



NOT TIME TO GO HOME

UNSUSTAINABLE RETURNS OF REFUGEES TO SOMALIA

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Cover photo: Displaced Somalis wait for food aid at a distribution centre outside Mogadishu on April 6, 2017. Hundreds of new arrivals, mostly from the hardest hit drought regions in the south, are pouring into Mogadishu in search of food according to a United Nations report in February 2017

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METHODOLOGY

This briefing is based on research carried out by Amnesty International in Somalia and Kenya between April and August 2017. Amnesty International interviewed a total of 145 Somali refugees and returnees, including 47 Somali refugees in Kenya and 98 Somalis who had returned to Somalia, of which 62 were women and 104 were men. All the research was conducted by non-Somali speaking researchers working with Somali interpreters. The names of all interviewees have been changed by Amnesty International in order to protect their identities.

Researchers visited Somalia between 24 April and 5 May 2017, during which time they visited Kismayo, Baidoa and Mogadishu. In Baidoa the researchers interviewed 66 refugees who had returned from Kenya. The interviewees were selected by three different NGOs who work with the returnee population in Baidoa. In Kismayo the researchers interviewed 32 returnees. On two days, interviewees were selected by NGOs who work with the returned population. On one day, the interviewees were selected by the Jubaland Refugee and IDP Agency – the Somali government humanitarian agency that coordinates the regional response to the returnee population.

Researchers also conducted one-on-one phone interviews with 47 refugees in Hagadera, Daghaley, and IFO 2 camps in Dadaab between 24 July and 15 September 2017. This group included both refugees who had previously repatriated to Somalia and had come back to Dadaab as well as refugees in Dadaab who were registered to return to Somalia.

Amnesty International also met with and interviewed humanitarian and human rights actors in Nairobi, Dadaab, Kismayo, Baidoa, and Mogadishu who work with the refugee and returnee populations, as well as representatives of the UN Refugee Agency, UNHCR, in Kenya and Somalia. Some of the organizations that work with the refugee and returnee populations in Kenya and Somalia did not wish to have their names disclosed. They have therefore been described using generic terms such as “agency” or “NGO”.

This report builds upon research conducted by Amnesty International for a November 2016 report *Nowhere Else to Go* which assessed the conditions under which refugees took the decision to return to Somalia from Kenya in 2015 and early 2016 and the levels of insecurity and humanitarian challenges the returnees faced in Somalia.¹

¹ Amnesty International, *Nowhere else to go: Forced Returns of Somali Refugees from Dadaab Refugee Camp Kenya*, 14 November 2016, Index AFR 32/5118/2016, available at: <https://www.amnesty.org/en/documents/afr32/5118/2016/en/>

1. BACKGROUND

Kenya hosts close to 500,000 refugees, 285,705 of whom are Somali.² The Dadaab refugee complex in eastern Kenya – where most of the Somali refugees live – was established in 1991 when armed conflict in Somalia triggered large-scale displacement from the country.³ In 2011, famine and drought, underpinned by ongoing conflict, caused another massive influx of refugees from Somalia to Dadaab.⁴

Conditions in Dadaab are difficult; nonetheless, the relative security and the services offered have historically made it preferable to the violence and poverty that have been endemic in Somalia since 1991 and which continue to plague many parts of Somalia today. During the past few years, however, the security situation in Somalia has improved. Notably, government forces along with forces from African Union Mission in Somalia (AMISOM) – the regional peacekeeping force – have re-established control over many of the country's large urban centres such as Mogadishu, Kismayo, and Baidoa.⁵ But while security conditions in some areas have gotten better, the country is experiencing an acute humanitarian crisis following three years of drought.⁶

1.1 KENYA'S POLICY TOWARDS SOMALI REFUGEES

Kenya is signatory to the 1951 UN Refugee Convention Relating to the Status of Refugees and its 1967 Protocol, and to the 1969 African Union Convention Governing the Specific Aspects of Refugee Problems in Africa (the 1969 AU Convention). Under its 2006 Refugee Act, Kenya recognized two kinds of refugees: *prima facie* and statutory refugees. *Prima facie* status applies to groups and is usually based on the circumstances in the country of origin. It means people are accorded refugee status based, often, on their nationality, and do not have their claim for refugee status determined individually.⁷ Until April 2016, Somalis were considered *prima facie* refugees by Kenya.

In 2012, a combination of improvements to the security situation in Somalia and public pressure on the Kenyan authorities to respond to the threat posed by the militant Somali group Al-Shabaab, led to calls to repatriate refugees.⁸ In recent years, Somali refugees have been scapegoated for attacks carried out by Al Shabaab in Kenya, including the September 2013 attack on the Westgate Shopping Mall in Nairobi. During

2 UNHCR, *Statistical Summary as of 30 November 2017, Refugees and Asylum-Seekers in Kenya*, available at: http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/12/Kenya-statistics-package-November_2017.pdf

3 UNHCR Kenya, available at: <http://www.unhcr.org/ke/dadaab-refugee-complex>. Until recently, Dadaab was composed of five refugee camps – Dagahaley, Ifo, Ifo 2, Hagadera and Kambioos – however, Kambioos was closed in 2016 and IFO is scheduled to close in 2018

4 UNHCR Kenya, available at: <http://www.unhcr.org/ke/dadaab-refugee-complex>

5 See: AMISON, *Security Improves In Somalia As Police Force Builds Capacity*, 28 April 2016, available at: <http://amisom-au.org/2016/04/security-improves-in-somalia-as-police-force-builds-capacity-spf-commissioner/>; UN Security Council, *Report of the Secretary-General on Somalia*, 9 January 2017, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/N1647163.pdf>

6 OHCHR, *UN rights experts urges the international community to support Somalia on all fronts*, 26 May 2017, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21665&LangID=E>

7 For more information see: Refworld, *The Refugees Act [Kenya]*, 2006, Section 3, available at: <http://www.refworld.org/docid/467654c52.html>

8 See: Amnesty International, *No place like home: Returns and relocations of Somalia's displaced*, 19 February 2014, Index AFR 52/001/2014, Chapter 4, available at: <https://www.amnesty.org/en/documents/AFR52/001/2014/en/>

Kenya's subsequent counter-terror operation known as 'Usalama Watch', Somali refugees were subjected to arbitrary arrest, extortion, harassment and violence.⁹

In November 2013, the Government of Kenya, the Government of Somalia, and UNHCR signed a Tripartite Agreement that paved the way for "voluntary" repatriation in "safety and dignity."¹⁰ Between 2014 and 2016, despite the commitments made under the Tripartite Agreement, Kenya forcibly returned refugees to Somalia.¹¹

In April 2015, Al-Shabaab attacked the University College of Garissa, killing 148 people. Following this attack, political leaders in Kenya's North Eastern Region called for the closure of the Dadaab camps, and a number of senior government officials called for UNHCR to repatriate all Somali refugees in Dadaab to Somalia.¹²

In August 2015, the Kenyan government effectively suspended registration of new refugees at Dadaab camp, and halted refugee status determination (RSD).¹³ This move significantly undermined the right to seek and enjoy asylum, and placed unregistered refugees in a precarious situation as, without registration, they have limited access to a range of services in the camp and are vulnerable to harassment and arrest by the Kenyan authorities.

In April 2016, Kenya revoked *prima facie* status for Somalia refugees.¹⁴ Following this, in May 2016, the government announced that Dadaab would be closed by November 2016 and that Somali refugees needed to return to their country.¹⁵ The deadline was later extended to May 2017,¹⁶ but a new closure date was not publically announced after the May deadline passed. The government justified its directive to close the camp by citing national security concerns, the slow pace of returns under the Tripartite Agreement, and the failure of the international community to support Kenya's efforts to host the refugees.¹⁷

The number of refugees who returned to Somalia under the Tripartite Agreement's voluntary repatriation program rose sharply in the aftermath of the government's directive to close the camp: in 2015, 5,616 refugees returned, compared to 33,213 and 32,863 in 2016 and 2017 respectively.¹⁸ In 2016, the Government of Kenya was widely accused of forcing refugees to return; UNHCR was criticized as being complicit.¹⁹ While the agreement formally expired in November 2016,²⁰ in August 2017, UNHCR officials informed Amnesty International that UNHCR were operating as if the agreement was still in force.²¹

9 Amnesty International, *No place like home: Returns and Relocations of Somalia's displaced*, 19 February 2014, Index AFR 52/001/2014; Amnesty International, *Somalis are Scapegoats in Kenya's counter-terror crackdown*, 27 May 2014, Index AFR 52/003/2014, available at: <https://www.amnesty.org/en/documents/AFR52/003/2014/en/>

10 Tripartite Agreement between the Government of the Republic of Kenya; the Government of the Federal Republic of Somalia; and the United Nations High Commissioner for Refugees Governing the Voluntary Repatriation of Somali Refugees Living in Kenya, 2013, available at: <http://www.refworld.org/pdfid/5285e0294.pdf>

11 For more information see: Amnesty International, *No place like home: Returns and relocations of Somalis displaced*, February 2014, Index AFR 52/001/2014, p.35, available at: <https://www.amnesty.org/en/documents/AFR52/001/2014/en/>

12 UNHCR, *Voluntary Repatriation of Somalia Refugees from Kenya, Operations Strategy 2015-2019*, available at: <http://www.unhcr.org/5616280b9.pdf>

13 However, prior to 2015, registration of Somali refugees in Dadaab had been sporadic since October 2011, when DRA suspended registration. Between 2011 and 2015 registration only resumed on a few occasions and for limited periods of time. For more information on Kenya's refugee policy prior to 2017 see: Amnesty International, *Nowhere else to go: forced returns of Somali refugees from Dadaab refugee camp*, 14 November 2016, AI Index AFR 32/5118/2016, available at <https://www.amnesty.org/en/documents/afr32/5118/2016/en/>; Amnesty International, *No place like home: Returns and relocations of Somalia's displaced*, 19 February 2014, AI Index AFR 52/001/2014, available at: <https://www.amnesty.org/en/documents/AFR52/001/2014/en/>

14 The other group of refugees with *prima facie* status in Kenya are South Sudanese refugees. For the revocation of Somali refugees' *prima facie* status see: The Kenya Gazette, Published by the Authority of the Republic of Kenya, Vol. CXVIII- No. 46, Nairobi, 29 April 2016, available at: http://kenyalaw.org/kenya_gazette/gazette/volume/MTMxNA--/Vol.CXVIII-No.46

15 Aggrey Mutambo, 'Decision to close Dadaab refugee camp final, Ruto tells UN boss', *Daily Nation*, 23 May 2016, available at: <http://www.nation.co.ke/news/1056-3215622-6lnkuz/index.htm>; Patrick Kingsley, 'Kenya tells UK to resettle Somali refugees living in Dadaab', *The Guardian*, 25 May 2016, available at: <https://www.theguardian.com/global-development/2016/may/25/kenya-william-ruto-tells-uk-to-resettle-somali-refugees-living-in-dadaab>

16 Standard Media, 'Kenya's Dadaab refugee camp closure deadline extended by six months after request by UNHCR, CS Nkaissey says', 16 November 2017. Read more at: <https://www.standardmedia.co.ke/article/2000223669/kenya-s-dadaab-refugee-camp-closure-deadline-extended-by-six-months-after-request-by-unhcr-cs-nkaissey-says-%20http://www.capitalfm.co.ke/news/2016/11/kenya-extends-dadaab-closure-six-months/>

17 See: Republic of Kenya, *Government Statement and Update on the Repatriation of Refugees and Scheduled Closure of Dadaab*, available at: <http://www.interior.go.ke/?p=3113>

18 UNHCR, *Weekly Update, Voluntary Repatriation of Somali Refugees from Kenya*, December 2017, available at: <http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/12/Voluntary-Repatriation-Analysis-01December-2017.pdf>

19 Amnesty International, *Nowhere else to Go: Forced Returns of Somali Refugees from Dadaab Refugee Camp*, 14 November 2016, AI Index AFR 32/5118/2016, available at: <https://www.amnesty.org/en/documents/afr32/5118/2016/en/>; Human Rights Watch, *Kenya: Involuntary Refugee Returns to Somalia*, 14 September 2016, available at: <https://www.hrw.org/news/2016/09/14/kenya-involuntary-refugee-returns-somalia>

20 UNHCR, *Somalia Situation 2017 – Supplementary Appeal January – December 2017*, May 2017, available at: <http://www.unhcr.org/591ae0e17.pdf>

21 Amnesty International interview with UNHCR Kenya and UNHCR Somalia country representatives, 15 August 2017.

On 9 February 2017, the High Court in Kenya blocked the Government's directive to close Dadaab. The court's ruling held that the directive was illegal under national and international law.²² The ruling also stated that the revocation of Somali's *prima facie* refugee status was unconstitutional and violated rights guaranteed in national and international instruments.²³ The Kenyan government filed notice of an appeal of the High Court's decision, but did not subsequently file a record of the appeal.²⁴ Since the High Court's decision, the Kenyan authorities have done little to modify their earlier statements about closure of the Dadaab camp and the need for Somalis to return to their country.

By December 2017, 72,177 refugees had been repatriated from Dadaab to Somalia as part of the voluntary repatriation framework.²⁵ Notably, 32,863 Somali refugees have returned so far in 2017, the bulk of whom were repatriated after the Kenyan High Court's ruling declaring that the closure of Dadaab was illegal.²⁶ In addition, as of 15 November 2017 another 18,140 refugees were registered in Dadaab for voluntary repatriation.²⁷

1.2 INTERNATIONAL SUPPORT FOR SOMALI REFUGEES IN KENYA

Funding for the refugee response in Kenya has declined sharply since 2011. In 2016, the Somalia Situation Supplementary Appeal for the Somali response in Kenya was only 15% funded by the end of the year.²⁸ The 2017 Somalia Situation Supplementary Appeal for Kenya was only 7% funded as of 7 November.²⁹ In addition, as of November, UNHCR's appeal for its refugee response in Kenya, which covers primarily the South Sudan and Somali responses, was only 29% funded.³⁰ In the same period, the World Food Programme (WFP) also experienced regular and chronic underfunding, forcing it to repeatedly reduce the quantity of the food ration given to refugees in Dadaab. Persistent underfunding of the refugee response in Kenya has compromised the level of services and assistance delivered to refugees.³¹ There has been a similar and marked reduction in funding for UNHCR, and its partners' operations, in Dadaab since 2011. Funding for the Dadaab operations decreased from \$96.3 million in 2011 to approximately \$40 million in 2015. However, the drop in funding has not been commensurate with a reduction in the total refugee population during this same period.³²

On several occasions the government of Kenya has pointed to the failure of the international community to adequately support the refugee response in Kenya as a justification for the closure of Dadaab camp and for the repatriation of Somali refugees to their country.³³ Kenya's national policy on refugees has also been influenced by the abusive immigration and asylum policies of the United States (US), European Union (EU), Australia and other countries, which have used a counter-terrorism and security narrative to justify

22 Kenya National Commission on Human Rights & another v Attorney General & 3 others [2017] eKLR, available at: <http://kenyalaw.org/caselaw/cases/view/131173>

23 Library of Congress, Global Legal Monitor, *Kenya: Government's Attempt to Close Refugee Camps Found Unconstitutional*, 8 March 2017, available at: <http://www.loc.gov/law/foreign-news/article/kenya-governments-attempt-to-close-refugee-camps-found-unconstitutional/>

24 CNN, 'Kenya to appeal court block on closure of world's largest refugee camp', 18 February 2017, available at: <http://edition.cnn.com/2017/02/09/africa/kenya-dadaab-refugee-camp/index.html>

25 UNHCR, *Weekly Update, Voluntary Repatriation of Somali Refugees from Kenya*, December 2017, available at: <http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/12/Voluntary-Repatriation-Analysis-01December-2017.pdf>

26 UNHCR, *Weekly Update, Voluntary Repatriation of Somali Refugees from Kenya*, December 2017, available at: <http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/12/Voluntary-Repatriation-Analysis-01December-2017.pdf>

27 UNHCR, *Bi-weekly Operational Update, Dadaab Kenya, 01-15 November 2017*, available at: <http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/11/Dadaab-Bi-weekly-Operational-Update-1-15-November.pdf>

28 UNHCR, *Somalia Situation, 2016 Funding Update as of 3 January 2017*, available at: <http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/01/Somalia-Situation-Funding-Update-03-January-2017.pdf>

29 UNHCR, *Somalia Situation, 2017 Funding Update as of 7 November 2017*, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/Somalia%20Situation%20Funding%20Update%2007%20November%202017.pdf>

30 UNHCR, *Operational Update Dadaab Kenya 01-15 November 2017*, available at: <http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/11/Dadaab-Bi-weekly-Operational-Update-1-15-November.pdf>

31 Amnesty International, *Nowhere else to Go: Forced Returns of Somali Refugees from Dadaab Refugee Camp*, 14 November 2016, AI Index AFR 32/5118/2016, available at: <https://www.amnesty.org/en/documents/afr32/5118/2016/en/>; MSF, *Dadaab to Somalia- Pushed back to Peril*, October 2016, available at: <https://www.msf.org.za/about-us/publications/briefing-documents/dadaab-somalia-pushed-back-peril/>; Cuts to funding to organizations in Dadaab was also an issue raised repeatedly by NGOs operating in the camp and UNHCR.

32 UNHCR, *Kenya comprehensive refugee programming 2016, Programming for solutions*, April 2016, available at: <http://www.unhcr.org/ke/wp-content/uploads/sites/2/2016/05/Kenya-Comprehensive-Refugee-Programme-document-KCRP-20161.pdf>

33 See for example the statement of the Ambassador Monica Juma, Principal Secretary Ministry of Foreign Affairs of the Republic of Kenya, 19 September 2016, available at: <http://statements.unmeetings.org/media/27660427/kenya.pdf>; The Ministry of Interior & Coordination of National Government, *Government Statement And Update On The Repatriation Of Refugees And Scheduled Closure Of Dadaab Refugee Camp*, 11 May 2016, available at: <http://www.interior.go.ke/index.php/2015-02-28-06-43-54/news/98-government-statement-and-update-on-the-repatriation-of-refugees-and-scheduled-closure-of-dadaab-refugee-camp>

restrictions on the rights of refugees and human rights violations against migrants and those seeking asylum.³⁴

Any illusions of international responsibility sharing with respect to refugees were further shattered by changes in US refugee policy since early 2017. Amongst other measures, US President Trump's March 2017 Executive Order reduced the overall number of refugees the US would resettle and suspended its resettlement programme for 120 days. After the expiry of the 120 day suspension, the government reinstated the resettlement programme but with "*extreme vetting*" measures to be applied to 11 countries of concern.³⁵ It is highly likely that Somalia, one of the countries targeted by the US government's travel ban, is one of the 11 countries on the list. The US had, until this point, been the main country to which Somali refugees from Kenya were resettled. For example, in 2015, of those resettled from Dadaab, the US was the primary resettlement country resettling 72% of the total.³⁶

34 For more on the EU's abusive policies and funding of migratory control initiatives under the EU-Horn of Africa Migration Route Initiative and the EU Trust Fund see Amnesty International, *Nowhere else to Go: Forced Returns of Somali Refugees from Dadaab Refugee Camp*, 14 November 2016, AI Index AFR 32/5118/2016, available at: <https://www.amnesty.org/en/documents/afr32/5118/2016/en/>

35 The Guardian, 'Trump ends refugee ban with order to review programme for 11 countries', 25 October 2017, available at: <https://www.theguardian.com/us-news/2017/oct/24/trump-refugee-ban-end-immigration-executive-order>

36 Somalia Newsroom, 'UNHCR Plans for 125,000 Refugee Returns to Somalia by End of 2017', 19 May 2016, available at: <https://somalianewsroom.com/2016/05/19/unhcr-plans-for-125000-refugee-returns-to-somalia-by-end-of-2017/>

2. HUMANITARIAN AND SECURITY PROBLEMS IN SOMALIA

As noted in Chapter 1, more than 70,000 refugees from Kenya have returned to Somalia since the voluntary repatriation programme started in December 2014 and at least 18,000 are registered to return in the near future. This chapter examines the conditions to which they are returning, and whether these conditions are consistent with international refugee and human rights law and standards. The chapter begins by looking at the overall security and humanitarian context in Somalia and then examines some of the specific ways this context impacts returnees.

2.1 ONGOING CONFLICT AND INSECURITY

Despite some progress in relation to security and development in Somalia in the past four years³⁷, the absence of state control over large parts of its territory has permitted ongoing violations of international human rights and humanitarian law with impunity.³⁸ During 2016 and 2017, ongoing conflict continued in large parts of the country between AMISOM-supported government forces, clan militias and Al-Shabaab.³⁹ This violence involved attacks against civilians and other gross violations of human rights, including conflict-related sexual violence, abduction and execution of children, and threats to freedom of expression.⁴⁰

Although the government has control over the major urban centres of Mogadishu, Kismayo, and Baidoa, Al-Shabaab maintains control over a significant portion of south and central Somalia.⁴¹ According to the UN, Al-Shabaab, with its ongoing “*guerrilla warfare*” in rural areas of south and central Somalia, continues to pose a “*potent threat*”⁴² and attacks by the armed group threaten to weaken or even reverse the limited progress made on peace and security in the country.⁴³ According to a December 2017 report by the UN:

37 UNSOM & UNHCHR, *Protection of Civilians: Building the Foundation for Peace, Security and Human Rights in Somalia*, December 2017, available at: https://unsom.unmissions.org/sites/default/files/protection_of_civilians_report_20171210_2.pdf

38 UN Security Council, Review of the United Nations presence in Somalia after the 2016 electoral process (Letter), Letter dated 5 May 2017 from the Secretary General addressed to the President of the Security Council, S/2017/404, 5 May 2017, available at: http://www.un.org/ga/search/view_doc.asp?symbol=S/2017/404

39 UN Security Council, *Report of the Secretary-General on Somalia*, 6 September 2016, available at:

http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/763; UN Security Council, *Report of the Secretary-General on Somalia*, 9 May 2016, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/430;

http://www.un.org/ga/search/view_doc.asp?symbol=S/2017/408

40 UN Security Council, *Report of the Secretary-General on Somalia*, 9 May 2017, available at:

http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/430

41 See: *Al Shabaab Area of Operations in Somalia*, October 2017, available at: <https://www.criticalthreats.org/analysis/al-shabaab-area-of-operations-october-2017>; Crisis Group, *Instruments of Pain (III): Conflict and Famine in Somalia*, 9 May 2017, available at:

<https://www.crisisgroup.org/africa/horn-africa/somalia/b125-instruments-pain-iii-conflict-and-famine-somalia>

42 UN Security Council, *Report of the Secretary General on Somalia*, May 2017, available at:

http://www.un.org/ga/search/view_doc.asp?symbol=S/2017/408

43 *Report of the Independent Expert on the situation of Human Rights in Somalia*, 06 September 2017, available at:

<https://reliefweb.int/report/somalia/report-independent-expert-situation-human-rights-somalia-ahrc3662-advance-unedited>

“From 1 January 2016 to 14 October 2017, UNSOM documented a total of 4,585 civilian casualties (2,078 killed and 2,507 injured), 60 per cent of which were attributed to Al Shabaab, 13 per cent to militia, 11 per cent to state actors, four per cent to the African Union Mission to Somalia (AMISOM), and 12 per cent to other and undetermined or unidentified actors. In addition, 729 civilians were abducted by Al Shabaab, of whom 403 were reportedly released. Al Shabaab was also responsible for 86 targeted assassinations and executed 46 persons during the reporting period.”⁴⁴

Despite the government being in control of the urban centres, Al-Shabaab has shown it can still mount attacks in these locations. In October 2017, Al-Shabaab was responsible for two deadly attacks in Mogadishu: more than 350 people were killed in a massive truck bombing on 16 October and a further 23 people were killed as a result of a car bomb in the city two weeks later on 29 October.⁴⁵

Grave violations against children persist in Somalia, with perpetrators enjoying widespread impunity. According to data collected by the Monitoring and Reporting Mechanism (MRM) on grave violations against children in times of armed conflict, during the period between 2012 and 2016, 6,163 children were recruited as fighters. Al-Shabaab was responsible for 70 percent of the verified cases of recruitment and use of children, with other non-state actors and the Somali National Army responsible for the remainder.⁴⁶ According to the UN Secretary General’s report on Somalia, in March 2016 at least 60 percent of Al-Shabaab fighters captured in Puntland were children.⁴⁷ Between 1 January and 22 August 2017, MRM verified 393 incidents affecting 882 children, including recruitment, abductions, executions, killings and maiming.⁴⁸

Despite some progress made at state and federal level to address sexual violence and harmful traditions that exacerbate it, women and girls continue to be at serious risk of rape and other forms of sexual and gender-based violence against a backdrop of armed conflict and associated mass forced internal displacement.⁴⁹ Sexual violence is prevalent in camps for internally displaced persons (IDPs), with the number of reports on the increase and women from minority clans being particularly affected.⁵⁰ According to the UNSOM Gender-Based Violence Subcluster, 3,200 cases of gender-based violence were reported between September 2016 and March 2017; however due to prevalent under-reporting, real numbers are likely to be much higher.⁵¹ In the context of an absent state and weak rule of law in many parts of Somalia, the local *xeer* traditional justice system fills the role of the formal justice system⁵², which has serious implications for women and girls’ ability to access justice. Clan negotiations around settling rape cases frequently involve offering compensation to survivors of rape in the form of a marriage offer from the perpetrator.⁵³

44 UNSOM & UNHCHR, *Protection of Civilians: Building the Foundation for Peace, Security and Human Rights in Somalia*, December 2017 available at: https://unsom.unmissions.org/sites/default/files/protection_of_civilians_report_20171210_2.pdf.

45 The Guardian, ‘At least 23 dead in bombing and gun attack at Mogadishu hotel’, 29 October 2017, available at: <https://www.theguardian.com/world/2017/oct/28/mogadishu-people-dead-car-bomb-outside-somalia-hotel>

46 The report acknowledges that data is only indicative of the scope of grave violations given the serious security challenges and general lack of access during the reporting period. For more information see: UN, *Report of the Secretary-General on children and armed conflict in Somalia (S/2016/1098)*, available at: <https://reliefweb.int/report/somalia/report-secretary-general-children-and-armed-conflict-somalia-s20161098>

47 UN Security Council, *Report of the Secretary General on Somalia*, September 2017, available at: <https://reliefweb.int/report/somalia/report-secretary-general-somalia-s2017751>

48 UN Security Council, *Report of the Secretary General on Somalia*, May 2017, available at: http://www.un.org/ga/search/view_doc.asp?symbol=S/2017/408; UN Security Council, *Report of the Secretary General on Somalia*, September 2017, available at: <https://reliefweb.int/report/somalia/report-secretary-general-somalia-s2017751>

49 Report of the Independent Expert on the situation of Human Rights in Somalia, 06 September 2017, available at: <https://reliefweb.int/report/somalia/report-independent-expert-situation-human-rights-somalia-ahrc3662-advance-unedited>; International Crisis Group, *Instruments of Pain (III): Conflict and Famine in Somalia*, 9 May 2017, available at: <https://d2071andvip0wj.cloudfront.net/b125-instruments-of-pain-iii.pdf>

50 International Crisis Group, *Instruments of Pain (III): Conflict and Famine in Somalia*, 9 May 2017, available at: <https://d2071andvip0wj.cloudfront.net/b125-instruments-of-pain-iii.pdf>; Office of the Special Representative of the Secretary-General for Sexual Violence in Conflict – Somalia (based on Report of the Secretary-General to the Security Council (S/2015/203), 23 March 2015, available at: <http://www.un.org/sexualviolenceinconflict/countries/somalia/>); UN Security Council, *Report of the secretary General on Somalia*, May 2017, available at: http://www.un.org/ga/search/view_doc.asp?symbol=S/2017/408

51 *Report of the Independent Expert on the situation of Human Rights in Somalia*, 06 September 2017, available at: <https://reliefweb.int/report/somalia/report-independent-expert-situation-human-rights-somalia-ahrc3662-advance-unedited>

52 *Report of the Independent Expert on the situation of Human Rights in Somalia*, 06 September 2017, available at: <https://reliefweb.int/report/somalia/report-independent-expert-situation-human-rights-somalia-ahrc3662-advance-unedited>; Office of the Special Representative of the Secretary-General for Sexual Violence in Conflict – Somalia (based on Report of the Secretary-General to the Security Council (S/2015/203), 23 March 2015, available at: <http://www.un.org/sexualviolenceinconflict/countries/somalia/>

53 International Crisis Group, *Instruments of Pain (III): Conflict and Famine in Somalia*, 9 May 2017, available at: <https://d2071andvip0wj.cloudfront.net/b125-instruments-of-pain-iii.pdf>

2.2 THE OVERALL HUMANITARIAN CONTEXT

Ongoing conflict and insecurity in Somalia intersects with and exacerbates serious humanitarian challenges. The combined effects of decades of conflict and reoccurring drought has had a devastating impact on the population. The UN Secretary-General's May 2017 report on Somalia stated that during the previous six months "[t]he humanitarian situation deteriorated at an alarming rate."⁵⁴

DROUGHT AND IMPACTS ON ACCESS TO WATER AND FOOD

Somalia has experienced four consecutive seasons of poor rainfall, with rainfall in 2017 some 50 percent below average in most areas.⁵⁵ The impact on access to safe water for drinking, cooking, bathing and sanitation has been severe. The majority of Somalia's urban poor, including the IDP population, have to buy water and rely on small water vendors who sell poor quality water at high prices. According to the government "[the] poor people pay up to five times more for water" than those who have access to piped water (estimated to be just 35% of the population).⁵⁶ Access to clean drinking water is massively restricted by drought and internal displacement, leading to water having to often be supplied through costly water trucking and storage facilities in settlements.⁵⁷

The drought has also had a devastating impact on livelihoods and access to food. According to the Food and Agriculture Organization (FAO), Somalia's livestock sector dominates the country's economy, creating about 65% of Somali's job opportunities.⁵⁸

Families with average size livestock herds are now forced to pay between \$200 and \$400 a month for water. For example, between June 2015 and November 2016, severe water shortages led to a 300% increase in the price of water in some areas of Puntland, from \$5 per 200 litre barrel to \$15.⁵⁹ Moreover, the three year drought has killed approximately 60% of livestock in the country.⁶⁰

In early 2017, UN agencies were warning of a serious risk of famine in Somalia because of the drought.⁶¹ Although famine was averted, as of November 2017 more than 6.2 million people in Somalia - half the country's population - are in need of humanitarian assistance.⁶² More than 3.1 million are considered to be in acute need of humanitarian assistance for survival, with a further 3 million estimated as being in the 'stressed' category and in need of livelihoods support to prevent them from falling into "emergency" or "crisis" categories. Around 1.2 million children are affected by acute malnutrition.⁶³ The threat of famine is expected to persist into 2018, with food security expected to deteriorate further next year.⁶⁴

The lack of access to water has also impacted health. The UN has reported that cases of massive acute watery diarrhoea (AWD)/cholera intensified as a result of the drought, with 1,155 deaths recorded between January and the end of July 2017.⁶⁵

Somalia is heavily dependent on international aid to provide humanitarian assistance to drought-affected communities. However, only 61% of the UN OCHA Humanitarian Response Plan, including the supplementary appeal,⁶⁶ which requested US\$1.5 billion for the response in 2017, was funded as at 30

54 UN Security Council, *Report of the Secretary-General on Somalia*, 9 May 2017, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/430

55 UN OCHA, *Humanitarian Needs Overview 2018 Somalia*, 29 November 2017, available at: <https://reliefweb.int/report/somalia/2018-somalia-humanitarian-needs-overview>

56 Federal Government of Somalia, *Somalia National Development Plan 2017-2019*, October 2017, available at: <http://mopic.gov.so/wp-content/uploads/2016/11/SOMALIA-NATIONAL-DEVELOPMENT-PLAN-2017-2019.pdf>. According to the Somali government, only 35 percent of the population in Somalia has access to piped water.

57 Federal Government of Somalia, *Somalia National Development Plan 2017-2019*, October 2017, available at: <http://mopic.gov.so/wp-content/uploads/2016/11/SOMALIA-NATIONAL-DEVELOPMENT-PLAN-2017-2019.pdf>

58 See FAO website at: <http://www.fao.org/somalia/programmes-and-projects/livestock/en/>

59 UNDP, *In Search of Water, Addressing drought and preventing famine in Somalia*, 18 July 2017, available at: <https://stories.undp.org/in-search-of-water>

60 *Report of the Independent Expert on the Situation of Human Rights in Somalia*, 06 September 2017, available at: <https://reliefweb.int/report/somalia/report-independent-expert-situation-human-rights-somalia-ahrc3662-advance-unedited>

61 WFP and UNICEF, 'World must act now to save lives in Somalia, U.N agencies warn', 17 February 2017, available at: <https://reliefweb.int/report/somalia/world-must-act-now-save-lives-somalia-un-agencies-warn>

62 UN OCHA, *Humanitarian Needs Overview 2018 Somalia*, 29 November 2017, available at: <https://reliefweb.int/report/somalia/2018-somalia-humanitarian-needs-overview>

63 UN OCHA, *Humanitarian Needs Overview 2018 Somalia*, 29 November 2017, available at: <https://reliefweb.int/report/somalia/2018-somalia-humanitarian-needs-overview>

64 UN OCHA, *Humanitarian Bulletin Somalia*, 01-29 November 2017, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/november_humanitarian_bulletin_2017tg_002_yf_jbv2.pdf

65 UN Security Council, *Report of the Secretary General on Somalia*, September 2017, available at: <https://reliefweb.int/report/somalia/report-secretary-general-somalia-s2017751>

66 UN OCHA, *2017 Humanitarian Response Plan Revision*, May 2017, available at: https://fts.unocha.org/sites/default/files/2017_somalia_hrp_revision.pdf

November 2017.⁶⁷ For its Somalia response in 2017, which covers the cost of supporting Somali returnees from Kenya and Yemen, as well as those people newly internally displaced inside Somalia, UNHCR requested US\$118.7 million.⁶⁸ As of end of October 2017, this appeal was 53% underfunded.⁶⁹

AN INTERNAL DISPLACEMENT CRISIS

Ongoing armed conflict in several parts of the country and the severe drought have induced massive internal displacement of people in Somalia. As of November 2017, 2.1 million people were internally displaced, over one million of whom became displaced during 2017.⁷⁰ Much of the internal displacement has been of people moving from rural to urban areas in search of food and water. IDPs who have fled to urban centres are forced to live in extremely poor and overcrowded conditions, in makeshift shelters not fit to withstand the harsh climatic conditions.⁷¹

The UN's independent expert on Somalia has stated that IDP settlements lack adequate shelter and critical non-food items.⁷² Moreover, the sites of informal settlements often lack tenure security and inhabitants face a constant risk of eviction.⁷³ Between January and September 2017, more than 100,000 IDPs were forcibly evicted from their settlements by landlords and "gatekeepers" [informal IDP settlement managers], disrupting their livelihoods, further weakening their coping mechanisms and exposing them to protection risks.⁷⁴

The huge displacement from rural areas to urban centres in 2017 has placed considerable strain on the ability of the already overstretched and poorly-resourced local municipalities to provide basic services such as education, health care, potable water and adequate shelter and sanitation. The widespread gap in the provision of these core essential services, combined with poor health infrastructure, has triggered disease outbreaks including AWD/cholera and measles.⁷⁵ According to the World Health Organization (WHO), although the cholera response has reduced the number of new cases, 1,159 people are estimated to have died from cholera in 2017 and at least 5.5 million people remain at risk of cholera and other water-borne diseases.⁷⁶

2.3 RETURNS: SAFE, DIGNIFIED, SUSTAINABLE?

It is in this context that refugees are returning from Kenya to Somalia. UNHCR's formal position is that Somalia is not ready for large-scale returns; however, between December 2014 and September 2017, the agency has facilitated the return of more than 70,000 people from Kenya under the voluntary repatriation framework. As noted earlier, these 70,000 refugees have returned to a context of a protracted situation of internal displacement in Somalia, where there are more than two million IDPs due to conflict and drought. Despite Somalia not being ready for large-scale returns, in 2016, the returns of Somalis constituted the third largest repatriation process globally, after the repatriation of Afghans (384,000) and Sudanese (37,200).⁷⁷

Under international law refugees have a right to return to their country of origin. However, international law and standards require that returns happen in a manner that respects and protects the rights, safety and dignity of the returning refugees and that return is sustainable. 'Safety' refers to legal safety, physical security and material security, which includes "access to land or means of livelihood."⁷⁸ Amongst other elements

67 OCHA, *Somalia Humanitarian Funding Overview*, 30 November 2017, available at:

https://reliefweb.int/sites/reliefweb.int/files/resources/funding_overview_30_november_final.pdf

68 UNHCR, *Somalia Situation 2017, Supplementary Appeal January to December 2017*, May 2017, available at:

<https://data2.unhcr.org/en/documents/download/58247>

69 UNHCR, *Somalia Factsheet, 1-31 October 2017*, available at: <https://data2.unhcr.org/en/documents/download/60776>

70 UN OCHA, *Humanitarian Needs Overview 2018 Somalia*, 29 November 2017, available at: <https://reliefweb.int/report/somalia/2018-somalia-humanitarian-needs-overview>

71 UN OCHA, *Humanitarian Needs Overview 2018 Somalia*, 29 November 2017, available at: <https://reliefweb.int/report/somalia/2018-somalia-humanitarian-needs-overview>

72 *Report of the Independent Expert on the situation of Human Rights in Somalia*, available at: <https://reliefweb.int/report/somalia/report-independent-expert-situation-human-rights-somalia-ahrc3662-advance-unedited>

73 UN OCHA, *Humanitarian Needs Overview 2018 Somalia*, 29 November 2017, available at: <https://reliefweb.int/report/somalia/2018-somalia-humanitarian-needs-overview>

74 Data is from Norwegian Refugee Council (NRC)'s eviction tracking monitor, see: UN OCHA, *Humanitarian Bulletin Somalia*, September 2017, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/final_bulletin_september_2017v2.pdf

75 UN OCHA, *Humanitarian Needs Overview 2018 Somalia*, 29 November 2017, available at: <https://reliefweb.int/report/somalia/2018-somalia-humanitarian-needs-overview>

76 WHO, *Outbreak update: Cholera in Somalia*, 26 October 2017, available at: <http://www.emro.who.int/surveillance-forecasting-response/outbreaks/outbreak-update-cholera-in-somalia-26-october-2017.html>

77 UNHCR, *Global Trends, Forced Displacement 2016*, available at: <http://www.unhcr.org/statistics/unhcrstats/5943e8a34/global-trends-forced-displacement-2016.html>

78 UNHCR, *Handbook Voluntary Repatriation: International Protection*, Geneva 1996, available at: <http://www.unhcr.org/uk/3bfe68d32.pdf>

‘dignity’ requires that returnees are treated with respect and full acceptance by their national authorities, including full restoration of their rights.⁷⁹

Sustainability implies that no person should return to a territory from where there is a reasonable likelihood that they will need or want to flee in the foreseeable future. According to UNHCR, voluntary repatriation is not a durable solution without the reintegration of returnees into the local community.⁸⁰ While reintegration is a long-term process, its sustainability depends on the protection given to returnees during their initial repatriation process.⁸¹ Returnees, who can neither return to their place of origin in the country to which they return, nor sustainably reintegrate in the place of return, are at increased risk of becoming *de facto* IDPs.⁸²

This chapter considers whether the returns from Kenya to Somalia are consistent with these international standards.

VOLUNTARY REPATRIATION: INTERNATIONAL STANDARDS

The Government of Somalia, the Government of Kenya and the UNHCR are required to adhere to the principles of voluntary repatriation in safety⁸³ and dignity⁸⁴. Under the Tripartite Agreement, the Government of Somalia is responsible for ensuring the safe, dignified and sustainable return of Somalis.⁸⁵ UNHCR is responsible for facilitating and verifying that returns are voluntary and undertaken in conditions of safety and dignity.⁸⁶ This responsibility continues after repatriation and often involves monitoring, reporting, and intervening.⁸⁷ It also includes ensuring that returnees have the assistance necessary to reintegrate economically and socially, which often includes access to land.⁸⁸

Somali refugees are returning to a complex and acute humanitarian situation where more than half of the country’s population is in need of humanitarian assistance.⁸⁹ The situation is exacerbated by the fact that many returnees cannot go back to their home villages in rural areas because of ongoing insecurity.⁹⁰ This means they are returning to urban centres where there is a relative degree of security, but where they remain displaced and are unable to return to their places of origin for the foreseeable future.

The principal urban destinations for returnees are Kismayo, Baidoa and Mogadishu.⁹¹ As noted in the previous chapter, Baidoa and Mogadishu are also the locations to which hundreds of thousands of IDPs have fled in search of humanitarian assistance. Consequently, refugees are returning to areas that are facing humanitarian problems and a swelling IDP population. UNHCR has however suspended returns to Baidoa since August due to the humanitarian situation, but not to the other two principal destinations.⁹² According to the 2017 Global Report on Internal Displacement:

“[for] 25 per cent of the returnees, however, the three areas [Kismayo, Baidoa and Mogadishu] are not their place of origin or previous residence. They are also located in south-central Somalia, which hosts the vast majority of the country’s IDPs, and there are concerns that many returnees are simply adding to their

79 UNHCR, *Handbook Voluntary Repatriation: International Protection*, Geneva 1996, available at: <http://www.unhcr.org/uk/3bfe68d32.pdf>

80 UNHCR, *Handbook Voluntary Repatriation: International Protection*, Geneva 1996, available at: <http://www.unhcr.org/uk/3bfe68d32.pdf>

81 UNHCR, *Handbook Voluntary Repatriation: International Protection*, Geneva 1996, available at: <http://www.unhcr.org/uk/3bfe68d32.pdf>

82 Internal Displacement Monitoring Centre, Thematic Series, *The Invisible Majority. Internal Displacement and the Global Compact on Refugees, Are today's returning refugees tomorrows IDPs?* November 2017, available at: <http://www.refworld.org/pdfid/5a26b5ea4.pdf>

83 The notion of safety is also codified in the OAU Convention which requires countries of asylum in collaboration with countries of origin to make adequate arrangements for the safe returns of refugees participating in repatriation programmes. See OAU, *1969, Convention Governing the Specific Aspects of Refugee Problems in Africa*, available at: <http://www.unhcr.org/uk/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html>

84 UNHCR, *Discussion Note on Protection Aspects of Voluntary Repatriation EC/1992/SCP/CRP.3*, 1992, available at:

<http://www.unhcr.org/uk/excom/scip/3ae68cd314/discussion-note-protection-aspects-voluntary-repatriation.html>

85 See: Tripartite Agreement between the Government of the Republic of Kenya, the Government of the Federal Republic of Somalia and the United Nations High Commissioner for Refugees, *Governing the Voluntary Repatriation of Somali Refugees living in Kenya*, 2013, available at: <http://www.refworld.org/pdfid/5285e0294.pdf>. According to UNHCR, “repatriation should not only be voluntary; it should take place under conditions of safety and dignity.”

86 UNHCR, *Handbook Voluntary Repatriation: International Protection*, Geneva 1996, available at: <http://www.unhcr.org/uk/3bfe68d32.pdf>.

87 UNHCR, *Handbook Voluntary Repatriation: International Protection*, Geneva 1996, chapter 6.2, available at:

<http://www.unhcr.org/uk/3bfe68d32.pdf>

88 UNHCR, *Handbook Voluntary Repatriation: International Protection*, Geneva 1996, available at: <http://www.unhcr.org/uk/3bfe68d32.pdf>

89 IDMC, GRID 2017, *Global Report on Internal Displacement*, May 2017, available at: <http://www.internal-displacement.org/assets/publications/2017/20170522-GRID.pdf>

90 Danish Demining Group (prepared by Ken Mekhaus), *Dadaab Returnee Conflict Assessment*, August 2017, available at:

<https://reliefweb.int/report/somalia/dadaab-returnee-conflict-assessment-august-2017>

91 IDMC, *Global Report on Internal Displacement*, 2017, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/2017-GRID.pdf>

92 Amnesty International phone interview with UNHCR Kenya and UNHCR Somalia, August 2017; UNHCR, *Operational Update Dadaab Kenya, 01-15 September*, available at: <http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/09/15-September-Dadaab-Bi-weekly-Operational-Update.pdf>

number... The likelihood of returnees being forced to move again in search of basic assistance, services and sustainable livelihoods is high.”⁹³

This has significant implications for access to housing and livelihoods and the sustainability of these returns, as will be discussed below.

UNHCR is aware that returnees are entering a very challenging humanitarian context. In mid-2017, while appealing for additional funding, UNHCR noted:

*“a number of factors continue to jeopardise the humanitarian and social situation in Somalia [including] limited access by humanitarian and development actors; ...limited livelihood opportunities; ... poor infrastructure, especially with regard to housing, schools and health facilities.”*⁹⁴

The Agency also noted: *“the current risk of famine in Somalia is high and there are already reports of deaths and illnesses caused by drought-related factors.”*⁹⁵

All of the available data on insecurity and the humanitarian situation point to clear risks to the human rights of returnees, particularly their right to a safe and dignified return. In order to mitigate the challenges they face and to support returnees to sustainably reintegrate in Somalia, UNHCR and its implementing partners are providing people with an enhanced returns assistance package.⁹⁶ This comprises a cash grant of \$200 per person (regardless of family size); a subsistence package which includes a monthly payment of \$200, ongoing for six months; education assistance amounting to \$25 per child, per month, for a period of nine months; and a standard package of core relief items, including jerry cans and plastic sheeting.⁹⁷ In its May 2017 Supplementary Appeal: Somalia Situation, UNHCR also states that it will support households to construct permanent shelters by providing up to \$1,000 per family, and that they would also consider rent payment solutions for urban returnees.⁹⁸ Further, UNHCR commits to basic services interventions, focused on community based projects, UNHCR has also said it will support livelihoods programming, although it also noted that *“Agricultural activities have been limited by the protracted conflict and the destruction of agricultural equipment and infrastructure.”*⁹⁹

While there are clear challenges, there is little data available on the experiences of returnees and their ability to cope; nor on the extent to which returnees may be competing with local and IDP populations for scarce resources. In April/May 2017 Amnesty International visited Baidoa, Mogadishu and Kismayo and interviewed refugees and humanitarian workers to better understand if, and if so how, the returns from Kenya to Somalia meet international standards.

2.3.1 ISSUES FACING RETURNEES: EXPERIENCES FROM THE GROUND

Nearly all the returnees interviewed by Amnesty International – all of whom were repatriated under the Tripartite Agreement’s voluntary repatriation program – stated that they and their families still faced serious hardship in Somalia. Most of the returnees said that they were unable to go back to their home villages, because of the drought and insecurity in the areas and many have ended up living in or adjacent to IDP camps in Baidoa and Kismayo.

One of the main issues of concern was, unsurprisingly, access to water. The drought has resulted in a shortage of water in Kismayo and Baidoa,¹⁰⁰ with Baidoa suffering from a particularly acute water shortage.¹⁰¹ In the interviews conducted by Amnesty International the interviewees spoke about the challenges of finding clean drinking water.

93 IDMC, *Global Report on Internal Displacement*, 2017, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/2017-GRID.pdf>

94 UNHCR, *Somalia Situation 2017, Supplementary Appeal*, available at: <http://www.unhcr.org/591ae0e17.pdf>

95 UNHCR, *Somalia Situation 2017, Supplementary Appeal*, available at: <http://www.unhcr.org/591ae0e17.pdf>

96 UNHCR, *Somalia Situation 2017, Supplementary Appeal*, available at: <http://www.unhcr.org/591ae0e17.pdf>

97 UNHCR, *Somalia Situation 2017, Supplementary Appeal*, available at: <http://www.unhcr.org/591ae0e17.pdf>

98 Regarding the issue of shelter, UNHCR states that “site and settlement planning will be conducted, including tenure security and restoration of land and property rights as required”, see UNHCR, *Somalia Situation 2017, Supplementary Appeal*, available at: <http://www.unhcr.org/591ae0e17.pdf>

99 UNHCR, *Somalia Situation 2017, Supplementary Appeal*, available at: <http://www.unhcr.org/591ae0e17.pdf>

100 UN OCHA, *Humanitarian Bulletin*, 31 July 2017, available at:

<http://reliefweb.int/sites/reliefweb.int/files/resources/FINAL%20July%202017%20Humanitarian%20Bulletin-v2.pdf>;

101 UN OCHA, Reach and USAID, *Baidoa IDP Settlement Assessment, Somalia, Situation Overview April 2017*, available at:

http://reliefweb.int/sites/reliefweb.int/files/resources/Press%20release%20-%20Humanitarian%20situation%20in%20Bangassou%20-%2015052017_0.pdf

Halima, a 46-year-old single mother with three children left her village of Bulo Adey, near Berdera, in 2011. She was repatriated to Baidoa with her family in January 2017. She told Amnesty International that water was her family's greatest concern:

“Now we have no water... not even a single cup for four days... and no food,” she said.¹⁰²

Warsame, a 48-year-old man with three wives and 12 children, told researchers he has become desperate about the lack of water. He returned to Somalia in June 2015; some of his family lives in an IDP camp in Baidoa, while others are living in the town. He stated that only those in the IDP camp had access to adequate water.

“Really, if I had the opportunity to go back to Dadaab, I would not wait around... For four days my family went without water.”¹⁰³

Many of the returnees interviewed by Amnesty International said that the limited water that is available for sale is sometimes prohibitively expensive. Several returnees said water cost 7,000 shillings (US\$12) per jerrycan. For example, Bashir, in his 40s, originally fled to Kenya from Bardera as a result of drought and famine in 2011. He was repatriated to Baidoa in January 2017 and was living in a settlement for IDPs when Amnesty International met him. He told researchers that he and his family were again suffering as a result of drought.

“We have no water. Other people sell water for 7000 shillings per jerrycan. That it is too expensive; I can't afford it,” he said.¹⁰⁴

Amina, a women in her thirties, was repatriated to Baidoa with her husband and seven children in August 2016. Like most of the returnees to whom Amnesty International spoke, she had to buy water from local water-sellers.

“The biggest problem that we have in the area is water. We buy a jerrycan of dirty water 7000 shillings. We can go for some days without water,” she told Amnesty International.

Several people said that family members and neighbours had become ill through lack of access to clean water or because the water they buy is contaminated. Loyaan, a 38-year-old man, was originally displaced to Dadaab as a result of the drought in 2011. He returned to Baidoa with his six children in August 2016. He told Amnesty international that he had been prevented from returning to his home because of the drought and that his children had become ill from drinking the water he purchased.

“I could not go back to [his home district] Bardera because of the drought. I came to Baidoa so I could receive support. ... We have no water. We buy water 7000 shillings per jerrycan. But they sell us dirty water. This is why my children suffered from cholera. We want clean water”, he said¹⁰⁵

Hajji, 38, was displaced from Baidoa. He returned to Somalia with his six children in August 2016.

“Water is the most pressing issue for us. We have no clean water they sell dirty water and it is very expensive. There was an outbreak of cholera in the village in the last few weeks,” he told Amnesty International.¹⁰⁶

Igal, a 40-year-old man fled from Somalia in 2011 because of drought and violence, returned and settled in Baidoa with his six children in August 2016. He told Amnesty International that his family and neighbours were suffering from a severe lack of food and clean water.

“If you visit our homes you will see people who have eaten nothing for at least three days. And there is no clean drinking water... We were expecting the government to help us with water wells,” he said.¹⁰⁷

Access to food is also a significant concern for returnees. As noted above, Somalia is experiencing serious food insecurity. Because of the insecurity in many rural areas, people cannot return to rural homes to farm and make a living. Returnees must rely on their assistance packages and humanitarian aid to obtain food.

The experience of the returnees to whom Amnesty International spoke is backed up both by credible data on the drought situation and its impact in Somalia, referred to earlier, and by the observations of humanitarian

102 Amnesty International interviews, Somali returnees, Somalia, 24 April 2017.

103 Amnesty International interviews, Somali returnees, Somalia, 24 April 2017.

104 Amnesty International interviews, Somali returnees, Somalia, 24 April 2017.

105 Amnesty International interviews, Somali returnees, Somalia, 25 April 2017

106 Amnesty International interviews, Somali returnees, Somalia, 25 April 2017

107 Amnesty International interviews, Somali returnees, Somalia, 25 April 2017

aid workers to whom Amnesty International spoke, some of whom questioned the appropriateness of returns into a drought context. For example, one UN official in Baidoa told researchers that

“the region does not have capacity to absorb returnees, especially with the drought. Service delivery is the biggest issue. Returning people to areas affected by drought is inappropriate.”¹⁰⁸

Another humanitarian aid worker in Baidoa said:

“It’s already a disaster... if they close Dadaab it will be worse... people are already sleeping under the sky and waiting 36 hours for water!”¹⁰⁹

2.3.2 THE IDP CRISIS AND LACK OF ADEQUATE SHELTER

Sustainable reintegration of Somali refugees depends on their ability to reclaim their land or gain access to land or property.¹¹⁰ In its *Integrated Action Plan for Sustainable Return and Reintegration of Somali Refugees from Kenya to Somalia*, UNHCR recognizes that “the provision of shelter is essential to anchoring return and sustaining reintegration in Somalia”. As part of this Action Plan UNHCR committed to supporting the construction or rehabilitation of permanent or semi-permanent shelters.¹¹¹ However UNHCR is only able to support the construction of permanent housing if the returnees own land. The Action Plan also states that UNHCR will take action to ensure that housing, land and property rights are dealt with as part of the provision of shelter solutions; and that it will advocate with the government and local authorities to secure land tenure rights for returnees.¹¹² The Action Plan further refers to providing “transitional shelters” while issues relating to land or property rights are being resolved.¹¹³

The issue of land tenure and property rights in Somalia is a highly complex and contested one. Somalia lacks a functioning land governance system, the existing system having collapsed during the conflict post 1991.¹¹⁴ Verification of records of land titles is complicated by destroyed or lost records, falsification of documents and corruption, amongst other factors.¹¹⁵ Tension over land ownership was a central feature of the conflict and land-grabs remain commonplace.¹¹⁶ The influx of IDPs to urban areas has further exacerbated tension over land ownership in large urban areas.

Access to adequate shelter is a major challenge for the IDP population in Somalia.¹¹⁷ Returnees settling in or close to IDP settlements in urban areas with no land tenure face the same challenges as IDPs. UNHCR has recognized that this puts returnees at risk of forced evictions, which are regular occurrences in urban areas in South and Central Somalia.¹¹⁸

Access to land is a priority for returnees from Dadaab¹¹⁹, but returnees, the majority of whom are not returning to their areas of origin, face multiple challenges obtaining secure access to land on which to construct shelter. Nearly all the returnees interviewed by Amnesty International said that they had been unable to secure adequate shelter, despite UNHCR’s commitments to providing shelter support, in the form of cash assistance of the value of up to \$1,000, as part of the returns package. This support does not address the persistent challenges, referred to above, with regard to tenure. Many of those interviewed were

108 Amnesty International interviews with Somali returnees, Somalia, 26 April 2017.

109 Amnesty International interviews with Somali returnees, Somalia, 26 April 2017

110 NRC, *Dadaab’s Broken Promise*, October 2016, available at: <https://www.nrc.no/globalassets/dadaabs-broken-promise-an-nrc-report-10.10.16.pdf>

111 UNHCR, *Integrated Action Plan for Sustainable Return And Reintegration of Somali Refugees from Kenya to Somalia 2016- 2017*, 2015, available at: <http://www.unhcr.org/561e54069.pdf>

112 UNHCR, *Integrated Action Plan for Sustainable Return And Reintegration of Somali Refugees from Kenya to Somalia 2016- 2017*, 2015, available at: <http://www.unhcr.org/561e54069.pdf>

113 UNHCR, *Integrated Action Plan for Sustainable Return And Reintegration of Somali Refugees from Kenya to Somalia 2016- 2017*, 2015, available at: <http://www.unhcr.org/561e54069.pdf>

114 Danish Demining Group - Ken Menkhaus, *Dadaab Returnee Conflict Assessment*, August 2017, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/dadaab-returnee-conflict-assessment-ddg-2017.pdf>

115 Danish Demining Group - Ken Menkhaus, *Dadaab Returnee Conflict Assessment*, August 2017, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/dadaab-returnee-conflict-assessment-ddg-2017.pdf>

116 NRC and Legal Action Worldwide, *Housing, Land and Property in Somalia: Persons of Concern in Somaliland, and South-Central Somalia*, October 2014, <http://legalactionworldwide.org/wp-content/uploads/2014/11/Housing-Land-and-Property-Issues-in-Somalia-Persons-of-Concern-in-Somaliland-and-South-Central-Somalia.pdf>

117 Danish Demining Group - Ken Menkhaus, *Dadaab Returnee Conflict Assessment*, August 2017, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/dadaab-returnee-conflict-assessment-ddg-2017.pdf>

118 UNHCR, *Integrated Action Plan for Sustainable Return And Reintegration of Somali Refugees from Kenya to Somalia 2016- 2017*, 2015, available at: <http://www.unhcr.org/561e54069.pdf>

119 Danish Demining Group - Ken Menkhaus, *Dadaab Returnee Conflict Assessment*, August 2017, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/dadaab-returnee-conflict-assessment-ddg-2017.pdf>

living in or around IDP settlements in Kismayo or Baidoa. The lack of adequate shelter has made the returnees extremely vulnerable to the elements and susceptible to illness.

For example, Hawo, a forty-year-old woman who returned to Kismayo from Kenya with her seven children in February 2016, says she was told that she would receive a shelter but did not receive one.

“We just built a shelter with sticks . . . we don’t have [a good] shelter and it is the rainy season. The food and our beds are soaked wet, this is the main problem we are facing here.”¹²⁰

Several returnees interviewed by Amnesty International stated that they were unaware, prior to returning, that UNHCR could only help them construct shelters if they owned land. Only a few of the returnees interviewed had been able to purchase land; the vast majority do not have sufficient financial resources to do so.

In recognition of the difficulties faced by returnees in trying to secure land ownership, UNHCR recently changed its policy to include areas of land that have been provided by the government to the returnee community.¹²¹ Some returnees, however, who have settled on land that was given to them by the government, have subsequently encountered members of the local community claiming that they are the true owners of the land and have threatened them with violence unless they vacated the property.

For example, Siyad, a 31-year-old man who returned to Kismayo with his six children in April 2016, was able to build a house, but was subsequently threatened.

“[The UN], fulfilled the promise of money but the other promises they didn’t fulfil. . . . I started paying rent and then ran out of money and went to an IDP camp . . . The problem is that there is no work and people telling us that we are on their land. My house that I built [in the IDP camp], a guy with a gun came and destroyed half the house. . . . I don’t have anywhere else to go so I stayed. . . . [The guy who destroyed the house] told me to leave the place and I don’t have anywhere to go. . . . The most important thing we need is land.”¹²²

UNHCR and its implementing partners have acknowledged that they face obstacles in both Kismayo and Baidoa that have prevented them from assisting the vast majority of returnees with shelters.¹²³ At the end of June 2017, UNHCR reported that 605 shelters and 275 latrines had been constructed for returnees in Kismayo and 405 shelters and 175 latrines had been constructed in Baidoa, which represents just a tiny fraction of the needs of the more than 52,000 returnees who had resettled in those areas.¹²⁴

The ongoing insecurity and severe drought in Somalia pose a major risk to the viability of the repatriation process. While refugees are being assisted to return to the relatively secure areas of the country, the armed conflict and gross violations of humanitarian and human rights law that accompany it, nonetheless have a major impact on returns: many people still cannot go back to their places of origin and therefore risk remaining displaced, this time inside the country as IDPs. UNHCR has acknowledged the serious challenges around land tenure, and the conflicts that are inherent to land access. However, there is not yet any viable solution that would enable all returnees to access secure, permanent housing, and UNHCR has admitted that only a small proportion of returnees have been supported to construct a permanent shelter.

The impact of the drought is also felt by those who return and drought has driven the IDP crisis. In its planning for 2017 UNHCR expected to assist an additional 30,000 Somali refugees fleeing Somalia due to insecurity and drought. Voluntary repatriation cannot be a durable solution unless refugees successfully reintegrate, recover livelihoods and can live in dignity. Conditions in Somalia are not allowing this to happen, and as some people return, others continue to flee to Kenya and Ethiopia. The challenges facing returnees in Somalia raise questions about how the returns can be viewed as meeting the requirements of safety, dignity and sustainability.

120 Amnesty International interviews with Somali returnees, Somalia, 2 May 2017.

121 Amnesty International interview with UNHCR Somalia, May 2017

122 Amnesty International interviews with Somali returnees, Somalia, 2 May 2017.

123 For more on obstacles affecting access to land in Somalia see: NRC, *Influencing durable solutions: An advocacy package, the practice of housing, land and property rights in Somalia*, 2016, available at:

<http://regionaldss.org/sites/default/files/NRCAdvocacyPackageHLPRightsSomalia.pdf>

124 UNHCR, *Weekly update, Voluntary repatriation of Somali refugees from Kenya*, 9 June 2017, available at: <http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/06/Voluntary-Repatriation-Analysis-9-June-2017.pdf>;

3. VOLUNTARY RETURN?

Amnesty International has previously reported on the organization's serious concerns about the extent to which returns from Kenya to Somalia are truly voluntary.¹²⁵ As noted in Chapter 1, in May 2016 the Kenyan government announced its intention to close Dadaab refugee camp by 30 November 2016. In making the announcement, the government made clear that it intended Somali refugees to return to Somalia. The extremely tight timeframe and the lack of any alternative options for Somali refugees left open the prospect of large-scale forced returns to Somalia. In what Amnesty International and other human rights observers considered an effort to coerce people to make what could be passed off as a voluntary return, government officials told refugees in Dadaab that if they did not go back before the 30 November deadline they risked not getting the financial support package.¹²⁶

An Amnesty International report, *Nowhere Else To Go*,¹²⁷ published in November 2016 and based on research carried out in Dadaab in August 2016, concluded that a range of what are known as “*push factors*”, meant that decisions to return were not voluntary in any meaningful sense. For this report, Amnesty International spoke to 56 Somali refugees, almost all of whom expressed concern about being forced back to Somalia; those planning to return under the voluntary agreement were doing so because they believed they would at least get some support if they agreed to go “*voluntarily*”. Many refugees also described a deteriorating humanitarian situation in Dadaab, including a reduction in food rations, which they felt made life in the camps difficult. The testimony provided by the refugees was backed up by information provided by humanitarian workers and documentation confirming reduced rations, as well as media statements by government officials.¹²⁸

Refugees whom Amnesty International met in Somalia during the research for this report, and who had returned in 2016, also stated that the decisive factor in their decision to return was a belief they would ultimately be forced. For example, Ahmed, in his forties, fled from Kismayo in 1991 after members of his family were killed during the civil war. He told Amnesty International that he returned to Kismayo in August 2016 because he was worried that he would be abused if he stayed in Dadaab:

“[I returned to Somalia] because Kenya told us that if we don’t move they would abuse us... I heard this on the BBC. ... [The UNHCR] said that [decision to return] was voluntary, not forced. It was not forced. We went to the [UNHCR] office and asked for repatriation. ... Since Kenya said that we had to leave, we returned to our motherland.”¹²⁹

Abdiya, a 40-year-old woman with seven children who fled from Dinsoor in 2011 and returned to Somalia in 2016, explained to Amnesty International that she felt forced by the Kenyan government to return to Somalia.

“At the beginning [of our time in Dadaab] life was very good but by at the end we were forced to leave the country. ... We heard it on the radio. It was the Kenyan government [who forced us to leave]. They said ‘we don’t want any more refugees. You must go back home’. ... It was the Kenyan President. ... I would have liked to stay

125 Amnesty International, *Nowhere else to go: forced returns of Somali refugees from Dadaab refugee camp, Kenya*, November 2016, Index No. AFR 32/5118/2016, available at: <https://www.amnesty.org/en/documents/afr32/5118/2016/en/>

126 Amnesty International, *Nowhere else to go: forced returns of Somali refugees from Dadaab refugee camp, Kenya*, November 2016, Index No. AFR 32/5118/2016, available at: <https://www.amnesty.org/en/documents/afr32/5118/2016/en/>

127 Amnesty International, *Nowhere else to go: forced returns of Somali refugees from Dadaab refugee camp, Kenya*, November 2016, Index No. AFR 32/5118/2016, available at: <https://www.amnesty.org/en/documents/afr32/5118/2016/en/>

128 Amnesty International, *Nowhere else to go: forced returns of Somali refugees from Dadaab refugee camp, Kenya*, November 2016, Index No. AFR 32/5118/2016, available at: <https://www.amnesty.org/en/documents/afr32/5118/2016/en/>

129 Amnesty International interviews with Somali returnees, Somalia, 2 May 2017.

but I had no choice. ... Nobody else [other than the government] told us to leave. ... The UNHCR gave us a card and helped us with our shelter and rations. And our repatriation costs were paid by the UNHCR... No [UNHCR] did not pressure us to leave], UNHCR was telling us to stay. It was the Kenyan Government that ordered us to leave. So we could not have any more safety then.”¹³⁰

Jama'a, a 55 year old man who left Ururow in 2011 returned to Baidoa in early 2017. He told Amnesty International that statements by the Kenyan government caused him to fear for his safety and ultimately to repatriate:

“[I returned] because the Kenyan government said that 24 hours after the deadline [to close Dadaab] we would be beaten. I heard this on the radio... heard this on V[oice] O[of] A[merica] ... an official in the government, he said ‘we were keeping refugees for 10 years, now they need to return to their countries or they will have bad consequences. They will be beaten.’ ... he said ‘three month after deadline we will dispatch troops to the camp... and in 24 hours we will beat you.’ ... I Left in February 2017, just after the three month deadline... After such an announcement, I am afraid that [beatings] will happen. ... The UNHCR told us we could stay and that they would discuss the issue with Kenya... but [they also said] if you want you can go. ... But the UNHCR is only an agency, Kenya is a government - it has the power. So we decided to leave. ... We also heard that Somalia was getting better. This encouraged us. ... The UNHCR gave us a choice... The UNHCR told us that Somalia is getting better. That there is peace.... [The UNHCR] told us this at conferences with refugees three times between June and September 2016... they told us about the drought, they told us everything... but it was our decision, because of the government.”¹³¹

The situation changed when, on 9 February 2017, the High Court in Kenya blocked the Government's directive to close Dadaab. Since the High Court's decision, explicit statements by the government and other forms of overt pressure appear to have subsided; however, while the government has not announced a new deadline for the closure of Dadaab, it has failed to take any measures to publically reassure refugees that they have the option of staying in Kenya if they choose not to return to Somalia.

Amnesty international interviewed several returnees in Somalia who left Dadaab after the Court Order. Moreover, Amnesty International spoke to refugees in Dadaab by phone in between July and September 2017, more than six months after the High Court ruling to ask them what changes they had observed.

Farhan, a leader in Hagadera camp told Amnesty International that he has observed a change in reason why people are repatriating in the aftermath of the High Court decision.

“Before people left because of the government directive. Since the court order people are leaving freely... There has been a lot of change since the court order. People have calmed down.... Some people are leaving because of the lack of food in the camp... the people going back right now don't know conditions in Somalia but they can't handle it in the camp right now... people see the money [from UNHCR] as a quick fix to the problems they are experiencing in the camp but people spend the money they get and then they must come back [to Dadaab].”¹³²

The impact of what are perceived to be increasingly difficult living conditions in Dadaab was referred to by several other refugees. For example, Iguman, a 36 year old man with eight children, who had been living in IFO II in Dadaab since 2008, told Amnesty International that the decrease in food rations played a decisive role in his decision to repatriate with his family.

“Life in Dadaab was good at first then some problems started and then rations decreased. ... I decided to come back because security improved [in Somalia] and because food was cut in Dadaab. And because Jubaland got stable. ... It was voluntary. I was not forced. They just said that they were closing. ... We would not have left if the food rations had stayed the same.”¹³³

Abdullahi, a chair of a refugees association in one of the camps in Dadaab, told Amnesty that:

“First people were afraid because of the government directive [to close the camp] so they went back [to Somalia]... but now [after the High Court decision] now they are deciding to go back because of the hardships in

130 Amnesty International interview, Somali returnees, Somalia 25 April 2017.

131 Amnesty International interview, Somali returnees, Somalia, 25 April 2017.

132 Amnesty International interview, Somali returnees, Somalia, 27 July 2017.

133 Amnesty International interview, Somali returnees, Somalia, 2 May 2017.

the camps. The food shortage. And there is no freedom of movement. You can't go outside [the camp] to look for a job.”¹³⁴

Asiya, in her 40s with eight children, had been living in Dadaab since 1991. She registered to return in April 2017. She told Amnesty International that she decided to register as a result of the dire humanitarian situation in the camp as well as fear that she might be forced back. She was unaware of the court ruling.

“I have registered to go back... one of the reasons why [I registered] is that a lot of the [humanitarian] organizations have left. ... We don't have enough sugar, water, milk, and food... and I do not have any work. I cannot support my family. ... I also have decided to go back because it was a directive [from the government]... and also because the education sector has gotten worse... teachers have gone back [to Somalia] and students were told to go home [to Somalia]... in Dadaab there are a lot of radio stations like BBC and VOA and these stations give us information that people are supposed to return. ... Right now no one is forcing us to go but there might be [in the future] so I'm going to go back.”¹³⁵

Again, the accounts of the refugees about the increasing hardships in Dadaab are borne out by information from humanitarian actors. According to UNHCR, overall funding and assistance for refugees in Dadaab decreased at a significantly higher rate in 2016 than the rate at which the population in the camp decreased.¹³⁶ The 2017 Somalia Situation Supplementary Appeal for Kenya was only 7% funded as of 7 November.¹³⁷ The World Food Programme (WFP) cut food rations to Dadaab consecutively in 2014, 2015 and 2016.¹³⁸ In April 2017 WFP announced that due to an injection of funding it would temporarily be able to start delivering a full food ration to Dadaab.¹³⁹ However, due to the uncertainty around funding it was forced to cut the food ration value again in October 2017.¹⁴⁰ Unsurprisingly, food provision is perceived to be insecure by refugees in Dadaab and several refugees told Amnesty that the lack of basic provision in the camp was a driving force in their decision to return.

Several of the refugees, however, stated that fear of being forced back was still a decisive factor in their decision to repatriate. Some were unaware of the High Court decision, while others were aware of it but still believed that the government would close the camp and force people to return.

Ali, a youth leader in his twenties who has lived in Dadaab for his entire adult life told Amnesty that although the public statements by government officials had subsided, significant pressure to return still existed, which was compounded by the increasingly difficult humanitarian situation in the camp.

“The pressure still exist. ... No one is directly pressuring [any more] but there is psychological pressure. ... [Many refugees] still believe that the courts are controlled by the government. ... Pressure has not decreased with the [High Court] decision. ... People think that government will refocus on closing the camp after the Kenyan elections. ... I attended a meeting in the camp with Kenyan government officials in late 2016. The government officials used to tell us leaders to tell the refugees to go home. ... the UNHCR says it's voluntary but they have no power. ... Although some people make other decision after going to the helpdesk. ... Also, there was decrease in rations and a change from sorghum to wheat. And a reduction in water. And health facilities not funded. And people think that they won't get the package if they don't leave. ... And people believe that it is sufficient money to start a livelihood... but it's insufficient and many have returned [to Dadaab]... and some have gone to refugee camps in Dollo [Ethiopia].”¹⁴¹

134 Amnesty International phone interview with Somali refugees in Dadaab, 27 July 2017.

135 Amnesty International phone interview with Somali refugees in Dadaab, 1 August 2017.

136 UNHCR, *Kenya comprehensive refugee programming 2016, Programming for solutions*, April 2016, available at:

<http://www.unhcr.org/ke/wp-content/uploads/sites/2/2016/05/Kenya-Comprehensive-Refugee-Programme-document-KCRP-20161.pdf>

137 UNHCR, *Somalia Situation, 2017 Funding Update as of 7 November 2017*, available at:

<https://reliefweb.int/sites/reliefweb.int/files/resources/Somalia%20Situation%20Funding%20Update%2007%20November%202017.pdf>

138 WFP, “WFP Forced To Reduce Food Rations To Refugees In Kenya”, 14 November 2014, available at:

<https://www.wfp.org/news/news-release/wfp-forced-reduce-food-rations-refugees-kenya>; WFP, “Lack Of Funds Forces WFP To Reduce

Food Rations Again For Refugees In Kenya”, 11 June 2015, available at: <https://www.wfp.org/news/news-release/lack-funds-forces-wfp-reduce-food-rations-again-refugees-kenya>; WFP, “Urgent Funding Needed To Reverse New Food Ration Cuts For Refugees In Kenya”, 06

December 2016, available at: <https://www.wfp.org/news/news-release/urgent-funding-needed-reverse-new-food-ration-cuts-refugees-kenya>

139 WFP, ‘New donor funding allows WFP to resume full food rations for refugees in Kenya’, 07 April 2017, available at:

<https://www.wfp.org/news/news-release/new-donor-funding-allows-wfp-resume-full-food-rations-refugees-kenya>

140 Amnesty International skype interview with UNHCR Kenya Country Representative and UNHCR Somalia Country Representative, 18

August 2017; WFP, “WFP Cuts Food Rations For Refugees In Kenya Amidst Funding Shortfalls”, 2 October 2017 available at:

<http://www.wfp.org/news/news-release/wfp-cuts-food-rations-refugees-kenya-amidst-funding-shortfalls>

141 Amnesty International phone interview with Somali refugees in Dadaab, 27 July 2017.

Anab, a twenty year old mother of four from Jilib fled Somalia because of the famine in 2011. She registered to return in June 2017. She told Amnesty International that her decision to return was largely a result of her belief that she was going to be forced back.

“I have decided to go back to [Kismayo] with my family and my children. ... [I decided] because in the radio we were told that everyone was going to be taken back. ... [UNHCR] said that there is no problems in Kismayo and that any person who is willing to go back can go back. They said that the humanitarian situation was fine, that everything is fine.... I don't know about any problems in Somalia.”¹⁴²

Mohamud, a refugee leader in his late 50s, told Amnesty that he had not registered to return because he is worried about what might happen to him if he returned to Somalia, but that many people in Hagadera camp were still registering because of the conditions in the camp and the belief that the camp will close. He was aware of the Court decision, however, he told Amnesty International that he did not believe that it was reassuring people that they did not need to return if they didn't want to.

“The Court order said [the decision to return] was voluntary but are people still going [back to Somalia] based on what they heard before. People still believed that they will be forced at a later date if they don't go back willingly now. ... I don't want other people's children to suffer.”¹⁴³

Waey, a teacher in his 30s with five children, registered to return in March 2017. He told Amnesty International that he was unaware of the High Court decision and he decided to register as a result of the government decision to close the camp.

“I have decided to go back [to Somalia] because of the government directive regarding repatriation... the decision is not from my side but we cannot stay where we are not wanted... we heard on the radio and we were given sheets and the UNHCR is registering people for repatriation... I went to the office and registered for repatriation... and filled the forms... the sheets said that Kismayo was one of the safe places... We were told that we'd be given some money when we went back... they didn't give me any [other] information. ... I would prefer to stay. I would like my kids to finish their studies... If the decision of the government changed then many people would not go back, including me.”¹⁴⁴

Based on testimony from refugees, returnees and humanitarian workers, the major push factor affecting the decision of refugees to return from Kenya to Somalia prior to the High court ruling in February 2017 was the belief that the Kenyan authorities would close the camp and people would be forced to go back. Some people also clearly believed that if they did not do so “voluntarily” they could lose out on the repatriation package. Since the court ruling, the deterioration in the humanitarian conditions in Dadaab now appear to be a push factor of equal significance for refugees. Despite the Court ruling, the majority of refugees with whom Amnesty International spoke were not convinced that the Government of Kenya's position on closing Dadaab had changed.

The refugees' concerns are underpinned by the lack of alternatives being offered to Somali refugees in Kenya and by policy changes made by the Kenyan authorities with regard to Somali refugees. As noted in Chapter 1, in recent years the Kenyan government has taken a series of steps to reduce the asylum space for, and protection of, Somali refugees. The government has repeatedly refused to offer Somali refugees the option of local integration in Kenya. On the contrary, by effectively denying to newly arrived Somali refugees access to registration and RSD procedures since 2015, the government has sent a clear message to Somalis that they are no longer welcome. The denial of registration impacts the ability of newly arrived refugees from Somalia to access food assistance and other basic services in Dadaab. The alternative durable solution of resettlement to a third country has also been effectively closed since the US government introduced significant cuts and further restrictions to its resettlement programme earlier this year.

Returns to Somalia cannot be considered voluntary in any meaningful sense in a context of: ongoing uncertainty regarding the future of Dadaab camp and what will happen to refugees who choose not to return to Somalia; the absence of alternatives being offered to Somali refugees in Kenya; a coercive environment in Dadaab, compounded by the reduction in humanitarian assistance and services in the camp. Taken together, these conditions greatly challenge the right of refugees to make truly voluntary choices or decisions based on free-will, contrary to international standards.

142 Amnesty International phone interviews with Somali refugees in Dadaab, 1 August 2017.

143 Amnesty International phone interviews with Somali refugees in Dadaab, 1 August 2017.

144 Amnesty International phone interviews with Somali refugees in Dadaab, 1 August 2017.

4. CONCLUSION

More than 70,000 Somali refugees have returned from Kenya to Somalia since December 2014. These returns have taken place under an agreement between Kenya, Somalia and the UNHCR, known as the Tripartite Agreement. Under this agreement, UNHCR has undertaken to facilitate voluntary returns that protect the rights of refugees and enable them to return to Somalia in safety and dignity.

In 2016 Amnesty International raised serious concerns about the returns process and highlighted that Somali refugees in Kenya's Dadaab camps were effectively being coerced into returning through a range of "push factors", including threats from the Kenyan authorities and deteriorating conditions in the camps. This briefing focuses on the situation in Somalia to which the refugees are returning.

Somalia is suffering from a severe drought. In early 2017 UN agencies were warning of a serious risk of famine because of the drought. Although famine has thus far been averted, as of November 2017 more than 6.2 million people - half the country's population - were in need of humanitarian assistance and the threat of famine is expected to persist into 2018.

The drought, as well as ongoing armed conflict and insecurity across many parts of the country, has driven massive internal displacement. As of November 2017, 2.1 million people were internally displaced. The huge displacement from rural areas to urban centres has placed considerable strain on the ability of the already overstretched and poorly-resourced local municipalities to provide basic services such as education, health care, potable water and adequate shelter and sanitation.

Somalia is dependent on donor aid to deal with the impact of the drought and provide for the basic needs of the affected population. However, aid appeals are underfunded.

This is the context into which refugees from Kenya are returning. The urban centres to which hundreds of thousands of IDPs have moved in search of water, food and other humanitarian assistance are the same places to which many refugees from Kenya are being returned.

Testimony from returnees to whom Amnesty International spoke in Kismayo and Baidoa suggests that they face severe water shortages and difficulties securing adequate housing/shelter. In this regard their situation appears similar to IDPs, and many returnees become de facto IDPs.

The testimony provided by returnees is supported by information from humanitarian actors and UN data on the humanitarian situation. The information raises serious questions about the viability of the returns and the extent to which they can meet the requirement for "in safety and dignity". As noted in this briefing, the concept of a return in safety includes material safety, meaning refugees should have access to basic means of survival and "access to land or means of livelihood".

Although monitoring of returns is a component of the Tripartite Agreement, there is a lack of official data on the situation of returnees, particularly the extent to which they have found adequate shelter, food and water and/or any sustainable livelihoods. Nor is there any data on levels of ill health.

Based on the data gathered by Amnesty International it appears that at least some, if not many, returnees from Kenya do not have access to basic material safety. The cash they receive to support themselves does not address the challenges around the availability of safe water or land on which they have security of tenure to build a home.

A context of ongoing insecurity and a deepening drought-driven humanitarian crisis cannot be considered conducive to returns. UNHCR has also said it expects to support 30,000 people fleeing Somali in 2018, raising further concerns about the viability and sustainability of the current returns process.

Amnesty International's research also exposes ongoing challenges in Dadaab that undermine the concept of voluntary return. The push factors documented in 2016 remain a concern, despite a Kenya High Court ruling that prevents the government from closing Dadaab.

This report concludes with a call for the Governments of Kenya and Somalia, and UNHCR to halt returns until they can meet the requirements of being truly voluntary, safe and dignified, and on the international community to do far more to support both Kenya and Somalia, and – critically – the refugee and IDP populations.

5. RECOMMENDATIONS

TO THE GOVERNMENT OF KENYA:

- Halt all returns to Somalia that do not meet the international standards of voluntary repatriation, in safety and dignity, and make public assurances to Somali refugees and asylum-seekers still fearing forcible return that they can continue to seek and enjoy refuge in Kenya;
- Grant asylum to Somalis fleeing conflict, in line with national and international law, including those who failed to be able to settle in Somalia and returned to Dadaab;
- With the support of the international community, ensure all asylum-seekers and refugees, without discrimination, have full access to food and humanitarian assistance as well as basic services in Dadaab refugee camp

TO THE GOVERNMENT OF SOMALIA

- Halt the facilitation of returns to Somalia that do not meet the international standards of voluntary repatriation in safety and dignity;
- With the support of the international community, including UNHCR and other UN agencies, provide adequate support to the returnee population, including access to land and/or adequate shelter, to ensure that they can successfully reintegrate,

TO UNHCR AND IMPLEMENTING PARTNERS:

- Halt the facilitation of returns to Somalia that do not meet the international standards of voluntary repatriation, in safety and dignity;
- Increase monitoring of returnees, including to determine the percentage who are able to establish independent livelihoods, gain access to land and/or adequate shelter, or end up living in an IDP camp. Ensure that this information is available at the Helpdesks in Dadaab;
- Ensure access to humanitarian assistance and full access to basic services for all undocumented refugees in Dadaab

TO THE INTERNATIONAL COMMUNITY:

- Call on the Kenyan government to ensure that returns to Somalia fully comply with international standards of voluntary repatriation and withdraw funding or other support for forced and unsustainable returns;
- Meaningfully share with Kenya, as a major, refugee-host country the responsibility to both host and assist refugees, including through fully funding humanitarian appeals and providing increased resettlement places and other pathways of admission;
- Provide technical and financial support to the Government of Kenya, NGOs, and civil society to come up with sustainable and long-term solutions for integration of refugees in the country;
- Ensure sufficient technical and financial assistance is provided to the Government of Somalia so that it can provide adequate support to those who are returning in addition to internally displaced persons and host communities.

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