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FROM LIFE WITHOUT PEACE TO PEACE WITHOUT LIFE

THE TREATMENT OF SOMALI REFUGEES AND ASYLUM-SEEKERS IN KENYA



New arrivals awaiting registration in Dadaab. © UNHCR/E. Hockstein

INTRODUCTION

This document focuses on certain aspects of the treatment of Somali nationals who have found refuge in Kenya.¹ Whilst Amnesty International recognises that there are many human rights issues of concern affecting Somali refugees and asylum-seekers in Kenya, this document describes only some of these human rights issues, and in particular:

- the impact of the closure of the Kenya-Somalia border on Somali asylum-seekers' rights to refuge and protection, and reports of *refoulement* of Somali nationals by the Kenyan security forces;
- the situation in the three Dadaab camps in North-Eastern Kenya, which host mainly Somali refugees, including overcrowding, policing, allegations of recruitment of refugees for military training and restrictions on the right to freedom of movement; and
- the situation of Somali asylum-seekers and refugees in urban areas of Kenya, including police harassment and reports of *refoulement*.

The Somali people constitute one of the largest refugee populations in the world.² With no end in sight to the armed conflict, human rights crisis and humanitarian emergency in southern and central Somalia, a large number of Somali nationals continue to be displaced within the country, and many others cross international borders to seek refuge and protection in neighbouring countries.³ According to the UN High Commissioner for Refugees (UNHCR), the UN Refugee Agency, more than 1.4 million people are internally displaced in Somalia and over

600,000 Somali nationals have taken refuge in neighbouring countries.⁴ UNHCR states:

“It is UNHCR's view that people fleeing southern and central Somalia are in need of international protection and that involuntary returns to that part of the country place people's lives at risk... Current conditions in Somalia are particularly dire. Over the past three weeks alone [in July 2010] some 18,000 people have been displaced, 112 killed and around 250 wounded according to field reports from partners and agencies on the ground.

Somalis are fleeing years of violence, and are themselves victims of terror and conflict which has taken thousands of lives and displaced millions. Indiscriminate fighting continues, with utter disregard for the safety and well being of the civilian population. With nearly half of the population dependent on humanitarian aid, Somalia is one of the world's worst crises...”⁵

Kenya hosts the largest number of Somali refugees in the region, with 338,151 registered refugees as of September 2010, according to UNHCR. However, the overall number of Somali nationals living in Kenya is probably much higher, as many are not registered. While Somali nationals have sought refuge in Kenya for many years,⁶ the intensification of the armed conflict in southern and central Somalia since the end of 2006 has resulted in renewed large flows of Somali asylum-seekers fleeing to Kenya.⁷

The large numbers of Somali nationals and the resources required to support them presents a monumental challenge for the Kenyan authorities. Amnesty International considers that Kenya disproportionately shoulders the responsibility for large refugee flows from Somalia. Kenya needs more support from the international community to provide durable solutions to such a large number of refugees, in terms of both increased support for local integration projects and a substantial increase in the numbers of Somali nationals benefiting from resettlement programmes in third countries.

Whilst undoubtedly Kenya has shouldered the lion's share of responsibility world-wide by hosting a huge Somali refugee population, the Kenyan authorities' restricting of the rights of Somali refugees and asylum-seekers on their territory is a matter of profound concern.

In January 2007, the Kenyan authorities closed the country's 682 km border with Somalia, and the main transit centre in Liboi operated by UNHCR⁸ for those crossing the border, following the resurgence of armed conflict in Somalia between the Transitional Federal Government of Somalia (TFG), supported by Ethiopian troops, and the Islamic Courts Union (ICU) in December 2006. The Kenyan government said that ICU fighters, whom it suspected of links with al-Qaeda, might enter Kenya and endanger national security.⁹ Following the border closure, reports of Kenyan security forces extorting bribes from Somali asylum-seekers or forcibly returning them to Somalia have increased. At the same time, the Kenyan authorities have turned a blind eye to the flow of Somali asylum-seekers who continue to cross the border despite its official closure, failing to respond to their protection needs.

Further, the Kenyan authorities have not responded adequately to the increasing overcrowding in the Dadaab refugee camps and the consequent strain on the provision of essential services to asylum-seekers and refugees. Some 280,000 registered Somali refugees are confined to the three refugee camps in Dadaab in North Eastern Kenya, some 80 km from the Kenyan border with Somalia, where their access to shelter, water, sanitation and other essential services is impeded by severe overcrowding. As one refugee said to Amnesty International: “In Mogadishu, there was life, but there was no peace. Here, we have peace but we have no life.” The refugees are generally not permitted to leave the camps, unless in exceptional circumstances, and they have almost no livelihood opportunities. Several refugees have told Amnesty International that for them the Dadaab camps are comparable to an open prison, from which there is no escape, except for the very few who are selected for resettlement in third countries.

In addition, refugees complain of insecurity in the camps, which they attribute to either tensions with other refugees, or to the alleged presence of members or sympathisers of al-Shabab, the Somali armed Islamist group that currently controls most of the territory in southern and central Somalia. Aid and protection agencies have told Amnesty International that there are not enough police officers present in the camps to adequately address security incidents. Refugees also complain about abuses by the Kenyan security forces in and around the camps and about their lack of accountability.

Many Somali nationals also live in Nairobi and other major cities in Kenya, some without proper documentation and therefore more vulnerable to exploitation. Urban Somali asylum-seekers and refugees are often harassed, arrested,

arbitrarily detained, and at risk of ill-treatment and *refoulement* by the Kenyan security forces. Many report having to pay bribes to police officers in order to be released from detention and not to be forcibly returned to Somalia, in violation of the principle of *non-refoulement*.

Amnesty International has long called on the Kenyan government to ensure that Somali nationals fleeing armed conflict and human rights abuses in Somalia are able to cross the border and seek refuge and protection on Kenyan soil. The organization has also repeatedly called on the Kenyan government to allocate more land in North-Eastern Kenya where refugees could be hosted so as to decongest the camps. Kenyan government officials agreed that Ifo, one of Dadaab's three camps, could be extended and have also agreed in principle to the establishment of a fourth camp. The extension of Ifo is now underway but the building of a fourth camp has yet to begin. Amnesty International also has long-standing concerns about human rights violations by the Kenyan security forces and the impunity with which they operate. Somali refugees are particularly vulnerable to abuse by the security forces in Kenya, given the ambiguity of government policy towards them and the real risk that they can be forcibly returned to Somalia.

The Kenyan government needs to address Somalia's refugee crisis urgently in order to improve the lives of those it hosts on its territory, in line with its obligations under its own Refugee Act (2006) as well as international refugee law instruments, including the 1951 Convention related to the Status of Refugees (the UN Refugee Convention) and its 1967 Protocol. The Kenyan authorities have strongly denounced the deteriorating situation in Somalia, which Amnesty International welcomes, but they also have the duty to ensure that Somali nationals fleeing gross human rights abuses and indiscriminate violence can access refuge and adequate protection on Kenyan soil.

The UNHCR eligibility guidelines for assessing the international protection needs of asylum-seekers from Somalia¹⁰ of 5 May 2010 say that " *In view of the serious and widespread violations of human rights and the ongoing armed conflict and insecurity in much of southern and central Somalia and some parts of Somaliland and Puntland, UNHCR considers that many Somali asylum-seekers are in need of international protection. Somalis from southern and central Somalia, Somaliland and Puntland may qualify, depending on the circumstances surrounding their flight, as refugees within the meaning of Article 1A(2) of the 1951 Convention and/or Article I(1) of the OAU Convention.*"¹¹

In countries where Somali asylum-seekers have arrived in large numbers, represent a discernible and similar pattern in the nature of their claims that demonstrate international protection needs, and where refugee status determination on an individual basis would exceed local capacities, UNHCR encourages the adoption of a group-based protection approach. Group-based approaches include the application of prima facie group recognition, applied by UNHCR and States to situations of mass influx, and temporary protection granted by States".

Furthermore, in its eligibility guidelines UNHCR has called on all governments to grant complementary or subsidiary protection to Somalis from southern and central Somalia seeking asylum and whose claims are considered as not meeting the refugee criteria.

"... Somalis from southern and central Somalia seeking asylum and protection due to the situation of generalized violence and armed conflict in their places of origin or habitual residence and whose claims are considered as not meeting the refugee criteria under Article 1A(2) of the 1951 Convention or Article I(1) of the OAU Convention, should be granted international protection under the extended refugee definition in Article I(2) of the OAU Convention... The widespread disregard of their obligations under international humanitarian law by all parties to the conflict and the reported scale of human rights violations make it clear that any person returned to southern and central Somalia would, solely on account of his/her presence in southern and central Somalia, face a real risk of serious harm.....

UNHCR considers that no internal flight (or relocation) alternative (IFA/IRA) is available inside southern and central Somalia. Where recognition as a refugee is based on the refugee criteria under Article I(2) of the OAU Convention, the IFA/IRA test is not applicable. Where the examination of an IFA/IRA is a requirement under domestic law, it should be examined on a case-by-case basis, taking into consideration the specific circumstances of the asylum-seeker, in the framework of the relevance and reasonableness test and the guidance provided in this paper."

FROM THE BORDER TO THE CAMPS – SOMALI ASYLUM-SEEKERS AT RISK

CLOSURE OF THE BORDER AND TRANSIT CENTRE: SOMALI ASYLUM-SEEKERS DENIED REFUGE AND PROTECTION

The border between Kenya and Somalia was officially closed on 3 January 2007, after the Kenyan government cited security concerns related to the possibility that ICU fighters may enter Kenya. The border closure may have also reflected long-term frustration of the Kenyan authorities at the inadequate international support to share responsibility and the lack of any prospects of durable solutions for the 200,000 Somali refugees Kenya was already hosting three years ago.¹²

Since the border was closed, armed groups opposed to the TFG in Somalia have expanded their control over Somalia, including in the regions bordering Kenya. Armed groups, in particular al-Shabab, have also threatened to attack Kenya if it continued to back the TFG.¹³ Somali armed groups have made incursions on Kenyan territory and are suspected of kidnapping a few persons in Kenya and taking them to Somalia in recent years, making the border areas insecure.¹⁴ In response, the Kenyan government has progressively increased its police and military presence along the border.

As a result of the Kenyan government decision to close the border with Somalia, the UNHCR-administered refugee transit centre in Liboi, a town 15 km away from the Kenya-Somalia border, was forced to close. UNHCR used to register asylum-seekers at the transit centre, provide a health screening to identify those in need of vaccinations, and transport refugees to the Dadaab camps. The camps are approximately 80 kilometres away from Liboi. There was also a security screening centre in Liboi, run by the Kenyan authorities.



Somali woman on the edge of the Dadaab camps, June 2010.
© Amnesty International

Since the closure of the transit centre, asylum-seekers have to make their way to the Dadaab camps, where they are registered by UNHCR and Kenya's Department for Refugee Affairs. When they reach the camps, Somali asylum-seekers go through a refugee status determination process. Somalis are usually recognized as *prima facie* refugees.

Closing the border has however done little to stem the flow of asylum-seekers into the country. Since January 2007, almost 150,000 Somalis have registered as refugees in Dadaab. Amnesty International is concerned about the continued impact of the border closure on the protection and medical and humanitarian assistance for Somali asylum-seekers and refugees. The organization is also concerned at the concomitant rise in extortions and human rights violations by Kenyan law enforcement officials against Somali nationals in Kenya. Somali asylum-seekers appear to have been made even more vulnerable as a result of the border closure policy implemented by the Kenyan authorities.

Amnesty International acknowledges that Kenya has legitimate security concerns regarding Somalia's armed groups, and that Kenya has the right and duty to protect those on its territory from attacks by armed groups. However, this duty does not mitigate the human rights obligations of the Kenyan authorities, including the need to protect the human rights of Somali asylum-seekers.

In any event, the border closure has not prevented thousands of asylum-seekers from crossing into Kenya. Further, the Kenyan authorities have continued to raise security concerns in respect of Somali arrivals. This, in turn, has called into question what impact, if any, the border closure has actually had on addressing the very concerns that the Kenyan authorities cited as the reasons for the closure of the border. In addition, the closure of the border and of the main transit centre has led to a range of human rights violations. Besides effectively denying Somalis access to refuge and international protection and leading to continuous violations of the principle of *non-refoulement*, the closure of the transit centre at Liboi has had serious implications in terms of protection for refugees. As asylum-seekers continue to pour across the border, they are no longer registered or put through security or health screening. For registration and screening, and an assessment of their protection needs, they must first reach the camps, about 80 kilometres from the border. The journey from the border to the camps is often a dangerous one, where Kenyan police are able to commit abuses against Somali asylum-seekers with impunity.

1. VIOLATIONS OF THE PRINCIPLE OF *NON-REFOULEMENT*

When the Kenyan authorities closed the border, they effectively trapped around 4,000 Somalis at the Somali border town of Doble¹⁵ and *refouled* around 360 refugees who were waiting at Liboi, for transfer to Dadaab. Kenyan NGOs estimate that thousands of Somali asylum-seekers have been *refouled* back to Somalia by the Kenyan security forces in the border area since it was closed.¹⁶ Some have been expelled at the border while others have been denied entry altogether. In 2009, UNHCR denounced the forcible return of at least 93 Somali asylum-seekers in the border areas in violation of the *non-refoulement* principle.¹⁷ The area between the Somali border and Dadaab is not consistently monitored by UNHCR and other independent observers, therefore it is possible that the real number of Somalis deported by Kenyan security officers may be much higher.¹⁸ Somali asylum-seekers who are forcibly returned to Somalia by the Kenyan security forces are usually taken to the border near Liboi, and are forced to go back to the town of Doble, currently controlled by a faction of the al-Shabab armed group.

Efforts by the Kenyan authorities to prevent Somali asylum-seekers from entering the country and *refoulement* of those who cross onto Kenyan soil at the border continue to date, despite the fact that the majority of those crossing at the border are women and children and others from South and Central Somalia who, according to UNHCR's eligibility guidelines should be granted international protection.¹⁹

Following violent clashes that began on 17 October 2010 in the Somali border town of Belet Hawo between the armed Islamist group al-Shabab and the pro-Somali government armed group Ahlu Sunna Wal Jamaa, tens of thousands of people were forced to flee their homes. Around 8,000 Somalis fled to a makeshift site known as Border Point 1 near the Kenyan border town of Mandera, in north-eastern Kenya, where they were registered by UNHCR.

On 31 October, the District Commissioner in Mandera ordered the refugees at Border Point 1 to leave the area by 2 November. Some 8,000 refugees left the site, as a result of which they no longer had access to humanitarian aid. Though some reportedly remained with friends or family in Mandera and others went to the Ethiopian town of Dolow, approximately 3,000 crossed about 1km into Somalia, where they are within range of Belet Hawo and at risk of being caught in renewed fighting. Despite the fact that they said they did not feel safe to return to Somalia, on 4 November, Kenyan Administrative Police are reported to have moved them even further inside Somalia.

The principle of *non-refoulement* prohibits the expulsion, extradition, deportation, return or otherwise removal of any person in any manner whatsoever to a country or territory where he or she would face a real risk of persecution or serious harm. This principle is outlined in the 1951 Convention relating to the Status of Refugees (the UN Refugee Convention) and in numerous other international instruments. In addition, the principle of *non-refoulement* is widely regarded as a norm of customary international law.

By choosing to close its borders to refugee influxes, Kenya has effectively denied individuals the right to seek asylum and has placed them at risk of continued persecution. In so doing, Kenya has violated its own Refugee Act of 2006,²⁰ and has abrogated from its obligations under the UN Refugee Convention and its 1967 Protocol, including, in particular, the principle of *non-refoulement*. Kenya is also in violation of the OAU Refugee Convention and other international human rights law treaties to which it is a party, and has contributed to increased abuses of the human rights of those fleeing Somalia. Borders should not be closed to prevent the entry of refugee flows.²¹ International refugee law prohibits arbitrary border closures that prevent would-be refugees from seeking asylum.

Amnesty International has repeatedly called on the government of Kenya to allow entry to individuals fleeing from the conflict inside Somalia and seeking refuge in Kenya. The closure of the border to asylum-seekers, which automatically precludes access to a fair and satisfactory asylum procedure, and the forcible return of Somalis to a situation of indiscriminate and generalised violence, violates the principle of *non-refoulement* and Kenya's obligations under national and international law.

2. ABUSE OF SOMALI ASYLUM-SEEKERS BY KENYAN SECURITY FORCES NEAR THE BORDER

Amnesty International has received numerous reports of the Kenyan police at the closed border threatening asylum-seekers with forced removal to Somalia in order to extort bribes or arresting and detaining asylum-seekers until they pay a bribe.

In addition, since the closure of the border, in contravention of Kenya's Refugee Act and of international refugee and human rights standards, Somali asylum-seekers are often arbitrarily arrested, detained and charged with "illegal entry" under Kenya's 1967 Immigration Act, which punishes entry into the country without a permit with a fine or one year's imprisonment. The provisions under the Immigration Act contradict Kenya's Refugee Act of 2006, thereby undermining the latter, which states that "no person claiming to be a refugee within the meaning of section 3 (1) shall merely, by reason of illegal entry be declared a prohibited immigrant, detained or penalized in any way".

Furthermore, the Immigration Act also contravenes the UN Refugee Convention and its Protocol. Article 31(1) of the UN Convention and Protocol relating to the status of Refugees States that "Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

Asylum-seekers caught by Kenyan security forces near the border avoid forcible return to Somalia and/or arrest and detention by paying bribes (commonly known as taxes) to them. A 15 year-old boy who escaped Somalia with his family told Amnesty International in June 2010:

"We went from Mogadishu to Dobley by car, then from Dobley to Liboi by taxi, then from Liboi to Dadaab by bus. When we came to Liboi we were caught by Kenyan soldiers. By the time we got out of the car they told us to go back to Somalia. We had to pay 1,200 Kenya shillings [approximately USD15] for the whole family. The driver gave them 1,200 Kenya shillings (Ksh)."

Those who do not have money resort to calling relatives abroad to transfer money to them, or else face prolonged detention or deportation. A 13 year-old girl travelling with a baby explained the circumstances of her journey from Somalia, in June 2010:

"I gave money to a driver [of a vehicle coming] from Somalia. I had to hide from the police by walking. I didn't meet any difficulty at first. When I ... went to Garissa²² I was arrested. There were two other ladies who did not have identity papers who were arrested with me. My relative abroad had to send 25,000 Ksh [about USD310] to release me; the driver negotiated this with the police. I was in jail for one day."

A 55 year-old Somali woman told Amnesty International in March 2010:

"I came to Dadaab seven days ago through Dobley. I was caught after Dobley and spent six days in jail in Garissa. I came by car with 25 other Somalis. We were all jailed... I had four children with me: one girl aged 11, and three boys aged eight, nine and three years-old. The Kenyan police said: "you came illegally through the wrong way". I had to pay 5,000 Ksh. My relatives had to send money. The court allowed us to go, but the police asked for bribes even after the court had allowed us to go. They took their bribe in Garissa. Then there were Kenyan officials in Liboi who told us that they will take us to the refugee camps."

A man and a woman who arrived in Dadaab in March 2010 described their journey to Amnesty International: *"Our journey took four days... one day and a night walking to Kismayo with our daughter, then three days from Kismayo to Dobley by truck. Because of the rain the truck was unable to move for part of the journey. We crossed the border. ... when we got near the camp at night we were told the Kenyan police was going to catch us, so we were told to run in the blocks. I ran, holding my four year-old daughter's hand. The truck was carrying commodities but was also transporting 15 people."*

The closure of the Liboi transit centre has considerably disrupted and delayed the registration of refugees. It has also disrupted the medical screening of those arriving from Somalia, with potentially serious health consequences not only for the asylum-seekers, but also for the refugee population in the camps and potentially for the population outside the camps. UNHCR no longer transports asylum-seekers and refugees from Liboi to the camps, rendering them vulnerable to abuse on the road, by Kenyan security officers and also by bandits. Further, perpetration of abuses against asylum-seekers continues with impunity partly because there are no UNHCR staff in the area between the border and the camps, who could monitor the situation.

One woman and her four young children told Amnesty International in March 2010: *"The journey took six days from Mogadishu by bus. Our property was looted on the way, by people with knives in Liboi, Kenya."*

According to some aid agencies working in Dadaab, training of Kenyan security forces, including the military, on refugee rights and on Kenya's Refugee Act has helped to improve their behaviour towards asylum-seekers. Sometimes the Kenyan security forces request UNHCR to come and transport asylum-seekers from Liboi to the camps, but these requests are ad hoc and intermittent.

Amnesty International has repeatedly called on the Kenyan government to re-open the transit centre at Liboi so that Somali asylum-seekers are accorded the protection to which they are entitled under the UN Refugee Convention and its 1967 Protocol, as soon as they enter the country. The organization considers that the re-opening of the transit centre and the reinstitution of UNHCR transportation of Somalis from the transit centre to the camps would reduce the chances of asylum-seekers falling prey to abuses by either bandits or Kenyan law enforcement officials.

3. OVERALL FAILURE OF THE BORDER AND TRANSIT CENTRE CLOSURE POLICY

Closing the border has not addressed the security concerns of the Kenyan authorities. In practice, it has proved impossible for the Kenyan authorities to effectively close and control the 682 km-long border. As of September 2010, 34,872 Somali nationals were registered in Kenya, demonstrating that the closure has not stopped asylum-seekers from entering the country. In a meeting with Amnesty International delegates in March 2010, Kenya's Minister of State for Immigration said "the closure of the border does not help us. We would be better to screen them [Somali asylum-seekers] so that we can know who they are".



Somalis queuing for registration in Dadaab.

© UNHCR/E. Hockstein

Amnesty International considers that appropriate screening would go a long way in addressing the Kenyan authorities' legitimate security concerns and lead to the effective identification of individuals who may well be undeserving of asylum on the grounds that they are not eligible for recognition as refugees for reasons of exclusion. Kenya's Refugee Act and the UN Refugee Convention²³ both provide ways for the Kenyan government to address, to some extent, its legitimate national security concerns regarding members of Somali armed groups being unwittingly and undeservedly recognized as refugees.

Previously, security screening was done at the transit centre in order to determine whether someone was eligible for recognition as a refugee, and what kind of protection they were entitled to, irrespective of their eligibility. Since the closure of the border and the transit centre, asylum-seekers are only screened once they reach the camps, creating more opportunities for those who are not eligible for refugee status to slip away unnoticed.

While recognizing the legitimate concerns of the Kenyan government, Amnesty International believes that the most effective and appropriate way to deal with their security concerns would be to allow Somali asylum-seekers into Kenyan territory, to re-open the transit centre in Liboi, and to proceed with security screening as soon as possible after their entry into the country. Those found not to be eligible for the *prima facie* recognition as refugees, for example, because legitimate security concerns may have arisen, should be subject to an individualised refugee status determination procedure with all the procedural safeguards. It would be in the course of such procedure that application of the exclusion clauses may be called for after rigorous scrutiny.²⁴

Reopening of the transit centre would also allow the immediate health screening and registration of incoming asylum-seekers, as well as tending to their most immediate humanitarian needs before they could proceed safely to the camps.

The need to address Kenya's security concerns is not irreconcilable with the obligation of the Kenyan government to allow civilians at risk to seek asylum on its territory. Indeed, UNHCR has previously been engaged in initiatives to establish a screening process of asylum-seekers entering Kenya. The Minister of Immigration also said that, after negotiations with UNHCR, the authorities had agreed to reopen the Liboi screening centre in February 2010. However, to Amnesty International's knowledge, the screening centre is still closed to date, and Somali asylum-

seekers continue to bear the consequences.

LIFE IN THE CAMPS

1. LACK OF ACCESS TO ESSENTIAL SERVICES AS A RESULT OF CONGESTION IN THE CAMPS

Amnesty International is concerned that the Kenyan authorities have failed to respond adequately to the severe overcrowding in the Dadaab camps by turning a blind eye to the huge numbers of asylum-seekers continuously entering the country. The rights of the asylum-seekers and refugees to housing, water, sanitation, health and education have been severely compromised.

The three refugee camps in Dadaab, Ifo, Dagahaley and Hagadera were originally established in the early 1990s to accommodate 90,000 refugees divided equally between the camps. As of 15 March 2010, the refugee population in the three camps was 266,594 people, with almost 150,000 new arrivals since January 2007. The camps' resources and infrastructure have been stretched beyond capacity and the quality and quantity of essential services delivered heavily compromised.

The increase in population has not been matched by a commensurate rise in the land made available to host refugees. As a result, newly arrived refugees have had to stay with relatives and clan members. They cannot build their own shelters because there are no plots of land available. New arrivals are given plastic sheeting to use as tents, which are extremely hot during the day and do not protect them from bad weather conditions. Humanitarian agencies have seen their resources stretched as well and at times plastic sheeting and mosquito nets are not always readily available for those newly arrived.

The existing water infrastructure in the camps was designed for three times less the number of refugees actually in the camps and the water pipe system is old and strained. Families complain that water allocation is insufficient, and that there are frequent disputes at water taps. Refugees living on the edge of the camps have to walk long distances to collect water.

Although there are primary and secondary education facilities in the camps, they cannot cater for the needs of a growing population, including of unaccompanied minors, many of whom have arrived in the last three years and who do not have access to education. Those newly arrived from Somalia, where access to and quality of education is severely compromised by the armed conflict, face a huge challenge in adapting to a new education system. Many children, particularly girls, have never been to school when they were living in Somalia, other than *duksi* (Koranic school).

Medical facilities are also stretched, and psychosocial services and counselling are minimal, considering the high level of trauma that the vast majority of the population coming from Somalia have endured.

UNHCR has negotiated with the Kenyan government and the host community of Kenyans living in the areas where the camps are located to address the severe overcrowding of the camps. UNHCR has been given a provisional and conditional licence to build a fourth camp in Dadaab by the National Environment Management Authority, though the conditions are yet to be defined. In addition, the Garissa county council has approved land for the expansion of Ifo camp. This extension is currently under development and is known as Ifo II and III.

The part of the extension known as Ifo II will have a holding capacity of 40,000.



Somali refugees wait for water, Dadaab. © UNHCR/E. Hockstein

UNHCR plans to resettle an estimated 30,000 Ifo camp residents who live in heavily congested and flood-prone areas to Ifo II, as well as an additional 5,000 to 10,000 new arrivals who have settled on the periphery of Dagahaley camp. Work on Ifo III, which will also have a holding capacity of 40,000, is set to begin in early 2011 and will be reserved for newly arriving refugees. Though the Ifo extension is currently underway, there are reports that some members of the host community²⁵ are attempting to delay this process.

In 2009, over 13,000 refugees were relocated from Dadaab to Kakuma, another refugee camp on the Kenyan border with Sudan.

These measures should gradually alleviate the severe overcrowding in the Dadaab camps. However, it is essential that conditions for the fourth camp are agreed in order to address the continuing influx of refugees and to ensure that the delivery of essential services adequately fulfil refugees' right to adequate shelter, food, water and education.

2. POLICING IN THE CAMPS

The Kenyan authorities have an obligation to ensure adequate protection of refugees in camps, including through effective policing. However, refugees complain of insecurity in the camps. Somali people who arrived recently alleged in interviews with Amnesty International that members and sympathisers of al-Shabab, the armed Islamist group in Somalia, were present in the camps or travelled through it.

Overcrowding has exacerbated insecurity and incidences of crimes among the refugees in the camps. Somali refugees report that as the number of people living in the camps increases, so do incidents of theft and sexual abuse. Humanitarian workers and UNHCR also report an increase in cases of sexual violence, including rape, early and forced marriages, and unwanted pregnancies in the camps. The majority of newly arrived refugees are women and children, including unaccompanied minors whose parents were killed in the armed conflict in Somalia, or who have been separated from them when fleeing. Aid agencies have expressed concern that children who have been adopted or are fostered by other families can be at risk of being used as domestic workers. Overcrowded shelters make women and girls particularly vulnerable to sexual abuse.²⁶

Conflicts among individuals hailing from different clans within the Somali communities present in the camps, as well as between Somalis and refugees from other countries were also reported by many of the refugees interviewed by Amnesty International.²⁷

UNHCR has stressed that there are not enough police officers to address insecurity, theft and sexual abuse in the three Dadaab camps. Furthermore, there is distrust of the police among refugees, many of whom have been victims of abuses at the hands of Kenyan security forces while on their way to the camps.

Kenya's Minister for Internal Security established a committee in June 2010, following a Human Rights Watch report detailing instances of police abuse of Somali refugees and asylum-seekers near the Kenya-Somalia border.²⁸ This committee appears to be tasked with investigating whether the Human Rights Watch allegations are true. The committee, comprised of officers from the Office of the Prime Minister, the Provincial Administration and the Supreme Council of Kenya Muslims among others, travelled to Dadaab refugee camps to investigate these allegations in August 2010. In Dadaab, the committee spoke to UNHCR staff, NGOs and refugees. Though it was indicated informally to NGOs in Dadaab that the committee would produce a report detailing the findings of the committee, it is not clear whether these would be made public. To date, Amnesty International is not aware of any report published as a result of the committee's work.

On 2 April 2010, violence between the police and refugees erupted in the Dagahaley camp following a clash between a refugee and a policeman. While this was a specific, one-off incident, it is nonetheless illustrative of the tension existing in the refugee camps, and of the perception by refugees that the Kenyan police behave with impunity. In June 2010, Amnesty International delegates met the refugee who says his beating by a policeman sparked the violence, as well as witnesses of the violence and the Police Superintendent of Dadaab.

The refugee told Amnesty International:

"It happened on 2 April. I was collecting food at the distribution centre. My friend's ration card was taken by an officer so I asked why he took his ration card. The police was called. A policeman started to hold me by the collar

and beat me, slapping me and kicking me ... saying: "You're not respecting Kenyan police, you're looking down on us". He was saying to the others that I needed to be beaten up. Then he gave me a blow on my heart, that's when I lost consciousness. I ended up in hospital in Garissa, and then I was transferred to a Nairobi hospital, where I stayed for two weeks. I was urinating blood."

Witnesses to the incident told Amnesty International that when the young man lost consciousness, rumours that he was dead spread among the refugees queuing for food distribution and sparked anger and riots. Refugees started to throw rocks at the food distribution centre, and police reinforcements reportedly responded by firing live ammunition in the air. UNHCR staff intervened to restore calm. The young man was initially taken to hospital in Dagahaley camp, and refugees who followed him subsequently burnt down a police vehicle parked in front of the hospital.

The young man was then transported to the hospital in Garissa, the nearest town to Dadaab. Due to the severity of his injuries, he was taken the following day to hospital in Nairobi. His medical report states that there were signs of trauma and injuries on his head, chest and abdomen and that he suffered from intestinal bleeding.

The Police Superintendent of Dadaab told Amnesty International that he had ordered an investigation into the incident and made assurances that if anyone in the police was found to have committed an offence, action would be taken. He said that the investigation had so far revealed that the police had intervened when a young man took more food than he was due; that the young man had grabbed the policeman by the shirt, then fell down and was hurt. The crowd present at the food distribution centre then claimed that he was dead and started looting and destroyed computers and sewing machines at the distribution centre, and subsequently burnt a police vehicle.

When Amnesty International asked if the policeman alleged to have beaten up the refugee was suspended pending investigations, the Superintendent answered that he was not suspended, because it was the refugees who were responsible for the riot and because the policeman had not been proven guilty. The policeman was reportedly transferred away from Dadaab immediately after the incident. The police investigation appears to have focused almost exclusively on finding those among the refugees responsible for looting and destroying equipment.

It was only on 10 June that the police took a statement from the injured refugee. In addition, the committee set up by the Minister of Internal Security reportedly investigated the incident.

Amnesty International is concerned that the Kenyan authorities did not immediately suspend the police officer accused of ill-treating the refugee in April 2010 and that the results of investigations into the incident have not been made public, including to the refugees in Dagahaley. The Kenyan authorities have an obligation to ensure that anyone, including any police officers reasonably suspected of committing human rights violations be brought to justice in proceedings fully compliant with internationally recognized fair trial standards. Victims of human rights violations, including torture or ill-treatment, should receive compensation.

Amnesty International calls on the Kenyan authorities to make public the assessment of the committee established by the Minister of Internal Security, to ensure that any member of the Kenyan security forces reasonably suspected of criminal offences and human rights violations is brought to justice and subject to appropriate disciplinary measures and to provide reparation to refugees who have been victims of human rights violations by the security forces. Amnesty International also urges the Kenyan government to implement without delay reforms aimed at addressing long-standing issues of police impunity, including the establishment of an independent civilian body to investigate complaints filed against the police.²⁹

Amnesty International believes that, for the police to work better with the refugee communities, a strong signal must be sent to the refugees and the police alike that police abuses will not be tolerated, and that police officers are not above the law.

3. REPORTS OF RECRUITMENT OF REFUGEES FOR MILITARY TRAINING

In October 2009, reports that the Kenyan security forces were recruiting Somali refugees in the Dadaab camps for military training emerged. Human Rights Watch stated that Somali refugees, along with Kenyans of Somali ethnicity were being recruited for military training, in order to fight for the Transitional Federal Government in Somalia.³⁰ According to testimonies collected by Human Rights Watch, Somali recruiters appear to have deceived young men and teenagers in the camps into "fighting for their country" with promises of a good salary and UN

support for the constitution of this force. Those recruited were reportedly handed over to the Kenyan security forces and taken for military training with a view to eventually deploy them to support the armed forces of Transitional Federal Government of Somalia. In addition, the Kenyan security forces appear to have taken those who subsequently wanted to opt out of the training hostage.

The UN Monitoring Group on Somalia, in charge of overseeing compliance with the UN arms embargo on Somalia established in 1992, stated in March 2010 that “approximately 2,500 youth were recruited by clan elders and commissioned agents, both from within Somalia (exclusively the Juba Valley) and north-eastern Kenya, including the Dadaab refugee camps. Two training centres were established, one at the Kenya Wildlife Service training camp at Manyani, the other near Archer’s Post at Isiolo.”³¹ The Monitoring Group also reported irregularities, such as the recruitment of refugees and underage youth,³² and that the Kenyan authorities had not notified the UN Security Council of the training.

Amnesty International delegates met Kenya’s Minister of Defence in March 2010. He denied that the Kenyan authorities had recruited any refugee in the Dadaab camps. However, the Minister acknowledged that Kenya had been providing support to the Transitional Federal Government, consisting of training Somali nationals for a “paramilitary police” but denied that refugees were among those who had received this training. The training was delivered notwithstanding the fact that Kenya had not applied to the UN Sanctions Committee on Somalia for an exemption from the UN arms embargo.³³

Following the allegations of recruitment, UNHCR launched an awareness campaign in the Dadaab camps, explaining the civilian and humanitarian nature of the camps, and warning that refugees who join the armed forces or armed groups would lose their refugee status.

According to refugees in the Dadaab camps and aid agencies, there have not been further reports of recruitment of refugees since the launch of the UNHCR awareness campaign. However, it is difficult to verify whether this is indeed the case partly as a result of the fact that refugees are fearful that if they come forward with information about the recruitment, they would be stripped of their refugee status. These fears have, in addition, made it difficult to investigate fully the reported recruitment drive in late 2009.

A 20 year-old refugee in one of the Dadaab camps, who said that he was recruited but escaped from the training centre, told Amnesty International in June 2010 that many refugees were deceived into being recruited and forced to train against their will. According to him, many are still missing:

“I arrived in the refugee camp in 2008. I fled Somalia because of the war. I was taken away from the refugee camp to a place called Manyani in September 2009.

Somali people came to tell me that they will pay me. Some were refugees, other foreigners. They looked like officials. They said: “We are representatives from the Somali government and we came to recruit you”. I was invited to talk to them by a relative. One night my relative said that we were going to Hagadera [one of the three refugee camps in Dadaab], but on our way we came across a vehicle. The vehicle had a Kenyan military plate, and Kenyan security officers were there, wearing uniforms of green and dark colour. They said: “you will be trained and become a soldier in Somalia.” There were lots of youths [ranging from 15 to 21 years old] there who came from the Ifo camp.

We travelled for two days. The Kenyan police were surrounding us in case we tried to escape. We were put in three different trucks, which carried 90 youths each, all Somali refugees from Dadaab. The day after, we were dropped at a police station. I was given bread and we travelled to Manyani. We were told to sleep and that we would go to training the following day. They told us to sleep outside. In the morning they took our mobile phones, clothes and belongings. They did not want us to communicate. They said that if they found a mobile phone on us they would beat us and kill us.

The training consisted of running for 15 km. Kenyan military men said that we would then be taken for an advanced training. We were the second group to be trained, there were a lot of people recruited before us. They told us that we would go back to Somalia. They also said: “If you try to leave we will shoot you.” I stayed there for two months. It was sad, the place was harsh. There was good food for the Kenyans and bad food for us. There were a few 16 years-old among the recruits.

One night, at the end of November 2009, I escaped with two others. The place we went through had a lot of elephants, and one of us was knocked down by an elephant and lost consciousness. I believe he is dead. My other friend and I started walking for the whole night. We arrived in a town with a railway. Word had got out that Somali recruits were leaving the camp and that the police were looking for us. Someone took us to Mombasa from where we called relatives, who sent money so we could come back to Dadaab. Some have escaped from Manyani, others are still training there. I did not tell anyone about what happened to me before, but I want the world to know what is happening to the refugees."

The recruitment of refugees in refugee camps occurred in violation of international humanitarian, human rights and refugee law, which state that refugee camps should be "exclusively civilian and humanitarian in character."³⁴

The recruitment also contravened the provisions of the UN arms embargo on Somalia, which stipulates that any military and security support to the Transitional Federal Government of Somalia should be subjected to notification and authorization by the UN Sanctions Committee.³⁵

The Kenyan authorities have yet to account for contravening international law, and for the fate of the recruits themselves. Amnesty International urges the Kenyan authorities to immediately carry out an independent, impartial and thorough investigation into the involvement of the Kenyan security forces in recruiting from refugee camps and in training refugees, and ensure that those responsible for violating international law are held to account. Amnesty International also urges the Kenyan authorities to immediately reveal the whereabouts of all those deceived into being recruited in and around Dadaab, to give them access to their families, UNHCR and the UN Monitoring Group on Somalia, and to release them.

4. FREEDOM OF MOVEMENT



Edge of Ifo camp, Dadaab. © Homan Sayah

Somali refugees in the Dadaab camps cannot venture out without special permission. Though no official policy to confine people to the camps³⁶ has ever been enacted in Kenya, nevertheless, a de facto camp confinement policy is enforced by the Kenyan government. Refugees receive free humanitarian assistance in the camps, but if they reach urban areas, they have to be economically self-sufficient.

The camps offer almost no economic opportunities to refugees. Those who work for UNHCR and humanitarian agencies are not allowed to receive a wage; instead, they receive "incentives". With adequate shelter, water, sanitation and education and other essential services detrimentally affected by the severe

overcrowding in the camps, many refugees, the majority of whom are young people, prefer to go to urban areas, where they believe they would have more work opportunities and a chance to improve their life.

Whilst refugees do get free assistance in the camps, Amnesty International believes that the dearth of livelihood opportunities causes them hardship and increases their desperation, hindering self-reliance and creating push factors towards urban centres where they can become vulnerable to exploitation, as described below.

Refugees must apply for a movement pass to be able to travel outside the camps. Permission is granted to refugees needing medical treatment unavailable in the camps, pupils and students who have obtained a scholarship or a place to study in education establishments outside the camps, for family reasons (such as funerals), or for attending resettlement interviews set up by embassies of third countries. Those who need to be moved away from the Dadaab camps for their own protection are also considered.

Refugees travelling without permission risk detention or forced returns by the Kenyan security forces. Even those in possession of a movement pass for medical reasons have at times been arrested.

The authorities have discretion to restrict the issuance of travel documents on security grounds. For almost a year, a vetting committee, which comprises the Provincial Commissioner of North-Eastern Kenya, representatives of Kenya's security forces, including the national intelligence services and the military, and the Department of Refugee Affairs, has screened requests for movement passes on security grounds. The committee was reportedly set up because the Kenyan authorities considered that too many refugees were not returning to the camps after obtaining passes, and that some of the movement passes used were fake. This has further curtailed the issuing of movement passes, as national security concerns are prioritised over the rights of refugees, and because the committee does not meet often enough.

The government of Kenya should ensure that all recognised refugees, including those in Dadaab, have full freedom of movement throughout Kenya in accordance with relevant international standards.

SOMALI ASYLUM-SEEKERS AND REFUGEES IN NAIROBI

1. LACK OF DOCUMENTATION AND INTEGRATION OF ASYLUM-SEEKERS AND REFUGEES IN NAIROBI

Somali asylum-seekers in Nairobi face lengthy asylum procedures. UNHCR is responsible for determining asylum applicants' international protection claims through its own refugee status determination procedure, although there are plans for Kenya's Department for Refugee Affairs to take this over once it has enough capacity, as envisioned in Kenya's Refugee Act. The large number of asylum-seekers in Kenya has created a backlog in the UNHCR system, with delays in registration that can stretch to more than a year.³⁷

Many Somalis do not register with UNHCR, for a variety of reasons, including a lack of awareness about their rights, asylum procedures and Kenya's legal framework, fear of being arrested and deported by the police if venturing to the UNHCR office in Nairobi, or lack of means for transport. Others have fake identity documents. Although there are Kenyan NGOs providing legal aid and information on asylum issues in Nairobi, the clandestine status of many asylum-seekers and refugees makes access to them difficult. As one NGO staff member said to Amnesty International, "the number of asylum-seekers we reach is minimal."

The majority of Somali nationals in Nairobi survive through the informal economic sector. Those who have no refugee documentation papers or identity documents are at additional risk of exploitation.

Despite the fact that under national and international law refugees should enjoy equality with other foreign nationals in Kenya, those who have obtained refugee status have their right to work restricted. Article 16(4) of the 2006 Refugee Act states:

"Subject to this Act, 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."³⁸

Article 17 (1) of the Convention and Protocol relating to the Status of Refugees, states that the "Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment."

Unaccompanied refugee minors are particularly vulnerable to exploitation and abuse. Somali children with no parents are generally absorbed by their communities, but they are at risk of being used as domestic servants and are less likely to be sent to school than other children. Girls are particularly vulnerable to sexual abuse.

A 19 year-old girl, who arrived in Nairobi from Mogadishu in 2003, told Amnesty International:

"In 2003 there were youth groups coming to houses to rape girls in Mogadishu, so my mother asked a neighbour to bring me to Kenya to safety. I stayed with this family for two years. I was working for them and I used to take care of their children. But the father wanted to use me so I left. I went to live with another woman who accommodated me. I registered with UNHCR in 2007 and was given a mandate [refugee status].

I left the woman who accommodated me because she mistreated me ... I had to ask the neighbours to give me shelter and one night they threw me out with my clothes. I called another girl I know and went to sleep at her

place... I now stay with a third host.

I have been through a lot. Not fleeing with their families makes teenagers vulnerable. You move from one place to the other. ... My worry is: where will I go next."

As a result of the border and transit centre closure, unaccompanied minors may enter the country undetected. Those who decide to make their way to Nairobi rather than go to the refugee camps may end up not being identified and registered by UNHCR and therefore may not receive protection. Even before the closure of the border and transit centre many unaccompanied minors from Somalia made their way to Nairobi without being registered or screened. However, the border closure appears to have exacerbated this situation. Unaccompanied minors, especially girls, are particularly vulnerable.

Bearing in mind the strain under which UNHCR is working in Kenya as a result of the large influx of Somali asylum-seekers, the international community needs to provide assistance to ensure the protection of all Somali asylum-seekers and refugees in Kenya, including children and in particular girls.

2. POLICE HARASSMENT AND *REFOULEMENT* FROM URBAN AREAS

Much as refugees and asylum-seekers who make their way to the camps, refugees and asylum-seekers in urban areas also report widespread harassment by police, extortion, arbitrary arrests, detentions and forcible return. Those who lack asylum documentation are at additional risk, but even those who have proof of their refugee status or of their asylum application have been arrested and forcibly returned in violation of the principle of *non-refoulement*.

Legal aid organisations report that Somalis are seen as "cash-cows" by the police, and because many are not aware of their rights, they have no choice but to pay the bribes demanded by the police.

The practice of forcible returns by Kenyan police implies that such threats are real. Indeed, refugees interviewed by Amnesty International took such threats seriously. Although assessing the extent of this practice would require systematic documentation, testimonies from refugees and organisations providing advice to asylum-seekers suggest that it is widespread.

A 17 year-old girl from Mogadishu, who arrived in Kenya in January 2009, said:

"In Kenya we don't have total freedom. We have no documents, we cannot move, the police can harass us. We are refugees and seen as such. The police are very bad, they can see that we are Somalis and they catch us. They want money. They tear up our documents..."

Sitting here with you I cannot even begin to tell you what challenge it is emotionally to be a refugee. It always stays with us.

I want to pass a message to the Kenyan government. There are refugees still in jail, the government should release them and give them somewhere to live until there is peace in our country. The Somalia war will not have a solution so Somali people should be allowed to go anywhere and be seen as human beings. The Kenyan government should stop harassing refugees. Even when we tell them that we haven't reached the age to have an identity card they still insist."

Aside from almost daily police harassment reported by Somali refugees, the police have also conducted large-scale arrests in the Eastleigh suburb of Nairobi, an area populated predominantly by Somalis.

On 17 January 2010, following violent protests two days earlier in support of a Muslim cleric, Abdulla al-Faisal, Kenyan police raided the Eastleigh neighbourhood in Nairobi and arbitrarily arrested hundreds of Somali nationals. One Kenyan NGO estimated that close to 1,500 persons, mostly men, were arrested. Somali MPs living in Kenya and Kenyans of Somali ethnicity were also arrested. The arrests were carried out by the General Service Unit and the anti-terrorism police after Kenyan officials claimed that al-Shabab were involved in the protests. Arrests of Somalis started in Nairobi before spreading to other cities in Kenya, including Mombasa.

Local organisations reported that police tore up the permits of some of those arrested. Even asylum-seekers and refugees with valid documents were arrested. They were detained in police stations throughout the city.

According to NGOs working with refugees in Nairobi, police transported by truck an unknown number of Somali refugees and asylum-seekers back to the border with Somalia where they were then *refouled* after they were detained, with or without court orders. Some of those forcibly returned have reportedly made their way back. Lawyers provided legal aid to hundreds of Somalis arrested, but it has proven difficult for them to get access to all those detained, and those deported were those who did not benefit from legal representation. Lawyers have also reported that some of those detained, unaware of their rights, have pleaded guilty to offences of “unlawful presence”, either hoping for leniency in sentencing by the courts, or to shorten their detention, to be deported, and then again attempt to come back to Kenya.

One Somali refugee told Amnesty International:

“On 17 January 2010 there was a curfew going on because of the strikes in Nairobi. It was around 7pm. My daughter was very sick so I went out to the pharmacy at around 7pm. I was arrested by the Kenyan police with a group of Somalis. They took me to the Tsotsi police station, took my mobile phone and 500 Ksh. I started complaining that my wife was on her own with a sick baby so the police beat me up. They kicked me and slapped me on the back. There were a lot of Kenyan Somalis arrested with me. Some people came to rescue the other Somalis so they helped me too. They had to give money to the police. Some Somalis had to pay 10,000 Ksh to get out. I came back in the morning to Eastleigh.³⁹ I heard a week later that some other Somalis were deported back to Somalia.

On 24 January, when I went to pray, the police were going around, door-to-door, in Eastleigh. My wife didn't open the door quickly enough so they started to beat her saying: “Why didn't you open the door?” Then they saw she had a baby so they left her alone.”

CONCLUSION

Amnesty International recognises the immense challenge that the Kenyan authorities face whilst hosting the largest percentage worldwide of refugees from conflict-ridden Somalia, and the Kenyan government's security concerns related to the actions of Somali armed groups, present just on the other side of the border with Somalia.

However, this does not justify in any way human rights violations against Somali refugees and asylum-seekers on Kenyan soil. The Kenyan authorities are bound by international human rights and refugee law to provide refuge and protection to Somali nationals fleeing persecution and armed conflict, and to ensure that its security forces respect international human rights law at all times, including when dealing with refugees and asylum-seekers. In addition, as some among the Kenyan authorities recognise, the closure of the Kenya/Somalia border and the screening centre do not help in addressing Kenya's security concerns, while having a negative impact on the rights of refugees.

The Kenyan authorities are also responsible for ensuring that all refugees are able to access adequate humanitarian aid on Kenyan soil, including adequate shelter, medical services and education, and that they are not denied their right to freedom of movement.

With no end in sight to the armed conflict in southern and central Somalia, the Kenyan government must urgently reconsider, with the help of the international community, how to provide durable solutions to Somali nationals who seek refuge in Kenya. Given the refugee crisis that Kenya faces, local integration projects that respect the rights and needs of both refugees and host communities and resettlement of Somali refugees to third countries must be considered. Donor countries have an important role to play in sharing international responsibility towards Somali refugees and asylum-seekers and in assisting the Kenyan government to fulfil its human rights obligations.

RECOMMENDATIONS

THE KENYAN GOVERNMENT SHOULD:

- Allow entry to individuals fleeing from conflict in Somalia and seeking refuge in Kenya, in line with its obligations under international and national law;
- Immediately halt all forcible returns of Somali nationals to southern and central Somalia;
- Urgently reopen the UNHCR-administered refugee transit centre in Liboi to screen refugees and provide them with immediate humanitarian assistance, and allow UNHCR to transport refugees from Liboi to Dadaab;
- Publicly instruct all security forces and border officials that forcible returns to Somalia contravene Kenyan and international law and train security forces on the duty to respect the principle of *non-refoulement*;
- Ensure that persons found not to be eligible for *prima facie* recognition as refugees, are subject to an individualised refugee status determination procedure with respect for all procedural safeguards;
- Investigate all reports of abuses by the security forces against asylum-seekers and refugees, including harassment, extortion, ill-treatment, arbitrary arrests and detentions and bring to justice any member of the security forces reasonably suspected of committing a criminal offence;
- Make public the assessment of the Committee set up by the Ministry for Internal Security into abuses by Kenyan security forces in and around Dadaab;
- Provide redress and compensation to Somali asylum-seekers and refugees who have been victims of abuses by the Kenyan security forces;
- Immediately reveal the whereabouts and the fate of all those recruited for military training in and around Dadaab, give them access to their families, UNHCR and the UN Monitoring Group on Somalia, and release them; investigate the involvement of the Kenyan security forces in recruiting and training refugees, and ensure that those responsible for violating international law be held to account;
- Implement without delay reforms aimed at addressing the long-standing issues of police impunity, including the establishment of a civilian body to investigate complaints filed against the police;
- Ensure the rapid building up of the Ifo camp extension and the agreement of the terms for the fourth camp to host Somali refugees in Kenya;
- Respect the right of recognised refugees to freedom of movement throughout Kenya, and facilitate refugees' right to work.

THE INTERNATIONAL COMMUNITY, AND IN PARTICULAR DONOR STATES TO KENYA AND STATES INVOLVED IN RESETTLEMENT PROGRAMMES SHOULD:

- As part of the international responsibility sharing, open or increase resettlement programmes for Somali refugees in Kenya;
- Provide support to integration projects for Somali refugees in Kenya, both in refugee camps and in urban areas, and press the Kenyan authorities to ensure that its security forces are made accountable for abuses against Somali asylum-seekers and refugees;
- Provide financial support to UNHCR to increase its resources in protection delivery and monitoring of abuses on refugees and asylum-seekers, both in the refugee camps and in urban areas.

TAKE ACTION

PLEASE WRITE TO KENYA'S MINISTER FOR INTERNAL SECURITY AND MINISTER FOR IMMIGRATION:

Hon. Prof. George Saitoi
Minister of State for Provincial Administration and Internal Security
Office of the President
Harambee House
Harambee Avenue
PO Box 30510
Nairobi, Kenya

Hon. Gerald Otieno Kajwang
Minister of State for Immigration and Registration of Persons
Ministry of Immigration and Registration of Persons
Nyayo House
Off Kenyatta Avenue
PO Box 30191
Nairobi
Fax No. +254 2 220731
Email: dis@immigration.go.ke

¹ Amnesty International delegates visited Kenya, including the three Dadaab refugee camps and Nairobi in March 2009, March 2010 and June 2010 to meet Somali asylum-seekers and refugees and discuss its concerns on Somalia with the Kenyan authorities, UN agencies and NGOs. While the purpose of these visits was to assess the situation in Somalia through interviews with Somali nationals who had recently fled their country, Amnesty International has also gathered information on the difficult situation experienced by Somali refugees and asylum-seekers in Kenya.

² “International law defines a ‘refugee’ as a person who has fled from and/or cannot return to their country due to a well-founded fear of persecution, including war or civil conflict. A refugee is a person who ‘owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country... Article 1, the 1951 Convention Relating to the Status of Refugees’”; UNHCR Briefing Notes, UNHCR issues warning over treatment of Somali refugees, 23 July 2010, <http://www.unhcr.org/4c495e799.html>

³ The right to seek and to enjoy asylum from persecution is contained in Article 14 (1) of the Universal Declaration of Human Rights, which states that “Everyone has the right to seek and to enjoy in other countries asylum from persecution”.

⁴ UNHCR Briefing Notes, UNHCR issues warning over treatment of Somali refugees, 23 July 2010, <http://www.unhcr.org/4c495e799.html>

⁵ UNHCR Briefing Notes, UNHCR issues warning over treatment of Somali refugees, 23 July 2010, <http://www.unhcr.org/4c495e799.html>

⁶ Tens of thousands have lived in the Dadaab refugee camps in Garissa district in North Eastern province of Kenya since 1991, following the collapse of the government of Siad Barre and the ensuing conflict. The Dadaab complex is comprised of three adjacent refugee sites (10 – 15 km apart), Hagadera, Ifo and Dagahaley.

⁷ “An asylum seeker is a person who has left their country of origin, has applied for recognition as a refugee in another country, and is awaiting a decision on their application.” See Information & Briefings - Basic Definitions, on the UN High Commissioner for Refugees UK website at http://www.unhcr.org.uk/info/briefings/basic_facts/definitions.htm

⁸ Until the border closure, UNHCR screened and registered newly-arrived asylum-seekers at the refugee transit centre in Liboi, about 15 km from the Kenya/Somalia border. UNHCR also provided a health screening to identify those in need of vaccinations and transported people from there to the camps.

⁹ For more information, see Amnesty International, Kenya: Denied refuge, the effect of the closure of the Kenya/Somalia border on thousands of Somali asylum-seekers and refugees, 2 May 2007 (AFR 32/002/2007)

¹⁰ UNHCR, Eligibility guidelines for assessing the international protection needs of asylum-seekers from Somalia, 5 May 2010, <http://www.unhcr.org/refworld/pdfid/4be3b9142.pdf>

¹¹ Kenya ratified the 1951 UN Convention relating to the Status of Refugees (the UN Refugee Convention) in 1966 and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention on Refugees) in 1992

¹² “No Entry! A review of UNHCR’s response to border closures in situations of mass refugee influx” UNHCR, June 2010, <http://www.unhcr.org/4c207bd59.pdf>

¹³ For example, see BBC News, Somalia appeal for foreign troops, 20 June 2009, <http://news.bbc.co.uk/1/hi/world/africa/8110685.stm>

¹⁴ For example, see VOA, Somali gunmen kidnap aid workers in Kenya, 18 July 2009, <http://www.voanews.com/english/news/a-13-2009-07-18-voa11-68652007.html>; Reuters, Somali gunmen kidnap cleric in Kenya camp, 25 May 2009, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/KHII-7SE7MW?OpenDocument&RSS20=02-P>; IRIN, Kenya/Somalia: insecurity without borders, 17 September 2010, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/ASAZ-89DHZ7?OpenDocument&rc=1&cc=som>

¹⁵ Dobley is the Somali border town closest to Liboi, through where many Somalis go to cross the border into Kenya

¹⁶ For more information, see Amnesty International, Kenya: Denied refuge, the effect of the closure of the Kenya/Somalia border on thousands of Somali asylum-seekers and refugees, 2 May 2007 (AFR 32/002/2007)

¹⁷ See UNHCR Briefing Notes, Kenya: Refoulement of Somali asylum-seekers, 3 April 2009, <http://www.unhcr.org/49d5d9c16.html>, and UNHCR Calls on Kenya to stop forcible return of Somali asylum-seekers, 27 January

2009, <http://www.unhcr.org/497ef08a4.html>

¹⁸ Human Rights Watch states that it documented at least 152 Somali asylum-seekers deported by Kenyan security forces between September 2009 and March 2010, see Human Rights Watch, “Welcome to Kenya”, police abuse of Somali refugees, 17 June 2010, <http://www.hrw.org/en/reports/2010/06/17/welcome-kenya-0>

¹⁹ In March 2010, UNHCR’s Camp Population Statistics show that of the total population of 266,594 people in the three camps, more than 135,000 were under 18 years old.

²⁰ Sections 3, 11 and 18 of the Refugee Act state:

“3. (1) A person shall be a statutory refugee for the purposes of this Act if such person

(a) owing to a well-founded fear of being persecuted for reasons of race, religion, sex, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or

(b) not having a nationality and being outside the country of his former habitual residence, is unable or, owing to a well-founded fear of being persecuted for any of the aforesaid reasons is unwilling, to return to it.

(2) A person shall be a prima facie refugee for purposes of this Act if such person owing to external aggression, occupation, foreign domination or events seriously disturbing public order in any part or whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality...

11. (1) Any person who has entered Kenya, whether lawfully or otherwise and wishes to remain within Kenya as a refugee in terms of this Act shall make his intentions known by appearing in person before the Commissioner immediately upon his entry or, in any case, within thirty days after his entry into Kenya...

(3) Without prejudice to the provisions of this section, no person claiming to be a refugee within the meaning of section 3 (1) shall merely, by reason of illegal entry be declared a prohibited immigrant, detained or penalized in any way save that any person, who after entering Kenya, or who is within Kenya fails to comply with subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months, or both...

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

²¹ The OAU Convention explicitly links *non-refoulement* to non-rejection at the frontier. UNHCR has repeatedly expressed its view that “in all cases the fundamental principle of *non-refoulement* involving non-rejection at the frontier must be scrupulously observed” (UNHCR Excom 1981: II.2).

²² Garissa is the Kenyan garrison town nearest to Dadaab.

²³ Article 1(F) of the UN Refugee Convention states that the provisions of the Refugee Convention, “shall not apply to any person with respect to whom there are serious reasons for considering that...

(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) He has been guilty of acts contrary to the purposes and principles of the United Nations.”

In addition, to ensure the fundamental civilian nature of the refugee protection regime, active combatants are excluded. According to the UNHCR Guidelines on Exclusion Clauses: “The presumption of refugee status does not apply to active combatants. Armed or military activities are by nature incompatible with the civilian character of asylum. As a consequence, those who continue to take an active part in armed conflict – whether international or non-international – are not eligible for refugee protection and

assistance. Individuals who have taken part in armed or military activities but who have given these up (that is, former combatants) should also be kept outside the scope of *prima facie* recognition, but may apply for asylum and may be admitted into asylum procedures under certain conditions.”

²⁴ On the subject of exclusion from refugee status, the May 2010 UNHCR’s Eligibility Guidelines state, *inter alia*, “Due to reported violations of international humanitarian law and human rights law by various actors, some of the claims lodged by Somali asylum-seekers may give rise to concerns regarding possible exclusion from refugee status. Where relevant, grounds for exclusion from recognition and protection as a refugee should be assessed based on the exclusion clauses set out in Article 1F of the 1951 Convention and Article I(5) of the OAU Convention. Group-based protection approaches thus need to include appropriate screening mechanisms to identify potentially excludable claims.”

Article 33 of the UN Refugee Convention states that the principle of *non-refoulement* “may not, however, 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 judgement of a particularly serious crime, constitutes a danger to the community of that country”. A state considering invoking this provision must, however, ensure that an individual asylum-seeker poses a clear danger to the public or to national security. It should take into account the proportionality of the sentence faced relative to the crime; the circumstances of the crime and other relevant factors. As with the exclusion factors cited in Article 1(F) of the UN Refugee Convention, this determination requires access to a fair and satisfactory asylum procedure.

However, as international human rights law makes clear, even if an individual is not eligible for international protection as a refugee because of the application of the exclusion clauses, the principle of *non-refoulement* provides absolute protection if the individual concerned faces a real risk of grave human rights violations, including as a result of indiscriminate threats to life, physical integrity or freedom resulting from violence or events seriously disturbing public order such as is the case currently in southern and central Somalia.

²⁵ The local population in Dadaab complains that the influx of refugees has created pressure on grazing land and environmental damages and that they have been neglected for humanitarian assistance and employment compared to the refugees.

²⁶ Design and social structure of camp (overcrowded, multi-household dwellings, communal shelter) has been identified as one of the causes of sexual and gender-based violence for refugees. UNHCR, Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons – Guidelines for Prevention and Response, May 2003.
<http://www.unhcr.org/3f696bcc4.html>

²⁷ See for instance, IRIN, Kenya/Somalia: refugees moved after camp killing, 14 July 2010,
<http://www.reliefweb.int/rw/rwb.nsf/db900SID/AC10-87CHHE?OpenDocument>

²⁸ Human Rights Watch, “Welcome to Kenya”, police abuse of Somali refugees, 17 June 2010,
<http://www.hrw.org/en/reports/2010/06/17/welcome-kenya-0>

²⁹ See Amnesty International public statement, 13 August 2010, Kenya: New Constitution offers a basis for better protection and fulfilment of human rights but measures to end impunity still needed (AFR 32/011/2010)

³⁰ Human Rights Watch, Kenya: Stop recruitment of Somalis in refugee camps, 22 October 2009,
<http://www.hrw.org/en/news/2009/10/22/kenya-stop-recruitment-somalis-refugee-camps>

³¹ UN, Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853 (2008), 10 March 2010,
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/246/89/PDF/N1024689.pdf?OpenElement>

³² The report of the Monitoring Group on Somali refers to “underage youth”. It should be noted that under Article 8 of the Rome Statute of the International Criminal Court “Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities” is a war crime.

³³ The UN Security Council imposed a comprehensive arms embargo on Somalia in 1992 and established a Sanctions Committee to oversee the arms embargo. The Security Council later voted to allow exceptions to the arms embargo. See Amnesty International, Somalia: international military and policing assistance should be reviewed, 21 January 2010,
<http://www.amnesty.org/en/library/asset/AFR52/001/2010/en/86225a8e-1db3-427c-a2ca-03adbf632e87/afr520012010en.pdf>

³⁴ This principle is found in UNHCR’s Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum, which states that “The civilian and humanitarian character of asylum is a critical aspect of safety and security of refugees, and constitutes an important international protection standard.” The principle is also found in UN Security Council resolutions.

³⁵ See Amnesty International, Somalia: international military and policing assistance should be reviewed, 21 January 2010, <http://www.amnesty.org/en/library/asset/AFR52/001/2010/en/86225a8e-1db3-427c-a2ca-03adbf632e87/afr520012010en.pdf>

³⁶ Under the Aliens Restriction Act, the Minister for Internal Security can enact a policy for "requiring aliens to reside and remain within certain places or districts" only "when a state of war exists... or when it appears that an occasion of imminent danger or great emergency has arisen." See Aliens Restriction Act, Article 3, May 1973.

³⁷ See UNHCR Kenya Operations, Weekly update for the week ending Friday 13 August 2010, [http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/EGUA-88FQ3P-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/EGUA-88FQ3P-full_report.pdf/$File/full_report.pdf)

³⁸ Kenya's Immigration Act allows non-Kenyan citizens to apply for a work permit, renewable every two years, at a cost of 50,000 Ksh (about \$700). However, according to a study on urban refugees in Nairobi by the Overseas Development Institute and the International Rescue Committee, the Ministry of Immigration has stopped issuing such permits. See Overseas Development Institute, Hidden and Exposed: Urban refugees in Nairobi, Kenya, March 2010, http://ircuk.org/fileadmin/user_upload/Reports/Hidden___Exposed_Urban_Refugees_Report_FINAL.pdf

³⁹ Eastleigh is a suburb in Nairobi predominantly inhabited by Somali nationals.