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FROM HORROR TO HOPELESSNESS

KENYA'S FORGOTTEN SOMALI REFUGEE CRISIS

MARCH 2009

I. SUMMARY

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Kenya is in the midst of a rapidly escalating refugee crisis. In 2008 alone, almost 60,000 Somali asylum seekers—165 every day—crossed Kenya’s officially closed border with Somalia to escape increasingly violent conflict in Somalia and to seek shelter in three heavily overcrowded and chronically under-funded refugee camps near Dadaab town in Kenya’s arid and poverty-stricken North Eastern Province. The camps now shelter over 260,000 refugees, making them the world’s largest refugee settlement.

The continuous cross-border movement gives the impression that the closing of the border by the Kenyan government in January 2007 has not affected Somali asylum seekers’ ability to seek refuge in Kenya. In reality, however, it has led to the Kenyan police forcibly returning asylum seekers and refugees to Somalia in violation of Kenya’s fundamental obligations under international and Kenyan refugee law, and to serious abuses of Somali asylum seekers and refugees. Emboldened by the power over refugees that the border closure has given them, Kenyan police detain the new arrivals, seek bribes—sometimes using threats and violence including sexual violence—and deport back to Somalia those unable to pay. By forcing the closure of a UNHCR-run registration center close to the border, the Kenyan authorities have also seriously aggravated the humanitarian assistance needs among Somalis arriving in the three camps near Dadaab town.

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A young Somali refugee inside a tent in a Dadaab refugee camp, Kenya.



The influx of tens of thousands of new arrivals into the already severely overcrowded and under-resourced camps has exacerbated shortages of shelter, water, food, and healthcare for all refugees—new and old. An unknown further number of Somalis, possibly in the tens of thousands, have travelled directly to Nairobi where most disappear into the city, receiving no support and remaining invisible to the outside world.

Kenya officially closed its border with Somalia days after the Ethiopian military intervened to oust the Union of Islamic Courts (UIC) from south-central Somalia. Apparently aimed at preventing the entry of fleeing supporters of the UIC into Kenya, the border closure has had an extremely negative impact on Somali civilians trying to flee the violence.

The border closure has allowed Kenyan police to forcibly deport Somali asylum seekers and refugees in flagrant violation of international law and has caused Kenyan political authorities to turn a blind eye to police corruption and abuses in the border areas and the camps.

This 15-year-old boy fled Mogadishu with his 12-year-old brother. They now live as refugees in Kenya.

The authorities have also forced the United Nations High Commissioner for Refugees (UNHCR) to close its refugee transit center near the border, and for well over a year Kenyan authorities have failed to respond to calls for new land to decongest the camps. To their credit, however, in an unspoken compromise, the Kenyan authorities allowed UNHCR to register almost 80,000 Somali refugees in the camps in 2007 and 2008, and, in February 2009, granted a limited amount of land to help begin decongesting the camps.

Under its Immigration law, Kenya has the right to regulate the presence of non-nationals in its territory and may, therefore, prevent certain people from entering or remaining in Kenya, including those deemed a threat to its national interests. However, international and Kenyan law obliges Kenya to allow all people claiming to be refugees (“asylum seekers”) access to Kenyan territory to seek asylum with the Kenyan authorities or with UNHCR, and every asylum seeker has a right to have his or her case considered.

Since the border closure, the Kenyan authorities have deported hundreds, possibly thousands, of Somali refugees and asylum seekers, thereby violating the most fundamental part of refugee law, the right not to be refouled —forcible return to a place where a person faces a threat to life or freedom on account of race, religion, nationality, membership of a particular social group, or political opinion. Under its obligations in the 1969 OAU Convention Governing the Specific Aspects of the Refugee Problems in Africa (1969 OAU Convention), Kenya is also bound not to send refugees or asylum seekers back to situations of generalized violence, such as in Somalia.

The Dadaab refugee camps were originally designed for 90,000 refugees, but by the end of February 2009 held 255,000, a 48 percent increase since January 2008. Because of the lack of new land to expand the camps, UNHCR declared the camps full in late August 2008. Between then and the end of February 2009, just over 35,000 new arrivals received no shelter and have been forced to sleep under open skies in makeshift shelters

In October 2008, this 90-year-old woman had been in a Dadaab refugee camp for three months without being registered. During a registration crisis in the camp in the second half of 2008, many new arrivals waited 60 days or more to be registered and to be eligible for food assistance.

that provide little protection from the harsh weather, or in cramped confines with relatives or strangers who were already living in conditions well below minimum humanitarian standards. Aid agencies who already had limited resources are working overtime, struggling to meet basic minimum standards in food, water, shelter, sanitation, and healthcare assistance for the mushrooming camp population. Malnutrition rates have reached at least 13 percent since mid 2008 and children under the age of five suffer from high malnutrition rates below international standards. Tens of thousands of refugees almost certainly receive well below the required daily amount of water. Basic minimum sanitation standards are not being met. Healthcare agencies are understaffed, lack sufficient drugs, and cannot adequately meet refugees’ healthcare needs: mortality rates for women, infants, and under-fives are all under minimum international standards. A recent international NGO assessment concluded that the camps face a situation that is conducive to a public health emergency.



Refugees from a Dadaab refugee camp collect wood.

For at least one year, UNHCR unsuccessfully tried to negotiate with Dadaab’s local authorities for land for additional camps. The Kenyan negotiators demanded development aid and environmental protection measures in return for hosting the increasing refugee population. In the second half of 2008 a serious registration crisis—caused by a combination of the high number of monthly arrivals, UNHCR’s decision to register new arrivals in only one camp after May, and limited UNHCR registration resources—left thousands of refugees, including the sick, women, and children, waiting weeks and even months to receive food.

As a result of mounting criticism from nongovernmental organizations, in December 2008 UNHCR changed its registration system to streamline registration of new refugees and issued a donor appeal for US\$92 million. In early February 2009 the Kenyan Prime Minister promised the Deputy High Commissioner for Refugees new land for up to 50,000 refugees, one-third of the land required to adequately decongest the camps and to shelter the minimum number of expected new arrivals in 2009.

Kenya has never officially adopted a policy requiring Somali (or other) refugees to stay in camps. However, in practice Kenya and UNHCR have used a number of disincentives to limit the number of refugees choosing to live or move outside of camps. The first disincentive is the shared policy of the Kenyan government and UNHCR that refugees cannot receive humanitarian assistance outside of camps.

The second disincentive—which violates refugees’ right to freedom of movement in Kenya— is the government’s policy restricting officially sanctioned movement between the camps and other parts of Kenya. Once registered in Dadaab’s camps, refugees are not permitted to travel unless they fulfil one or more unpublished criteria for obtaining a “movement pass” co-signed by the Kenyan authorities and UNHCR. If the police stop a refugee registered in the camps travelling without a movement pass, the refugee risks being arrested and fined, and, in practice, even worse (detention and refoulement).

The third disincentive for Somalis to live outside the camps has been UNHCR’s lengthy refugee status determination procedures in Nairobi, compared to swift

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Somalis in a Dadaab refugee camp line up for registration by the UN refugee agency, UNHCR. At the height of a registration crisis in the second half of 2008, new refugees including women and children waited on average two months to get registered, during which time they received no food assistance from aid agencies.



Refugees queue for water in a Dadaab refugee camp.

procedures in Dadaab's camps. In early 2009 Somalis still waited up to nine months to have their status determined, leaving them vulnerable to police abuses in the interim. In March 2009 UNHCR said it was seeking to cut the average time to two months.

Kenya has legitimate security concerns and a right to control its border, but closing the border to asylum seekers and the refoulement (unlawful forced return) of Somali asylum seekers and refugees violates Kenya's fundamental obligations under international and national refugee law. Kenya should immediately cease refoulement and take steps to ensure that refugees have access to assistance and protection in Kenya. To this end, Kenyan authorities should invite UNHCR to re-open its refugee transit center in Liboi and ensure that its police guarantee all Somali asylum seekers free movement to Dadaab's camps or to Nairobi—where UNHCR or the Kenyan authorities can register them as refugees.

Kenya should urgently take steps to end the impunity with which abusive police officers operate in the border areas, in and near Dadaab's camps, and between Dadaab and Nairobi. Finally, Kenya should build on its recent commitment to provide new land for 50,000 refugees by cooperating fully with the United Nations Country Team in its efforts to secure land capable of accommodating a further 100,000 refugees to help decongest Dadaab's existing camps and to accommodate new arrivals in 2009. To ensure that further land is rapidly made available, UNHCR should relinquish its control over negotiations with the local Kenyan authorities in Fafi and Lagdera Districts, which house Dadaab's camps, and help organize a joint effort between development and environmental agencies in the United Nations Country Team and five Kenyan Ministries with refugee and development mandates relevant to Kenya's North Eastern Province.

Despite competing demands from other agencies struggling with other crises in Kenya, including chronic food shortages, donors should respond generously to UNHCR's supplementary appeal for funds to address the appalling situation in Dadaab's camps. Donor governments should also intervene with the Kenyan government to stop the refoulement of Somali refugees and asylum seekers.



A 55-year-old woman in a Dadaab refugee camp lies in her bed awaiting medical help. Contrary to official camp policy, she has been denied medical attention because she is not registered.



A mother in a Dadaab refugee camp holds an x-ray revealing where a bullet lodged in her son's spine. He was wounded during an attack in Mogadishu and is now paralyzed. In violation of international law, refugees must apply for special government and UNHCR permission to travel to Nairobi if they want to receive specialized healthcare.



Refugees run from a sandstorm which rips through their makeshift homes on the edge of a Dadaab refugee camp.

With regard to Kenya’s de facto encampment policy, the Government of Kenya should guarantee Somali asylum seekers’ right to travel from Somalia directly to Nairobi, to apply for refugee status, if they so choose. The Kenyan authorities should grant full freedom of movement to all asylum seekers recognized as refugees in Dadaab’s camps in accordance with Kenya’s international and constitutional legal obligations, and UNHCR should advocate for full freedom of movement for all recognized refugees in Kenya. UNHCR should publish the criteria asylum seekers need to meet to justify applying for refugee status in Nairobi. UNHCR should also reduce the average waiting time for Somali asylum seekers to be recognized as refugees so that Somalis in Dadaab and in Nairobi are treated the same way, and to minimize the time that Somali asylum seekers are vulnerable to police abuses in Nairobi.

II. RECOMMENDATIONS

TO THE GOVERNMENT OF KENYA

IN RELATION TO ITS REFOULEMENT OF SOMALI REFUGEES AND ASYLUM SEEKERS

- Immediately cease all refolement of Somali refugees and asylum seekers.
- Train Kenya’s military and police, particularly soldiers and officers stationed in North Eastern Province, on the rights of Somali refugees and asylum seekers under the 2006 Refugees Act.
- Investigate all incidents of refolement where Kenyan police officers are known to have forcibly returned Somali refugees or asylum seekers to Somalia and take appropriate disciplinary action.

IN RELATION TO THE BORDER CLOSURE

- In line with Kenya’s obligations under international and Kenyan law, allow Somali asylum seekers to cross all parts of Kenya’s border with Somalia, including at all official border posts.
- Immediately invite UNHCR to re-open its refugee transit center in Liboi to ensure the orderly registration of all newly arrived Somali asylum seekers crossing at or near the HarHar border point between Doble and Liboi; security permitting, allow UNHCR to transport all asylum seekers between HarHar and Liboi and Dadaab’s three camps to help prevent police abuses against asylum seekers on their way to the camps.

IN RELATION TO KENYAN POLICE BRIBES, ARBITRARY ARREST, DETENTION, AND VIOLENCE AGAINST SOMALI REFUGEES AND ASYLUM SEEKERS

- Immediately investigate possible systematic corruption and police abuses in Kenyan police stations in Dadaab’s camps and in the towns of Garissa and Mwingi.
- Discipline or charge any officers found to have committed violence against Somali refugees and asylum seekers.
- Ensure that Kenyan police stop demanding bribes from Somali refugees and asylum seekers in exchange for free movement in Kenya and take action against police found to have demanded such bribes.
- In line with Kenya’s international and constitutional legal obligations, and in the absence of any specific national security threat associated with the movement of any person, ensure that all recognized refugees, including those registered in Dadaab, have full freedom of movement throughout Kenya, and ensure that no refugee is arrested on charges of “residing without authority” outside of Dadaab’s camps; the Department of Refugee Affairs should issue all registered refugees in Dadaab with identity cards that guarantee such free movement.

IN RELATION TO THE LAND CRISIS IN DADAAB’S CAMPS

- Recognize that land for new camps with a capacity of 150,000 refugees is urgently needed in North Eastern Province and engage with the UN to quickly acquire land for new camps.
- Reach agreement with the UN on a comprehensive long-term joint approach for all future negotiations with local community representatives from Lagdera and Fafi constituencies, to ensure that those communities’ medium and long-term development grievances are effectively addressed.

IN RELATION TO DEPARTMENT OF REFUGEE AFFAIRS’ MANDATE IN DADAAB AND NAIROBI

- Produce a public document that sets out in clear terms the criteria and procedures for refugees to obtain movement passes to travel from Dadaab to Nairobi, including the procedure for appealing refusals.
- Clarify the Department’s current capacity to register Somali (and other) asylum seekers by publicly confirming that Somali nationals who have arrived in Kenya since the outbreak of war in Somalia in 1991 are able to register prima facie as refugees and by confirming the rights that attach to this status.

TO UNHCR

IN RELATION TO KENYA’S UNLAWFUL DEPORTATION OF SOMALI REFUGEES AND ASYLUM SEEKERS

- Increase monitoring of Kenyan police practices in and around the town of Liboi and between Liboi and Dadaab’s camps and interview new arrivals in Dadaab’s camps to collect possible testimony from witnesses to police abuse and refolement.
- Swiftly intervene with the Kenyan authorities whenever UNHCR receives reports of imminent refolement and denounce refolement whenever it is found to have occurred.
- Raise concerns over Kenya’s refolement of Somali refugees and asylum seekers at the 2009 meeting of UNHCR’s Executive Committee in Geneva.

IN RELATION TO KENYAN POLICE ARBITRARY ARREST AND DETENTION OF, AND VIOLENCE AGAINST, SOMALI REFUGEES IN POLICE STATIONS IN DADAAB’S CAMPS

- Promote regular training of all Kenyan police officers working in police stations in Dadaab’s camps on the rights of Somali refugees and asylum seekers under the 2006 Refugees Act, the 1951 Refugee Convention, and the 1969 OAU Convention, including their rights to be free from arbitrary detention and all forms of violence.
- In light of the ongoing abuse of refugees in police stations in Dadaab’s camps, review UNHCR’s protection work with Dadaab’s police to ensure that refugees are more effectively protected against such abuses, document allegations, and raise incidents of alleged abuse with the heads of the police stations, with the Dadaab-based Department of Refugee Affairs, and with the Police Commissioner in Nairobi.
- Discontinue UNHCR’s support for the Kenyan authorities’ movement pass system for refugees in Dadaab’s camps and in line with international refugee and human rights law, advocate for refugees to be granted full and unrestricted freedom of movement throughout Kenya.

IN RELATION TO REGISTRATION OF NEW ARRIVALS IN DADAAB’S CAMPS AND CORRUPT SECURITY GUARDS AT UNHCR’S GATES

- Commit adequate resources at all times to UNHCR’s registration procedures in all three of Dadaab’s camps to ensure that all new arrivals are registered with as little delay as possible and receive food during the next available distribution cycle; only discontinue registration in all three camps once a new camp has been established where all new arrivals can be registered.
- Organize refugee registration and other operations to prevent corruption among Armed Group Kenya security guards (the UNHCR-hired guards).
- Investigate all allegations of corruption among Armed Group Kenya security guards and dismiss any guards found to be demanding bribes from refugees.

IN RELATION TO THE LAND-CRISIS IN DADAAB’S CAMPS

- Request the UN Humanitarian Coordinator, UNDP, and UNEP to join UNHCR and meet with the Ministries of Immigration and Registration of Persons, Land, Planning and National Development, Development of Northern Kenya and Other Arid Areas, and Special Programmes to adopt a joint approach for negotiations with local community representatives from Lagdera and Fafi constituencies for further new land capable of accommodating at least 100,000 Somali refugees.
- Formally request the United Nations Country Team, and in particular UNDP and UNEP, to take over these land negotiations because they have greater capacity than UNHCR to deliver the development- related products and services local negotiators are seeking from the UN in exchange for expansion of land for more refugee camps.

IN RELATION TO UNHCR’S MANDATE IN NAIROBI

- In line with rapid UNHCR procedures in Dadaab and to help minimize Somali asylum seekers’ vulnerability to Kenyan police abuses in Nairobi, ensure UNHCR determines their refugee status under the 1969 OAU Convention and the 1951 Convention as rapidly as possible.
- Publish the criteria UNHCR uses to decide that a Somali asylum seeker applying for refugee status in Nairobi has a right to remain in Nairobi instead of being required to seek refugee status in Dadaab’s camps.

TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS SPECIAL RAPPORTEUR ON REFUGEES, ASYLUM SEEKERS, IDPS AND MIGRANTS IN AFRICA

IN RELATION TO KENYA’S REFOULEMENT OF SOMALI REFUGEES AND ASYLUM SEEKERS

- Call on Kenya to end its violation of the principle of nonrefoulement.
- Investigate and report to the African Commission on Human and Peoples’ Rights on Kenya’s refoulement of Somali refugees and asylum seekers.

IN RELATION TO THE BORDER CLOSURE

- Call on the Kenyan authorities to respect their international obligations to ensure that all Somali asylum seekers can access Kenyan territory to claim asylum.
- Call on the Kenyan authorities to allow UNHCR to re-open its Liboi transit center to ensure the orderly registration of all newly arrived Somali asylum seekers crossing at or near the HarHar border point between Doble and Liboi.

IN RELATION TO RESTRICTIONS ON REFUGEES’ FREEDOM OF MOVEMENT IN KENYA

- Call on the Kenyan authorities to guarantee refugees full and unrestricted freedom of movement throughout Kenya.

TO OTHER GOVERNMENTS PROVIDING FUNDING FOR SOMALI REFUGEES AND ASYLUM SEEKERS

IN RELATION TO KENYA’S REFOULEMENT OF SOMALI REFUGEES AND ASYLUM SEEKERS

- Raise Kenya’s violation of international refugee law with the Kenyan authorities and call on them to put an immediate halt to these practices.
- Include in reviews of bilateral aid to Kenya reports on Kenya’s violation of international refugee law.
- Raise Kenya’s violation of international refugee law during UNHCR’s 2009 Executive Committee meeting in Geneva.

IN RELATION TO THE BORDER CLOSURE

- Call on the Kenyan authorities to respect their international obligations to ensure that all Somali asylum seekers can access Kenyan territory to claim asylum.
- Call on the Kenyan authorities to allow UNHCR to re-open its Liboi transit center to ensure the orderly registration of all newly arrived Somali asylum seekers crossing at or near the HarHar border point between Doble and Liboi.

IN RELATION TO KENYAN POLICE CORRUPTION AND ABUSES AGAINST SOMALI REFUGEES AND ASYLUM SEEKERS

- Raise the incidents of Kenyan police corruption and abuses against Somali refugees and asylum seekers noted in this report with the Kenyan authorities.
- Request the Kenyan authorities to take concerted action to put an end to such practices and to prosecute all police officers found guilty of abuses against Somali refugees and asylum seekers.

IN RELATION TO DADAAB’S CAMPS

- Urge UNHCR to request the UN Country Team, in particular UNDP and UNEP, to take over negotiations with national and local officials for land for a fourth and fifth camp so that UNHCR can focus on areas falling within its mandate and area of competence.
- Respond generously to UNHCR’s December 19, 2008, Supplementary Appeal for US\$92 million to address the massive needs and humanitarian crisis in Dadaab’s camps and commit funds directly to NGOs working in the camps.
- Press UNHCR to stop all security guard corruption in its camp compounds.

Kenya is facing a rapidly escalating refugee crisis. Since January 2007, almost 100,000 Somalis have crossed Kenya's officially closed border to reach overcrowded neglected camps sheltering 260,000 refugees near the town of Dadaab in northeastern Kenya. Escaping the horrors of war in Somalia, many asylum seekers face abusive Kenyan police near the border who detain, threaten, and beat them to obtain bribes and unlawfully deport those who cannot pay.

Since August 2008, 35,000 new refugees have received no shelter and sleep under open skies, in makeshift tents, or squat with relatives or strangers already struggling to survive. New camps for 150,000 refugees should have been prepared by now but by mid March 2009, land for only 50,000 had been identified. Resource-stricken aid agencies can barely provide basic minimum standards in food, water, sanitation, and health-care assistance.

Citing its fear of Somali Islamist fighters, Kenya closed its border with Somalia in January 2007, a decision directly affecting Somali refugees' right to seek protection and assistance in Kenya. The government has forcibly returned hundreds, if not thousands, of Somalis back to armed conflict and persecution and has turned a blind eye to police corruption and abuses in the border areas. It has also forced the United Nations High Commissioner for Refugees (UNHCR) to close its refugee transit center near the border, leading to a registration and assistance crisis for tens of thousands of refugees in 2008.

This report calls on Kenya to cease its unlawful deportations, stop the impunity with which abusive police officers operate in the border areas and camps, and provide additional land for 150,000 refugees. It also calls on donors to urgently provide funds to help address the appalling humanitarian situation in Dadaab's camps.

HUMAN RIGHTS WATCH
350 Fifth Avenue, 34th Floor
New York, NY 10118-3299

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Cover photograph: A girl carrying water for her mother passes a makeshift refugee shelter in one of Kenya's Dadaab refugee camps. Since mid August 2008 when the camp was declared full, over 35,000 new Somali refugees have received no shelter materials.
(c) 2008 Marcus Bleasdale/VII