and children within the camps.

Despite national legislation to support equal rights, women in Dadaab camps are exposed to multiple axes of subordination, marginalization and violence. Female-headed households, single women, older women, and adolescent girls are the most vulnerable. Traditional Somali Islamic

culture assigns women a secondary role, and in the camps shari'a law and traditional legal systems (such as xeer law and the maslaha courts) often in practice determine the outcomes for women. Traditional clan justice puts the resolution of disputes into the hands of clan elders, traditional and religious leaders. Generally, women are excluded from traditional decision-making bodies, and from participation in key community structures. Furthermore, women and girls enjoy much less freedom of movement, speech, access to education, employment and other services. High levels of stigma are attached to the victims of GBV, who are seen as sullied by, and often to blame for, the violence enacted upon them.

GBV was already an area of grave concern in Dadaab before the emergency of 2011. A baseline assessment in Hagadera camp in January 2011 by IRC documented, against a backdrop of severe over-crowding and an insufficient police presence, the vulnerability of new arrivals and the existing population to multiple forms of GBV, as well as the universal under-reporting of violence against women¹²². Despite several agencies running effective GBV programmes in the camps, there remained huge unmet needs. In 2011, the massive refugee influx overwhelmed existing services. In addition, women and girls arriving were more than usually vulnerable because of the shortage of shelter, the large numbers of female-headed households that made up the new caseload, and the breakdown in social order that often accompanies such crises. Two rapid assessments¹²³ carried out during the 2011 emergency document the different types of GBV that refugees are exposed to in Dadaab, and highlight the "urgent need for scale up and strengthening of existing services"¹²⁴.

6.1 Sexual violence against women and girls in and around the camps

These assessments looked in particular at the vulnerability of female new arrivals to sexual violence. The focus was on those who, for several months of 2011, were living in extremely flimsy shelter in the 'outskirts' area of Hagadera before being relocated to existing camps and to Kambioos and Ifo 2. There are no public figures for incidence of sexual violence in and around the camp – the information contained in the GBV Information Management system is correctly confidential. However, the assessments confirm a situation for women and girls of unacceptable levels of sexual violence and abuse, both on their journey through Somalia, across the border and on the road towards the camps, and at the camps themselves. Respondents to the RCK camp survey spoke of the dangers of leaving the camp in search of firewood or water, or of going out to the surrounding areas to use the toilet due to the non-existence of gender-sensitive facilities in the camps or outskirts.

Interviewees in the RCK camp-based survey were surprisingly candid about sexual violence in all the four camps covered by the survey. Across the four camps, 14% of respondents said that they had themselves been exposed to gender-based violence of one form or another, whilst 31% said they knew of somebody else who had had such an experience. Strikingly, almost a third of women interviewed in Dagahaley camp who had been in the camp several years said that they themselves were survivors of GBV, indicating that this has been a problem in Dadaab for many years, and that women arriving during the course of the 1990s were also very vulnerable to GBV.

The incidence and reporting of sexual violence is not uniform across the camps. The outskirts, where

122 Murray, S. and Achieng, A. (2011). A Gender Based Violence Assessment, Hagadera Refugee Camp, Dadaab, Kenya

123 Rapid inter-agency sexual and gender-based violence assessment (2011). Dadaab Refugee Camps and Outskirts, 2011. IRC. (2011). *Gender based violence rapid assessment, Dadaab, Kenya*.

124 Rapid Inter-agency Sexual and Gender-based Violence Assessment. (2011). Dadaab Refugee Camps and Outskirts.

the transfer of fresh arrivals to the new camps has not been happening fast enough, leave women and girls exposed. In the new camps (Ifo 2 and Kambioos), due to a number of factors - limited services (giving rise to conflict at water points, long journeys to collect water and firewood), the fact that Kambioos residents need to collect their food from Hagadera camp, and the absence of any security presence - sexual violence, exploitation and abuse are still real dangers, according to the camp population and key informants. These crimes are carried out by refugees and members of the host community alike. Respondents to the 2011 assessments spoke often of armed bandits as being responsible when sexual violence takes place outside the camp, but sexual violence is also carried out at night inside the camp. In these instances, it is not uncommon for the perpetrator to be known to the survivor.

Despite perennial recommendations as to how to improve the situation, still not enough has been done to ensure women and girls are safe inside the camps. There are still no sex-specific latrines, and few that can be locked. Routes to school, and the areas around facilities such as latrines, are not consistently lit. There is insufficient police presence in the camps, especially in the new camps and outskirts areas, where much of the sexual violence takes place. Following the recommendations of the inter-agency assessment of last year, UNHCR is now making clear efforts to mainstream protection programming throughout the sectoral interventions of the camps, with trainings being conducted for NGO staff working in water/sanitation, education, nutrition, and other related areas. There is an extensive set of planned activities in the inter-agency Operational Continuity Plan, but many of these are still to be implemented.

6.2 Other forms of culturally-tolerated GBV

Women and girls in Dadaab are also exposed to several forms of GBV which are rooted in Somali culture, either publicly as acts of tradition and custom - for example, early and forced marriage, forced divorce and FGM - or as private trends and actions taking place in the home which are not seen as crimes. This particularly includes domestic violence, which has been reported as “widespread and to some degree acceptable in the community”¹²⁵.

This kind of GBV commonly takes the form of physical or psychological violence between family members, and at times of economic difficulty or resource stress, domestic violence tends to worsen¹²⁶. There was also reporting on high levels of forced divorce and family abandonment, leaving women as single-headed households who then suffer from discrimination and marginalization in accessing services. Interviews in Eastleigh revealed several women who had left the camp in fear of losing their children, because the extended families of husbands who have left them or disappeared had threatened to take the children away.

Early marriage is also relatively common in the camps, particularly for families facing economic stress, for whom the bride price would mean an important contribution to survival. Marriage below the age of 16 years is illegal in Kenya under the Marriage Act, but enforcement on this has been weak in the camps, given that most marriages take place through religious ceremonies rather than state processes. The law also does not recognize the illegality of the threat of early marriage, so an offence is only committed once the marriage has taken place. The District Children’s Officer,

¹²⁵ IRC. (2011). *Gender based violence rapid assessment, Dadaab, Kenya*.

¹²⁶ Focus group discussions during the emergency assessments of 2011 bear witness to higher levels of domestic violence in the outskirts.

with support from some NGOs, has been making efforts to address this by having parents sign an agreement that they will not marry their children before the age of eighteen years.

Another act of gender-based violence with deep traditional roots is FGM. Several agencies in Dadaab have been working for years with communities and religious leaders to combat this practice, but it remains ubiquitous. In Somalia, FGM is a customary practice that has proven extremely resistant to change, and it is clear that working towards its elimination is a long-term investment. Local and international women's rights organizations talk of abandoning FGM in a generation. This kind of long-term vision is difficult to implement and sustain in an environment as inherently 'temporary' as a refugee camp, so efforts to engage with the issue have remained ad hoc despite the ironic reality that a second generation is now being born in Dadaab.

A real opportunity exists for women and children's agencies given the enactment of the FGM Act. This provides the District Children's Officer and law enforcement personnel with an opportunity to ensure a stepped-up level of engagement with the Dadaab population on the issue. A more intensive and sustained programme, such as those on-going in Somalia, is needed to generate gradual behaviour change to meet the requirements of national legislation. The long-term dividend of a reduction of FGM prevalence in Dadaab once some of the refugee population return to Somalia would be enormous.

6.3 Prevention of Sexual Exploitation and Abuse

In an environment such as Dadaab, where provision of free humanitarian goods and services is fundamental to the survival of refugees, the opportunities for sexual exploitation and abuse are endemic. 13% of respondents to the RCK survey across the four camps said that they had been asked for something in return for services at some point in the camps, with a focus on police and the workers assigning shelter as the main perpetrators. Of these, more than 75% were women, but the demands made were of a varied nature, and most commonly involved requests for money rather than sexual favours. Fewer than ten women and girls of the 472 interviewed in the survey said that they had been directly asked for sex in exchange for services they were entitled to.

Protection agencies working in the camps established a system for the prevention of sexual exploitation and abuse in 2003, and procedures were developed for awareness-raising, complaints and information-gathering. However, these systems are less functional at the time of writing this report due in part to the crisis of 2011. The assessments of 2011 call for a renewed effort in the areas of code of conduct strengthening, mass information, community awareness, and training of humanitarian staff, as well as the development of a joint complaints and reporting mechanism across camps. This requires specialized support, including human and financial resources. This is of particular significance in the current environment where security restrictions mean that many services are being delivered by refugee incentive workers, who are more likely to take advantage of vulnerable women and children in the distribution of services due to low capacity, the position of these individuals in the refugee community and minimal monitoring¹²⁷. CARE, IRC and others are strengthening the PSEA system, and this features as a priority area in the Operational Continuity Plan. However, the necessary funding needs to be allocated by donors and UNHCR. Furthermore, all agencies working in the camps, including those with no protection mandate, must understand the importance of participation in the PSEA system.

127 Interviews with NRC and CARE, DMO March 2012.

6.4 Access to law enforcement and justice for survivors

Accessing justice for survivors of GBV is a chronic challenge. Impunity for perpetrators is entrenched, and only contributes to the continuation and acceptance of GBV. In the case of sexual violence carried out by unknown ‘bandits’ outside the camp, part of the problem is the difficulty of identifying the perpetrator. This is not the case with domestic violence, however, nor other forms of gender-based violence that take place within the camp where the perpetrator is known. Stigma is one of the fundamental reasons for inadequate disclosure of cases, especially sexual violence, leading to a small proportion of actual incidents being reported and fewer still proceeding through the legal channels. Another issue is the poor follow-up by police, and the systemic blocks to serious pursuit of justice.

The traditional mediation system within the camp, known as ‘maslaha’, is a powerful and often effective tool for resolving disputes. However, it is usually overseen by traditional community and religious leaders, is male dominated, and does not tend to rule in cases of gender-based violence in a way that offers any meaningful justice for the survivor. Very often perpetrators will be released after an agreement is reached between clans, and the compensation offered, if any, does not tend to reach the individual or their family. Often the solution provided for the victim’s ‘honour’ and continued survival in the community will be to marry her attacker. The maslaha will also sometimes regard other instances of GBV, such as FGM or domestic violence, as private matters. Despite this, families often seek a solution even in cases of serious crime at this local level, both for cultural reasons, and because of the real and perceived difficulties of reporting to the police. For example, in Kambioos, where there is no police presence, reports need to be made to the police in Hagadera, which is at a significant distance.

Even when a report is made to the police, survivors of GBV report unreliable outcomes. Through its obligations to regional and international legal frameworks, the government of Kenya has a duty to investigate and prosecute instances of violence against women – including refugee women. This means that the police in the Dadaab camps should be making all reasonable efforts – as they would for any citizen - to provide refugees with effective protection against such violence by private parties.

It has been widely reported in the last few years that police do not consistently follow up on cases of GBV presented to them. Human Rights Watch give multiple examples of first-hand interviews conducted in 2010 with survivors of rape who made reports to the police, with no results: either no perpetrator was identified, or arrested or detained suspects were soon released (possibly after payment of bribes to the police). The verdict of HRW at that time was that “justice for sexual violence survivors in the camps remains the exception and impunity for perpetrators the rule”¹²⁸. If refugees do not feel that their case will be pursued in a meaningful manner, they are even less likely to report. Police appear to take some cases more seriously than others, describing cases ‘false reports’. This scepticism was also reflected elsewhere, with some NGOs even suggesting that refugees were aware that being a survivor of sexual violence could enhance their likelihood of resettlement. Focus group discussions¹²⁹ with recently arrived refugees in the new camps indicate that there is insufficient police presence. Furthermore, agencies have not done enough to link the new arrivals, who are still

128 Human Rights Watch. (2010).

129 RCK, 2012.

only Somali-speaking, to the law enforcement mechanisms in the other camps. Since early 2012, CARE and IRC have been supporting gender desks in police posts in the Dagahaley, Hagadera and Ifo camps, but these are still not functioning perfectly, with too few female police officers.

Unfortunately, even in cases where the police take forward an investigation and a prosecution follows in the Kenyan court system, women rarely access justice. There is no permanent court in Dadaab, only a mobile court which visits the camp one week per month. Sometimes witnesses and even the survivor fail to turn up again after the initial complaint, which is a source of frustration to the police. Despite the work of agencies such as the Refugee Consortium of Kenya, which provides legal aid to survivors of sexual violence, successful prosecutions through the court system are still extremely rare. Several agencies are doing awareness and training work with communities in the camp to increase knowledge on the rights of victims of GBV, but despite this, follow up through the judicial system is rare. During 2011, RCK represented and offered pre- and post-trial advice to only 59 survivors of rape at the police stations and courts.

On occasion, police officers themselves have been responsible for sexual violence against refugees. Human Rights Watch have documented three cases of rape of refugee women by police officers between 2008 and 2010, and ‘several’ cases of rape by police officers in the aftermath of IEDs and other security incidents in the camp in December 2011. UNHCR said that nine cases of reported sexual violence by the police were under investigation from this period¹³⁰, but were not able to say whether clear disciplinary action had been taken against the police officers in question. These cases may not of course reflect the extent of incidents involving the law enforcement or security forces, because in almost all such cases, survivors are not able or willing to report the incident back to the police.

Even though advocacy is being done at several levels by organizations such as UNHCR, these interventions are usually diplomatic and bilateral in nature, and no record of them – or the results of this advocacy – are shared publicly. Where law enforcement officers of the state are accused not only of failing to prevent, but even of participating in such serious crimes, it is crucial that progress made to investigate and punish perpetrators is made public. Particularly in the context of the on-going police reform in Kenya, the government has the opportunity to publicize its interventions to address corruption, impunity and criminal activity in the ranks of the police force so that credit can be given to these efforts. The responsibility also lies with agencies whose mandate is the protection of refugees, including women and children, to hold the police to strong public account so that they avoid inadvertently encouraging cover-up and secrecy in the response to the actions of individual police officers.

Several agencies with a mandate to address GBV stated the need for stronger high-level leadership from UNHCR as the lead coordination agency in this area. Also needed is consistent funding for programmes to combat GBV, as well as a more concerted mainstreaming of the issue into service delivery in the food, water, sanitation and shelter sectors. As security in Dadaab worsens generally, women and girls are disproportionately vulnerable to violence; it is the responsibility of the Kenyan government and of UNHCR to face this endemic violation with honesty, and collaborate more closely to address it.

130 Interview with UNHCR officer, DMO, March 2012.

7. The protection of refugee children in the camps

Children make up 57%¹³¹ of the population of the Dadaab refugee camps, and are therefore an important part of the refugee population. In refugee contexts globally, children have special vulnerability and protection needs, beyond the protection challenges facing all members of the camp population. The trauma that often precedes a refugee situation, and the disruption and stress of the displacement itself, put refugee children in need of specialized and targeted protection programmes to ensure their best interests are safeguarded, and that they are able to pursue as normal and fulfilled a life as possible.

The problems children typically face in refugee situations are very much in evidence in Dadaab, as well as others exacerbated by the particular features and history of this camp and the context. The camps have been in existence for twenty years, and there are already more than 6,000 children born in the camp to residents who themselves were born in the camp. Many of the traditional child protective mechanisms that the broader community is able to foster, as well as the protection services that a state provides, are stretched or do not exist in a situation of protracted displacement. In Dadaab, where a second generation is now being born who have known nothing but life in a refugee camp, child welfare, development and protection issues are entrenched and widespread.

There is also a vast population of refugee children who arrived during the months of the emergency of 2011, and their protection needs are of a different kind, and often more acute - a direct consequence of experiences inside Somalia or of the journey to the camps. These include separation from family, bereavement, psychosocial distress, the trauma of participation in the conflict, or exposure to sexual violence. Several of these continue to be on-going risks once the children have arrived in the camp, particularly as many of these families stay in the less well-protected and served 'outskirts', or are in camps such as Ifo 2 and Kambioos where services are less established. It is apparent that children in these marginal areas are more exposed to violence than those living in the older areas of the camp¹³², and the needs of these children require a more 'emergency'-oriented response.

Compounding these humanitarian and developmental child protection challenges are several harmful traditional customs practiced throughout the camps, affecting girls in particular. These include female genital mutilation, early and forced marriage, marginalization of girl victims of sexual violence (and therefore abandonment of babies born out of wedlock), child labour, corporal punishment, stigmatization of disability, and other discrimination. Several of these violations are illegal under Kenyan law, but because of their deep roots in Somali culture, addressing them in the context of a refugee camp of hundreds of thousands is a complex task.

For the Government of Kenya, and the humanitarian agencies working in Dadaab, therefore, ensuring a level of adequate service delivery, awareness, information and programming to keep children protected is extremely challenging. All refugees, like any other person in Kenya, have the right to safety and security. This right finds expression in the Constitution and thus it is a duty owed

131 UNHCR. Refugees in the Horn of Africa, Somali Displacement Crisis Information Sharing Portal. Retrieved from <http://data.unhcr.org/horn-of-africa/region.php?id=3&country=110>

132 Inter-Agency Child Protection Rapid Assessment in the Dadaab Refugee Camps, September 2011.

to all. The government, through its law enforcement apparatus, is responsible for ensuring that the Dadaab camps are safe and secure. Specifically with regard to children, section 23 (1) of the Refugees Act (2006) provides that: ‘The Commissioner shall ensure that specific measures are taken to ensure the safety of refugee women and children in designated areas.’ This provision specifically addresses issues of the physical safety of women and children within the camps.

The provision of safety and security is a function of the Kenya police and through the support of UNHCR the government has established police stations within the camps. However, in regard to cases of violence against women and children, as mentioned above, the record and reputation of the Kenya police, particularly in recent months, has not always been exemplary with regard to the follow-up and prosecution of cases of violence against women and children.

There is also a District Children’s Officer (DCO), appointed to Dadaab camps only in the early months of 2012, who is committed to the supervision of child protection issues (as well as issues such as child health and education) in the camps and the wider district. The creation of this position has been welcomed by the child rights agencies, whose programmes the DCO monitors to ensure they are in line with the annual operating guidelines issued by the National Council for Children Services. The DCO’s department appears to have good relations with the host and refugee community, and there is acceptance of the useful role this office plays. This is evidenced by the fact that in the last four months since the beginning of 2012, the DCO has handled 306 cases from the refugee community and 195 cases from the local community¹³³. However, for the great majority of child protection cases, follow-up and solutions are found within the camp, and referrals are not made onwards to the Kenyan Department of Children Services.

7.1 Child Protection issues in the camp, and programme response

The organizations implementing child protection activities in the Dadaab camps are UNICEF, UNHCR, Save the Children UK and the Refugee Consortium of Kenya, amongst others. These and other organizations participate in a child protection coordination forum, set up in 2007 and chaired by Save the Children UK. Coordination remains imperfect, and at the time of writing this report there is no common child protection strategy for the camps that guides the activities of the working group, only several parallel agency-specific work plans. Between them these agencies take responsibility for addressing some of the key child protection problems as identified below.

7.2 Unaccompanied minors and separated children

The 2006 Refugees Act describes several groups of vulnerable individuals which the government needs to recognize as vulnerable and in need of special measures when processing their asylum status. Amongst these are separated and unaccompanied children¹³⁴. These children may also benefit from accelerated refugee status determination and special measures to ensure their safety within the designated areas [Section 23(1)]. Furthermore unaccompanied and separated children are supposed to be registered using a special designated form designed to capture as much information as possible for tracing purposes. In this regard, the DRA should as far as possible assist the child to

¹³³ Interview with District Children’s Officer, Dadaab, March 2012.

¹³⁴ Article 13 of the 1990 African Charter on the Rights and Welfare of the Child also stipulates special provisions of refugee children that are unaccompanied by parents or guardians.

trace his/her family and facilitate reunification. Where his/her family cannot be found, the child should be accorded the same protection as any other child permanently or temporarily deprived of his family [Section 23 (2, 3, &4)]. The DRA is not yet carrying out this responsibility towards unaccompanied children.

A screening for identification of minors arriving in the camp without adult protection used to be in place at the Liboi transit centre before its closure in 2007. Since then, Save the Children has placed a team of staff at the point of reception and registration in the camps, ensuring that such vulnerable cases are fast-tracked for assistance. During 2011, Save the Children's programme identified and supported 582 children (including 231 girls) through 462 foster families, trained 177 new foster parents, and provided 212 foster parents with business skills and small business grants¹³⁵. Save the Children staff (with support from the District Children Officer) provide training to, and monitor the welfare of, the families and children involved in the foster process, and support families willing to take on other children with income-generating activities/micro-credit.

However, since October 2011, when the registration process was suspended by the Government of Kenya, there have only been two screenings of new arrivals during which a small number of vulnerable children were identified. Otherwise, children in need can only be reached if they learn about services and are able to locate the NGO offices in the camps and seek out assistance. Cases of such children can be fast tracked so that they are able to receive tokens to access food and non-food items: however, they cannot receive shelter assistance or be assigned a plot. Thus the reach of the programme, already benefiting only a proportion of children in need in the camp, is now even more limited, and large numbers of newly-arrived children are not being assisted. Given the nature of the Somali clan and family systems, it is likely that children arriving unaccompanied do find their way to some kind of extended family or support from former neighbours. In an assessment carried out in late 2011¹³⁶, the majority of families interviewed did not believe children should be living alone in the camp. However, it is widely accepted that children who live with extended family who themselves are facing harsh living conditions and stretched resources are likely to be at risk of neglect, violence or exploitation¹³⁷.

7.3 Best Interest Determination

UNHCR supports Save the Children to carry out a Best Interest Determination (BID) process for children needing accelerated access to durable solutions. BID describes the formal process with strict procedural safeguards designed to determine the child's best interests for particularly important decisions that affect him or her. These are commonly children who remain unaccompanied or separated at the camp, or who are the victims of unresolved custody disputes, or who have suffered or who are at risk of abuse, violence or exploitation from their caretakers, or who are otherwise eligible for resettlement based on their extreme vulnerability. According to the 2006 Refugees Act, this is a duty which should be undertaken by the government, but so far it remains one that UNHCR oversees. During 2011, 285 (157 boys, 128 girls) children were supported through the BID process¹³⁸.

135 Interview with Save the Children staff, Dadaab, March 2012.

136 Himbert, S. (2011). *Kenya child protection assessment: Report and analysis*. Kambi oos camp and Hagadera outskirts, Terre des Hommes Kenya.

137 Himbert, S. (2011).

138 Interview with Save the Children UK protection officer, March 2012

The Government of Kenya and the agencies working in Kenya need to make even greater efforts to change the behaviours amongst the refugee population that result in child protection violations. The most extreme cases amongst such children should be fast-tracked for resettlement. However, while it is important for this solution to exist, it should be a last resort, balanced by an emphasis on preventive protection interventions.

7.4 Children formerly associated with armed groups

The fighting in Somalia has taken a particularly brutal toll upon children, due to the scale and longevity of the conflict, but also as a result of the pro-active policy of the main insurgent group, Al Shabaab, to include children in the fighting force¹³⁹. There is no comprehensive, statistical evidence-base for how many children in Somalia have been directly affected by the conflict in the last few years, but the levels of abduction, coercive or deceitful recruitment of school-age children into the front lines of several armed groups, and some of their experiences whilst with those groups, has been widely documented¹⁴⁰. Given the generalized situation of lawlessness in Somalia, and the continued absence of a demobilization programme in the country, those children who escape from participation in the conflict often flee the country to Kenya, if they can.

The number of children in Dadaab camp who have fled active participation in the conflict is not known. However, there is evidence that a concerted effort would potentially reveal large numbers in the camps¹⁴¹. These children often arrive unaccompanied, and because of the absence of screening procedures at the (now-closed) Liboi reception centre, or even at the point of registration since October 2011, they are extremely unlikely to be identified. For reasons of stigma, they are unlikely to present themselves to the Kenyan government or agencies in the camps as such, unless there is an obvious benefit to doing so.

There is no programme in the Dadaab camps that seeks to cater for the specific and extreme needs of such a caseload. Discussion of this issue amongst agencies is sensitive, in particular for UNHCR, because of the suggestion of the non-civilian nature of the camp, as well as the possible reaction of the Government of Kenya were this debate to become more public. Neither of the two child protection assessments carried out in Dadaab during 2011 made reference to the presence of former recruits in the camp, nor to the existence of, or need for, any programmes targeting such a group. The DCO also made no mention of this issue as an important child protection challenge¹⁴². Given the reprehensible nature of these violations of child rights - recruitment of children is a war crime as well as the most significant violation against children under Security Council Resolution 1612 - and the isolation, separation from family, and chronic and acute psychosocial problems often associated with it, the silence surrounding the problem seems to speak to an alarming gap in child protection in Dadaab.

The 2006 Refugees Act obliges the government of Kenya to ensure the civilian nature of the camps by separating combatants from legitimate asylum-seekers. The law anticipates that such separation

139 The very name of the group, 'Al Shabaab', means 'youth'.

140 Human Rights Watch. (2012). *No place for children: Child recruitment, forced marriage, and attacks on schools in Somalia*.

141 Ibid.

142 Interview with DCO, Dadaab Main Office, March 2012.

will take place away from the camp, possibly at a border reception centre. However, since the closure of the Liboi centre, there is no mechanism for this. If a sensitive and confidential process of screening and identification were re-instated, then a discreet programme of support to these most direct victims of the conflict could be established, ensuring referral to services and protection outside the camp, fast-tracked resettlement, or a more proactive programme of family tracing.

Child protection agencies need to do more to support the government in this area by monitoring individual cases. Recently a training was conducted for NGOs in Kenya to increase levels of awareness on Somalia's obligations to report against Security Council Resolution 1612, which scrutinizes the impact on children of conflict, in particular with regard to six egregious child rights violations by parties to conflict. Although not a listed country on the Security Council agenda for SCR 1612, Kenya has been affected by the spillover of the Somali conflict, and hosts a refugee population with a great many child victims of these violations. In the case of child recruitment, some of them are still vulnerable (see below), even when they should be protected in the camps on Kenyan soil. It would greatly enhance the Somalia reporting process if more consistent monitoring of child rights issues were to be done in the camps, and with it, for a referral system to be established for identified cases of former child recruits (or those at risk of recruitment in the camps) to be fast-tracked to the appropriate services, preferably outside the camps.

7.5 Child Recruitment in Dadaab camps

A related child protection issue of grave concern is the threat of recruitment by armed forces or groups from the camps themselves. It is not known how many combatants or recruiters are in the camp, nor the number of weapons concealed amongst the population, but recent attacks on police posts inside the camps attest to some armed Al Shabaab presence in the camps. Child protection agencies working in the Dadaab camps have over the past few years come across specific cases of recruitment, or the threat of recruitment, by Al Shabaab. Human Rights Watch, during their interviews in Dadaab camps in 2011, spoke to several parents and children about their fear of child recruitment: a number talked of seeing Al Shabaab recruiters in the camps. In the survey for this report, 12% of respondents listed fear of recruitment (particularly of children) as a key concern in the camps.

Several interviews carried out for this report with asylum-seekers in Eastleigh, Nairobi, confirmed that one of the main reasons for refugees to leave the camp and make their way to Nairobi is lack of security, specifically the threat of forcible recruitment of children to join Al Shabaab inside Somalia. One mother¹⁴³ who had arrived in Dadaab in 2010 said, 'I come from the Hamar Weyne district of Mogadishu. I fled because of the fighting, and because there were men in the area moving around the houses, gathering boys to join the jihad. My son had been approached and I was afraid he would be taken away. We came to Dadaab to protect my children, but some months after we arrived here, I saw two of the men who had been trying to recruit my son. There was no way we could stay in the camp'.

In 2009, Human Rights Watch reported on a campaign of recruitment of Somali refugees in the camps, as well as Somali-Kenyan youth from areas of North-Eastern Kenya, to join the forces of the Transitional Federal Government (TFG) in Somalia. The report asserted that this recruitment

143 Interview with asylum-seeker, Eastleigh, Nairobi, February 2012.

campaign was being overseen and supported by the Kenyan Defence Force, with new recruits being transported to a paramilitary base near Mombasa for training. The claims were investigated by the press and confirmed privately by diplomats and by the Somali TFG commander General Yusuf Dhumal, the group's top military commander¹⁴⁴. After the issue was raised in the Kenya parliament, the recruitment drive was abated, but in the meantime it constituted a grave breach of refugee rights, and (if children under 15 were amongst the recruits, as reported) even a war crime.

It is the obligation of the Kenyan government to protect refugee populations on its territory from the threat of recruitment and to keep refugee camps entirely civilian in nature. Screening of new arrivals at the border and registration in the Dadaab camps would both be crucial parts of this protection, since it would give the government the chance to exclude active combatants and those linked to terrorist organizations. Aside from the humanitarian imperative of such a process, this would be an important first step for the Kenyan government and child protection partners to participate in the global paradigm shift towards holding parties to conflict accountable for their actions.

144 Taylor, L. & Albin-Lackey, C. (2009, November 20). Kenya recruits Somali refugees to fight Islamists back home in Somalia. *Human Rights Watch*. Retrieved from <http://www.hrw.org/news/2009/11/16/kenya-recruits-somali-refugees-fight-islamists-back-home-somalia>

8. The protection of other vulnerable groups

Vulnerability is a context specific concept: as such, UNHCR does not provide a clear definition of vulnerability, nor an account of which groups match the requisite criteria for being classed as vulnerable. In the UNHCR Handbook for Emergencies, UNHCR emphasizes that certain groups should be given special, context-specific attention. When it comes to malnutrition, for example, infants, children, the elderly, the sick, and pregnant and lactating women are particularly vulnerable. At the outset of an emergency or during a large influx such as that witnessed in Dadaab in 2011, ‘older persons, persons with disability, unaccompanied and separated children, and some single parents are less able to access food, shelter, material health care and other humanitarian assistance with ease.’¹⁴⁵ In this case, efforts have to be made as early as possible to identify obstacles and ensure that these groups have equal access to services¹⁴⁶.

In July 2011, during the major influx of refugees from Somalia, Handicap International (HI) deployed its emergency cell to broaden their scope of beneficiaries to other vulnerable groups aside from those living with disabilities. The aim was to identify people who have difficulties accessing protection and assistance, not only people with disabilities, but also other vulnerable groups, for example female-headed households and the elderly. While not providing services directly to other vulnerable groups, HI provide screening and referral services upon registration¹⁴⁷.

8.1 People living with disabilities

Because of the compound effects of chronic poor health care (including at the moment of childbirth), low immunization rates, and the impact of injury from twenty years of conflict inside Somalia, the numbers of people living with disabilities of various sorts in the Dadaab camps is surprisingly high – 20% of those interviewed in the Dadaab survey for this research were living with a disability of one sort or another.

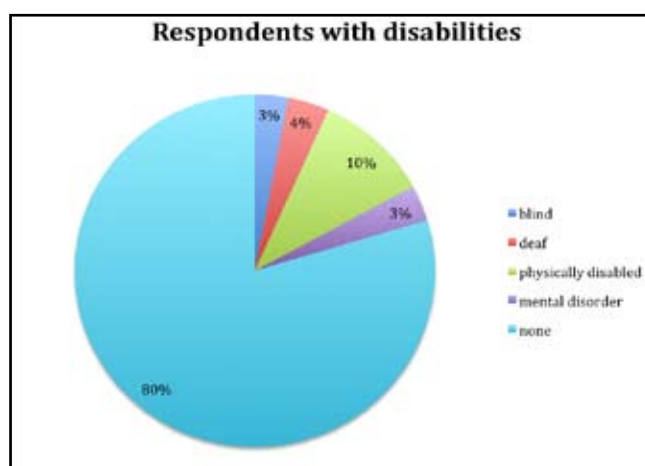


Table 5: Respondents with disabilities

People living with disabilities face enormous challenges in the harsh physical environment of Dadaab. A Handicap International orthopedic technologist explains: ‘The sand and heat in Dadaab make living with a physical disability very challenging. Even tricycle wheelchairs fitted with special wheels are very difficult to use and the disabled person ends up having to be pushed by several people. As for prosthetics, they wear out quickly in this climate. Refugees might use them minimally at home but they do not use

¹⁴⁵ UNHCR. (2007). Handbook in Emergencies.

¹⁴⁶ UNHCR. (2007). *Handbook in Emergencies*.

¹⁴⁷ Abbassian, K. (2012). Interview with Handicap International Operations Manager in Dadaab.

them to travel any significant distance. This drastically limits a person's mobility, independence and dignity'¹⁴⁸.

Discrimination and stigmatization of persons with disabilities are particularly acute in Somali culture, and throughout Somalia, families hide and disguise members of the family who have disabilities. This often involves incarceration, isolation inside the home, or restraint of both children and adults

by tying to furniture or other immovable objects. Children are kept from attending schools and other services. These cultural taboos around disability are difficult to challenge, leaving persons living with disabilities marginalized¹⁴⁹. Persons with disabilities face protection issues from the direct community, including verbal abuse and being beaten or stoned.

Handicap International is

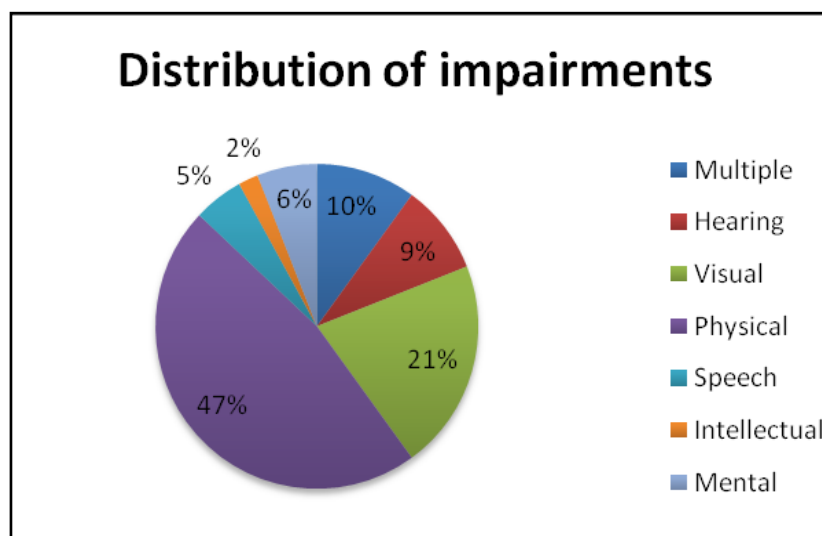


Table 6: Distribution of impairments, RCK 2012

working hard to mainstream issues of protection and accessibility of services for people living with disabilities in the camps¹⁵⁰. HI uses the UN Convention on Rights of Persons with Disabilities to define persons with disabilities to include people with 'long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'.

HI conducted a survey in March-April 2011, providing information on a sample of 12,831 people living with disabilities in three camps of Dadaab. The survey highlights the distribution of impairments in three camps, as well as areas where inequalities exist for people with disabilities in terms of access, protection and enjoyment of rights.

The study finds that most persons with disabilities have insufficient access to shelter, education and livelihoods. A significant number furthermore are unable to access specialized healthcare, food rations and rehabilitation. Some persons with disabilities are unable to access services due to inaccessible material, as information on protection and services is often not adapted to the recipient's needs (for example, braille, large print, or sign language). Visually and physically impaired persons may also experience difficulties accessing infrastructure and are affected by long distances to services¹⁵¹.

148 Cone, D. (2010). Shifting community views: reducing stigma in Dadaab. *Forced Migration Review*, (35).

149 Ibid, and HI Handicap International. (2012b). Contribution to PARTICIPATORY ASSESSMENT 2012 - *Tips and further references / details to consider disabilities in assessments. Dadaab.*

150 Handicap International. (2012b).

151 Ibid.

An effective screening for vulnerabilities and disabilities existed at the point of registration before its suspension, but attention needs to be paid to how to replace this vital step in the process. This should be considered by the assessment teams focusing on Ifo-2 as well as the outskirts, Kambioos, and new arrivals in Dagahaley and Hagadera. Although a lot of work is being done in this area, better coordination and follow-up of the inter-agency assessment and referral system would help HI identify and address specific needs, or refer cases where relevant¹⁵².

8.2 Elderly

The elderly play a crucial role in any society and have a lot to offer younger generations. Older people are often community leaders, helping in the upbringing of children and transmitting skills, crafts and culture that safeguard the traditions of displaced populations. HelpAge argue that elderly people's vulnerabilities originate in lack of opportunities, services and exclusion. While many of the same challenges faced by elderly people are also experienced by members of the community at large - for example, limited livelihood opportunities, collection of firewood or water storage - these challenges can be exacerbated for the elderly due to age related vulnerabilities¹⁵³.

In November 2011, there were approximately 16,000 elderly people in Dadaab, namely refugees whose age was recorded to be 60 and above. UNHCR Dadaab's community services team, however, believes that approximately 10 percent of refugees aged 50-59 should be included in this group, as many people do not know their exact age or are fearful of exclusion from assistance. If this is true, the elderly population in Dadaab could be well above 30,000¹⁵⁴.

HelpAge seconded a specialist to UNHCR in September-October 2011 for six weeks to raise attention on issues affecting the elderly in East Africa, including the Dadaab camps. The study found that the elderly population had a knowledge gap about processes and access to services, and faced risk of attack or other health-related dangers while collecting firewood. Unaccompanied older people who live alone have to rely on support of well-wishers to collect food rations and help with cooking. A large percentage of the elderly population face mobility issues, and there is no prioritization of elderly in health clinics, often forcing them to return after a day-long wait at the clinic.

152 Ibid.

153 HelpAge International. (2011). Crisis-affected older people in Kenya and Somalia. Retrieved from <http://www.helpage.org/download/4f902f1b97440/>

154 Ibid.

9. Education and employment

Children's right to education is firmly grounded in the UN Convention on the Rights of the Child, first adopted in 1989. Securing the right to education in the refugee camps is crucial to ensure the protection of children and adolescents. The UNHCR Handbook on Emergencies states: 'Education in emergencies is not only a basic human right but also an essential tool of protection'¹⁵⁵. Education can provide 'intellectual, physical and psychosocial safety during emergencies and beyond.'¹⁵⁶

While education in Dadaab can be a means of protection, it brings with it a number of protection concerns. Long distances to schools, insecure school routes, congested and age-inappropriate classrooms, sanitation facilities, and other issues all contribute to protection concerns in the provision of education. The large number of out-of-school children and youth, and the limited employment and livelihood opportunities for them, lead to abuse, sexual and gender based violence, idleness, and recruitment in militias.

9.1 Education in the camps

After the establishment of the camps in 1991, the Somali refugee population was responsible for education in the camps until 1994, following a Somali curriculum. In 1994, UNHCR and the Government of Kenya started to provide education in the camps via implementing partners, offering the Kenyan curriculum to ensure refugee children received recognized primary and secondary education certificates. Since 1998, children have been sitting for the Kenya Certificate of Primary Education (KCPE) and the Kenya Certificate of Secondary Education (KCSE) examinations in Dadaab and Garissa.¹⁵⁷ There are currently 24 primary and 6 secondary schools supported by UNHCR, as well as 11 primary and 3 secondary schools funded privately. A number of vocational training programmes are also available, notably the Youth Education Pack provided by NRC, but these only reach a small portion of youth aged 15-24 years.

Measurement category	Pre-primary education	Primary education	Secondary education	Alternative education (youth 15-24)
Gross Enrollment Rate	19.8%	34.4%	7.4%	1%
GER for boys	22.1%	40.4%	11.1%	
GER for girls	17.6%	26.5%	3.7%	
Gender Parity Index	0.79	0.70	0.33	

Table 7: Education data in Dadaab, November 2011¹⁵⁸

As of November 23, 2011, there were 463,500 refugees in Dadaab, of which 56.7% were children under the age of 18 years, and 19.1% were youth between 15-24 years of age. Many of the new arrivals, who represented 42% of the total population in 2011, have never accessed formal education,

¹⁵⁵ UNHCR (2007)..

¹⁵⁶ UNHCR/UNICEF. (2011). Joint Strategy for Education in Dadaab, p.15.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

compounding the challenges of integrating them into the formal education system in Dadaab¹⁵⁹. This has led the agencies to provide alternatives for older children and youth to rapidly catch up.

Girls are underrepresented in the education system, accounting for only 38% of primary school and 27% of secondary school students. Approximately one-third of girls aged between 5 and 13 go to school and only one in twenty aged 14 to 17 are enrolled. While boys are generally encouraged to go to school, hurdles for girls remain: cultural practices, attitudes of parents, early marriage, and household chores limit their ability to access education.¹⁶⁰

9.2 Protection concerns in the education sector

A plethora of issues exist in the education sector which give rise to protection concerns. There is a thirst in the refugee community for education that exceeds the capacity of UNHCR and its implementing partners. Education is not a humanitarian priority area, and the vital role that investment in learning ought to play in the lives of an entire generation of refugees growing up in the camps was not anticipated in the early years of Dadaab's existence. For this reason, funding for the education sector has never been prioritized and is still insufficient after all the years of the camps' existence. Teaching and learning materials are inadequate and only a limited number of teachers and staff are trained. Classrooms are overcrowded and often consist of inappropriate mix of ages.¹⁶¹

In the 2011 Joint Strategy for Education in Dadaab, the following are listed as major protection concerns related to the provision of education:

- 'Safety and security issues to, in and from schools due to: distance, insecure school routes and lack of school fences
- Congested, age-inappropriate classrooms
- No implementation of child friendly schools initiatives
- Limited provision/appropriate services for children with special needs
- Inadequate sanitation facilities, furniture, laboratories, sports grounds and equipment
- Lack of child-protection training or monitoring for school staff¹⁶²

Safety and security concerns surrounding education exist both in and around the school environment. Distances to schools are often great, especially among the new arrivals living in the outskirts of camps, leaving children open to numerous vulnerabilities.¹⁶³ The monitoring, reporting and referral mechanisms in place are currently not adequate to ensure that abuse and exploitation in school contexts remain limited.¹⁶⁴

Most classrooms in Dadaab consist of a mix of age appropriate and age inappropriate pupils. Students are often initially enrolled in 'dugsi' education, delaying their access to formal education in the camps, and new arrivals have often never had exposure to any form of formal education.

159 UNHCR/UNICEF. (2011).

160 UNHCR. (2011a).

161 UNHCR/UNICEF. (2011).

162 Ibid. p.13

163 NRC, 2012; Ibid.

164 UNHCR/UNICEF. (2011).

Classrooms with mixed ages and abilities pose a protection risk and tax an already overcrowded system. This reduces the ability of teachers to directly engage students and is likely a contributing factor to the low retention rates.¹⁶⁵ UNHCR and its partners are planning on increasing the availability of accelerated learning programmes in order to deal with this issue.

9.3 Education as a protection tool

Education can provide children and youth with a safe environment and resources ‘that will allow them to achieve intellectual, physical and psychosocial protection, self-actualization and empowerment’¹⁶⁶. It can be used as an effective means to disseminate messages on GBV, health, and other protection areas. Schools can furthermore provide access to other services such as health, WASH, and psychosocial support, as well as integrate referral systems into their existing structure.

The effectiveness of using education to create awareness among youth of available services, appropriate referral channels, and crucial issues including GBV and health, cannot be understated. A prime example of the role of schools in protection awareness can be gleaned from UNHCR’s Dadaab Youth Survey of 2011. There is a vast disparity in knowledge among youth on where to report GBV between youth who have attended formal education, dropouts and those who have never gone to school. 86% of primary school graduates and 90% of secondary school graduates knew where to report GBV, versus 52 percent of dropouts and a mere 38 percent of those who never went to school.¹⁶⁷

A number of guiding recommendations for protection are outlined in the Joint Strategy on Education in Dadaab 2012-2015. These include training staff on code of conduct, monitoring, child protection and gender issues, and involving the community to address how education acts as a protection mechanism for vulnerable populations.¹⁶⁸ The strategy furthermore includes plans to improve referral mechanisms with counselling services with possible referrals to other service providers; enhance conditions for children with special needs, including accessibility of schools, teaching methods and equipment; and ensure student councils are formed to promote concepts of self-governance and represent students vis-à-vis school management.

The refugee community has made it clear that inclusion of Somali language, religious education, and cultural studies in formal education in Dadaab are of vital concern. This would allow the Somali community to maintain cultural coherence, and a connection to their homeland. While it is not currently feasible to include them in the Kenyan mainstream education programme in Dadaab, UNHCR recommends for the community to be supported in such efforts outside school hours and during weekends. It is of critical importance to see the education of refugees in Dadaab as a way of investing in the longer-term future of Somalia. At some point in the coming years, repatriation will become possible, and funding high quality education in the camps is a way of injecting capacity into a future Somalia that will be in need of educated and capable returnees for its business and administrative workforce.

¹⁶⁵ Ibid. p.24.

¹⁶⁶ Ibid. p.4.

¹⁶⁷ UNHCR. (2011b).

¹⁶⁸ UNHCR/UNICEF. (2011). p. 36.

Reduction of gender disparities in education is a clear priority for the education partners in Dadaab, chiefly through sensitization of the community on the benefits of girls' education. Additional protection measures, including fences around schools and adequate and separate sanitation facilities, are necessary for girls' retention. Other proposed activities to support attendance include the provision of single-sex learning opportunities as well as the supply of soap and sanitary wear for girls.

9.4 Youth and employment

Youth are in a unique developmental phase and the lack of suitable action and engagement in a refugee situation can leave them susceptible to an array of issues, including abuse, sexual and gender based violence, idleness, and recruitment by armed militias. With a secondary school enrolment rate of 7.4%, almost non-existent tertiary education opportunities, and limited prospects for youth to acquire skills that would improve their livelihood, many young people remain idle and become prone to antisocial behaviour, including substance abuse. UNHCR follows the UN definition of youth, which comprises any person between the ages of 15 to 24, while the Government of Kenya includes persons up to the age of 35. With the latter definition, youth in Dadaab comprise almost a third of the total refugee population.¹⁶⁹

Given the low enrolment rates in secondary schools and vocational training a large majority of youth can be classified as 'school-leavers'. This group includes graduates from primary, secondary and vocational schools, as well as students who have dropped out. While some school leavers find ways to engage themselves, including incentive employment or business activities in the market, most remain idle in the camps. This leads to intense frustration of youth in the camps. There is a general sentiment amongst youth of not being heard or involved in decision-making in the camps¹⁷⁰, which may intensify these feelings.

9.5 Employment and livelihood opportunities

Employment and livelihood opportunities among youth chiefly comprise incentive employment by the agencies, business activities in the markets, and manual labour. Refugee youth with little or no education stand very little chance of gainful employment in the camps. In the youth survey of 2011, UNHCR found that 76% of secondary school graduates were employed, contrasted with 14% of youth who never went to school.

Incentive employment opportunities are scarce, and the incentive is not commensurate with the level of education or training, performance or the ability to carry out the job.¹⁷¹ 86% of employed youth interviewed earned less than 5,000 shillings per month¹⁷², often earning well below the minimum wage in Kenya. Out of the employed youth, two-thirds are employed by agencies, with the remainder chiefly engaged in business activities in the camps. For the youth without a job, their means of survival consists of rations (58%), support from direct family (21%), support from abroad (13%) or support from relatives in Kenya (8%)¹⁷³

169 UNHCR. (2011a).

170 UNHCR. (2011b).

171 Ibid.

172 UNHCR. (2011b).

173 Ibid.

NRC's Youth Education Pack (YEP) is one of the rare opportunities for youth to be trained and directly linked to the job market in Dadaab upon completion of their training. YEP includes a combined literacy, numeracy, life skills and vocational training programme.¹⁷⁴ YEP absorbs youth who have been trained into NRC's WASH and shelter programmes.¹⁷⁵ The best students are sent to Garissa for additional training and come back to Dadaab to serve as teachers. This is a rarity and a great opportunity for out-of-school youth, but unfortunately the capacity of such programmes is limited.

Restrictions on movement make it difficult to buy and sell goods, and the payment of bribes increases the cost to undertake such activities.¹⁷⁶ The Refugees Act of 2006 states that 'every refugee and member of his family in Kenya shall, in respect of wage-earning employment, be subject to the same restrictions as are imposed on persons who are not citizens of Kenya.'¹⁷⁷ The Government of Kenya makes provision for Class M work permits for refugees: however, it is unclear if these are currently being issued at all, as Class M permits under the Immigration Act were intended for refugees recognized prior to 1990. Furthermore, UNHCR's interpretation of the Refugees Act of 2006 indicates that refugees must now obtain a work permit costing 50,000 shillings in order to legally work in Kenya¹⁷⁸ - a prohibitive amount to all but a select few. As a result, Somali refugees operate almost exclusively in the informal sector, with limited protection or legal rights.

174 UNHCR/UNICEF. (2011).

175 NRC (2012).

176 UNHCR. (2011a).

177 Government of Kenya. (2006).

178 UNHCR. (2009). UNHCR | Refworld | World Refugee Survey 2009 - Kenya Retrieved 19 April, 2012, from <http://www.unhcr.org/refworld/country,,,,ERI,,4a40d2aa76,0.html>

10. Moving on from Dadaab

Inevitably, in a refugee situation as protracted as that in Dadaab, with so many people living in the camps, there has been considerable movement in and out of the camps over the years, despite Kenya's official encampment policy. 39% of the longer-term residents of the camp interviewed during the survey said that they had left the camp at least once, and this figure will not even reflect the numbers who left the camp for a destination such as Nairobi who have never returned to the camp.

There are many opportunities that a life outside the refugee camps can offer, given the restrictive and controlled nature of existence there. But of course there are also significant challenges associated with moving on, both in terms of the journey, and the situation facing refugees on arrival elsewhere. Services are not available to refugees in urban centres in the same way as they are in the camps, and life outside the environment of the camp context requires an entirely new level of self-sufficiency. Despite this, there is a constant flow (although the numbers are not known) of refugees out of Dadaab and onwards to other destinations inside Kenya, and beyond. Other refugees pay smugglers, who are active in the Dadaab camps, to transport them onwards to South Africa, where they hope to find family members and employment¹⁷⁹.

10.1 The legal and policy context

Refugees ought to be at liberty to move around Kenya as other aliens in the same circumstances, given that the country is signatory to the 1951 Convention. These international obligations require the government to guarantee refugees the right to choose their own residence and to move freely within the country¹⁸⁰. However, in reality, the government of Kenya has made enjoyment of these rights contingent on national law¹⁸¹. The 2006 Refugees Act allows the minister to designate places to be refugee camps and transit centres¹⁸². Because of the legal ambivalence of this provision¹⁸³ and the political sensitivities around formally assigning land for a refugee camp, the government has neither officially designated the location of the camps nor gazetted them as such. Despite this, the government applies a policy of encampment in the country, and the movement of refugees out from Dadaab camps onto other destinations inside Kenya is carefully restricted.

The Regulations do allow the Department of Refugee Affairs to issue movement passes to specific refugees or asylum-seekers who have valid reasons to travel outside of the designated area for a limited period of time. There is also a Pupil Pass that can be issued to students learning outside of the designated area. Applications are subjected to vetting by a committee comprised of the DRA, the police, the District Officer and the local security intelligence. This procedure is not provided for in law, and even within DRA there are differing opinions as to its usefulness, let alone legality.

179 Horwood, C. (2009). *In pursuit of the Southern Dream: Victims of Necessity*. IOM.

180 United Nations. (1951). Convention Relating to the Status of Refugees, Article 26.

181 Government of Kenya. (2006). Refugees Act. Section 16 (1).

182 S Government of Kenya. (2006). Refugees Act. Section 16 (2).

183 At the time of ratification or accession, states have the right to put a reservation on issues to which they do not wish to be bound, but they are not allowed to renege from their international commitments through national law. Article 27 of the Vienna Convention on the Law of Treaties provides that: a party may not invoke provisions of its internal law as justification for its failure to perform a treaty.

Those against oppose it as a securitization of an otherwise humanitarian function, whereas those in support allege interests of national security.

10.2 The reality on the road

In practice, refugees have over the years travelled out of the camps both with and without movement passes. 39% of longer-term residents of the camp interviewed during the survey said that they had left the camp at least once, over half of these for reasons of medical referral to services outside the camp. A little over half of the respondents said that they had been able to get movement passes for the journey, and this indicates that movement passes are more commonly issued to those in need of advanced health services than to refugees positing other reasons for temporary absence from the camps. This observation was backed up by feedback from several of the focus groups discussions.

The focus group discussion participants also indicated that a movement pass was easy to get if you were prepared to pay for it. It was not clear how much would be the typical cost for the pass, or whether the money given went to a 'fixer' in the camp or directly to the officers from government and non-government agencies involved in the committee responsible for deciding on movement passes, but the fact that movement passes were to some extent 'for sale' was agreed in three different discussion groups¹⁸⁴.

Such a situation in the camps – where unlawful restrictions on freedom of movement have resulted in an imperfect and even corrupt system for obtaining permission to move - means that many refugees have been forced to set off for other parts of the country, whether to find family, take advantage of a business opportunity, or to move out of the camps wholesale, without the necessary movement pass.

Inevitably, this exposes them to police harassment and extortion, to such an extent that the process of identifying, stopping, and taking money from refugees on the move has become an institution amongst the police in various points along the route. Focus Group Discussion participants talked of the police nickname for refugees (either with or without movement passes) as 'mbuzi', or 'goat meat', indicating that the monies taken from these individuals and groups pay for police lunch. Reports indicate that there are fake movement passes being made in or around the camps. Whether or not this is true, it is certainly the perception amongst some government officials¹⁸⁵. As a result, passes are sometimes taken away from refugees en route and sent back to Garissa for verification. All of these issues further contribute to the prevalence of bribery in exchange for freedom to continue the journey.

To avoid this exposure, and with the help of local residents, refugees have found alternative routes that bypass the police road blocks. Many are assisted by the host community, so that police can often find them only if they notice their inability to speak Kiswahili. Others give money to organized smugglers to take them by truck down to Nairobi, either by covert routes or with the collusion of police once bribes have been paid. Some refugees reportedly even pay public officials or police to escort them along these routes¹⁸⁶.

¹⁸⁴ Hagadera and Dagahaley FGDs with youth and community leaders conducted in March 2012.

¹⁸⁵ Interview with OCPD Bura, Refugee Consortium of Kenya, June 2011.

¹⁸⁶ Interview with DC Bura, Refugee Consortium of Kenya, June 2011.

When refugees are intercepted and taken to court, the punishment is usually return to Dadaab, though there are cases of refugees having spent several months in prison once convicted. There is no evidence that courts ever give out an instruction to return refugees to Somalia. In 2011, during the massive influx of new arrivals, it seems that court trials of new arrivals who had not registered or refugees who did not have a movement pass fell dramatically¹⁸⁷, as did levels of abuse or extortion against those travelling with nothing in their pockets – in the context of the Somali famine. It was perhaps understood that the situation had evolved into a humanitarian crisis and that the incoming asylum-seekers were unusually desperate.

In general, this is a situation of which all parties can take advantage; the police's understanding of the law is patchy, and where there is not clarity about the status of a person's pass or ID, an easy solution presents itself in the extortion of a bribe. The Refugee Consortium of Kenya and other agencies have carried out significant training and awareness-raising on the Refugees Act, but there remain gaps since police staff transfer is so high. With low levels of understanding of the law amongst both police officers and refugees themselves, extremely limited resources and accountability in the remote areas of North East Kenya, growing smuggling cartels and ever larger numbers of refugees leaving Dadaab to seek a life elsewhere, securing the protection of asylum-seekers and refugees on the move from Dadaab is a very significant problem. This is in part due to the willingness of refugees to pay bribes, without realising that they may be perfectly entitled under Kenyan law to be where they are.

Ultimately, the solution lies with the long-awaited police reform in Kenya. This, it is hoped, will instil a different culture amongst police in the country, tackle endemic corruption, and impose new and important levels of accountability to the police service, even in the more remote parts of Kenya. This process has been slow in taking off, though it has been supposedly underway for several years in Kenya, and has -so far not yielded dramatic results. Nonetheless, some UNHCR staff report that there have been improvements in processes related to the handling of asylum-seekers¹⁸⁸, and it is possible that the next election in Kenya will usher in a period of more focused activity on this long-overdue area of governance reform.

10.3 The move to Kakuma

One alternative location for Somali refugees who do not wish to remain in the Dadaab camps because they cannot be registered, or for reasons of insecurity or lack of protection and assistance, is Kakuma refugee camp in North West Kenya, near the South Sudan border. Kakuma camp was established in 1992 and was used to settle refugees of South Sudanese origin. In the course of the following few years, when several other camps were closed and the two biggest ones, Kakuma and Dadaab, were consolidated, about 35,000 mainly Somali refugees were transferred from the coastal camps to either Dadaab or Kakuma. A majority of the Somalis that came to Kakuma were from the minority clans such as the Bajuni, Digle Mirfle and other groupings that felt discriminated against, for various reasons.

187 Interview with Resident Magistrate in Hola, Refugee Consortium of Kenya, June 2011.

188 Campbell, E. Crisp, J & Kiragu, E. (2011). *Navigating Nairobi: A review of the implementation of UNHCR's urban refugee policy in Kenya's capital city*. Policy Development and Evaluation Service, UNHCR. Also, interviews with UNHCR staff in DMO, March 2012

For a long time, the majority of refugees in Kakuma were South Sudanese (about 70%), with a significant minority of Somalis (about 20%) as well as Ethiopians, Rwandese, Burundi, Congolese, Ethiopian, Eritreans and Ugandans (the remaining 10%). In 2003 about 12,000 Somali Bantus were moved from Dadaab to Kakuma - the first large scale movement of refugees between the camps. Almost all of this caseload was resettled to third countries in the course of the following year.

The next large scale movement of Somali refugees from Dadaab to Kakuma was in September 2009, when a group of about 13,000 Somalis were relocated to help ease the congestion. The move involved volunteer refugees and their families. At the time, the move to Kakuma was further justified by the fact that a significant portion of South Sudanese refugees had voluntarily repatriated following the attainment of peace in their homeland.

In the context of the intense over-crowding in Dadaab, the Government of Kenya has put a cap on the refugee population there at 460,000, and has suggested that all new arrivals be moved to Kakuma. This has not so far happened, and is not being encouraged by UNHCR because of the immense cost and logistical complications of such a move. In any case, the capacity of Kakuma camp is capped at about 90,000, so the camp is also full with a current resident population of about 93,000.

Interestingly, there has been some spontaneous movement towards the camp by newly arrived refugees themselves. Kakuma received and registered about 8,000 new refugees in late 2011/early 2012, of which 5,000 were Somalis¹⁸⁹. This obviously coincides with the suspension of registration in Dadaab, and asylum-seekers who are reliant on humanitarian assistance and support (and have understood that they need to be registered to qualify for such) may well find the prospect of the long and arduous journey to Kakuma worthwhile in the context of the additional assistance they will then receive once registered as camp residents there.

More common, however, is for newly arrived refugees, or those who do not feel they can sustain existence in the camps of Dadaab, to move onwards to the urban centres of Kenya, in particular the capital city Nairobi, where they are eligible for far less humanitarian assistance but can enjoy a swathe of compensating freedoms.

10.4 Becoming an urban refugee

There are, as discussed above, particular reasons why refugees move away from the Dadaab camps towards urban centres, but this movement also needs to be understood in the broader narrative of sub-Saharan African urbanization. Despite being currently the least urbanized region of the world, more than half the population of sub-Saharan Africa will be living in urban areas in two decades' time. Refugees, migrants and the internally displaced are a significant component of this shift; almost half of the world's 10.5 million refugees are living in cities and towns, with only one-third in camps¹⁹⁰. An estimated 51% of the world's IDPs are living in urban areas.

The refugee population in Kenya is as dynamic an example of this urbanizing shift as any. Moving out of the camps to the city makes sense for refugees who wish to establish themselves in a more dignified and economically independent way of life, relying on their own connections and

189 Interview with UNHCR staff, April 23, 2012

190 UNHCR. (2009).

efforts to find opportunities, employment and livelihoods, and freeing themselves from the stifling environment and control of a refugee camp. There is no doubt that the steady flow of incoming refugees can exacerbate the vulnerability of the already resident urban poor, contributing to stress on resources, competition for livelihoods and increased social tension. Nairobi has a population of approximately 2.9 million: of these, around 40% are unemployed, 50% below the poverty line and 60% in slums¹⁹¹. Nonetheless, the move to the city is often for many refugees a 'major vector of integration'¹⁹². Arrival may be negatively impacted by discrimination, hostility and sometimes even conflict, but despite this, an ever-greater number are making their way to cities¹⁹³.

There are estimated to be as many as 100,000¹⁹⁴ refugees living in Nairobi, of whom 53,531 have been issued with a Mandate Refugee Certificate by UNHCR. Of these, approximately 58% are Somali. The rising numbers of refugees in the city reflects a combination of both push and pull factors – an increasingly difficult situation in the camps, and a greater flexibility on the part of both government and UNHCR towards the presence and status of the urban caseload. Historically, UNHCR was unable to invest significant time and resources into urban refugees because of the perception that this would encourage refugees to leave the camps and put pressure on already overstretched urban areas. To this extent, UNHCR tacitly consented with the encampment policy of the government¹⁹⁵. However, since the early 2000s, the organization has taken a much more proactive approach to mapping and assessing the urban caseload, as well as seeking out partnership with local government and with local organizations to provide services and assist the most vulnerable urban refugees with the more challenging aspects of urban life¹⁹⁶.

This has been made easier for UNHCR by their adoption in 2009 of a global policy on urban refugees, which has officially endorsed the work that was already being done by UNHCR in Kenya with regard to refugees in Nairobi. It has also given impetus and provided additional funds for more extensive outreach, community services, protection and other service provision (through partners such as Kituo cha Sheria and RCK). These pioneer activities were used as a pilot for implementation of the UNHCR policy, and as a result, the relationship with and understanding of the growing urban refugee population has significantly improved.

The most important step towards official recognition and acceptance of the urban refugees is that since 2011 the DRA has been carrying out registration in Nairobi, Malindi, Mombasa and Nakuru, as well as issuing refugee certificates, in a process separate to the issuance of refugee MRCs by UNHCR. This process is an incontrovertible step towards embracing the notion of a recognized urban refugee population, and is of particular significance in the context of a suspended registration process in Dadaab. For asylum-seekers crossing the border from Somalia, there is currently a more welcoming registration and protection procedure for those who head straight for urban centres, rather than following what is dictated in the law and making their way to Dadaab or Kakuma refugee camps.

191 Campbell, E. et al. (2011).

192 Lindley, A. (2011). Unlocking protracted displacement: Somali case study. RSC Working Paper 79, Refugee Studies Centre, University of Oxford.

193 Interview with UNHCR protection officer, March 2012

194 Campbell, E et al. (2011).

195 Ibid.

196 Ibid.

Even for those refugees who have not been excluded from accessing full services in the Dadaab camps, the lack of security and safety, the overcrowding, the multiple challenges facing vulnerable portions of the population, as well as the harsh climate and the remote location of the camps, act as onward drivers for some of the camp population. For Somali refugees who have the means or the connections to survive independently, life outside of the camps is likely to be preferable.

As only a small number of refugees are able to get movement passes for travel beyond the camps other than for medical emergencies, much of this onward migration is illicit. The problems refugees face en route are described above, and they do not end on arrival in the city. Although refugees interviewed in Eastleigh for this research described the process of having the records of their registration transferred from Dadaab to Nairobi as relatively straightforward, and DRA registration is ongoing in the city, refugees still face regular harassment and extortion from police in all parts of Nairobi. The problem of police venality is compounded by language barriers, ignorance of the refugee law, unfamiliarity on the part of police or refugees with correct documentation, and the large number of fake documents in circulation in Nairobi¹⁹⁷.

Somali refugees are to some extent complicit in this arrangement, being too willing to pay their way out of an encounter with the police, whether or not they are legitimately registered in the country. Certainly more awareness-raising with refugees themselves is needed to discourage this practice, since it has only led to entrenched corruption in the ranks of police based in areas hosting large Somali refugee populations¹⁹⁸.

Despite the difficulties Somali refugees inevitably encounter in adapting to urban life and dealing with their initial sense of exclusion, as well as the continued risk of falling foul of the authorities, large numbers continue to come to Nairobi and find themselves a place in the complex cosmopolitan society of Kenya's capital. Integrating locally could be one long-term solution for some refugees since for many of them, particularly second generation Somali refugees, the urban centres of Kenya have already become home. However, this will not be an option for more than a fraction of the current Somali refugee population, and the search for a range of durable solutions remains a central responsibility of the government of Kenya, UNHCR and the international community.

197 Pavanello, S. et al. (2010). *Hidden and exposed*.

198 Interview with RCK officer, March 2012.

11. Durable solutions

Protracted refugee situations, lasting decades, have come to characterize the world's current refugee caseload – two thirds of today's refugees are in a situation of extended exile¹⁹⁹. Somalia's refugee crisis is one of the most complex, entrenched and long-standing refugee situations in the world, and yet thinking around traditional durable solutions has so far failed to produce a formula for improved livelihoods, self-sufficiency and meaningful long-term protection for any but a tiny minority of camp residents.

There are three standard strategies that UNHCR, governments and other refugee actors pursue when searching for the resolution of a refugee situation: repatriation to the country of origin, local integration in the country of asylum or resettlement to a third country. Perhaps in a situation as complex as Dadaab, the traditional divisions, principles and mechanisms for durable solutions need to be re-examined with additional flexibility and creativity. In particular, there must be a strong emphasis on prevention of further displacement and stabilization in the country of origin, as well as an acceptance that there will not be a uniform solution for the entire population.

The diaspora already plays an important part in making life in the camps more sustainable by contributing millions of dollars of remittances to the refugee population every year. The presence of so many Somalis in developed countries all over the world also fuels the imagination of camp residents in one direction only, and creates tunnel vision about what could possibly constitute a better life. The diaspora will be crucial in bringing about and sustaining a Somalia to which refugees can return, and strategies to build alliances with key expatriate Somali communities should feature in thinking about the shape and timing of durable solutions. Finally, the right kind of investment in the education, growth and development of refugees in the camps well before the moment where solutions to this protracted crisis are applied will be the key to their durability and success.

11.1 Local integration

Local integration, whilst being one of the three key durable solutions identified for refugee contexts, is nowhere provided a legal definition in refugee law. It is a solution not often advocated by UNHCR and the international community more generally, who tend to focus on repatriation as a preferred solution. Local integration has been described as having three related dimensions - legal, economic and social - with all three aspects of significance for its sustainability²⁰⁰. Legally, refugees are 'granted a progressively wider range of rights and entitlements by the host state'²⁰¹; these are described in the 1951 Refugee Convention and include the right to seek employment or income generating activities, to own property, to have freedom of movement and access to services such as education. Ultimately, this is likely to result in permanent residence and possibly even citizenship in the country of asylum. Economically, refugees become more self-reliant, can establish and sustain livelihoods, and are less dependent on the state or humanitarian actors for assistance. Finally, the social

199 *Forced Migration Review* (2009). Issue 33, September 2009: *Protracted Displacement*.

200 Crisp J. (2004). The local integration and local settlement of refugees: A conceptual and historical analysis. EPAU Working Papers, 1 April 2004. New Issues in Refugee Research. Working Paper 102. UNHCR Policy Development and Evaluation Service.

201 Ibid.

integration of refugees means that they are able to live alongside nationals of the host country without fear of discrimination or intimidation from fellow citizens or the authorities.

A related strategy is that of ‘local settlement’, similar to local integration but not implying the same degree of finality. Whereas local integration suggests that the host country becomes the indefinite country of residence, even citizenship, local settlement allows asylum-seekers access to land or other means of self-sufficiency where they can remain until such time that repatriation becomes possible. It is one way of managing mass refugee influxes that is acknowledged in the OAU 1969 Convention, which directs that states ‘shall use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.’²⁰²

Despite the fact that local integration is not prominent in discussions of durable solutions by governments and other stakeholders, for situations of protracted refugee displacement such as Dadaab, particularly when conflict is ongoing in the country of origin, voluntary repatriation is hard to imagine. In Dadaab, where a third generation of refugees is now being born in the camps, the opportunity for – and desirability of – repatriation to a country entirely unknown to this generation of young adults and their children seems very remote.

For this reason, local integration options need to be examined more seriously as a solution for at least some part of the Dadaab population. It is improbable that the government of Kenya would be willing to offer hundreds of thousands of Somalis in Kenya legal citizenship²⁰³, so for anything more than a small residual caseload, this option of full, legal integration (meaning an end to the need for international protection) seems highly unlikely. This does not mean that a more gradual or phased approach to allowing refugees some form of increased status in Kenyan society cannot be imagined.

Integration in urban centres

The first option is to allow some form of more solid and protective identity and status for refugees who make their way to urban, non-camp settings. Asylum-seekers and those already issued *prima facie* status in the camps are living in their thousands in Nairobi and other urban centres, with a variety of documentation, including in some cases illegally procured Kenyan identity documents. In addition to being bought and sold, Kenyan IDs have been issued by MPs hoping to increase their voter base in certain parts of the country: this was brought to light over the past few years by checking refugee fingerprints against the national ID database. To this extent, then, refugees are finding their way to different levels of local integration in Kenyan society already, but often this involves circumventing Kenyan law. This leaves them exposed on an ongoing basis to exploitation and insecurity, and unable to participate fully in society.

Two of the most important elements of integration are employment and education. Access to employment is in theory highly restricted in Kenyan law, with Class M permits being an entitlement

202 Ibid.

203 Although in theory under the Kenyan constitution, anybody who has lived here for a certain number of years, speaks Kiswahili and is economically self-reliant is eligible, there is an extra stipulation about this applying only if the individual has legal residence in the country, and this has been used as a block to the naturalization of refugees

in the Refugees Act, but these have in fact not been issued except in a few isolated cases²⁰⁴ by the Government of Kenya since 2004. Far more common is for refugees, both skilled and unskilled, to find their way into the extensive informal sector, finding a place in the labyrinth of opportunities available in areas such as Eastleigh for casual workers, waiters, labourers, or in shops and restaurants. Newly-arrived refugees will usually be assisted to find work by family, clan or other social networks, and to this extent are better off in urban environments than many other refugees. Somali entrepreneurial spirit is legendary, and certainly a transformation has occurred in several of the areas where many Somali refugees have settled, giving other groups such as Asians, who formerly controlled the marketplace, some competition²⁰⁵. This has been lubricated in recent years to some extent by the inflow of money from Somalia and expatriate Somali sources, including from activities such as kidnapping and piracy, which has released millions of dollars into the Kenyan economy in various forms²⁰⁶.

Given the dynamic economic environment that the Somali refugee population has brought to certain parts of Nairobi, and the fact that Somali business may even be creating jobs not only for Somalis but also for Kenyans, the role that refugees can play if provided with opportunities for measured integration is clearly one with great potential. Eastleigh is even attracting attention from tax authorities in recent years²⁰⁷. A critical barrier to this is growing xenophobia - the perception that Somalis in Kenya are dangerous, that they may be linked to extremist groups, and that areas such as Eastleigh are hotbeds of jihadist plotting. This attitude needs to be recognized and addressed with some urgency by UNHCR and its partners, if the otherwise impressive capacity of Somalis to adapt and integrate is to be allowed a chance to contribute to longer-term solutions for Somali refugees.

In terms of access to education, the Government of Kenya guarantees the right to free primary education to both refugees and citizens, although in reality it is often difficult for refugees to exercise these rights if they are not aware of exactly what they are. Schools will often charge fees or find ways to extract additional payment out of refugee parents, and there are other financial and logistical impediments for families wishing to send children to school, in the form of language barriers, uniform costs, transportation, lunch fees and so on. Where families are required to produce evidence of documentation, such as birth certificates, this too can exclude refugee children from school. For Somali refugees, there is also a tendency to send children to madrasa schools where they can receive an Islamic education, meaning they miss out on the Kenyan public school system. Decisions taken on the education to which refugee children are exposed will of course play an enormously important role in determining the extent to which integration into local society takes place.

Integration in North Eastern Province

The presence in Kenya of a significant Somali Kenyan minority in many ways facilitates relations with Somali refugees, and points to the possibility for some incremental steps towards local integration

204 Interview with UNHCR officer, Nairobi, March 2012.

205 Pavenello, S, 2010.

206 This phenomenon has been widely observed and commented upon in the international and Kenyan media. For example, France 24. (2009, April 14). Piracy money inflates Kenyan property market. Retrieved at <http://www.france24.com/en/20090416-piracy-money-inflates-kenyan-property-market-somalia>

207 Harper, M. (2010, December 10). "Little Mogadishu" – Paradise for shoppers or pirates?. BBC News. Cited in Lindsay, A. (2011).

for a part of the refugee population, if the process could be handled with political sensitivity. Certainly relations with this group in Kenya has been vital for Somali refugees' business links and economic activity, support whilst on the move and protection from the authorities. Somali Kenyans already suffer discrimination from the government, as well as suspicion amongst the Kenyan public in general. This was demonstrated by the reaction to the 2009 North Eastern Province census, which revealed a much higher number of Somali Kenyans living in the country than had previously been thought.

Historically, North Eastern Province is one of the most economically marginalized and socially excluded regions of the country, under-developed compared to the rest of Kenya and with rising poverty levels. Human development indicators are below both the Millennium Development Goals (MDG) targets and national averages²⁰⁸. During early 2012, communities experiencing episodes of violence in Moyale and Isiolo met with significantly less official intervention and support than would have been expected if they had taken place in other more central parts of the country.

Most of all, however, Somali Kenyans have been affected by the prejudices and assumptions surrounding the Somali refugee population - that they are harbouring terrorist elements who pose a threat to Kenya's national security. This is in part because not enough has been done by UNHCR, the Department of Refugee Affairs and other refugee agencies to mount public awareness and public relations campaigns with the media, academics, young people and the Kenyan public in general to explain what it means to be a refugee, the complexities of living as a victim of protracted displaced situation and Kenya's obligations in that regard. It is also necessary to separate the issues of Kenya's war with the Shabaab from the needs and rights of Somali families seeking temporary international protection.

Refugees are often political campaign topics, but there is a serious risk that the Dadaab caseload could find their future thrown into the mix of party political one-upmanship as Kenya approaches its next election. It will be in the interest of some MPs to court the support of the refugee population - since, as was clear during the 2007 election, a percentage of the camp holds Kenyan IDs - and in the interest of others to capitalise on anti-refugee and anti-Somali sentiment.

As things stand, the Dadaab camps are very much a feature of the North Eastern Province, and they represent its most significant city. Despite the negative impact of the camps on the surrounding physical environment due to the devastation of forest cover, in many other ways, the camps have had a positive effect upon the local economy. There is evidence that the camps are in fact bringing employment, investment and opportunity into host communities around the camps, rather than acting as a drain. A report commissioned by DRA in 2010 indicates that the often drought-affected and impoverished communities around the refugee camps benefit from the chance to register as refugees, with 27% of the communities within a 50 km radius estimated to be holding ration cards. In these cases, the advantages include lower food prices in the camps, more frequent transport services, access to improved education and water facilities, and free, high-quality health services in the camps. The estimated benefit to the local community is estimated to be approximately \$14 million a year²⁰⁹.

208 Kenya Humanitarian Community Strategic Framework for Host Communities and Border in Areas Drought Affected Arid Areas of the North and North Eastern Districts, March 2012.

209 Enghoff, M. et al. (2010). *In search of protection and livelihoods: Socio-economic and Environmental Impacts of the Dadaab Refugee Camps on the Host Community*. DRA.

In this context, there are increasing calls for aid and assistance to Dadaab to become more development-oriented, moving away from the seemingly endless care and maintenance approach towards something that provides refugees with more autonomy, opportunities and the chance to be self-reliant. Most recently, a Refugees International article²¹⁰ called for integration of the camp into the wider Kenyan economy, greater independence for the refugees, and a concerted effort by donors to ensure a long-term and strategic approach to development in North Eastern Province that includes the refugee population. This will need to be articulated within the framework of the current Kenyan devolution structure, as required in the Constitution, since decisions about investment, development priorities and any increased freedom and opportunities for refugees in Dadaab will increasingly be taken at a sub-national level in the future.

Refugee education and skills-training is one area that is in urgent need of massively increased investment, and refugees would be very much assisted if this could be accompanied by a change in the refugee law governing freedom of movement and access to employment. Agencies would then be able to pay refugee incentive workers – of whom there are increasing numbers in the context of reduced access for international staff in the camps – a meaningful salary comparable to, rather than a fraction of, Kenyan scales. Food rations for those whose families have working members, or whose businesses in the camps are running as businesses might run anywhere else in the region, could be cut or reduced to minimize the culture of chronic dependency in the camps.

This idea of a paradigm shift in the entire approach to running the Dadaab camps makes good sense in the current context, where alternative solutions are hard to come by and peace is not yet secured in Somalia. Careful thought will have to be given to exactly what form the changes in the camps will take, and how the benefits of such an arrangement may appear to a government reluctant to see the refugee population becoming too comfortable in Kenya. This does not have to be the first step in a process that will culminate in the Dadaab population becoming Kenyans. The ultimate solution of voluntary repatriation to Somalia remains a priority for what will be the great majority of the Dadaab population.

However, if the circumstances for this are still not right inside Somalia, then strategic and humane changes to the everyday lives of refugees in the camps and the realization of their basic rights are needed for the interim. In the process, the economy of North Eastern Kenya may well benefit, particularly if donors and the government of Kenya can be persuaded to commit to a push for greater investment, development and security in the region.

11.2 Resettlement

Third-country resettlement is one of the three main durable solutions promoted by UNHCR and partners for protracted refugee situations all over the world. Refugees from the Somali caseload have been resettled for more than fifteen years from Kenya, the majority of them to the USA, although several other countries also take Somali refugees (such as Australia, Canada, UK, Sweden, Denmark and Norway). Somalis still represent the great majority of the resettlement caseload out of the region every year (see the chart below for statistics of the past few years). During 2011, 10,518 cases were submitted by the UNHCR Kenya office for resettlement, of which 8,439 were Somali.

210 Tiff, M. (2012, April 18). Kenya can turn the Dadaab refugee camps into an asset. The Guardian. Retrieved from <http://www.guardian.co.uk/global-development/poverty-matters/2012/apr/18/kenya-turn-dadaab-into-asset%20>

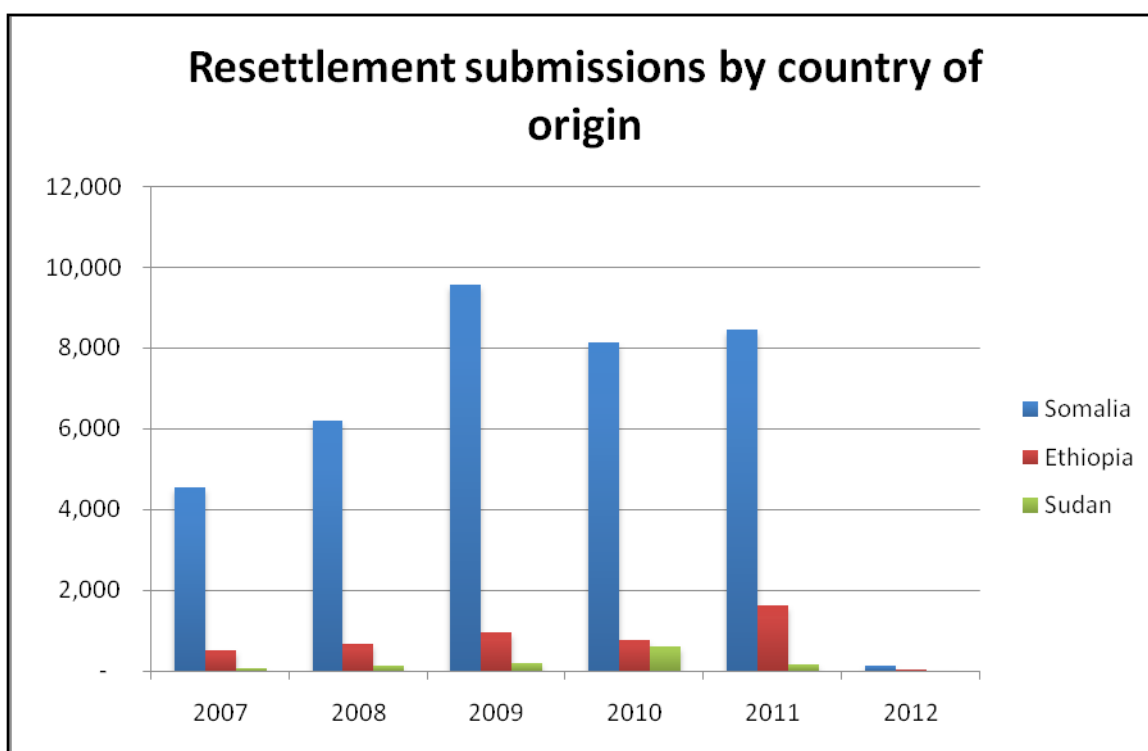


Table 8: Resettlement submissions by country of origin, UNHCR March 2012

Whilst resettlement provides solutions for a tiny percentage of the total Dadaab refugee population, and cannot in that sense help in ‘unlocking’ the situation of protracted displacement there²¹¹, the process is underpinned by two key motivations. The first is to provide better protection to a specific caseload whose security cannot be assured in their place of first asylum: this might apply to groups (such as the Somali Bantus resettled from Dadaab and Kakuma a decade ago) or to individuals with compelling protection claims. The second is that donor countries are able to demonstrate their support and solidarity with the government of Kenya, honouring their commitments to ‘burden-sharing’ by absorbing a certain number of refugees every year.

Resettlement does constitute the only meaningful durable solution on offer to refugees in Dadaab at the moment, and plays a very important role in the imagination and hopes of much of the camp population. 86% of the survey interviewees for this report said they would like to be resettled if the current situation continues inside Somalia, although only 59% listed it as a preferred option to repatriation if conditions would improve. Almost universally, the perception of refugees interviewed was that the only people being resettled now are the long-term caseload who came to the camps in 1991. This indicates that the number of extreme protection cases being identified and fast-tracked is not sufficient to have altered this perception.

It is, however, a politicized process, all the more so in the current context, with so many security concerns around the Somali population in general. The security constraints have meant that there are huge delays in the resettlement submission, interview, and departure process. This further exposes vulnerable refugees to protracted periods of uncertainty, insecurity and sometimes violence.

²¹¹ Long, K. (2011). *Permanent Crises? Unlocking the protracted displacement of refugees and internally displaced persons*. Refugees Studies Centre, Oxford University.

The resettlement process has been very seriously affected by the insecurity and consequent breakdown in access in the Dadaab camps since late 2011. Whilst resettlement departures continue, the existing backlog in the process means that thousands of individuals undergoing security screening are still waiting to leave. Consequently, resettlement submissions for Somalis only numbered 114 during the first quarter of 2012, and there have been no new resettlement referrals to receiving countries. Interviews are normally carried out, with refugees identified as high priority cases for resettlement by UNHCR, by officers of the embassies of resettlement countries in the camps themselves. However, since access has been so compromised since late 2011, these interviews have not been taking place. UNHCR has just received permission to transport several hundred individuals with protection claims from Dadaab to Kakuma, where they will be interviewed for potential resettlement to the United States. UNHCR is intending to construct accommodation in Kakuma camps for approximately 2000 people to house groups of priority resettlement cases from the Dadaab camps, so that they can be pre-screened and interviewed in the event security problems in the Dadaab camps persist.

Identification of the most vulnerable cases is not currently taking place since registration has been suspended, so it is highly likely that many of the most vulnerable people in the camp have not been identified as high-priority cases for resettlement. Certainly, UNHCR has not discussed with receiving countries fast-tracking for resettlement of some of the most extreme protection cases in the camps, for example children formerly associated with armed forces and groups in Somalia²¹².

Resettlement of the urban Somali caseload continues, but at a slower rate as a far smaller number are resettled from this group. This is a strategic decision by UNHCR to ensure that refugees are incentivised to stay in the camps. Many refugees find that they end up moving onwards from Kenya without resettlement assistance, as the delays involved are too long, and alternative opportunities for migration present themselves²¹³.

11.3 Repatriation to Somalia

The Government of Kenya has since late 2011 intensified the regularity and content of its public pronouncements on repatriating Dadaab refugees to Somalia. Since the Kenyan Defence Force incursion into Southern Somalia in October 2011, several high-level public figures in the Kenyan administration have claimed that areas of Central and Southern Somalia have been 'liberated' from Al Shabaab control, and are now ready to receive returnees safely. In January 2012, the former Permanent Secretary to the Ministry of Internal Security and Provincial Administration stated publicly that the country intended to begin preparing to relocate refugees to Somalia. In February, a government spokesman said any returns would be voluntary and carried out with UNHCR²¹⁴. However, most recently, Foreign Affairs Minister Moses Wetang'ula told a Parliamentary Committee on Defence and Foreign Relations in mid-March that it was time for Kenya to begin moving refugees back to freed areas of Somalia since "the reasons that made them run away have been solved

212 Interview with UNHCR resettlement staff, Nairobi, April 2012

213 Long, K. (2011) and Horwood, C. (2009).

214 Chonghaile, C. (2012, February 22). Kenya denies planning to close world's largest refugee Somalia refugee camp at Dabaab. The Guardian. Retrieved at <http://www.guardian.co.uk/world/2012/feb/22/kenya-denies-plan-to-close-refugee-camp?newsfeed=true>

through the efforts of the Kenya Defence Force”²¹⁵. These comments were backed up by statements from George Saitoti, Kenya’s Internal Security Minister, who said that there was now a “window of opportunity” to solve Somalia’s problems, and that refugees should be sent back to safe areas.

It is true that the situation in Somalia is changing rapidly; AMISOM’s forces are being supplemented, and despite sporadic mortar attacks, the capital Mogadishu seems firmly in control of the government, with huge numbers of IDPs flocking back to the city. Kenya’s own military force inside Somalia has been integrated into the AMISOM force. Mogadishu is seeing more investment and construction, and there is greater humanitarian access and movement for international aid agencies than at any point in the last few years. There appears to be discussion in the camps as to how and when return to a stronger and safer Somalia will be an option. One resident spoke recently of a “shift in focus among the Dadaab youth”²¹⁶; as chances of resettlement remain remote, and the situation appears cautiously hopeful in Somalia, “almost all the educated youths are willing to go back to Somalia to take part in the reconstruction of their war-torn country”²¹⁷.

The deteriorating conditions in the camp make remaining in Dadaab a less attractive option by comparison. One respondent in the survey, when asked why he was willing to go back to Somalia now, said: ‘Because the conditions in Somalia and the situation here in the camp are becoming the same. The police are harassing the vulnerable people in the camps instead of targeting those who caused the insecurity in the first place. This makes it difficult for us to want to stay here’. However, this kind of individual response should not be understood to indicate a groundswell of collective readiness to return from the camps. Only 14% of the Dadaab survey interviewees said that they would consider going back to Somalia now, whilst the great majority said that greater stability and peace would be pre-requisites of their return.

In reality, opportunities for a massive voluntary repatriation from the Dadaab camps to areas of Central and Southern Somalia still appear very slim. There have been some documented returns from Somalia, but these add up to no more than about 5,000²¹⁸ individuals, and it is not clear whether these are permanent repatriations, go-and-see visits, or short-term returns for purposes of harvesting, planting and checking property. Recent discussions around creating a kind of buffer zone on the Somalia side of the Kenya-Somalia border, including the IGAD meetings in January 2012, have been extremely controversial and, for the time being, premature. The precedents for this are also unpromising, given that the circumstances which hampered the Comprehensive Plan of Action for Somali refugees in 2005 – a UNHCR strategy to initiate a gradual return process - still pertain.

It is unlikely that in practice much of the refugee population of Dadaab feel there is sufficient security or safety in Somalia: wide swathes of the country are still controlled by Al Shabaab, and the TFG continues to be weak, unrepresentative, ineffectual and corrupt. The recent London Conference on Somalia (March 2012) demonstrated the extent to which western leaders and regional bodies such as the African Union are committed to addressing the causes and symptoms of political and security problems in Somalia. Nevertheless, in advance of the August 2012 expiry of the mandate

215 Oruko, I. (2012, March 13). Kenya may relocate refugees to Somalia. The Star. Retrieved at <http://www.the-star.co.ke/national/national/66555-kenya-may-relocate-refugees-to-somalia>

216 Hujale, M. (2012, March 24). ‘I never regret being in Dabbab’. IRIN. Retrieved at <http://www.irinnews.org/Report/95142/KENYA-SOMALIA-I-never-regret-being-in-Dadaab>

217 Ibid.

218 UNHCR.

of the current TFG, most refugees in Dadaab will not feel that enough has changed to make return a feasible and safe option at this point.

If the great majority of refugees in the Dadaab camps continue to be resistant to return, and conflict, political instability and diminished opportunities for livelihood are the daily reality in Somalia, then discussions around the repatriation of refugees need to be cautious, and sensitive to the absolute requirement that returns must be voluntary, safe and dignified. The Government of Kenya's deliberations on a stricter set of refugee management mechanisms in the 2011 Refugees Bill already suggest a shrinking asylum space that will reduce the basic rights of refugees in the country. The *prima facie* status long enjoyed by Somali refugees in this country is evidently under question, and registration of new arrivals is currently suspended. The refugee inflow during 2011, many of whom were escaping famine rather than persecution, are not returning to Somalia in the numbers that might have been expected. The government needs to ensure its move towards a more closely managed asylum regime does not breach the most fundamental refugee principle of all - the right to seek asylum until such time as voluntary repatriation is a voluntary, safe and dignified solution.

Despite this, it is still possible for UNHCR to begin meaningful planning and discussion on how voluntary repatriation might begin, if the political and security situation in Somalia continues to improve. A process of strategic preparation and forecast for a phased and conditional repatriation in the coming 36 months, with the close cooperation of the DRA and others involved in refugee management, would significantly contribute to mutual trust between the humanitarian agencies and government. Such a process might reduce the levels of publicly expressed impatience and intolerance towards the protracted refugee situation in Dadaab from elements of the Kenya government, and go some way to assuaging tensions on the issue. Some of the key humanitarian donors have been advocating for a 'volrep' planning process for several months now²¹⁹, and it would be politically astute, as well as important from a preparedness standpoint, for UNHCR to consider budgeting for elements of preparation for repatriation from 2013 forward.

Ultimately, UNHCR will also have to be creative in its construction and presentation of a narrative of repatriation to the residents of Dadaab. Somalis can be found in diaspora populations all over the Horn of Africa and the developed world, and notions of displacement and residence, adaptation and integration are conceived and understood in Somali culture in a unique way. Somalis are both highly modern and highly traditional, with their capacity to harness business, networks and technology all over the globe, whilst informed and defined by their nomadic history, culture and religion. A simple one-way, mass return to Somalia for those in Dadaab is unlikely to prove viable after such a long refugee history. Durable solutions will have to be multiple, flexible, and consultative, even in the context of a Somalia finally at peace.

219 Interviews with DANIDA and BPRM staff, April 2012.

12. Findings and Conclusions

At present, the asylum space for Somali refugees in Kenya is under strain. There is growing hostility in the country towards a Somali minority increasingly perceived as linked to extremism and insecurity. The run-up to the elections in Kenya is likely to lead to additional public emphasis on national security, the possible infiltration of criminal individuals across the Kenya/Somalia border, and, by extension, fuel public hostility towards the entire community of ethnic Somalis in Kenya (including refugees).

Despite the strengths of the current 2006 Refugees Act, which adheres closely to the standards set in the 1951 Convention, there are some key aspects of the law which have not been put into policy or practice, and are therefore limiting the practical protection of refugees. These include restrictions on the rights of refugees to movement and place of residence; the lack of a clear refugee policy; the closure of the Somalia/Kenya border; the current suspension of registration in the Dadaab camps; and continued gaps in capacity, training and autonomy of the DRA. Additionally, the draft 2011 Refugees Bill threatens to restrict further the rights of refugees and asylum-seekers in the country.

In the context of the 2011 famine and refugee crisis, the continued refusal by the Government of Kenya to open the border, lack of access to nutrition, health, water and transport facilities at Liboi was an egregious protection failure, contributing for several months to excess mortality in the first days of arrival in the camps. It also exposed new arrivals to protection violations and criminal activity on the road to Dadaab and other destinations, including police arrest, detention and extortion. 27% of refugees interviewed in the survey for this report who met police on the road during 2011 reported arrest, threats or extortion. Although refoulement was not widely reported, newly arrived Somalis continue to face regular abuse of their rights to seek asylum.

The camps at Dadaab, despite being the most long-standing camps in the world, continue to be the scene of significant insecurity, violence and protection concerns for the refugee population. These concerns have been exacerbated by the massive influx of 2011, and the spate of security incidents against police, humanitarian workers and refugee leadership of late 2011. The attacks against police are in part due to the lack of screening at the border; surveyed refugees describe their concerns over the Al Shabaab presence in the camp, the risk of recruitment, and their exposure to general criminality.

UNHCR is investing millions of dollars, with donor support, in strengthening and improving police presence in the camps, but the police are not trusted by the refugee population and are seen as perpetrators of violence in the camps themselves. Increasing the numbers of police in the camps is not enough: investigating and addressing police impunity for abuses in the camp, ensuring comprehensive training on refugee law for all police recruits, and an acceleration of countrywide police reform are urgently needed.

Women and children have particular and pronounced protection needs in the camps – in particular with regard to entrenched sexual violence which the RCK survey confirms is still widespread, and mostly goes unpunished. Women and girls are still exposed to violence while collecting firewood, using poorly lit latrines, and on long walks to schools and services. A stricter application of the

relevant Kenyan laws – the Children’s Act, the marriage laws, the FGM Act, and other criminal laws– is an important responsibility of the Kenyan government. If implemented, it could provide much needed pressure on UNHCR and other agencies to ensure better funded and more comprehensive programming on prevention and response, particularly with regard to access to justice.

Other vulnerable groups such as the elderly and persons with disabilities also struggle to access basic services and protection. In light of the recent incidences of insecurity, responsibility for aspects of service delivery has been transferred to refugee incentive workers: this has increased discrimination against the most vulnerable. Other rights, such as the right to education and access to justice, remain compromised in the context of the camps’ chronic overcrowding, compounded by significant gender disparities. The lack of opportunity for refugees to work in the camps, both in policy and in practice, continues to cause frustration and generate further protection risks.

The survey conducted for this report found that a minority of refugees in the camp (14%) would be willing to repatriate to Somalia now. 86% of respondents dream of resettlement to a third country, but this is a solution that reaches only a few thousand refugees per year. In the meantime, the insecurity and poor protection of the camp causes many refugees who have the means to leave the Dadaab camps and proceed to urban centres of Kenya, in particular to Nairobi. Here, despite discrimination and police harassment, Somalis are finding a way to sustain themselves economically and to integrate. Despite increasing openness on the part of the government of Kenya to recognize and assist the urban refugee caseload, there are still legal restrictions on refugees; gradual steps towards wider permission for refugees to work, move around and more solid identity documentation will facilitate this process of integration. The government and UNHCR need to carry out more committed public relations work with the Kenyan public in general to limit the growing hostility towards a Somali minority increasingly perceived as linked to extremism and insecurity.

Integration in North Eastern Kenya, where a significant Somali-Kenyan population already exists, may ultimately be a durable solution for some of the long-term residual population. Providing refugees in the camp with better opportunities for self-reliance, employment and education is a vital first step. At the macro-level, high-level engagement on the part of government, development agencies and donors with a long-term strategy for peace, security and development for North East Kenya is also necessary.

Voluntary repatriation remains the most likely solution for the majority of Somali refugees in Kenya, and the solution that the Government of Kenya is strongly advocating. This is also the preferred solution in the traditional conceptualization of durable solutions for refugees. Though peace has not returned to Somalia, key actors (UNHCR, donors and the Government of Kenya) should start planning and budgeting for a phased voluntary return process for the coming three to five year period once peace is achieved. There will be a need for nuanced, flexible and sensitive durable solutions, however, even once Somalia has finally achieved peace and is capable and willing to offer long-term protection to its own citizens.

13. Comprehensive Recommendations

To DRA and the Government of Kenya:

- Finalize the draft Refugees Policy and adopt a strategy to support its implementation.
- Re-open Kenya's border with Somalia, in accordance with the country's obligations under international and regional human rights law and its own refugee legislation, thereby allowing for formal border entry points where Somali citizens can be identified and processed through meaningful security screening, and where genuine asylum-seekers can be directed onwards to the camps.
- Recommence screening, reception and humanitarian support activities in collaboration with UNHCR and other partners at a transit centre in Liboi, to ensure comprehensive identification and support to the most vulnerable individuals and families.
- Recommence with immediate effect the registration of asylum-seekers in the camps of Dadaab, as well as permitting the issuance of ration cards by UNHCR, to end the state of limbo in which thousands of new arrivals find themselves.
- Recognize Kambioos camp as a necessary addition to the camps of Dadaab, where much-needed protection, shelter and other services can be provided to refugees who are already resident in Dadaab.
- Initiate an investigation into the violations by police officers in the Dadaab camps of December 2011, and ensure that swift action is taken to punish and discipline those found responsible.
- Accelerate the pending process of countrywide police reform, ensuring that independent oversight and increased accountability address systemic corruption, impunity and violence in the service.
- Support the establishment of a permanent court in Dadaab with judges and prosecutors, including those trained in handling cases for women and children.
- Allow refugees to move freely within Kenya according to its obligations under international laws as well as the Constitution of Kenya, and put an end to the widespread arrest and extortion of refugees moving from Dadaab to other parts of the country.
- Ensure that the passage of the 2011 Refugees Bill, and the constitutional review of other legislation, does not in any way restrict the protection standards for asylum seekers and refugees as set in the 2006 Refugees Act.
- Provide DRA with human and financial resources, and institutional independence and authority, to deliver effectively on its own mandate within government.
- Initiate, based on concrete evidence, preliminary discussions with UNHCR and other partners around a three to five year planning and scenarios development process for voluntary repatriation of some percentage of the population of Dadaab, conditional on improvements in the security situation inside Somalia.
- Raise public awareness about the rights and duties of refugees in general, and protect Somali refugees in particular from being portrayed as a national security threat.
- Fully implement the FGM Act, the marriage laws, Children's Act and other penal and civil laws in the Dadaab camps as well as elsewhere in Kenya (including provision of resources to the DCO, and training on enforcement for police and other government officials).

- In line with decentralized decision-making under the constitution, ensure strong leadership on strategic prioritization for investment in peace-building and economic development of North Eastern Kenya, including the granting of greater and more systemic opportunities for education and employment for the population of Dadaab.

To UNHCR:

- Continue to advocate with the Government of Kenya for compliance with international refugee law, and condemn the public statements from government concerning the urgency of relocation or return of Somali refugees to Somalia whilst circumstances in the country do not yet permit an assured return in safety.
- Increase levels of communication and trust with the Government of Kenya at all levels, and ensure improved transparency on these dealings to partners, donors and other stakeholders in the protection of refugees in Kenya.
- Initiate, in consultation with the Government of Kenya, UNHCR Somalia and other partners, a process of contingency planning, scenarios-building, budgeting and mapping for a possible phased voluntary repatriation to select areas of Somalia for 2013, conditional on improvements in the political and security situation inside Somalia.
- In light of global shortfalls, actively seek additional funding for all service delivery in the Dadaab camps for 2012, in particular for protection activities and programming for the most vulnerable.
- Increase the number and seniority of protection staff in the Dadaab camps to ensure adequate coverage of all five camps, including Kambioos camp. If security challenges continue to preclude the presence of national and international protection staff from the camps, build capacity of refugees to become more self-reliant in protection, strengthen community-based protection networks and ensure protection mainstreaming in all programmes.
- Prioritize and effectively mainstream protection activities in the camps, with a focus on improved coordination, leadership, funding and accountability for GBV programmes.
- Ensure that programmes targeting children with protection needs are entirely comprehensive in reach, including in Kambioos camp; and promote the monitoring and reporting of violations, including the child rights violations by parties to conflict.
- Prioritise the capacity building of refugee incentive workers on all aspects of protection through orientation and training.
- Reinvigorate the inter-agency PSEA system, ensuring codes of conduct, confidential complaints mechanisms, information campaigns and a system of follow-up and accountability is rolled out in all camps to address instances and trends of sexual exploitation and abuse, even when protection staff cannot be present in the camps.
- Advocate publicly for an immediate end to violence and intimidation against Dadaab residents by camp-based police, and increase pressure on police management to ensure swift disciplinary action where policemen/women are responsible for violence against refugees.
- Ensure funding and continued support to training and awareness-raising of law enforcement officers based in the Dadaab camps.
- Advocate for more concerted action on the part of the UN Environmental Programme, environmental NGOs and the Kenyan National Environmental Management Authority to address the rapid deforestation and degradation around the Dadaab camps.

- Ensure provision of fuel-efficient stoves, and sustainable, alternative fuel sources to all residents of the Dadaab camps, in order to reduce violence against women and girls and positively impact the on-going environmental degradation of the areas around Dadaab camps.

To donors and international community:

- Advocate strongly with the government of Kenya for the resumption of registration in the Dadaab camps, in accordance with the government's legal obligations.
- Advocate for and support an immediate reinstitution of transport services from the border.
- Apply on-going pressure to the Government of Kenya for the recognition of Kambioos camp.
- Ensure funding and support to UNHCR Kenya and Somalia to strengthen preparatory mapping and information-gathering on the possibilities of staged and conditional voluntary repatriation of some refugees from the Dadaab camps.
- Support the independent evaluation of the capacity of DRA in light of recent DANIDA support, and provide proactive support to build the institutional capacity of the institution.
- Encourage and fund UNHCR and partner organizations to re-establish a strong and functioning system to prevent and address sexual exploitation and abuse of refugees in the camps.
- Maintain levels of resettlement of Somali refugees out of the Dadaab camps, despite the constraints of security and access.
- Support UNHCR and partners in the establishment of a discreet programme for the identification and referral of former child recruits from Somalia, with a possible view to fast-tracking their resettlement in a third country.
- Provide funding to UNHCR and partners to scale-up funding for programmes to prevent and respond to GBV.
- Ensure the process of identification and processing of refugees eligible for resettlement is not slowed down by security constraints in the Dadaab camps.
- Support policy to include Dadaab camps into longer-term development, peace and security initiatives for North Eastern Kenya, including exploration of ways in which local integration might be proposed for some elements of the longer-term camp population.
- Support national NGOs to create awareness on refugee protection for general public as well as law enforcement actors to reduce xenophobic attitudes among the host communities.

To Civil Society organizations working in the camps:

- Continue concerted advocacy and technical advice to the Constitutional Implementation Committee to ensure the ongoing review of the refugee legislation in Kenya does not result in a shrinking of the asylum space in Kenya for refugees.
- Support UNHCR in more open and transparent advocacy with the Government of Kenya for resumption of registration, recognition of Kambioos camp and the opening of the border and Liboi transit centre.
- Scale-up training and awareness work with the police and other government duty-bearers in Dadaab on all aspects of refugee rights and the Kenyan refugee law.

- Work together to design programmes in all sectors to ensure systemic protection for women and girls from GBV, including traditional harmful practice such as FGM, and account for the special needs of children, elderly people, persons with disabilities and minorities.
- Participate in PSEA system development, and ensure its prioritization in organization-wide trainings.
- Ensure continued or elevated levels of programming focus on development and peace-building in the host community.
- Support marginalized and vulnerable groups (the youth, the elderly, persons with disability, and minorities) to be better represented in decision-making for service provision and protection in the Dadaab camps.

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Annex 1

Survey Questionnaire

Individual interviews on refugees' experience of protection and security inside the camps and on the migration corridor

1. Date interview conducted		2. Name of camp in which interview took place	
3. Name of monitor			
4. Age of interviewee <input type="checkbox"/> <18 years <input type="checkbox"/> 18 - 35 years <input type="checkbox"/> 35 - 60 years <input type="checkbox"/> > 60 years		5. Sex of interviewee <input type="checkbox"/> M <input type="checkbox"/> F 6. Any disability? <input type="checkbox"/> Not applicable <input type="checkbox"/> blind <input type="checkbox"/> deaf <input type="checkbox"/> physically disabled <input type="checkbox"/> mental disorder	
7. Status (married, single, divorced) <input type="checkbox"/> single <input type="checkbox"/> married <input type="checkbox"/> divorced <input type="checkbox"/> widow(er) <input type="checkbox"/> separated <input type="checkbox"/> missing spouse		8. Dependents? (spouse, children etc.) <input type="checkbox"/> spouse <input type="checkbox"/> children <input type="checkbox"/> relatives <input type="checkbox"/> foster children <input type="checkbox"/> other	
9. Date of arrival in Dadaab camps (year, and if 2011 onwards, month and year)			
10. Why did you leave Somalia? <input type="checkbox"/> directly impacted by conflict <input type="checkbox"/> clan issues <input type="checkbox"/> fear of recruitment/recruitment of children <input type="checkbox"/> looking for family members <input type="checkbox"/> home area overtaken by Al Shabaab <input type="checkbox"/> looking for livelihood opportunities <input type="checkbox"/> drought/famine or other groups <input type="checkbox"/> looking for resettlement <input type="checkbox"/> other			

I 1.a Where did you cross the Somali/Kenya border (which crossing point), and how (car, on foot, smuggled etc.)?

☐ Liboi ☐ El Wak ☐ Mandera ☐ Wajir ☐ Amuma ☐ other

How did you cross?

☐ on foot ☐ in private car/taxi ☐ smuggled by truck ☐ other

I 1.b How long did it take you to get from the border to the camp? (if s/he did not come directly, describe route and reasons)

I 1.c Did you stay with any families on the way to the camp? Did you experience hospitality and assistance, or hostility, on the way?

I 1.d Did you have any problems travelling from the border to the camp? ☐ yes ☐ no

If yes, describe why (e.g., police, bandits, extortion, transport etc.

I 2.a What registration documents do you currently have? How long did it take you to get these documents? (note the length of time below each document)

☐ none ☐ refugee certificate/ID ☐ proof of registration ☐ waiting slip ☐ asylum seeker pass

☐ ration card ☐ token ☐ other

I 2.b.i Which services are you receiving?

☐ none ☐ food ☐ medical ☐ water ☐ NFIs ☐ education ☐ other

I 2.b.ii Are there problems with the services provided?

I 2.c Have you ever been asked to do something or give something in return for food or other services?

☐ yes ☐ no

if yes, what?

I 2.d.i What is your main source of information about services in the camps?

☐ radio ☐ posters ☐ camp leadership ☐ agencies ☐ fellow residents ☐ other

I 2.d.ii Do you feel you are given enough information about services in the camps?

☐ yes ☐ no

<p>13.a Do you feel safe here in (name of camp).... <input type="checkbox"/> yes <input type="checkbox"/> no</p> <p>If no, why not?</p> <p><input type="checkbox"/> presence of AS or other military groups in the camp</p> <p><input type="checkbox"/> bomb and IED attacks in the camps <input type="checkbox"/> police are a threat to security</p> <p><input type="checkbox"/> Insufficient presence of police <input type="checkbox"/> police present but do not trust them</p> <p><input type="checkbox"/> insufficient oversight by agencies <input type="checkbox"/> feel at risk of recruitment (incl. of children)</p> <p><input type="checkbox"/> belong to minority clan and experiencing discrimination <input type="checkbox"/> insufficient presence of agencies</p> <p><input type="checkbox"/> threat of sexual violence <input type="checkbox"/> insufficient services (shelter, health etc)</p> <p>other</p>
<p>13.b How do you cope with these problems?</p> <p><input type="checkbox"/> do nothing</p> <p><input type="checkbox"/> discuss it with the community <input type="checkbox"/> discuss it with family</p> <p><input type="checkbox"/> report it to the community leadership <input type="checkbox"/> report it to the religious leadership</p> <p><input type="checkbox"/> take it to the malaxa <input type="checkbox"/> report it to UNHCR/agencies in the camp</p> <p><input type="checkbox"/> report it to the police</p> <p>other</p>
<p>13.c Have you had any contact with the police based in the camp? <input type="checkbox"/> yes <input type="checkbox"/> no</p> <p>If yes, why?</p>
<p>(For the reporting of a crime/incident)</p> <p>13.c.i Did they provide you with security/a solution to your problem?</p>
<p>(For an incident involving detention or arrest)</p> <p>13.c.ii Did the police treat you correctly? What happened?</p>
<p>13.d Have you seen any people in the camp whom you know from Somalia, who make you worried to stay here in the camp? <input type="checkbox"/> yes <input type="checkbox"/> no</p> <p>If so, why?</p>

13.e.i have you had any experience of sexual violence in or around the camp? ☐ yes ☐ no

If yes, can you tell me what happened?

13.e.ii If no, have you heard of any other woman or girl who has had such an experience?

☐ yes ☐ no

If yes, what happened?

13.e.iii To whom was the incident reported?

☐ nobody

☐ family

☐ community members

☐ camp leadership

☐ medical service providers

☐ UNHCR

☐ other agencies

☐ religious leaders

☐ police

☐ maslaxa

13.e.iv Did they take any action?

☐ yes

☐ no

13.e.v Was the result satisfactory? If not, why not?

☐ yes

☐ no

.....

(If interviewing a parent):

14.a Do you have any concerns/fears for your children? ☐ yes ☐ no

If yes, what are they?

☐ no/limited access to education

☐ sickness/poor health services

☐ psychosocial problems

☐ they are separated from family

☐ sexual violence

☐ recruitment by armed groups

☐ trafficking out of the camp

☐ removal by extended family

☐ other
.....

(If interviewing a child):

I4.b Do you go to school?

☐ yes ☐ no

I4.c What are your biggest concerns about living here in the camp?

☐ no/limited access to education ☐ sickness/poor health services

☐ psychosocial problems ☐ being separated from family

☐ sexual violence ☐ recruitment by armed groups

☐ trafficking out of the camp

☐ other
...

(If interviewing an elderly person/person with disability):

I4.d What are your biggest concerns about living here in the camp?

☐ loneliness ☐ sickness/poor health services

☐ psychosocial problems ☐ discrimination in access to food and other services

☐ violence ☐ would like to move somewhere else but cannot

☐ other

I4.e In your opinion, what can be done to improve protection in and around the camps?

I5.a Have you ever left the camps?

☐ yes ☐ no

I5.b For what reason?

☐ business/work outside the camp

☐ education of children

☐ family reunification

☐ health services

☐ security

☐ other

I5.c Did you have a movement pass? ☐ yes ☐ no

If yes, how long did it take to get it?

I5.d Did anything happen to you on the way?

16.a.i Do you intend to stay in the camps for the time being? ☐ yes ☐ no

16.a.ii If not, are you intending to move somewhere else inside Kenya? ☐ yes ☐ no

16.a.iii If so, to where?

☐ Nairobi ☐ Kakuma ☐ Garissa ☐ Mombasa/coast

Other

16.b Why?

17 Which of the following solutions would you prefer?

☐ Local integration ☐ repatriation (if peace in Somalia) ☐ resettlement

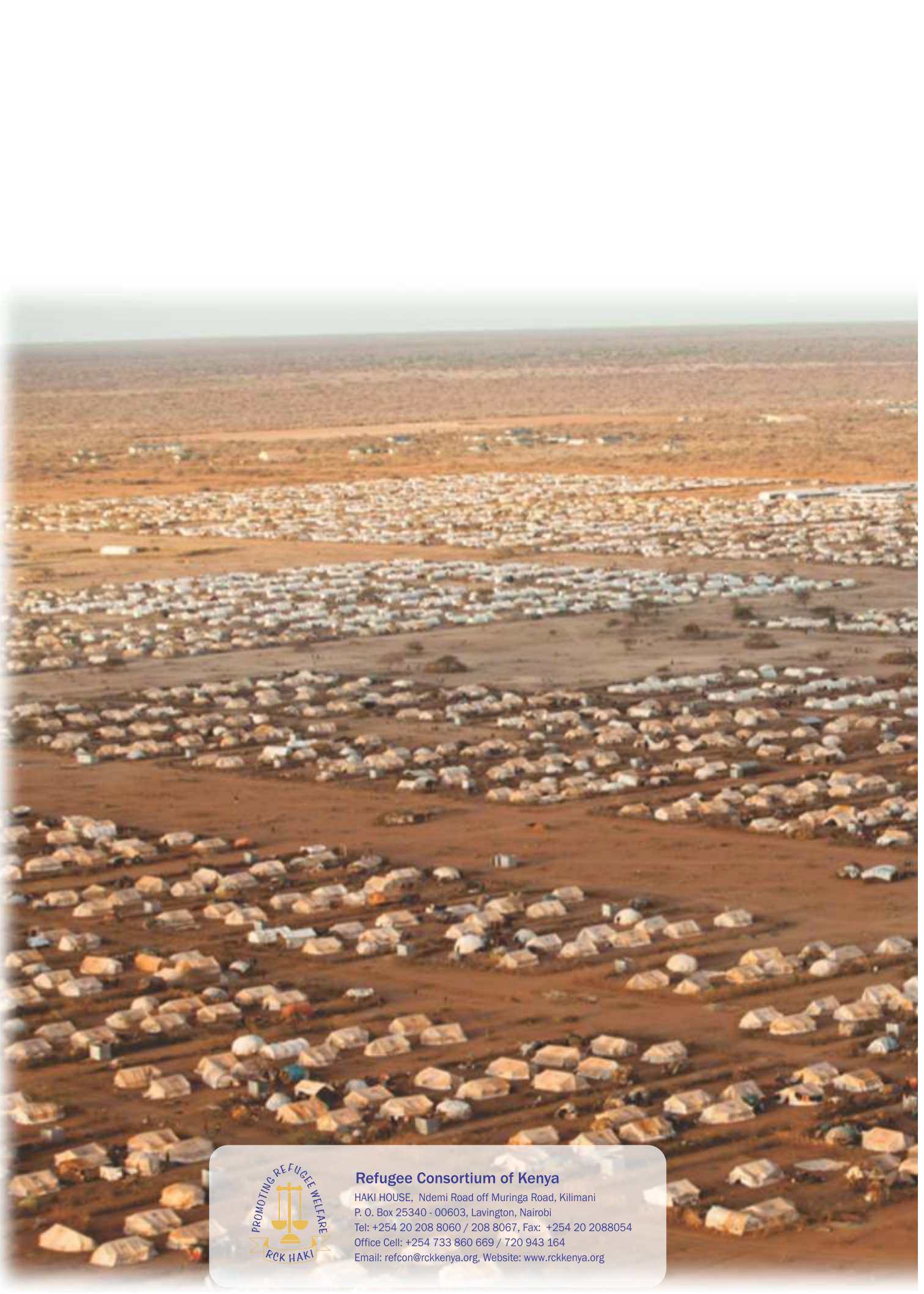
18 .a Would you like to be resettled to another country? ☐ yes ☐ no

18.b In your opinion, who gets resettled?

19.a Would you consider going back to Somalia now? ☐ yes ☐ no

19.b If not, what would have to change inside Somalia for you to want to return?

20. Do you know there is a Kenya law governing refugees? ☐ yes ☐ no



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