

BETWEEN A ROCK AND A HARD PLACE: SOMALI REFUGEES IN KENYA

Somali refugees in Kenya are facing pressure on multiple fronts. Earlier this year, the Kenyan government announced that all urban refugees must report to refugee camps. At the same time, the government launched a security operation aimed at rooting out alleged members of the Al Shabab terrorist organization from Eastleigh, a predominantly Somali neighborhood in Nairobi. Together, these two initiatives opened the door to increased levels of abuse, extortion, and harassment of refugees by the Kenyan police. This comes as the Kenyan government is publicly urging large-scale returns of Somali refugees even though the humanitarian situation inside Somalia is deteriorating severely.

BACKGROUND

Kenya has long been a generous host to hundreds of thousands of refugees – primarily those fleeing violence and food insecurity in Somalia, but also to those from war-torn countries throughout the region. For more than two decades, tens of thousands of those refugees have chosen to live in urban areas, particularly the capital city, Nairobi. Here, refugees have opportunities to provide for themselves, rather than living on the food and other aid in camps.

In 2009, the UN Refugee Agency (UNHCR), acknowledging the increasing number of refugees living in urban areas and recognizing cities as “legitimate places for refugees to reside and exercise the rights to which they are entitled,”

launched a global policy on refugee protection and solutions in urban areas.¹ By 2012, over 55,000 refugees were registered in Kenyan cities. In cooperation with schools and hospitals, key services became accessible to them, and a number of non-governmental organizations (NGOs) established programs to provide support such as legal aid and livelihood training.

In recent years, however, urban refugees’ freedom to pursue prosperous livelihoods in urban areas has been increasingly denied by the Kenyan government. In December 2012, citing national security concerns that linked the presence of refugees with the threat of terrorism, the government declared that all urban refugees must relocate to the Dadaab

POLICY RECOMMENDATIONS

- The UN Refugee Agency (UNHCR) must publicly uphold its urban refugee policy and do more to meet its mandate to protect refugees by increasing international staff for urban refugee protection programming in Kenya.
- Donor governments and philanthropic foundations must strengthen support to Kenyan organizations providing legal aid to urban refugees.
- The Kenyan government must meet its obligations under the Tripartite Agreement to provide protection and assistance to refugees, and should implement the recommendations of the Independent Policing Oversight Authority.
- Donor governments, in particular the United States and the United Kingdom, must support the Kenyan government to act on the recommendations of the Independent Policing Oversight Authority.
- UNHCR and the Kenyan Department of Refugee Affairs must coordinate to ensure that information regarding the repatriation of Somali refugees is communicated accurately and consistently.
- UNHCR must apply lessons learned from its experience supporting the return of internally displaced Somalis as it implements its Somali refugee repatriation programming. Both programs must support more resilient and sustainable livelihoods for returnees, and better link with longer-term development efforts to ensure conditions for return are sustainable.

and Kakuma refugee camps in northern Kenya. It also shut down urban registration centers and prohibited the provision of services to urban refugees. A national legal aid organization, with the support of UNHCR, filed a suit aimed at reversing the government's directive. In July 2013, Kenya's High Court ruled that the directive violated Kenya's constitution, which enshrines the country's obligations under the 1951 Refugee Convention.

On November 10, 2013, UNHCR and the governments of Kenya and Somalia signed the Tripartite Agreement Governing the Voluntary Repatriation of Somali Refugees Living in Kenya. The agreement was seen as a positive step to the extent that it sets out the legal framework for the "safe and dignified voluntary repatriation of Somali refugees from the Republic of Kenya and their reintegration in the Federal Republic of Somalia." This included Kenya's agreement to "continue to provide protection and assistance to all refugees until durable solutions are attained in accordance with national and international law."

ABUSE OF URBAN REFUGEES

Since the High Court's decision, Kenya has witnessed growing insecurity. There was last year's terrorist attack on the Westgate Mall in Nairobi, for which the Somali-based terrorist organization Al Shabab claimed responsibility. There have also been several attacks in Eastleigh, the neighborhood where large numbers of refugees and other foreign nationals have congregated in recent years. These events have put urban refugees in the government's crosshairs once again.

On March 25, 2014, Kenya's interior minister ordered all refugees living in cities to report to refugee camps, citing "emerging security challenges in urban areas." He also urged all Kenyans to report to police any out-of-camp refugees and announced the immediate deployment of an additional 500 security officers to Nairobi and Mombasa. The government's clear message was that refugees are terrorists.

Within days of issuing this directive, the government launched "Operation Usalama Watch," a multi-month security operation designed to "flush out" members of Al Shabab allegedly living in Eastleigh. Ominously, the campaign was referred to within the government as "Operation Sanitization of Eastleigh."²

The announcement of the directive and the launch of this counterterrorism operation were ostensibly separate initiatives – one aimed at expelling refugees from Kenya's cities and the other at capturing Al Shabab members and

sympathizers. Ultimately, though, the simultaneous actions not only unjustly and inextricably linked Somali refugees to terrorism, but also resulted in a major spike in abuse by Kenyan police against urban refugees. Somali refugees, in particular, have long been a target for bribes and harassment by police. The combined policies provided police with the cover to carry out abuse at an extraordinary level.

In July, a Refugees International team interviewed refugees in Nairobi who were accosted in their homes in the middle of the night by police demanding bribes to avoid arrest. Those who could not pay were thrown into trucks and taken to overcrowded prison cells where they were detained, some for weeks at a time, while awaiting security and immigration processing at Kasarani Stadium, outside Nairobi. In addition to Somalis, refugees from elsewhere (including Ethiopia and the Democratic Republic of Congo) as well as Kenyan citizens of Somali origin were caught up in these police sweeps.

Conditions in the detention cells were reportedly awful, with men, women, and children confined together, forced to sleep on the floor, and denied access to toilets. The RI team was alarmed by reports of abusive and unlawful behavior towards children. RI spoke with one woman who said her eight-year-old son's hand was broken when he was thrown into the back of the truck by police during arrest. Her son had no access to medical care during multiple days of confinement. Other refugees reported having to pay bribes between 40,000 to 50,000 Kenyan shillings (about \$450 to \$550) for their release. None of the refugees with whom RI met in Nairobi was brought before a judge within 24 hours of their arrest, as is required by Kenya's constitution.

Widespread human rights violations and constitutional breaches during Operation Usalama Watch were documented in a scathing report by the Independent Policing Oversight Authority (IPOA), released in July 2014. The IPOA is an independent agency that was created by an Act of Parliament in 2011. Its report outlines deplorable conditions in detention centers, allegations of bribery, long-term detention without an appearance before a court, family separations, and concerns about ethnic profiling. The report notes that the Operation "was not conducted in compliance with the law, respect for the Rule of Law, democracy, human rights and fundamental freedoms as envisaged under Article 238(2) of the Constitution."³

The Kenyan government must address police abuse against refugees. To begin with, the government should act on the recommendations in the IPOA report, including: a "refresher" training course on human rights for all

members of the police; improved basic hygienic conditions in detention facilities; trust-building activities undertaken by police within their communities; and steps by the government “to correct the impression created that certain communities are criminals and/or may harbor criminals.”⁴ The IPOA report also calls on the Internal Affairs Unit of the National Police Service to investigate allegations of bribery and corruption by police officers. In addition, guilty parties must be held to account.

During the worst of the abuses, donor governments seemed reticent to publicly condemn the police action. Kenya’s security sector partners, in particular the United States and United Kingdom, should make police reforms a top priority, not only by ensuring that the Kenyan government follow through on IPOA’s recommendations, but also by providing technical support to implement the recommendations.

FORCIBLE RELOCATIONS AND DEPORTATIONS

Ultimately, several thousand refugees who had been rounded up during the police raids were forcibly relocated to either the Dadaab or Kakuma refugee camps in northern Kenya. In Dadaab, RI interviewed parents who had been separated from their families and brought to the camp while their children remained with neighbors or friends in Nairobi. Many other urban refugees who had been taken to Dadaab had managed to return to Nairobi by paying bribes to bus drivers and police along the route. In fact, based on extensive interviews with UN agencies, NGOs, and refugees themselves, it is clear that many of the refugees who were rounded up and sent to the camps – along with many of the deportees – are now back in urban areas.

In Nairobi, RI met one woman who explained that she had been sent to the camps but returned to Nairobi within a matter of days. When asked why she did not want to stay in the camp, and was willing to risk further police abuse to return, she explained that in Nairobi she is able to support her family by selling tea to local shops in Eastleigh, and can provide her children with a better education. Her justifications for residing in Nairobi were echoed by many others. RI also spoke with refugees who had come to Nairobi to access specialized medical care not available in the camps.

At least 259 Somalis, several of whom had refugee status, were deported to Somalia by plane. This is a clear violation of the principle of non-refoulement, the most fundamental of refugee rights, which prohibits the return of refugees to countries where their life or liberty would be at risk. Moreover, these abuses amounted to a violation of Kenya’s

obligations under the Tripartite Agreement.

In light of this, UNHCR has a responsibility to take a more outspoken and robust approach in fulfilling its protection mandate. This must come from the highest levels. UNHCR in Geneva should issue a statement in support of the rights of urban refugees globally. Such a statement would further signal UNHCR’s commitment to its urban refugee protection policy and also indicate its support for NGOs working on behalf of refugees residing in cities. This is particularly important at a time when NGOs are feeling pressure from the Kenyan government and hesitant to speak out against the abuses. The government recently proposed a law that could impact registration of and funding for international NGOs, and one international NGO representative in Nairobi told RI this had “put the fear of God into us.” The representative admitted to curbing her group’s public criticism of the Kenyan government, which appears to have adopted a “with us or against us” attitude.

UNHCR headquarters should also demonstrate its commitment to its urban policy by deploying more international staff, particularly protection and community services staff, to the Kenya office. Over the past year, UNHCR has expanded its own outreach and direct engagement with urban refugees through increased consultations with refugee leaders and monitoring visits to neighborhoods like Eastleigh. But more must be done – particularly during this time of increased vulnerability. RI interviewed several refugees who had been registered by UNHCR in Nairobi who said that they felt abandoned by the agency in the face of the government crackdown. In the Kenya office, there is currently only one senior international staff person whose work primarily consists of managing UNHCR’s urban programming. At the very least, there is a need for an additional international staff person who is fully dedicated to urban refugees. More staff would allow UNHCR to work more directly with urban refugees, conduct increased protection monitoring, and respond more rapidly to protection incidents – important tenets of UNHCR’s global urban refugee policy.

At the same time, donors (including both philanthropic foundations and governments) should support independent national organizations that provide legal aid to urban refugees and advocate on their behalf. Kenya maintains a robust civil society, but since urban refugees are likely to face increasing legal challenges, it is important to build the capacity of civil society to defend their rights. Moreover, a national voice speaking in support of refugees is vital in advocating with the Kenyan government to reduce xenophobia in the public sphere. A number of effective

national refugee organizations exist, but would benefit from a greater diversity of funding that would expand their activities and bolster their independence. This is particularly relevant as Kenya's parliament prepares to debate a revision of the 2006 Refugee Act, which local civil society will play an important role in shaping and implementing.

REFUGEE RETURNS

For those Somali refugees who want to leave Kenya – either voluntarily or because they feel forced to do so due to increasing harassment – returning to Somalia presents additional challenges. As a step toward the implementation of the Tripartite Agreement, UNHCR has been planning a pilot repatriation program to support the return of an estimated 10,000 refugees. Three “return areas” in south-central Somalia – Luuq in Gedo Province, Baidoa in Bay Province, and Kismayo in Lower Juba Province – were selected for the pilot based on a set of criteria, including relative security and their suitability for adequate UNHCR field operations. Those who choose to repatriate will receive approximately \$100 for travel costs and non-food supplies from UNHCR in Dadaab. They will also be provided with additional assistance from UNHCR upon return to Somalia.

Despite the limited nature of the pilot program, the Kenyan government has stated publicly that all Somali refugees will (and must) repatriate in the near future. During RI's visit to Nairobi in July, the Kenyan Department of Refugee Affairs (DRA) announced its intention to have 80,000 refugees return to Somalia by the end of the year and an additional 200,000 by the end of 2015. This far exceeds the anticipated number of returnees under UNHCR's pilot return program, as well as any UNHCR funding to support them. In addition, a recent survey by the International Organization for Migration of Somali refugees living in Dadaab revealed that only 2.4 percent of the roughly 340,000 camp residents are currently willing to return.⁵

Further, Kenya's deportations of Somalis to Mogadishu, coupled with the government's ongoing pressure for large-scale returns, come at a time when Somalia is simply not ready to receive large numbers of returnees. For one, the security situation inside Somalia has worsened in many areas over the past year. A military offensive against Al Shabab strongholds in south-central Somalia in early 2014 by the African Union Mission in Somalia (AMISOM) led to increased displacement, and insecurity persists throughout much of the region. In early August, the Somali government announced that its forces and AMISOM would resume this military offensive against Al Shabab. The UN Office for the Coordination of Humanitarian Affairs is concerned that

any “liberated cities” (cities taken over by the government) will become “garrison towns” surrounded by Al Shabab and cut off from daily trade. Inter-clan violence is also on the rise in parts of south-central Somalia.

Making matters worse, poor seasonal rains have led to drought conditions in six areas (including Gedo Province, one of the areas selected for return). Drought conditions, combined with high food prices, conflict, trade disruptions, and reduced humanitarian assistance, have led to alarmingly high levels of food insecurity, threatening to tip the country back into famine. As of early September, more than a million people face crisis- or emergency-level food insecurity, more than 60 percent of whom are internally displaced. More than 200,000 children under the age of five are acutely malnourished (nearly one in seven children under five countrywide). The food security situation of over 2.1 million additional people remains fragile.⁶ In a statement on September 2, 2014, UN Humanitarian Coordinator for Somalia Philippe Lazzarini spoke of the “lethal mix of drought, surging food prices and conflict,” and stated that “concerted efforts are urgently required to save lives and prevent a free fall.”⁷ It goes without saying that the first priority must be for donors to increase funding to meet the enormous unmet humanitarian needs within Somalia, which according to Mr. Lazzarini's September statement, surpass \$500 million.

Further undermining the prospect for large-scale returns from Kenya is the fact that the Somali government is already struggling to absorb tens of thousands of Somalis who were expelled from Saudi Arabia. Mogadishu, where most deportees end up, is still unsafe, and deportees there have faced major challenges including finding employment or a place to live. RI's research indicates that some deportees now live in camps for internally displaced people, scattered throughout the city, where they struggle to access basic services like healthcare or education and malnutrition rates are shockingly high.

Taken together, Kenya's unlawful deportations and increasing pressure on Somalis to return not only violate the Tripartite Agreement but also threaten to derail a dignified and voluntary repatriation process in the long-term.

CONDITIONS FOR RETURN

To the extent that UNHCR goes forward with its pilot return program, the agency must work more closely with the Kenyan DRA to ensure that their public messaging regarding the repatriation of Somali refugees is accurate and consistent. While UNHCR cannot control the Kenyan press, several recent news articles suggesting that UNHCR is seeking funding for large-scale returns are incorrect.

These reports, when published, must be countered by UNHCR so that refugees and the public receive accurate information regarding conditions for return inside Somalia and assistance for those who choose to return.

At present, UNHCR has set up return information desks in Dadaab refugee camp to provide up-to-date information on conditions in return areas and the assistance packages for returning refugees. However, to date, there are no return information desks in urban areas like Nairobi where refugees have been under the most pressure (although UNHCR says it plans to set them up). Even where information desks are present, the continual delay of implementation of the return project has further fueled suspicion and mistrust among refugees. The project's start date has been delayed several times, most recently from August 2014 to September or October. One refugee from Nairobi who had been sent to Dadaab as part of Operation Usalama Watch told RI, "We from Nairobi call that desk the jokes desk," referring to the UNHCR return information desk at Dadaab. "They are playing with us, telling us to come back next week, next month. We don't think there is any money for us – the money has been spent on something else."

UNHCR must take a hard look at how the pilot program is being presented to the refugees, and work with DRA to ensure that refugees both in camps and in urban areas are receiving accurate and consistent information on the timing of, and conditions and expectations for, return. Not doing so will only increase refugees' mistrust of UNHCR and its ability to protect and assist them.

Second, to the extent that any UNHCR-supported, voluntary repatriation takes place, UNHCR staff in Kenya and Somalia must draw lessons from the return program for internally displaced persons (IDPs) now being implemented by UNHCR Somalia and its partners under the Somalia Returns Consortium. Launched in 2012, the IDP return project has supported the voluntary return of over 10,000 households (40,000 individuals) from camps and informal settlements to areas of south and south-central Somalia that are relatively secure. Three of the nine areas selected for the IDP return project – Bay, Gedo, and Lower Juba Provinces – have also been selected for the refugee return program. Thus, it is important that UNHCR ensures that the two programs are well coordinated.

A recent assessment of the IDP return project to date also provides important lessons for the sustainability of both IDP and refugee returns.⁸ According to the assessment, while two-thirds of the returnees had decided to go back to their villages based on the expectation that they would be able to resume their traditional livelihoods, 57 percent

reported that within a relatively short time-frame they found themselves reliant once again on food aid (or the sale thereof) as their main source of sustenance. The assessment also found that over time, many households reported individual family members had decided to leave again, most likely in order to find other means of survival. In short, the assessment revealed that unless displaced Somalis can support themselves over the long term, returns may be short-lived.

The primary forms of livelihoods in south and south-central Somalia – the areas where the IDP return project is being implemented – are farming, trading, or some form of agro-pastoralist activity. In fact, most people displaced from these areas in recent years fled not conflict but a severe drought and famine in 2011, which wiped out their crops and animals. RI met with refugees in Dadaab who had fled to Kenya during the 2011 drought and famine, and who had approached the return desk in the hope of being able to return to Baidoa and other areas to resume their agro-pastoralist lifestyles. "Life here in the camps is very difficult," one widow told RI. "There is no milk, and no meat. Life in Somalia will be better. There I can farm again."

These return areas were selected in part because they are relatively secure. But they are also among the most environmentally degraded areas of the country.⁹ A recent environmental assessment of Somalia commissioned by the U.S. Agency for International Development provides a sobering account of what returning farmers and pastoralists face. According to the report, the environmental reality of Somalia today is that land degradation is severe and, in most places, getting worse. "[L]and degradation," it claims, "may well be the largest environmental contributor to food insecurity and poverty in Somalia."¹⁰

Returns will not be sustainable, nor durable solutions achieved, until Somalia's environmental and climate-related challenges are addressed and rural populations provided with more resilient livelihoods. This will require at least two things. First, humanitarian agencies must rethink early recovery assistance to returnees, and design programs that help jumpstart more sustainable livelihood options. Providing seeds, tools, and short-term training or cash assistance will likely not be enough.

Second, longer-term development projects must be targeted at areas deemed safe for return, and they should focus on providing sustainable livelihoods for returnees. At present, this appears not to be happening. The aforementioned assessment of the IDP return project concludes that the program was not well-coordinated with longer-term humanitarian or development projects being implemented

in areas targeted for return assistance, thereby affecting the ability of UNHCR and its partners to advocate for continued sustenance of the returnees to prevent them from returning to IDP camps.

At an August ministerial-level meeting of the Global Initiatives on Somali Refugees (established by the UN High Commissioner for Refugees) in Ethiopia, regional governments, including Kenya, highlighted the need to create conditions within Somalia which make “voluntary, safe and sustainable repatriation possible,” while also committing to “maintain our goodwill, assure asylum and international protection for Somali refugees.” The participants further pledged to push back against negative perceptions of Somali refugees by “promoting positive messages on peaceful coexistence of refugees and host communities” and by “avoiding the stereotyping of refugees as threats to national security.”¹¹ These are encouraging and admirable commitments. The key task for all parties involved – Kenya, UNHCR, and donors alike – is to turn these commitments into reality.

Mark Yarnell and Alice Thomas traveled to Kenya in July 2014 where they interviewed government officials, UN agencies, national and international non-government organizations, and refugees and asylum-seekers in Nairobi and Dadaab refugee camp. Additional information on challenges facing Somali returnees and deportees was provided by Maimuna Mohamud, an RI consultant in Mogadishu.

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