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WATCH

# CRIMINAL REPRISALS

Kenyan Police and Military Abuses against Ethnic Somalis



# **Criminal Reprisals**

## **Kenyan Police and Military Abuses against Ethnic Somalis**

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## Kenyan Police and Military Abuses against Ethnic Somalis

|   |           |
|---|-----------|
| <b>Glossary of Abbreviations</b> .....  | <b>ii</b> |
| <b>Summary</b> .....  | <b>1</b>  |
| <b>Recommendations</b> .....  | <b>6</b>  |
| <b>Methodology</b> .....  | <b>11</b> |
| <b>I. Background</b> .....  | <b>13</b> |
| Attacks against Kenyan Forces and Civilian Targets .....  | 17        |
| Response of the Kenyan Security Forces.....   | 19        |
| <b>II. Security Forces' Abuses against Ethnic Somalis: Garissa, Mandera, and Wajir</b> .....  | <b>21</b> |
| Military Abuses in Garissa .....  | 21        |
| Military Abuses in Wajir .....  | 28        |
| Police Abuses in Wajir .....  | 32        |
| Military and Police Abuses in Mandera.....  | 33        |
| Loss of Trust in Security Forces .....  | 34        |
| <b>III. Police Abuses against Somali Refugees in Dadaab</b> .....   | <b>36</b> |
| Increasing Insecurity in Dadaab .....   | 38        |
| The December 2011 Police Raid on Somali Refugees.....   | 39        |
| Further Arrests and Extortion of Somali Refugees .....  | 44        |
| <b>IV. Response of the Kenyan Authorities to Abuses by the Security Forces</b> .....  | <b>45</b> |
| Police Response .....   | 45        |
| Broader Police Reform Issues .....  | 46        |
| Military Response.....  | 49        |
| <b>Acknowledgements</b> .....   | <b>52</b> |
| <b>Appendix I: Attacks on Kenyan Security Forces and Civilian Targets in North Eastern Province, October 2011-February 2012</b> ..... | <b>53</b> |
| <b>Appendix II: Human Rights Watch Letter to the Minister of State for Defence</b> .....  | <b>57</b> |
| <b>Appendix III: Human Rights Watch Letter to the Minister of State for Internal Security</b> .....                                   | <b>62</b> |

## **Glossary of Abbreviations**

|               |   |
|---------------|---|
| <b>AP</b>     | Administration Police                                   |
| <b>CID</b>    | Criminal Investigation Department                       |
| <b>DO</b>     | District Officer  |
| <b>DRA</b>    | Department of Refugee Affairs                           |
| <b>GIZ</b>    | Deutsche Gesellschaft für Internationale Zusammenarbeit |
| <b>GSU</b>    | General Service Unit                                    |
| <b>IED</b>    | Improvised explosive device                             |
| <b>IPOA</b>   | Independent Policing Oversight Authority                |
| <b>KDF</b>    | Kenya Defence Forces                                    |
| <b>KHRC</b>   | Kenya Human Rights Commission                           |
| <b>KNCHR</b>  | Kenya National Commission on Human Rights               |
| <b>KRA</b>    | Kenya Revenue Authority                                 |
| <b>LWF</b>    | Lutheran World Federation                               |
| <b>MSF</b>    | Médecins Sans Frontières                                |
| <b>MP</b>     | Member of Parliament                                    |
| <b>MUHURI</b> | Muslims for Human Rights                                |
| <b>NFD</b>    | Northern Frontier District                              |
| <b>NGO</b>    | Nongovernmental organization                            |
| <b>NSIS</b>   | National Security Intelligence Service                  |
| <b>OCS</b>    | Officer Commanding Station                              |
| <b>PPO</b>    | Provincial Police Officer                               |
| <b>SUPKEM</b> | Supreme Council of Kenya Muslims                        |
| <b>TFG</b>    | Transitional Federal Government of Somalia              |
| <b>TJRC</b>   | Truth, Justice and Reconciliation Commission            |
| <b>UNHCR</b>  | United Nations Refugee Agency                           |
| <b>UNODC</b>  | United Nations Office on Drugs and Crime                |

## Summary

On November 24, 2011 a Kenyan soldier was killed by an explosive device in Mandera, a town in Kenya's North Eastern province near the border with Somalia. In response to the attack at least three separate forces—the Kenyan police, Kenyan military, and soldiers of the Transitional Federal Government of Somalia (TFG)—took part in roundups and beatings of civilians in the area. According to one of the witnesses Human Rights Watch interviewed,

There was a blast on Thursday in the middle of town. Immediately the [police] started picking up people around there. Some school boys were beaten seriously. Some were in the hospital.... I escaped by the skin of my teeth. My neighbors were whipped by the military. They were beaten seriously. I had rushed to the scene to see what was happening, and the military surrounded us.... One man was bleeding from the head, and I took him to the hospital. Some of my boys were bleeding. I'm a teacher. These were boys of 12, 13, 15 years—young, small boys. The soldiers were beating people with clubs.

This report documents the abusive response of the Kenyan military and police to attacks in North Eastern province by militants suspected of being linked to al-Shabaab, a Somali Islamist armed movement that has been fighting Somalia's Transitional Federal Government since 2007. The incident described above is part of a pattern of violent and indiscriminate responses by the Kenyan military and police to suspected militant attacks between November 2011 and March 2012—responses that have involved arbitrarily rounding up large numbers of ethnic Somali Kenyans and Somali refugees and subjecting them in some cases to severe mistreatment.

The abuses documented in this report took place in Garissa, Wajir, and Mandera, as well as in the Somali refugee camps in Dadaab, in Kenya's North Eastern province. The abuses include rape and attempted sexual assault; beatings; arbitrary detention; extortion; the looting and destruction of property; and various forms of physical mistreatment and deliberate humiliation, such as forcing victims to sit in water, to roll on the ground in the sun, or to carry heavy loads for extended periods. Of particular concern is the report's

finding that the Kenyan military has detained scores of civilians, despite the fact that it has no legal authority to do so.

The hundreds subjected to abuse during this period included women, men, and children. The report documents abuses against children as young as four years old. The father of 15-year-old school boy Abdikadir in Wajir said that Abdikadir was so traumatized after being beaten by soldiers that he is now scared of going to school. Before leaving home for school in the morning he climbs up on a ladder and looks over the wall of the compound to make sure there are no soldiers around. Several of those Human Rights Watch interviewed said they still suffered chronic pain as a result of the beatings they underwent at the hands of the Kenya security forces.

In the most serious incident, in December 2011, Kenyan police responded to two attacks by suspected militants targeting Kenyan security officials in Dadaab by brutally beating scores of refugees. Police also raped and attempted to sexually assault several women in Dadaab. Faartun N. told Human Rights Watch,

It was the day after an explosion in the market.... They were three policemen who came. They were saying, "Bring us money" and "Where is your husband?" The three of them started beating me with a metal stick. They lifted me up to [take me] inside the house. I shouted, saying that I was a teacher.... Two of them moved out of the house, leaving behind one who immediately started locking the door and opened the zipper [of his trousers] while holding my neck in his right hand. I started screaming and fought back with him. In the process he stripped my underwear off and pulled me towards himself while standing, and as I struggled, after some time, I felt his sperms rolling over my thighs.

Hassan R. was attacked by police in the same raid in Dadaab, on December 20. He told Human Rights Watch,

Six policemen came. They asked me to produce explosives, but I had nothing to show them. I told them that I am an innocent refugee but they did not listen to me. They beat me with boots and batons on almost every

part of my body. I got some injuries on my ribs and thighs. I still have some pain. They also robbed two mobile phones and 5,000 Kenyan shillings [about US\$60]. They were saying to me that if I don't bring the explosives, they would arrest me. I was detained on the same night in Dadaab main police station. I paid 7,500 Kenyan shillings [about US\$90] to be released. I didn't file a police report. I never thought they would listen to me since they are ones who had detained and beaten me.

The escalation of violence and abuse in North Eastern province came on the heels of Kenya's military intervention in Somalia in October 2011. The operation, known as Operation Linda Nchi ("Protect the Country"), included deployment of several thousand Kenyan troops in areas of southern Somalia controlled by al-Shabaab.

In apparent reaction to Operation Linda Nchi, unknown assailants, suspected of being al-Shabaab supporters, have launched a series of attacks within Kenyan territory, targeting the military and police, government vehicles and installations, and select bars and restaurants. The abuses by the Kenyan security forces against ethnic Somali Kenyans in North Eastern province as well as against Somali refugees have all been in direct response to these attacks. As noted, the police assaults on refugees in the Dadaab refugee camps followed two incidents in two days in which police were targeted by improvised explosive devices (IEDs) within the camps; one officer was killed and two injured. The grenade and explosive attacks that militants have carried out in North Eastern province since October are crimes under Kenyan law and constitute abhorrent assaults on Kenyan civilians, local administrative officials, and security force personnel. But none of this justifies abusive reprisals against Kenyan citizens and refugees by the security forces.

Both the military and the police are implicated in the abuses. Not only do the violent and indiscriminate responses of the Kenyan security forces constitute serious human rights violations, the abuses are also serving to alienate Kenyans of Somali origin at the very moment when the security forces most need the trust and confidence of the local population in order to help identify the militants behind the grenade and IED attacks and ensure public safety.

In January 2012, responding to the concerns raised by Human Rights Watch and the Kenyan nongovernmental organization (NGO) Muslims for Human Rights (MUHURI), the



Ministry of State for Defence formed an ad hoc “board of inquiry” tasked with investigating allegations of abuses committed by personnel of the Kenya Defence Forces (KDF) in Kenya and Somalia. At the time of this writing the board was actively gathering information from some victims and community organizations in Kenya. The formation of the board is a welcome first step, especially given the Kenyan government’s historical reluctance to acknowledge responsibility for abuses by security forces. If the board of inquiry is going to break with past impunity, however, it should press for prosecutions of perpetrators and compensation for the victims, and the Ministry of State for Defence should publicly report on its findings.

The police, for its part, has pledged to investigate allegations of police abuse in North Eastern province. Thus far, however, in contrast with the military, the police has made no efforts to collect victims’ accounts on the ground. No police have been charged with crimes or subjected to internal disciplinary measures as a result of their conduct and crimes in the Dadaab refugee camps or elsewhere in North Eastern province. The police’s apparent reluctance to investigate the violence follows the government’s ongoing failure to publish the findings of an October 2010 investigation into a previous Human Rights Watch report on widespread police abuses against Somali refugees in and around the camps.

Like Hassan R., the victim of beating in Daadab cited above, many of the victims of police and military abuse interviewed by Human Rights Watch said they felt there was no point in making formal complaints of abuse to the authorities because they believed nothing would be done. Abdallah D., an employee at a state agency who was subjected along with many others to beatings, kicks, and various forms of humiliation after being arbitrarily and illegally detained at the military camp at Garissa in November 2011, spoke for many when he said, “I didn’t make a report ... I knew the police would not help.”

At this writing, the most severe abuses appear to have been curtailed. However, in March 2012 Human Rights Watch received further reports of harassment of Somali refugees in Dadaab, including an incident in late February in which police arbitrarily detained dozens of refugees and extorted money from them.

A member of parliament (MP) from the border town of Mandera, Mahmoud Mohammed, criticized the Kenyan security forces in a November 2011 interview with Human Rights Watch for attempting to “correct a wrong with a wrong.” As Mohammed pointed out, the

war in Somalia is likely to continue—with Kenyan troops integrated into the African Union peacekeeping mission, AMISOM, as of February 2012—and further fallout in the form of militant attacks within Kenyan borders can be expected. It is therefore essential that, the Kenyan police and military prevent and respond to such attacks through careful policing and intelligence work in collaboration with local communities in North Eastern province, rather than responding with random brutality toward civilians. In order to fulfill their obligations under international human rights law and to begin to regain the confidence of ethnic Somalis in Kenya, the Kenyan police and military should ensure that any internal investigations into the abuses feed into prosecutions of those officers responsible. The Directorate of Public Prosecutions should ensure that such cases are prosecuted assiduously, putting an end to the impunity that members of the Kenyan security forces currently enjoy.

International donor governments which support the Kenyan police and military, including those funding the Security Partnership Project between the United Nations Refugee Agency (UNHCR), the Ministry of State for Internal Security and the Kenyan authorities in Dadaab, should condition further support on accountability for human rights violations by the security forces, including the violations documented in this report.

## Recommendations

### To the Ministry of State for Defence and the Kenya Defence Forces

- Issue clear instructions to all military personnel that abuse of civilians, including torture, beatings, arbitrary arrest, and unauthorized searches of homes, are illegal and will not be tolerated.
- Issue clear instructions to all military personnel that the detention of civilians in military custody is illegal and will not be tolerated, and display an order to this effect publicly in all military camps.
- Ensure that ongoing investigations into abuses by military personnel, currently being undertaken by an ad hoc board of inquiry, result in accountability, through disciplinary actions against military personnel and, where relevant, turning over of evidence to the Directorate of Public Prosecutions and/or the military police.
- Cooperate fully with any actions taken by the Kenya Police, the military police and/or the Directorate of Public Prosecutions to investigate and prosecute crimes committed by military personnel, including by providing investigating authorities with all relevant information on command structure and deployment of military personnel during any operations in the course of which crimes are alleged to have been committed. Authorize police interrogations of military personnel suspected of crimes.
- Where appropriate in accordance with Kenyan law, ensure that military police conduct investigations of crimes committed by military personnel, and ensure that charges are filed before military tribunals against officers accused of committing crimes in their capacity as Kenya Defence Forces personnel.
- Investigate the role of commanders in Garissa, Wajir, and Mandera where abuses took place under their command to see if they ordered or were otherwise implicated in the abuse, or should have known about the abuse and failed to prevent or investigate it.
- Compensate victims who have suffered physical injury or material loss at the hands of KDF personnel.
- Establish a mechanism to receive and investigate civilian complaints against KDF personnel that is independent of the military chain of command, such as a civilian oversight body similar to the Independent Policing Oversight Authority (IPOA).

## To the Ministry of State for Internal Security, the Kenya Police, and the Administration Police

- Issue clear instructions to all police personnel that abuse of civilians, including torture, rape, beatings, arbitrary arrest, and unauthorized searches of homes, are illegal and will not be tolerated.
- Immediately suspend police officials suspected of playing a significant role in attacks on refugees at the Dadaab refugee camps in December 2011, as well as those suspected of playing a significant role in beatings of civilians in Mandera in November 2011 and Wajir in December 2011, while investigations are pending.
- Establish the envisaged community policing program in Dadaab, and prioritize the prompt expansion of community policing in other locations in North Eastern province, including Mandera, Wajir, and Garissa.
- Ensure that sufficient numbers of police posted to North Eastern province, including among the 349 stationed in Dadaab, are fluent in Somali in order to facilitate communication with residents.
- Increase the proportion of female police officers stationed in Dadaab.
- Ensure that police officers based in Dadaab receive ongoing training on human rights, including on the specific rights of refugees, preventing and responding to sexual violence, and the obligation to conduct effective investigations into allegations of human rights abuses.
- Place highly-qualified police investigators, including Somali speakers, in Dadaab in order to ensure thorough investigations into crimes committed in the Dadaab refugee camps.
- Compensate victims who have suffered physical injury, including rape and sexual violence, at the hands of the Kenya Police and Administration Police.
- Ensure the restitution of money and property to refugees who were robbed or had property destroyed by police during the December 2011 raid.
- Ensure that the recently established Independent Policing Oversight Authority is fully funded, staffed, and operational.
- Publish the findings of the government's October 2010 investigation into widespread police abuses against Somali refugees in and around Dadaab.

## **To the Criminal Investigation Department of the Kenya Police**

- Immediately investigate abuses committed by police at the Dadaab refugee camps between December 20 and 24, 2011, including beatings, rape, and looting.
- Immediately investigate reports of ongoing police extortion of refugees.
- Investigate military officers responsible for abuses against civilians in Wajir, Garissa, and Mandera. Submit files on suspected perpetrators to the Ministry of State for Defence without delay, requesting authorization to interrogate such perpetrators, where appropriate.
- Strengthen efforts to identify and bring to justice perpetrators responsible for grenade and IED attacks in North Eastern province, through enhanced collaboration with civil society organizations in the province as well as with the National Security Intelligence Service and the Anti-Terrorism Police Unit.

## **To the Department of Refugee Affairs**

- Expedite plans to re-open a refugee transit center at the border point at Liboi, where refugees can be screened and registered before being transported to Dadaab, as agreed in the Security Partnership Project between the government of Kenya and UNHCR.

## **To the Directorate of Public Prosecutions**

- Where appropriate in accordance with Kenyan law, initiate prosecutions against police and military personnel suspected of abuses against civilians.

## **To the Parliament of Kenya**

- Initiate a parliamentary investigation into the involvement of police and military personnel in abuses against civilians, including Somali refugees, in North Eastern province. Ensure that the investigation seeks to establish any role of military and police commanders and members of the Provincial Administration, including District Officers, in coordinating abuses or in failing to prevent or report them.
- Ensure that the recently established Independent Policing Oversight Authority is fully funded.

## **To International Donors to Kenya's Security Forces, Including the United States, the United Kingdom, Japan, Denmark, Sweden, France, the Netherlands, and the United Nations Office on Drug and Crime**

- Monitor police and military adherence to international human rights law and Kenyan law in their treatment of the civilian population in northeastern Kenya, and publicly condemn abuses.
- Fund an independent inquiry, by UNHCR in conjunction with policing experts or by another agency with the requisite expertise, into the quality of policing in Dadaab. The inquiry should assess: whether the numbers of police allocated to Dadaab are sufficient; whether the quality of policing differs significantly from other parts of the country; the quality of police relations with refugees and local residents, as well as police collaboration and information-sharing with other agencies, including the National Security Intelligence Service; and the ability of the police to conduct speedy, fair, and independent inquiries into allegations of abuse against them. The inquiry should make recommendations to improve policing.
- Condition support to the Kenyan security forces, including for KDF troops to be integrated into AMISOM, on accountability for human rights abuses committed in North Eastern province and elsewhere in both Kenya and Somalia.

## **To the United States**

- Request that the Kenyan government provide information to the US government in order to identify the military and police units present in Dadaab, Garissa, Wajir, and Mandera during the period in which the human rights violations documented in this report took place.
- In accordance with the Leahy Law, withhold training and funding from military and police units found to be responsible for abuses against civilians in Kenya.

## **To the United Nations High Commission on Refugees**

- Ensure that its Memorandum of Understanding with the Ministry of State for Internal Security include provisions conditioning provision of material assistance to the police in Dadaab on accountability for the December 2011 assaults on refugees and other human rights violations.

- In the absence of clear steps by the Kenya Police to hold officers accountable for crimes committed against refugees in Dadaab, publicize information collected by UNHCR protection staff on the scale and nature of abuses.
- Increase the presence of UNHCR or NGO protection staff reporting to UNHCR in the Dadaab refugee camps and ensure that they maintain regular contact with refugees in order to effectively gather information on the extent of human rights violations in and around the camps, including police abuses.
- Ensure that victims of abuses at the hands of the Kenyan police, particularly victims of sexual violence, receive medical, legal, and psychosocial support.
- Establish a permanent mechanism, through or independently of community policing structures, to allow for meaningful exchange of information between police, local authorities, local leadership and refugee leadership, with the objective of building relationships in order to prevent human rights abuses while enabling better cooperation between refugees and the police.

### **To the Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa at the African Commission on Human and People's Rights**

- Conduct a fact-finding mission to Kenya to investigate the December 2011 assaults on Somali refugees at Dadaab by the Kenya Police and Administration Police, as well as any subsequent abuses against refugees.
- Call on Kenya to investigate abuses against refugees, prosecute police officers responsible for these abuses, and compensate victims.

## Methodology

From October 2011 to March 2012, Human Rights Watch conducted research into human rights violations in Kenya's North Eastern province, which borders Somalia and has been affected by Kenya's intervention in southern Somalia. Human Rights Watch researchers conducted interviews in Garissa, Wajir, Dadaab, and Nairobi. We spoke with 55 victims of abuses by the Kenyan security forces. Twenty were Somali refugees who were mistreated by police in Dadaab in December 2011. The remaining 35 interviewees were Kenyan citizens, including 14 who were mistreated by the Kenyan military in Garissa between November 2011 and January 2012; 12 who were mistreated by the Kenyan military in Wajir in December 2011; one who was beaten by the police in Wajir, also in December; and eight who were beaten in Mandera in November 2011. The victims in Mandera were contacted on the basis of a report by local activists and were interviewed by telephone; while all were beaten by the Kenyan military, several also said that the police and Somali Transitional Federal Government forces were among the perpetrators. In Nairobi, Human Rights Watch researchers visited Eastleigh, a predominantly ethnic Somali neighborhood, to interview residents of both Kenyan and Somali nationality about the relationship between residents and police, but did not speak directly to any victims of recent abuses.

In all locations, local community organizations and journalists assisted Human Rights Watch in identifying and contacting victims. Interviews were conducted in English or in Somali or Kiswahili with the assistance of interpreters. Many victims requested not to be named in this report for fear of repercussions; their names have been replaced by pseudonyms.

Human Rights Watch interviewed police and military officials in Nairobi in order to assess the Kenyan authorities' responses to allegations of rights abuses; these officials included the spokespersons of the Ministry of State for Defence and the Kenya Defence Forces, the deputy spokesperson of the Kenya Police, a senior secretary at the Ministry of State for Internal Security, and military officials on the ad hoc board of inquiry into military abuses. In Garissa and Wajir, Human Rights Watch also interviewed local police and administrative officials. Officials of the United Nations High Commission for Refugees, the Kenya National Commission on Human Rights (KNCHR), several Kenyan nongovernmental organizations,



and representatives of diplomatic missions in Nairobi provided additional information, as did several members of parliament.

Several references in this report to the nature of and number of casualties in the various grenade and explosive attacks in North Eastern province are based solely or primarily on news articles. Where possible, that information has been corroborated by police sources or witnesses.

Human Rights Watch sent letters to Kenya's Minister of State for Defence Yusuf Haji and Minister of State for Internal Security George Saitoti on March 13 requesting further information on the police and military's responses to reports of abuses. As of April 23, neither ministry had responded to the letters.

# I. Background

On October 16, 2011, the Kenya Defence Forces launched a military campaign within Somalia with the stated objective of eliminating the threat posed by al-Shabaab, the militant Islamist armed movement that controls much of south-central Somalia and has been fighting Somalia's weak Transitional Federal Government—which is backed by the United Nations, the United States, and Ethiopia—since 2007. The campaign, known as Operation Linda Nchi (“Protect the Country”), was apparently triggered by the kidnapping of several foreign tourists and aid workers from Kenya's Coast and North Eastern provinces in 2011, allegedly by Somali militants or pirates. However, for several years already Kenya had prepared for a possible military intervention in Somalia, with the goal of creating a “buffer zone” along the border and a regional authority in Somalia that would be allied to Kenya.<sup>1</sup>

Kenya's incursion appears to have prompted a decision by some members or supporters of al-Shabaab to intensify attacks within Kenya.<sup>2</sup> The day after the incursion began, al-Shabaab responded by threatening to “strike at the heart of [Kenyan] interests” and make Kenya “regret and feel the consequences back home.”<sup>3</sup> The attacks that followed have apparently sought to punish Kenya for the intervention and force its troops to withdraw from Somalia.

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<sup>1</sup> Human Rights Watch, “*You Don't Know Who to Blame: War Crimes in Somalia*,” August 2011, <http://www.hrw.org/reports/2011/08/14/you-don-t-know-who-blame>.

<sup>2</sup> The origin and organization of the attacks in Kenya are unclear. Al-Shabaab has only claimed credit for one attack mentioned in this report, in Gerille on January 11, 2012, and disavowed responsibility for other recent attacks; see “Nairobi grenade attack: Al-Shabab denies Kenya blast,” *BBC News Online*, March 2, 2012, [www.bbc.co.uk/news/world-africa-17338125](http://www.bbc.co.uk/news/world-africa-17338125) (accessed March 19, 2012). Some analysts suggest that al-Shabaab has leadership and support within Kenya, and that it has recruited youth through the Muslim Youth Centre at Pumwani mosque, as well as among ethnic Somali communities. See Report of the Monitoring Group on Somalia and Eritrea submitted in accordance with resolution 1916 (2010), S/2011/433, July 18, 2011, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2011/433](http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/433) (accessed March 19, 2012). But Kenya and Tanzania's coastal Muslim communities are currently seen as potential targets for radicalization and recruitment. Most of the attacks within Kenya have not resulted in arrests and prosecutions which might provide insight into their organization, and Kenyan police and intelligence have not publicly presented an overarching theory about the organization or coordination of the attacks. The only person to have been convicted to date, following a grenade attack in Nairobi, is a convert to Islam from Kenya's Luhya ethnic group; he has claimed to be an al-Shabaab member. See International Crisis Group, *Kenyan Somali Islamist Radicalisation*, Crisis Group Africa Briefing No. 85, Nairobi/Brussels, January 25, 2012, pp. 5-8. The International Crisis Group suggests the attacks carried out in North Eastern province may be a joint operation between Somalis and Kenyan Swahili Muslims, who can more easily escape scrutiny.

<sup>3</sup> “Kenyan troops 100 km inside Somalia,” *Agence France Presse*, October 17, 2011, <http://www.capitalfm.co.ke/news/2011/10/kenyan-troops-100km-inside-somalia/> (accessed February 8, 2012).

In the early morning hours of October 24, a grenade exploded in a nightclub in Nairobi's Central Business District, injuring 12 people.<sup>4</sup> The evening of the same day, a second grenade exploded at a Nairobi bus stop, killing one person and injuring 18.<sup>5</sup>

Nairobi residents steeled themselves for the worst, anticipating attacks along the lines of the July 2010 bombings claimed by al-Shabaab in Uganda's capital, Kampala. In those attacks suicide bombers struck a restaurant and a rugby club where people were watching the televised World Cup final match, killing 76. However, following the initial attacks in Nairobi, the militants largely shifted their attention to Kenya's vast, remote North Eastern province.<sup>6</sup>

North Eastern province shares a porous 682 kilometer-long border with Somalia. Its residents are primarily Kenyans of Somali ethnicity. The province also hosts at least 460,000 Somali refugees who have fled Somalia's conflict over the past 20 years, most of whom arrived in the past five years as Somalia's conflict re-ignited. Most refugees live in five camps near the town of Dadaab, 90 kilometers west of the Somali border. Others are integrated into towns and villages in the region.

The province, which was known during colonial times as the Northern Frontier District (NFD), has a tumultuous history. In 1960, when neighboring Somalia gained independence, the British established a commission to assess the views of NFD residents on possible secession from Kenya and unification with Somalia.<sup>7</sup> The majority of NFD residents favored unification with Somalia, but during the negotiations leading to Kenya's independence in 1963, the British ultimately disregarded the NFD residents' views, ceding to the calls of Kenyan nationalists that the territory of Kenya retain its colonial boundaries. In response, an armed secessionist movement started in North Eastern province.

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<sup>4</sup> "Nairobi nightclub grenade attack injures 12," *BBC News Online*, October 24, 2011, <http://www.bbc.co.uk/news/world-africa-15425447> (accessed April 18, 2012).

<sup>5</sup> Jo Adetunji and agencies, "Deadly explosion hits Nairobi bus stop," *The Guardian*, October 24, 2011, <http://www.guardian.co.uk/world/2011/oct/24/explosion-nairobi-bus-stop-kenya> (accessed April 18, 2012).

<sup>6</sup> In March, however, grenade attacks took place in Nairobi (killing at least five people) and in Mombasa (killing at least one person); al-Shabaab claimed credit for the attacks. Leila Aden, "Five Dead, 21 Injured in Nairobi Attack," *Somalia Report*, March 10, 2012, <http://www.somaliareport.com/index.php/post/3044>, and Maureen Mudi, "Kenya: We Did It, Say Al Shabaab," *The Star* (Nairobi), April 1, 2012, <http://allafrica.com/stories/201204021446.html> (accessed April 16, 2012).

<sup>7</sup> The newly independent Somalia consisted of the former Italian Somaliland and the former British Somaliland.

The resulting series of confrontations between Kenyan Somali secessionists and the Kenyan armed forces was known as the “Shifita War.”<sup>8</sup> The conflict lasted throughout the 1960s, until the uprising was brutally suppressed by Kenya’s security forces.

In 1963 Kenya declared a state of emergency in the region which lasted for 28 years until 1991.<sup>9</sup> In 1984 Kenyan troops killed an estimated 2,000 ethnic Somalis in Wajir district in what came to be known as the Wagalla Massacre. Troops rounded up suspected “bandits,” forced them to lie down on the Wagalla landing strip, and fired on them, killing all but a few survivors.<sup>10</sup> As late as 1990, Kenya subjected its ethnic Somalis to special “screening” procedures and ordered that those “found to have sympathy with Somalia” be expelled from the nation in which they held citizenship; it also issued all ethnic Somalis special pink identity cards to permit easier identification by security personnel.<sup>11</sup>

A number of Kenyan Somalis interviewed by Human Rights Watch in North Eastern province acknowledged that in recent years human rights violations by security personnel have declined.<sup>12</sup> President Mwai Kibaki’s administration has made some minimal efforts to develop North Eastern province since coming into power in 2002 (although the province remains sorely under-resourced), and several Kenyan Somalis have been appointed to key administration positions.<sup>13</sup>

However, even in the last few years, there have been frequent incidents of abuse of ethnic Somalis in Kenya by the Kenyan security forces. For example, the police have conducted periodic raids in Eastleigh, a heavily ethnic-Somali neighborhood in Nairobi that is home

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<sup>8</sup> The term “shifita” means “bandit.” The Kenyan government’s pejorative use of the term “Shifita War” attempted to mask the essentially political nature of the conflict and to reinforce discriminatory attitudes toward Somalis. Africa Watch (now Human Rights Watch/Africa), *Kenya: Taking Liberties* (New York: Human Rights Watch, July 1991), pp. 268-322.

<sup>9</sup> See International Crisis Group, *Kenyan Somali Islamist Radicalization*, pp. 2-4.

<sup>10</sup> “Kenya: Wagalla massacre survivors testify,” *BBC News Online*, April 11, 2011, <http://www.bbc.co.uk/news/world-africa-13123813> (accessed February 10, 2012). Survivors say 5,000 people were killed, although the Kenyan government disputes this figure. Africa Watch, *Taking Liberties*, p. 274. See also S. Abdi Sheikh, *Blood on the Runway—The Wagalla massacre of 1984* (Northern Publishing House: Nairobi, 2007), <http://www.scribd.com/doc/2551019/BLOOD-ON-THE-RUNWAY-The-Wagalla-Massacre-of-1984> (accessed March 8, 2012), and Kenya Human Rights Commission (KHRC), *Foreigners at Home: The Dilemma of Citizenship in Northern Kenya*, February 2009, pp. 51-52.

<sup>11</sup> Africa Watch, *Taking Liberties*, pp. 298-322; *Screening of Ethnic Somalis—The Cruel Consequences of Kenya’s Passbook System* (New York: Human Rights Watch, September 1990), p. 2; Kenya Human Rights Commission, *Foreigners at Home*, pp. 34-40.

<sup>12</sup> Human Rights Watch interviews, Wajir and Garissa, January 2012.

<sup>13</sup> International Crisis Group, *Kenyan Somali Islamist Radicalization*, pp. 4-5. Kenyan Somalis appointed to high-level positions include Minister of State for Defence Yusuf Haji, Independent Electoral and Boundaries Commission chair Ahmed Issack Hassan, and former Police Commissioner Hussein Ali.

to both Somali nationals and ethnic Somali Kenyans. Police round-ups and extortion of money from those who cannot produce Kenyan identity cards have been regular features of Eastleigh life for many years.<sup>14</sup> There is also frequent harassment in North Eastern province, including extortion. The speaker of Kenya's parliament, Farah Maalim, told Human Rights Watch, "The police have always treated the population of North Eastern, Somali or Kenyan, as an ATM."<sup>15</sup>

Kenyan Somalis in North Eastern province have on several occasions in recent years been subjected to brutal raids by the security forces. In October 2008, Kenyan security agents involved in a joint police-military operation in Mandera, purportedly to disarm rival ethnic Somali militias, were responsible for torturing, raping, and beating local residents. Hundreds of residents had to seek medical treatment as a result of injuries inflicted by Kenyan security agents. Minister of State for Internal Security George Saitoti promised to establish a commission of inquiry to investigate the attacks, but failed to uphold this promise.<sup>16</sup> In October 2010 two ethnic Somali chiefs in Buna were tortured by police who suspected them of hiding Ethiopian rebels.<sup>17</sup> Each time ethnic Somalis are brutalized in North Eastern province the bitter memories of the 1984 Wagalla massacre resurface.<sup>18</sup>

In a context of ongoing impunity for past abuses such as those perpetrated under the state of emergency and the Wagalla massacre, continuing abuses contribute to a profound sense of alienation among Kenyan Somalis, especially in North Eastern province. Human Rights Watch interviewed Kenyan Somalis, including youths too young to remember Wagalla and the state of emergency, who said they believed they were perceived by

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<sup>14</sup> See, for instance, U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, "2010 Human Rights Report: Kenya," April 8, 2011, <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154352.htm> (accessed March 19, 2012).

<sup>15</sup> Human Rights Watch interview with Hon. Farah Maalim, Kampala, April 1, 2012.

<sup>16</sup> Human Rights Watch, "*Bring the Gun or You'll Die*": Torture, Rape and Other Serious Human Rights Violations by Kenyan Security Forces in the Mandera Triangle, June 2009, <http://www.hrw.org/reports/2009/06/28/bring-gun-or-you-ll-die>.

<sup>17</sup> Boniface Onger and Martin Mutua, "MPs want action taken over chiefs torture," *The Standard* (Nairobi), <http://www.standardmedia.co.ke/archives/editorial/InsidePage.php?id=2000022116&cid=159&> (accessed January 15, 2012); Human Rights Watch interviews, Lensayo (upper Eastern province), December 15, 2010. According to the Standard, medical reports showed that Yussuf had a cracked pelvic bone and a ruptured bladder after his private parts were crushed.

<sup>18</sup> Kenya established a Truth, Justice and Reconciliation Commission (TJRC) following the 2007-2008 post-election violence. Its mandate includes investigating and holding public hearings on human rights abuses committed in Kenya from 1963 to 2008. In May 2012 the TJRC is to publish a report based on its investigations, in which it can recommend further steps for accountability. The TJRC's first public hearings in April 2011 were in Wajir and included extensive testimony on the Wagalla massacre. Truth, Justice and Reconciliation Commission, "TJRC told of Gross Human Injustices in Wagalla," April 26, 2011, [http://www.tjrckenyana.org/index.php?option=com\\_content&view=article&id=237:tjrc-told-of-gross-human-injustices-in-wagalla&catid=1:tjrc-news&Itemid=187](http://www.tjrckenyana.org/index.php?option=com_content&view=article&id=237:tjrc-told-of-gross-human-injustices-in-wagalla&catid=1:tjrc-news&Itemid=187) (accessed April 18, 2012).

members of the security forces as the enemy, and that they were not considered true Kenyans. Abusive conduct by the Kenyan security forces since November 2011 has reinforced this sense of marginalization and increased the risk of radicalization.<sup>19</sup>

The marginalization of Kenyan Somalis does not necessarily translate, however, into significant support for the brand of violent, radical Islamism advocated by al-Shabaab. Residents of North Eastern province interviewed by Human Rights Watch consistently emphasized the lack of popular support for al-Shabaab across much of the province. As for Somali refugees in Kenya, many fled abuses by al-Shabaab in areas they control in southern Somalia that included child recruitment, harsh punishments, and arbitrary killings.<sup>20</sup> Nonetheless the existence of pockets of radicalism among both Kenyan Somalis and Somali refugees, coupled with ineffective policing and intelligence work, has aided those carrying out attacks in North Eastern province.

## Attacks against Kenyan Forces and Civilian Targets

Attacks against Kenyan government targets in North Eastern province began in late October 2011, shortly after the two initial Nairobi grenade attacks. The United Nations news service IRIN tallied at least 15 incidents involving grenades or improvised explosive devices in the regions of Garissa, Wajir, Mandera, and Dadaab in the month of December 2011 alone.<sup>21</sup> After a peak in December 2011 and January 2012, the frequency of such incidents diminished in February and March.

Based on news reports and interviews Human Rights Watch has compiled a list of 24 attacks in North Eastern province from October 2011 through February 2012 (see Appendix I). The majority of these attacks have targeted government or security force personnel, vehicles, or buildings. The most common type of attack has been the use of explosives to target vehicles. In these attacks the general pattern has been that explosives are buried in the dirt or sand in areas where police or military vehicles are expected to pass. Police told Human Rights Watch that in some cases they suspect the explosive devices are remotely

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<sup>19</sup> International Crisis Group, *Kenyan Somali Islamist Radicalization*, pp. 10-11.

<sup>20</sup> Human Rights Watch, *No Place for Children: Child Recruitment, Forced Marriage, and Attacks on Schools in Somalia*, February 2012, <http://www.hrw.org/reports/2012/02/20/no-place-children>; “*You Don’t Know Who to Blame*”; and *Harsh War, Harsh Peace: Abuses by al-Shabaab, the Transitional Federal Government, and AMISOM in Somalia*, April 2010, <http://www.hrw.org/reports/2010/04/13/harsh-war-harsh-peace>.

<sup>21</sup> “KENYA-SOMALIA: Paying high price for military incursion,” *IRIN*, January 13, 2012, <http://www.irinnews.org/report.aspx?reportid=94641> (accessed January 15, 2012).

operated; in other cases, they may be triggered by being struck by a vehicle.<sup>22</sup> At least 11 police, military, and government vehicles were targeted in this manner between October and February. In another pattern assailants have, in at least four cases, thrown grenades at restaurants and bars; at least one grenade attack also targeted a church compound. Finally, there have been at least seven attacks involving firearms, including the fatal shootings of two refugee leaders in Dadaab in late December and early January.

Al-Shabaab has only claimed responsibility for one attack in North Eastern province, a highly coordinated armed attack in Gerille, a border garrison in Wajir South district, which took place on January 11.<sup>23</sup> A number of government officials had traveled there on January 9 for an exercise involving the issuing of national identity cards, and were lodging in a government medical dispensary and the adjacent Administration Police camp. Just after 6 p.m., 50 to 100 attackers surrounded the area and fired on the camp and the dispensary. They were heavily armed: one survivor, a police officer, reported that the assailants were using guns, mortars, and rocket-propelled grenades.<sup>24</sup> Three police officers and three civilians were killed during the attack, including a woman who was fetching water near the camp. Two other police were seriously injured. A district officer from Gerille, a district registration officer from Wajir, and a driver were abducted and taken across the border into Somalia, where al-Shabaab paraded them in local towns.<sup>25</sup>

The attacks have resulted in the deaths of at least 20 civilians (including an administrative official and a police reservist), at least six police officers, and at least one soldier. At least 70 civilians (including an intelligence official), 15 police officers, and five soldiers have also been injured in the attacks. They have altered the rhythm of life for residents of North Eastern province, afflicting the local economy and creating a climate of ongoing insecurity.

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<sup>22</sup> Human Rights Watch telephone interview with North Eastern province Provincial Police Officer Leo Nyongesa, November 26, 2011.

<sup>23</sup> Local officials, including an Administration Police officer, told Human Rights Watch that the Kenyan security forces were poorly prepared to prevent or respond to the attack, thereby putting civilians at risk. The day before the attack, Administration Police in Gerille had received word of a group of 50 people moving toward the town. Both police and a local chief alerted officials in Wajir, but no reinforcements arrived. Human Rights Watch interviews with a journalist and a police official, Garissa, January 12, 2012, the representative of a human rights organization, Wajir, January 16, 2012, and an Administration Police officer, Wajir, January 17, 2012.

<sup>24</sup> Human Rights Watch interview with an Administration Police officer, Wajir, January 17, 2012.

<sup>25</sup> Human Rights Watch interview with PPO Leo Nyongesa, Garissa, January 12, 2012. The driver was subsequently released. Cyrus Ombati, "Abducted Kenyan found in Wajir," *The Standard* (Nairobi), January 19, 2012, <http://www.standardmedia.co.ke/InsidePage.php?id=2000050331&cid=4&ttl=Abducted%20Kenyan%20found%20in%20Wajir> (accessed March 16, 2012).

The manager of Garissa's Florida Hotel complained, "It's affecting business. We used to stay open until 10:30. Now, by 8 p.m. we have no customers."<sup>26</sup> A Wajir bar employee expressed similar dismay at the rate of business after the bar in which he waited tables was hit by a grenade attack on Christmas Eve, injuring six people.<sup>27</sup>

## Response of the Kenyan Security Forces

Residents of North Eastern province have expressed frustration with what they see as an inadequate effort on the part of the security forces to prevent such attacks and to identify and prosecute the perpetrators, which has led residents to feel particularly vulnerable. A religious leader in Garissa told Human Rights Watch, "In Somalia, there's war and so you get a gun and protect yourself. But here, there's a government and they don't protect you."<sup>28</sup>

The Kenyan government is making some efforts to investigate attacks in North Eastern; in some instances, criminal investigators and members of the Anti-Terrorism Policing Unit from Nairobi have been dispatched to the sites of attacks.<sup>29</sup> But so far no one has been convicted in any of the attacks. In the few cases in which suspects have been arrested, detained, and interrogated in accordance with proper criminal procedure, they have subsequently been released due to lack of evidence.<sup>30</sup> In only one attack in Kenya, the second Nairobi grenade attack in October, has a suspect been convicted.<sup>31</sup>

Instead of pursuing the perpetrators of the attacks, Kenyan security forces have regularly rounded up local residents or refugees and beaten them. These are not isolated incidents. As described in the following chapter, groups of police and soldiers have conducted these reprisals in at least four different locations in a coordinated manner following attacks. Thus, as well as directly impacting the business interest and security of the province, the attacks have also exposed locals to brutality from Kenyan security officers—the very people that they should be able to rely on for protection from militant attacks.

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<sup>26</sup> Human Rights Watch interview, Garissa, January 12, 2012.

<sup>27</sup> Human Rights Watch interview, Wajir, January 16, 2012.

<sup>28</sup> Human Rights Watch interview with Abdullahi Salat, Garissa chair of the Supreme Council of Kenya Muslims, Garissa, January 11, 2012.

<sup>29</sup> Human Rights Watch interview with North Eastern province PPO Leo Nyongesa, Garissa, January 12, 2012.

<sup>30</sup> Human Rights Watch interview with deputy police spokesperson Charles Owino, Nairobi, March 13, 2012.

<sup>31</sup> Ibid.



There have been no reported deaths as a consequence of recent Kenyan police and military abuses in North Eastern province. However, in other recent actions outside of the province the Kenyan military, in dealing with the perceived threat from Somali militants, has engaged in the unlawful use of force against civilians with fatal consequences.<sup>32</sup> These actions include the shelling of a displaced people's camp in the Somali town of Jilib in October 2011, a Kenya air force raid on Hosingow village in Somalia in December 2011, and the Kenyan navy's firing on a fishing boat near Kiunga, on the Kenyan coast near the Somalia border, in early November. In the latter incident the Kenyan navy apparently mistook a group of Kenyan fisherman for al-Shabaab members and fired on the boat even after intercepting it and interviewing its passengers.<sup>33</sup> Muslim Human Rights Forum, a Kenyan NGO that investigated the incident, found that the navy killed four civilians, all of them elderly Kenyans.<sup>34</sup> The attack on the fishing boat produced an outcry from Kenyan media and civil society organizations. However, the outcry did not trigger an immediate reaction from the military. While the Ministry of State for Defence board of inquiry informed Human Rights Watch in January 2012 that it intended to investigate this incident, no one has yet been held accountable.

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<sup>32</sup> Human Rights Watch has reported on violations of international humanitarian law by the Kenya Defence Forces within Somalia, including the Jilib air strike and another airstrike on the village of Hosingow in December 2011, which hit a *duksi* (Koranic school) and killed an estimated 11 civilians. See "Kenya: Investigate Bombing of Somali Village," Human Rights Watch news release, December 21, 2011, <http://www.hrw.org/news/2011/12/21/kenya-investigate-bombing-somali-village>, and "Kenya: Respect Law in Somalia Military Operations," Human Rights Watch News release, November 19, 2011, <http://www.hrw.org/news/2011/11/18/kenya-respect-law-somalia-military-operations>.

<sup>33</sup> Human Rights Watch interview with Al-Amin Kimathi, director of Muslim Human Rights Forum, Nairobi, November 14, 2011. The military spokesperson, Maj. Emmanuel Chirchir, told media the fishing boat was fired upon after it refused an order from the navy ship to stop for identification, but survivors said they had followed orders to stop. Alloys Musyoka, "Kenyan forces kill four fishermen in a mistaken Al Shaabab attack," *The Kenya Radar* (Nairobi), November 4, 2011, <http://www.kenyaradarlive.co.ke/?p=6358> (accessed March 16, 2012).

<sup>34</sup> The victims were Mohamed Masuo, 85, Haji Omar Mote, 73, Isa Yusuf, 61, and Salim Chechemeyo, 60. The remaining fishermen swam to shore and were detained by the Kenyan armed forces. At the army base, they were allegedly severely beaten by Kenyan military personnel before being transferred to police custody and eventually released. Human Rights Watch interview with Al-Amin Kimathi, November 14, 2011. See also Human Rights Watch letter to Minister of State for Defence Yusuf Haji, November 18, 2011, <http://www.hrw.org/node/103030>.

## **II. Security Forces' Abuses against Ethnic Somalis: Garissa, Mandera, and Wajir**

The first few attacks on Kenyan security personnel following the commencement of Operation Linda Nchi were not followed by brutal crackdowns or reprisals. However, as the number of attacks on Kenyan security personnel increased in November, civilians, particularly in North Eastern province, found themselves caught between two hostile forces: the militants seeking to destabilize Kenya, and the retaliating Kenyan police and military.

Between mid-November and mid-January Kenyan soldiers committed abuses, including serious beatings, against hundreds of civilians in and around the towns of Garissa, Wajir, and Mandera (where Somalia's Transitional Federal Government soldiers also crossed the border and participated in abuses). Dozens of victims were illegally detained, although the military has no authority under Kenyan law to detain civilians.

Kenyan police, for their part, have been responsible for at least one beating in Wajir and some involvement in the abuses in Mandera. The most serious human rights violations committed by the police, in the Dadaab refugee camps, are discussed in the following chapter.

### **Military Abuses in Garissa**

The first abuses by the military in Garissa took place on November 11, 2011, according to reports received by Human Rights Watch the following day. A witness in Garissa informed Human Rights Watch that in the course of a "security operation," military personnel were rounding up residents solely on the basis of their Somali appearance. He said he saw soldiers picking up suspects at pubs around Garissa, pulling drivers out of taxis, and forcing them to sit in mud and dirty water outside these locations. He said, "They were forced to sit in water. They were beaten if they didn't have identification. I saw them being beaten.... Police were moving around town, but it's the military that is doing this operation."<sup>35</sup>

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<sup>35</sup> Human Rights Watch telephone interview, November 12, 2011. The witness specifically stated that police picked up residents at DRC Pub, Locus, and Town Club.

The pattern of abuses increased after November 24 when three civilians were killed in the course of twin grenade attacks at Kwa Chege restaurant and at Ngamia Road in Garissa. The day the attacks took place the military beat and arbitrarily arrested residents, according to a witness.<sup>36</sup> Two sources in Garissa told Human Rights Watch the operations targeted specific locations where refugees or other foreigners were believed to live.<sup>37</sup>

The actions of the military over the following days appeared designed to humiliate victims. For instance, one evening in late November about a week after the grenade attacks, soldiers entered Garissa Madogo, a neighborhood a few kilometers west of the bridge leading into Garissa town. They drove to a cluster of small houses, disembarked, and searched the houses. A resident told Human Rights Watch, “They were banging on doors and asking for IDs. They broke down two doors when no one answered. We were caught by fear and followed whatever we were told.”<sup>38</sup> After searching these houses the soldiers turned back toward town, but just up the road, they met a group including two mechanics who were fixing a car, the car’s owner and its driver, a 17-year-old watchman, and a 21-year-old who lived nearby.

According to one of the mechanics,

There were about 15 or 16 soldiers from the military camp in Garissa. They were in helmets and combat uniforms.

We were outside, working on the broken down car. They asked, “What are you doing here?” We said, “We’re mechanics. We’re fixing the car.”

They told us to lie down on the ground. We lay down. They made us roll along the ground. There were two groups of soldiers, one on either side of a patch of road. We would roll to one side. Then one of the military guys would step on our heads. Then we would have to roll back, and on the other side they would also stamp on our heads. The distance [we had to roll] was about 200 meters. They kept saying “Lie down, roll.”

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<sup>36</sup> Human Rights Watch telephone interview, November 24, 2011.

<sup>37</sup> Human Rights Watch interview with a Garissa-based journalist, Garissa, January 10, 2012, and with Hanifa R., Garissa, January 11, 2012.

<sup>38</sup> Human Rights Watch interview, Garissa, January 11, 2012.

We did not make a formal complaint. You can't make a report against soldiers at the police. The police fear the soldiers, and no action can be taken against them.

We can't understand why they did this to us. It was about a week after one of the explosions. That night, there were no explosions.<sup>39</sup>

The 17-year-old watchman added,

They didn't ask us any questions, they just started beating us. They didn't even ask our names. They made us lie down and roll. We rolled for about half an hour here in the road. After the exercises, they left, then came back and started beating us more. They beat us with fists and kicked us with their boots. I was beaten on my whole body. There was no place they missed.<sup>40</sup>

During the same period, Abdiaziz M., a 16-year-old school boy, was assaulted. He saw soldiers near his home while he was standing at the gate. As Abdiaziz described it,

They called to me, and I tried to go back into the house. They came in the gate and started beating me. They didn't say anything. They didn't ask for my ID. The only thing they said was "Come!"

They hit me in the kidneys with a stick and with their fists. One kicked me; one had a stick. Others surrounded me.

They broke my arm. I had to go to the hospital to get my arm put in a plaster.<sup>41</sup>

Hanifa R., a government employee, was waking from a nap one day in late November when soldiers approached her home. She came outside when she heard voices.

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<sup>39</sup> Human Rights Watch interviews with Faisal A. and Masood N., Garissa, January 11, 2012.

<sup>40</sup> Human Rights Watch interview with Hussein J., Garissa, January 11, 2012.

<sup>41</sup> Human Rights Watch interview with Abdiaziz M., Garissa, January 13, 2012.

From one vehicle, men were shouting “This is the house! This is the house!” They were saying “You stupid! Dog! Trash!” as they were coming into the plot....

They told me to lie down.... They fired a gun into the air while fighting me to lie down. There were 10 to 15 soldiers. I lay down.

If the soldier had said “Madam, I want to search your house,” it would have been different, but he was saying, “You dog, you trash.”

My husband heard them talking to me. He was praying at that particular time. He came out. They said, “Lie down!”

My husband lay down. Without saying anything, they just started kicking him, hitting him. One officer was holding a pistol. They fired it once next to his head. The bullet hit the ground, and dirt flew up over his head. My young boy who is two years old was standing just next to him. They said to my husband “We can finish you, and there’s nowhere you can take us.”

Hanifa’s husband was taken away and interrogated about “which neighbors were not Kenyans” before he was released. Even after his return, family members remained traumatized by the incident. Hanifa told Human Rights Watch, “It was a shock. That night my kids were unable to go to sleep. The whole night they were crying. We were all afraid they might come back the next day.”<sup>42</sup>

A number of abuses also took place at Garissa military camp, where soldiers detained dozens of civilians over a period of weeks in violation of Kenyan law. At the military camp, as in Garissa Madogo, “exercises” featured prominently. Abdallah D., an employee at a state agency, was arrested by soldiers in late November after stopping his motorbike near the camp to look at a tire puncture. He was one of many victims to be arrested by soldiers for parking near the military camp, which lies along the main road through Garissa town—a location where long-distance truck drivers and others had habitually parked their vehicles

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<sup>42</sup> Human Rights Watch interview with Hanifa R., Garissa, January 11, 2012.

with no previous objections from the military. No signs indicate that parking is prohibited in the area. But his choice of parking spot exposed Abdallah, like many others, to abuse. He described his ordeal:

Someone came with a gun and grabbed me by the shirt. It was three soldiers. They told me to push the bike into the camp.

Inside the main gate, in the field, five soldiers told me to put my finger on the ground and then spin in circles. They said “Fast, fast.” Then they told me to put my head on the ground and raise my legs up. I tried and said, “It’s very hard. I can’t.” So one of the soldiers started kicking my buttocks. They said I was a criminal because I was disobeying orders. They said, “This man refused orders. Maybe he’s al-Shabaab.”

... Everyone had to do exercises. There were four stages. The first is the finger [standing and spinning in circles with your finger on the ground]; the second is [standing on] the head; the third is carrying a heavy load; and the fourth is cutting weeds. Everyone was also beaten; they were kicked. The others were still there, in the scorching sun, when I was released. I was there half an hour [before] I showed my [public service agency] ID and they let me go.

I didn’t make a police report.... We knew the police wouldn’t help.<sup>43</sup>

Even the chair of the Garissa Chamber of Commerce and Industry, Dubow Barre Duale—a former military officer and brother to a member of parliament—was not immune from ill-treatment. In late December he was sitting in his vehicle next to the Heller petrol station across from the military camp—not a prohibited parking area—when three soldiers approached, asked why he was parked there, and snatched his keys from his hand. In the scuffle they injured his hand, causing him to bleed. According to Duale,

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<sup>43</sup> Human Rights Watch interview with Abdallah D., Garissa, January 11, 2012.

They said, “If you’re man enough, come to the military camp.” I followed them to the camp. Then they said, “Stop or we’ll shoot you. You’re al-Shabaab.” I went back to my car and called the Provincial Police Officer (PPO).... The PPO came and talked to the military chiefs—the camp commander, a major and a captain. They then called me over. When I was coming, they told me to stop and stand two to three meters from them and identify myself. I said my name and that I’m a chairman of the Chamber of Commerce and a former military officer. The first soldier said, “Why didn’t you tell us that at first?” I said, “Because it makes no difference. Ordinary Kenyans also should not be harassed.”

My whole hand was bleeding at this point. [The commanders] gave me the key and said, “Sorry. These young men [soldiers] have made a mistake.”

The Garissa military camp commander was transferred at the end of December following complaints from Dubow Duale’s brother, Member of Parliament Aden Duale, and others, including other area members of parliament. However, harassment continued under the new camp commander in January.<sup>44</sup>

On January 11, 2012, a Human Rights Watch researcher personally witnessed the ill treatment of civilians at the military camp. The researcher observed soldiers forcing several men to roll in the dirt in a large field just beyond the entrance to the camp, which is visible from the main road. Soldiers forced another man to frog-jump across the field and to assume various gymnastic positions. Military personnel refused entry to Human Rights Watch, stating, “There are no human rights here.”<sup>45</sup>

Human Rights Watch interviewed several victims upon their release from the camp the same day. Yusuf Khalif Mohamed, a long-distance truck driver, said he stopped in Garissa for a soft drink on his way from Mombasa to Dadaab, where he was to make a food delivery for UNICEF. He parked near the camp, not knowing parking was prohibited there. A military officer approached him, told him he had parked illegally, confiscated his driver’s license,

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<sup>44</sup> Human Rights Watch interview with Garissa residents, January 11, 2012, and with Dubow Barre Duale, Garissa, January 13, 2012.

<sup>45</sup> Human Rights Watch visit to Garissa military camp, January 11, 2012.

and forced him to come to the camp. There soldiers threw a 20-liter container of water on him, made him roll on the ground, kicked him on the side, and hit him on the head with the butt of a gun. Mohamed told Human Rights Watch that one of them said, “I think you are al-Shabaab. You are bothering us in Somalia, and now you’ve come to bother us here.”<sup>46</sup>

Abdi E., a taxi driver who was also forcibly taken into the camp, said,

They told me to roll in their compound. They also told me to roll [turn around in circles] with my finger on the ground. Then they told me to stand in a push-up position for 30 minutes.... They poured water on me.... The soldiers were saying, “We can do whatever we want to you. We can shoot you. We can arrest you.”<sup>47</sup>

Ali I. was buying goods in a shop across from the military camp when he was arrested. He said,

Soldiers came and asked “Why are you standing here? So you’re al-Shabaab.” There were four soldiers. They took me to the camp. I had come with a vehicle, and they took away my driver’s license and my ID in order to make me go into the camp.

Once you go in, you become a captive. They kicked me with their boots and told me to roll around in the hot sun.<sup>48</sup>

When Human Rights Watch inquired about the incident, military spokesperson Maj. Emmanuel Chirchir initially claimed the individuals had been detained because they had “attempted to build an illegal structure [such as a kiosk] next to the military camp.”<sup>49</sup> However, Human Rights Watch saw no evidence to support this claim.<sup>50</sup>

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<sup>46</sup> Human Rights Watch interview with Yusuf Khalif Mohamed, Garissa, January 11, 2012.

<sup>47</sup> Human Rights Watch interview with Abdi E., Garissa, January 12, 2012.

<sup>48</sup> Human Rights Watch interview with Ali I., Garissa, January 12, 2012.

<sup>49</sup> Human Rights Watch telephone interview with Maj. Emmanuel Chirchir, KDF spokesperson, January 11, 2012.

<sup>50</sup> A youth activist had witnessed several of the arrests, and corroborated the claims of the victims. He said, “I saw three drivers being asked to roll yesterday. I saw water being poured on them, then they had to roll back. They parked their cars near Heller [petrol station]. Each driver was asked to get out of his car. The military took their keys. I saw this happen. They



At least eight men were detained on January 11, all subjected to similar treatment.<sup>51</sup>

## Military Abuses in Wajir

Most abuses in Wajir took place after a military vehicle in a convoy hit an improvised explosive device on Mandera Road, in a part of Wajir called Halane Village, on December 11, 2011. At least one soldier was injured in the explosion.<sup>52</sup>

Soldiers in the convoy secured the area and began rounding up civilians in the vicinity. According to a local human rights activist, “They cordoned off the area, arresting and beating everyone around, especially those wearing kanzus [a garment traditionally worn by Muslim men] or with beards.”<sup>53</sup> Civilians in the immediate area of the explosion were not the only ones at risk; soldiers also fanned out to the nearby neighborhoods, arresting people from the streets or from within their homes.

Numerous witnesses described how approximately 56 residents, including men, women, boys, and girls, were gathered by soldiers and forced to lie down in the gravel road.<sup>54</sup> They were made to roll from one location in the road to another, as in Garissa, and then to lie on their backs facing the sun for two to three hours. Many were beaten while being brought to Mandera Road or because they refused orders to roll or to lie facing the sun. After several hours, police took charge, taking males (including at least two children: a 15-year-old and a 16-year-old) into police custody while releasing females. Those taken into custody were released the following day, although most of them had to return for several consecutive days for questioning. To date, no one has been charged with planting the explosive device.

Ahmed D. lives on Mandera Road near the site of the explosion. He told Human Rights Watch that shortly after he heard the explosion,

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were told to follow the soldiers into the camp to get their keys back.” Human Rights Watch interview with a youth leader, Garissa, January 12, 2012.

<sup>51</sup> Human Rights Watch interviews, Garissa, January 11-12, 2012.

<sup>52</sup> “Kenyan official: 9 troops wounded by land mine,” AP, December 11, 2011, <http://www.guardian.co.uk/world/feedarticle/9990253/print>; Cyrus Ombati, “AP killed in Al Shabaab-linked explosions,” *The Standard* (Nairobi), December 12, 2011 (accessed April 16, 2012).

<sup>53</sup> Human Rights Watch interview with Abdiaziz Hassan, chair of Wajir Human Rights Network, Wajir, January 14, 2012.

<sup>54</sup> Based on the accounts of various victims, those victims at the scene number about 56: Forty-two men who were subsequently taken into police custody; approximately 10 women, who were released around 3:30 p.m.; and four workers from the city council, who were also released without being taken into police custody.

The military came into my house—three or four soldiers. They pointed a gun at me. I was told to surrender. They started ransacking all my rooms. I was with my six kids, who are between ten years and one and a half, and the kids saw everything....

The soldiers started kicking and slapping me. They took me out to the road and trampled me on the road. [I was] asking what do they want from me. They answered only by kicking me, and said, “The people who burned us are you. You know the people behind the blast. You should bring them.”

They took me to the place where other people were gathered. They made us lie on the ground for almost three hours. They told us to roll. If you fail they will continue kicking us with boots and hitting us with butts of guns. Some women were there, roughly 10. They also had to roll and were beaten.

The police came and other government officers. Forty-two of us were taken to Wajir Police Station. They were calling our names, interrogating us about what happened and where we were.... All of us were released the next day.

I was told to go to the hospital the next day. I had internal injuries from being hit with gun butts, and from the slapping and kicking. I have blood clots in my head. I was told this at the hospital. The hospital gave me antibiotics and painkillers. I have back, rib, and kidney pain, and also my manhood. Even there they kicked me. It was seriously swollen. My buttocks hurt and I can't sit for too long. I have pain after a few minutes.<sup>55</sup>

Dakan G., who has long suffered from epilepsy, describes herself as “about 50” but looks frail beyond her years. Human Rights Watch visited her in a small hut several minutes' walk from the explosion site. She said that on December 11 she had gone to see her mother about an hour after hearing the explosion but was intercepted by five soldiers.

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<sup>55</sup> Human Rights Watch interview with Ahmed D., Wajir, January 14, 2012.

They grabbed me and started beating me. They slapped me. They kicked me in the legs. They kicked me down and I fell on my backside. Then they pulled me along the ground to the place where the other people were.

They continued beating me there. I fainted in that place. A good Samaritan brought me back home.

I have pain in my throat. They held me by the throat so that I could not scream while they were beating me. I have pain in my chest and my back.... I am bedridden now as a result of the beatings. And before this, [I had] epilepsy at different times, but now it's continuous. The time is shorter between episodes.

I would like to see those soldiers taken to court, because they made me bedridden.<sup>56</sup>

Dakan G. was not the only victim who suffered lasting physical harm. Abdullahi D., a 50-year-old manual laborer who made bricks for a living, said,

Up to now I can't work to support my family because of the pain. I have seven children, plus my mother and my wife, who depend on me.

I have pain in my ribs, back, and left leg. A soldier kicked me four times in the leg. I was slapped in the face. One of my lower teeth is loose, and I still have pain in the teeth.

Human Rights Watch observed scars up and down his legs, and a round boot mark imprinted into his back.<sup>57</sup>

Another victim, Maash A., said soldiers hit him in the mouth, the shoulder, and the eye with the butt of a gun, and stomped on his legs. He is now missing two teeth, and says the vision in his left eye has become blurry.<sup>58</sup>

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<sup>56</sup> Human Rights Watch interview with Dakan G., Wajir, January 14, 2012.

<sup>57</sup> Human Rights Watch interview with Abdullahi D., Wajir, January 15, 2012.

With the assistance of Wajir Paralegal Network, a local NGO, a number of victims attempted to file complaints with the police. Initially, the Officer Commanding Station (OCS) turned them away. According to Muhumud B., “I went to the police two times and the police turned down my request to make a statement. They said, ‘This case is not with the police. It’s with the military, and the police can’t do anything about it.’”<sup>59</sup> Fifty-four-year-old Derow A., who was beaten with a gun butt and kicked in the mouth, had a similar experience—one which brought back bad memories of past abuse. He explained,

In 1984 I was one of the Wagalla victims, and I recalled that [when I was beaten on December 11]. I was mistreated [at Wagalla]. People were killed, many of my family members, uncles, cousins. Some were eaten by hyenas. It [brings] very bad memories when I go back to it.

[After the December 11 beatings] I went to police station [with other victims] to get a P3 and record a statement, but the police turned us down.<sup>60</sup> I didn’t go back again. I was one of the Wagalla victims and up to now nothing has been done, so this was just like Wagalla.<sup>61</sup>

Eventually, the OCS relented and agreed to take statements. But by this time several victims, including Muhumud B. and Derow A., had given up on the idea of filing complaints with the police, whom they saw as unwilling or unable to take on the military.<sup>62</sup> Ultimately, five to ten victims filed complaints with the police. They have not yet seen any follow up from police, although the military board of inquiry, discussed below, visited Wajir in February and took statements from victims.<sup>63</sup>

The December 11 beatings left an enduring mark on victims. Abdikadir, a slender 15-year-old school boy who was beaten by soldiers, told Human Rights Watch he is still afraid of the military.<sup>64</sup> His father explained that Abdikadir is so traumatized that before going to

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<sup>58</sup> Human Rights Watch interview with Maash A., Wajir, January 15, 2012.

<sup>59</sup> Human Rights Watch interview with Muhumud B., Wajir, January 15, 2012.

<sup>60</sup> The P3 form, officially known as the Kenya Police Medical Examination form, is provided at police stations and is used to request an examination by a medical officer in order to determine the injuries sustained by a complainant in an assault case.

<sup>61</sup> Human Rights Watch interview with Derow A., Wajir, January 15, 2012.

<sup>62</sup> Human Rights Watch interviews with victims, Wajir, January 15, 2012.

<sup>63</sup> Human Rights Watch telephone interview with Brig. John Wainaina, Ministry of State for Defence, February 27, 2012.

<sup>64</sup> Human Rights Watch interview with Abdikadir F., Wajir, January 15, 2012.

school every day, Abdikadir climbs up on a ladder and looks over the wall of the compound to make sure there are no soldiers around.<sup>65</sup>

## Police Abuses in Wajir

The majority of abuses documented by Human Rights Watch in Wajir were committed by the Kenya Defence Forces, but police also seriously beat one civilian, Adan Abdirahman Yusuf. Yusuf, a laborer, was arrested following the detonation of an explosive during Jamhuri Day celebrations on December 12 outside Wajir Stadium, in which three people, including a National Security Intelligence Service official, were injured.<sup>66</sup> He was working near the stadium, repairing a fence. According to Yusuf, immediately after the explosion, Kenya Police and Administration Police spotted him in the vicinity and began beating him.<sup>67</sup> He recounted,

They asked me whether I had a phone, and I said I don't carry a phone. They started beating me. First, they started kicking me. Then they held me up, made me stand up. Then they wrestled me down. I lay down on my chest. They started beating and kicking me and using the barrel of their guns [to hit me]. I was hit with a gun on the head and the back. I was kicked on the lower right side of my chest with a boot. I was bleeding profusely from the head.

They stopped beating me when I was not able to move. They dragged me to a vehicle and took me to the police station. The police took me to the hospital. The hospital could not stitch the wound. It was too wide, and the skin was too thin. I was only injected with painkillers. I didn't even get a bandage and couldn't even wash my head. They just told me to sit in the sun so it would dry and clot.

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<sup>65</sup> Human Rights Watch interview with Abdikadir F.'s father, Wajir, January 14, 2012.

<sup>66</sup> Jamhuri Day marks Kenya's establishment as a republic on December 12, 1962, and its independence one year later.

<sup>67</sup> Kenya has two police corps that operate under different command structures. The Kenya Police, sometimes referred to as the "regular police," is headed by Commissioner of Police Mathew Iteere. The Administration Police, a separate department that respond directly to the provincial administration, is headed by AP Commander Kinuthia Mbugua. Both departments are under the Ministry of State for Provincial Administration and Internal Security.

I am suffering from internal pain from the kicks. I can't work. I have pain in the kidney and a headache.<sup>68</sup>

Yusuf spent nine nights in police custody before he was freed on bail. He was charged with three counts of attempted murder. Charges against him were pending at this writing.

## Military and Police Abuses in Mandera

On November 24, a KDF soldier was killed by an explosive device in Mandera, near the Somalia border. In response to the attack, at least three separate forces—the Kenyan police, Kenya military, and soldiers of the Transitional Federal Government of Somalia, who had crossed into Kenya from Somalia—took part in roundups and beatings of civilians.<sup>69</sup>

According to one witness,

There was a blast on Thursday in the middle of town. Immediately the [police] started picking up people around there. Some school boys were beaten seriously. Some were in the hospital.... I escaped by the skin of my teeth. My neighbors were whipped by the military. They were beaten seriously. I had rushed to the scene to see what was happening, and the military surrounded us.... One man was bleeding from the head, and I took him to the hospital. Some of my boys were bleeding. I'm a teacher. These were boys of 12, 13, 15 years—young, small boys. The soldiers were beating people with clubs.<sup>70</sup>

Rahman O. was one of those caught up in the violent police response to the IED attack. Ten KDF officers entered his house and dragged him and his children out of bed. They beat him,

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<sup>68</sup> Human Rights Watch interview, Wajir, January 17, 2012.

<sup>69</sup> Human Rights Watch telephone interviews with Mandera residents, February 2012. Regarding the participation of TFG forces, a police official told Human Rights Watch, while denying the involvement of Kenyan troops, that “someone else’s military” was responsible for the abuses in Mandera, an apparent reference to TFG forces based in Bula Hawo, one kilometer from Mandera, across the Somali border. Human Rights Watch interview with a police official, date and location withheld. See also Adow Jubat, Cyrus Ombati, and agencies, “Somalia: Kenyan troops destroy Al Shabaab camps,” *The Standard* (Nairobi), November 25, 2011, <http://www.standardmedia.co.ke/entertainment/InsidePage.php?id=2000047276> (accessed February 10, 2011). The article cites the Mandera Town Council chair, Khalif: “As leaders we wonder what the role of TFG soldiers is. Whenever there is an explosion in Mandera, which is a town in Kenya, they (TFG) join the KDF in harassing the people... how can a foreign force assault our people?”

<sup>70</sup> Human Rights Watch telephone interview with a Mandera resident, November 26, 2011.

kicking him in the testicles and breaking his right hand. Rahman O. told Human Rights Watch that a pregnant neighbor miscarried after being beaten by soldiers.<sup>71</sup> Ayan H., a 40-year-old tutor, lost a tooth after being beaten by both KDF and TFG soldiers. Today, she told Human Rights Watch, she can no longer hear well.<sup>72</sup>

The chair of the Mandera Town Council and nine other local leaders sent a letter to the ministers for defence and internal security on November 26 in which they presented a list of 134 persons who had been victimized on November 24. The letter stated that 115 of them had been physically assaulted, while others were victims of looting by security forces. The list of victims of physical assault includes children as young as one month and adults as old as 62; it documents several cases of broken and dislocated limbs, and one case of sexual assault.<sup>73</sup>

Mandera West Member of Parliament Mahmoud Mohammed told Human Rights Watch that about 300 people were arrested to be “screened” on the day of the explosion; that victims included women, men, and children; that perpetrators included both police and military; and that some victims suffered broken limbs. He said that MPs from the region had asked the government to carry out an inquiry into the abuses, adding, “The war will likely continue, and they need to avoid responding like this again.... They cannot correct a wrong with a wrong.”<sup>74</sup>

## Loss of Trust in Security Forces

The result of the repeated beatings and mistreatment of residents of North Eastern province has been a diminishing trust in the Kenyan security forces at the very moment when those forces most need the confidence of the people in order to accomplish their security objectives.

The beatings have also further increased the sense of marginalization of the Kenyan Somali population. In the letter that local Mandera leaders sent to the ministers for defence and internal security in November, they stated: “On daily basis security men were

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<sup>71</sup> Human Rights Watch telephone interview with Rahman O., February 2012.

<sup>72</sup> Human Rights Watch telephone interview with Ayan H., February 2012.

<sup>73</sup> Letter from Mohamed A. Khalif, chair of Mandera Town Council, and other Mandera leaders to Minister of State for Internal Security George Saitoti and Minister of State for Defence Yusuf Haji, November 26, 2011, on file with Human Rights Watch.

<sup>74</sup> Human Rights Watch telephone interview with Mahmoud Mohammed, November 26, 2011.

being killed by thugs in other regions of Kenya and yet the population dwelling within that [sic] environs are not collectively punished. Does this mean Somalis are all naturally threat [sic] to the security of this nation? Does it signify that we are all Alshabab or their sympathizers?”<sup>75</sup>

Young people interviewed by Human Rights Watch placed a particular emphasis on the breakdown of trust between residents and members of the security forces. A youth leader in Garissa complained, “Freedom of movement has been altered. After 9 p.m. it’s risky for people to move around, because they’re afraid of the Kenyan security forces, not al-Shabaab.”<sup>76</sup> He added,

Young people have started saying that if today they were given the opportunity to decide between [living under] al-Shabaab and the Kenyan military, they would choose al-Shabaab. The military doesn’t usually have contact with the civilian population, so they use a lot of force. You can’t even talk back to them. They don’t even ask you questions.<sup>77</sup>

Yassin B., a 16-year-old boy in Wajir whose father, mother, 18-year-old-sister, and 16-year-old cousin were all beaten on December 11, said: “Now people fear the military. If they see a military car coming, everybody locks the doors.”<sup>78</sup>

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<sup>75</sup> Letter from Mohamed A. Khalif, chair of Mandera Town Council, and other Mandera leaders, November 26, 2011, on file with Human Rights Watch.

<sup>76</sup> Human Rights Watch interview with a youth activist, Garissa, January 12, 2012.

<sup>77</sup> Ibid.

<sup>78</sup> Human Rights Watch interview with Yassin B., Wajir, January 14, 2012.



### III. Police Abuses against Somali Refugees in Dadaab

The Dadaab refugee camps in North Eastern province host more than 460,000 refugees, most of them Somali. The camps already faced serious security and human rights problems prior to Operation Linda Nchi, but these have been exacerbated as a result of Kenya's intervention in Somalia.<sup>79</sup>

Even before October 2011 Human Rights Watch and other organizations had documented a range of concerns over police abuses of Somali refugees. In 2007 Kenya formally closed its border with Somalia, also shutting down a refugee transit center at Liboi, a Kenyan town 15 kilometers from a main border crossing. The transit center had served as a legitimate point of entry for asylum seekers who were screened and then transported to the camps at Dadaab, 80 kilometers away. Following its closure, police, in violation of Kenyan and international law, began intercepting asylum seekers who had crossed into Kenya, accusing them of "unlawful entry."<sup>80</sup> Many were forced to pay large bribes to the police in order to secure access to Dadaab.<sup>81</sup> Others were unlawfully returned to Somalia or arbitrarily detained and wrongfully charged with immigration offences in Kenya.<sup>82</sup>

In a 2010 report Human Rights Watch exposed widespread police violence, including rape, against refugees between 2008 and 2010.<sup>83</sup> Two women refugees interviewed for the report told Human Rights Watch they had been raped by police while on the way to Dadaab, while a third said she was raped in Dadaab.<sup>84</sup> In January 2011 Human Rights Watch also

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<sup>79</sup> Dadaab initially consisted of three camps, Ifo, Dagahaley, and Hagadera, designed to accommodate a total of 90,000 refugees. By July 2011 the camps housed nearly 400,000. Overcrowding contributed to insecurity: police told Human Rights Watch that congestion made it impossible for them to access some areas of the camps, while new arrivals were forced to seek shelter on the informal outskirts of the camps, where the absence of both policing and lighting facilitated crime. In August 2011, two new camps, Ifo Extension and Kambios, were opened, although Kambios is not considered an "authorized" camp by the government of Kenya and only hosts 12,000 refugees. Human Rights Watch interviews, Dadaab, April and August 2011; Médecins Sans Frontières, "Dadaab Refugee Camps – Back to Square One," February 21, 2012, <http://allafrica.com/stories/201202220863.html> (accessed March 16, 2012).

<sup>80</sup> Under Kenya's Refugee Act, asylum seekers have the right to freely enter Kenya; they must formally claim asylum within 30 days after entry. Refugees Act, Act. No. 13 of 2006, section 11 (1), [http://www.kenyalaw.org/kenyalaw/klr\\_app/frames.php](http://www.kenyalaw.org/kenyalaw/klr_app/frames.php). See also UN Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force 1954, April 22, 1954, acceded to by Kenya on May 16, 1966, art. 31.

<sup>81</sup> Human Rights Watch, *Welcome to Kenya*, pp. 22-25.

<sup>82</sup> *Ibid.*, pp. 28-37, 40-42.

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*, pp. 25-27, 46-47.

documented the case of a woman who was raped by police at Dadaab police station that month.<sup>85</sup> While the number of reported rapes by police in Dadaab does not indicate a widespread phenomenon, the police response is telling: in both cases of police rape within Dadaab known to Human Rights Watch, suspects were transferred out of the camps, not prosecuted.<sup>86</sup> Refugees have also reported beatings by the police, both on the way to Dadaab—in some cases because they have been unable to pay bribes—and in the camps.<sup>87</sup>

Human Rights Watch has also documented the failure of Kenyan police to provide adequate protection to refugees, including their failure to investigate and prosecute sexual violence within the refugee population, which is prevalent.<sup>88</sup> Inadequate policing allows common crime of all kinds to flourish; for instance, refugees have recently reported armed men stealing their food at night.<sup>89</sup> Refugees interviewed by Human Rights Watch in Dadaab in April 2011 said they did not go to the police when they were victims of crime because they believed the police would do nothing.<sup>90</sup>

In May 2011 UNHCR signed a memorandum of understanding for a “Security Partnership Project” with the Kenyan government. The project aims, in part, to “reinforce the security environment in the refugee camps and surrounding hosting areas with an enhanced police presence as well as through community policing.” Over the course of 2011, 92 additional police officers were deployed to Dadaab, bringing the total to 349; a further 108 officers are to be deployed, according to the agreement.<sup>91</sup> However, the introduction of a community policing program, under which refugees would work closely with the police to help provide security in the camps, did not go forward as planned due to increased insecurity, including attacks on police officers.<sup>92</sup>

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<sup>85</sup> Human Rights Watch, *“You Don’t Know Who to Blame”*, p. 43.

<sup>86</sup> Human Rights Watch, *Welcome to Kenya*, pp. 46-47, and *“You Don’t Know Who to Blame”*, p. 43.

<sup>87</sup> Human Rights Watch, *Welcome to Kenya*, pp. 27-28, 47-51.

<sup>88</sup> *Ibid.*, pp. 52-70. See also International Rescue Committee, “Gender-Based Violence Rapid Assessment, Dadaab, Kenya,” July 2011, <http://mhps.net/wp-content/uploads/group-documents/129/1312457004-IRCFINALGBVRapidAssessment-DadaabJuly2011.pdf> (accessed March 31, 2012).

<sup>89</sup> Alex Peña, “Somali Refugees Face Insecurity Inside Dadaab Refugee Camp,” *VOA News*, March 8, 2012, <http://www.voanews.com/english/news/africa/-Somali-Refugees-Face-Insecurity-Inside-Dadaab-Refugee-Camp-141993633.html> (accessed March 12, 2012).

<sup>90</sup> Human Rights Watch interviews, Dadaab, April 2011.

<sup>91</sup> UNHCR, “Kenya: Enhanced Security Partnership Project (SPP) 2011-2012,” [http://reliefweb.int/sites/reliefweb.int/files/resources/Full\\_Report\\_2958.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_2958.pdf) (undated; posted online in November 2011). UNHCR pays the salaries and other recurrent costs of Kenyan police in Dadaab, and has also constructed housing for them.

<sup>92</sup> Human Rights Watch interview with a UNHCR official, Nairobi, March 7, 2012. The Kenya Police has a Community Policing Directorate, but government-supported community policing initiatives have been implemented inconsistently, and not at all

A significant police presence is clearly important in Dadaab, but for many refugees police are currently part of the problem of insecurity, not part of the solution.<sup>93</sup> Accountability, including prosecutions of police who committed the assaults against refugees documented in this chapter as well as monitoring and prosecution of extortion, will be necessary in order to build trust between refugees and the police.

## Increasing Insecurity in Dadaab

In 2011 there were increasing forays into Kenya by groups of Somalis trying to kidnap foreigners. As with the piracy in the Gulf of Aden, the main motive of these groups was mercenary, to extract ransom payments, rather than political.<sup>94</sup>

Security sharply deteriorated in Dadaab beginning in September 2011 when a Kenyan driver working for CARE, an international NGO, was abducted. His abduction was followed in October by the abductions of Spanish aid workers working for the international NGO Médecins Sans Frontières (MSF).<sup>95</sup> Al-Shabaab did not claim responsibility, but the kidnappings were among the justifications that Kenya put forward for its intervention in Somalia.

In October 2011 Kenya's Department of Refugee Affairs (DRA) suspended registration of new arrivals in Dadaab, supposedly in response to insecurity, and registration had not yet been resumed at this writing. However, Somalis continue to arrive at Dadaab and, absent registration, many new arrivals live on the outskirts of the camps with no formal addresses. There is no process to screen them in order to determine who may pose a security risk.<sup>96</sup>

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in Dadaab. In the absence of community policing, refugees and aid agencies have established their own efforts to provide security, such as through the Community Peace and Security Teams, discussed below.

<sup>93</sup> Human Rights Watch interviews, Dadaab, February 2012.

<sup>94</sup> "France: Frenchwoman kidnapped in Kenya and taken to Somalia dies," *CNN*, October 19, 2011, [http://articles.cnn.com/2011-10-19/africa/world\\_africa\\_somalia-frenchwoman-dies\\_1\\_kenyan-officials-kenyan-government-lamu?\\_s=PM:AFRICA](http://articles.cnn.com/2011-10-19/africa/world_africa_somalia-frenchwoman-dies_1_kenyan-officials-kenyan-government-lamu?_s=PM:AFRICA) (accessed March 19, 2012).

<sup>95</sup> "Spanish MSF doctors seized near Kenya-Somali border," *BBC News Online*, October 13, 2011, <http://www.bbc.co.uk/news/world-africa-15293502> (accessed February 28, 2012).

<sup>96</sup> Refugees International, "Horn of Africa: The Continuing Food, Refugee and Humanitarian Crisis," testimony of Mark Yarnell before the Tom Lantos Human Rights Commission, U.S. House of Representatives, March 8, 2012, <http://refugeesinternational.org/policy/testimony/horn-africa-continuing-food-refugee-and-humanitarian-crisis> (accessed March 12, 2012).

Once the campaign of attacks against the police and military in North Eastern province accelerated, Dadaab was an easy target. Administration Police officers regularly escort UNHCR staff and humanitarian agencies during their work in the camps because of the risk of both common crime and abduction. Twice in November, police vehicles escorting UN staff were targeted by explosives; on the second occasion, two police officers were injured.<sup>97</sup>

As a result of the attacks, UNHCR, along with a number of other agencies, suspended most activities within the camps. Among the programs that were put on hold was a nascent protection monitoring system established by UNHCR in partnership with the Refugee Consortium of Kenya, a Kenyan NGO, which placed staff in the camps to document and respond to refugees' protection concerns. No protection monitors were in the camps for the whole of November and December 2011.<sup>98</sup> The security concerns of the agencies were real; however, their near-absence from the camps rendered refugees more vulnerable to abuses from both militants and the Kenyan security forces.

In the absence of a formal community policing program UNHCR began organizing refugees to carry out their own patrols at Dadaab, which UNHCR officials saw as a means to empower refugees and to demonstrate their ability to play a positive role in ensuring security.<sup>99</sup> However, on December 29 and January 1, gunmen shot dead two refugee leaders who played key roles in Community Peace and Security Teams, a pre-existing initiative coordinated by the Lutheran World Federation (LWF). The shooting demonstrated the risks for refugees wishing to take responsibility for security in Dadaab.<sup>100</sup>

## The December 2011 Police Raid on Somali Refugees

December saw three explosions in rapid succession in the Dadaab refugee camps. The first explosion was on December 5 in Ifo 2 West camp. An Administration Police officer was

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<sup>97</sup> Noor Ali and Daud Yussuf, "UN convoy hits landmine in Kenya's Dadaab camp," Reuters, November 5, 2011, <http://af.reuters.com/article/topNews/idAFJOE7A404C20111105> (accessed February 8, 2012); Daud Yussuf and Noor Ali, "Bomb destroys Kenya Police car in refugee camp," Reuters, November 15, 2011, <http://af.reuters.com/article/topNews/idAFJOE7AE0H920111115> (accessed February 8, 2012);

<sup>98</sup> Human Rights Watch interviews, March 2012.

<sup>99</sup> Human Rights Watch interview with a UNHCR official, Nairobi, January 4, 2012.

<sup>100</sup> Lutheran World Federation, "Refugee Community Leaders Shot Dead at Dadaab Camp," <http://www.lutheranworld.org/lwf/index.php/dadaab-cpst-shootings.html> (accessed March 12, 2012).

killed and three others were injured.<sup>101</sup> Following the explosion several refugees in the area ululated, apparently celebrating the death of the Administration Police officer.<sup>102</sup> Infuriated police arrested approximately 100 refugees; journalists reported that some of them were beaten.<sup>103</sup>

On December 19, 2011, another explosion, this time in Dadaab's Hagadera camp, killed a police officer and injured two others. The following morning saw yet another explosion in Ifo camp.

The third Dadaab explosion, while it did not result in any casualties, triggered a brutal crackdown by police. Hours after the attack, in what appears to be a planned response intended to punish the refugees, rather than an instant, spontaneous reaction, police officers descended on refugees' homes and market stalls.

Over the next four days police beat scores of refugees, causing many to seek medical attention according to multiple witnesses, including a health worker based at a local hospital that treated dozens of victims.<sup>104</sup> Children, including a four-year-old and a mentally ill 12-year-old, and pregnant women were among the victims.<sup>105</sup> Police raped at least one refugee woman, and attempted to rape others. They looted shops and stole money from refugees; a representative of the Supreme Council of Kenya Muslims (SUPKEM) who visited Dadaab a few days after the incident found that police broke into over 20 shops in Hagadera.<sup>106</sup> Citizen Rights Watch, a Garissa-based NGO that also visited Dadaab just after the incident, documented over 50 cases of refugees who had money or property looted or destroyed,<sup>107</sup> while the member of parliament from Dadaab, Farah Maalim, told

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<sup>101</sup> "Explosion kills Kenyan policeman in Dadaab camp," Reuters, December 5, 2011, <http://af.reuters.com/article/topNews/idAFJOE7B402K20111205> (accessed April 18, 2012).

<sup>102</sup> Human Rights Watch telephone interview with a journalist based in Dadaab, December 9, 2012.

<sup>103</sup> Bernard Momanyi, "100 suspects arrested after Dadaab attack," *Capital FM* (Nairobi), December 6, 2011, <http://www.capitalfm.co.ke/news/2011/12/100-suspects-arrested-after-dadaab-attack/> (accessed April 18, 2012); Human Rights Watch telephone interview with a journalist based in Dadaab, December 9, 2012.

<sup>104</sup> Human Rights Watch interviews, Dadaab, January 2012, and telephone interviews with agencies working in Dadaab, February 2012.

<sup>105</sup> Human Rights Watch interview with Nadifa G., Haweeyo T., and Amaal Y., Dadaab, January 2012.

<sup>106</sup> Human Rights Watch interview with Abdullahi Salat, Garissa, January 11, 2012, and with a youth leader, Garissa, January 12, 2012.

<sup>107</sup> Untitled document compiled by Citizen Rights Watch, on file with Human Rights Watch.

Human Rights Watch that police “looted 38 million Kenyan shillings [about USD\$450,000] worth of money and goods in a matter of hours.”<sup>108</sup>

Faartun N. was one of the women raped by police during the raid. She told Human Rights Watch,

It was the day after an explosion in the market ... They were three policemen who came. They were saying, “Bring us money” and “Where is your husband?”

The three of them started beating me with a metal stick. They lifted me up to [take me] inside the house. I shouted, saying that I was a teacher. They then spoke in a language that was neither Swahili nor English. Two of them moved out of the house, leaving behind one who immediately started locking the door and opened the zipper [of his trousers] while holding my neck in his right hand. I started screaming and fought back with him. In the process he stripped my underwear off and pulled me towards himself while standing, and as I struggled, after some time, I felt his sperms rolling over my thighs.

The police spent about 40 minutes in my compound: searching the rooms, beating me and at last raping me. I got some head injuries, back pain, and shoulder pain. I still feel the pain... I got treatment from GIZ [*Deutsche Gesellschaft für Internationale Zusammenarbeit*, German Agency for International Cooperation] in Ifo, who examined me and gave me some medication.<sup>109</sup>

Three other victims interviewed by Human Rights Watch suffered attempted sexual assault. 23-year-old Habiba R. narrated:

There were six policemen who came into the house. They did not ask us anything, but started beating us with batons.

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<sup>108</sup> Human Rights Watch interview with Farah Maalim, Kampala, April 1, 2012.

<sup>109</sup> Human Rights Watch interview with Fartuun N., Ifo camp, Dadaab, January 2012.

At first, one of them entered and slapped me heavily on the face. He asked me to go into the bathroom. I refused to do so. He then threw me on the ground and started unzipping [his trousers]. I screamed, and then my mother who was hiding inside the house, jumped out and shouted at the policeman. He turned to my mother and beat her with a stick ... Five other policemen entered and also beat us, and entered the houses searching, and then went out... They were only asking us to show them al-Shabaab.<sup>110</sup>

Amaal Y. said police tried to lift her veil and drag her into a room, but she fought them off. She and her four-year-old son were nonetheless “beaten mercilessly.” Both had marks on their backs a month after the beatings. According to Amaal, “My child also suffered from the beatings and still has pain. He cries at night and gets psychological trauma whenever he sees police.”<sup>111</sup>

Some refugees were taken into custody. Mahamud O. told Human Rights Watch that after being beaten with the butt of a gun, boots, and sticks, he was taken into custody and held in Dadaab police station for two nights. He had to pay a bribe of 12,000 Kenyan shillings (around USD\$140) to secure his release.<sup>112</sup>

Refugees interviewed by Human Rights Watch said they were not certain who, if anyone, was coordinating the police attacks. However, the SUPKEM representative who interviewed victims several days after the attacks told Human Rights Watch, “People said the DO [District Officer] from Dadaab was there during the operation. He was telling refugees, ‘What we’ve done here is something very small. You’ll see what we can do. You should go back to your country. No one here will assist you.’”<sup>113</sup>

Police told Human Rights Watch that those who were victimized should have gone to the police station to report the abuses; but most didn’t, for obvious reasons. Hassan R. was attacked by police on December 20. He told Human Rights Watch,

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<sup>110</sup> Human Rights Watch interview with Habiba R., Ifo camp, Dadaab, January 2012.

<sup>111</sup> Human Rights Watch interview with Amaal Y., Ifo camp, Dadaab, January 2012.

<sup>112</sup> Human Rights Watch interview with Mahamud O., Hagadera camp, Dadaab, January 2012.

<sup>113</sup> Human Rights Watch interview, Garissa, January 11, 2012.

Six policemen came. They asked me to produce explosives, but I had nothing to show them. I told them that I am an innocent refugee but they did not listen to me. They beat me with boots and batons on almost every part of my body. I got some injuries on my ribs and thighs. I still have some pain. They also robbed two mobile phones and 5,000 Kenyan shillings. They were saying to me that if I don't bring the explosives, they would arrest me. I was detained on the same night in Dadaab main police station. I paid 7,500 Kenyan shillings to be released.

I didn't file a police report. I never thought they would listen to me since they are ones who had detained and beaten me.<sup>114</sup>

Similarly, Najib A., beaten at Hagadera camp on December 20, said,

There were four policemen who came and harassed me to search for weapons in my house. They beat me with big sticks. The four of them beat me mercilessly ... I didn't file a report with the police. The thought of reporting to the very people who beat me never came into my mind.<sup>115</sup>

Najib A. still had bruises on his arms and legs from the beatings when Human Rights Watch interviewed him a month later.

The assault on the refugees led to a dramatic deterioration in relations between refugees and the police. A youth leader in Garissa who was in contact with youth in Dadaab told Human Rights Watch that police seemed to enjoy absolute impunity, operating out of the confines of Kenyan law: "It's like the police have created their own immune country from Kenya."<sup>116</sup> The resulting sense of overwhelming insecurity, said another youth activist, led some refugees to "[run] back to Somalia because they could not withstand the beatings," although the number of refugees who left for such reasons appears to be minimal.<sup>117</sup>

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<sup>114</sup> Human Rights Watch interview with Hassan R., Dadaab, January 2012.

<sup>115</sup> Human Rights Watch interview with Najib A., Dadaab, January 2012.

<sup>116</sup> Human Rights Watch interview with a youth leader, Garissa, January 12, 2012. The youth leader further explained that Kenyan police in Dadaab and elsewhere in North Eastern province conduct themselves in a manner that suggests they do not feel bound by the laws of Kenya.

<sup>117</sup> Human Rights Watch interview with a youth leader, Garissa, January 12, 2012; email communication to Human Rights Watch from a diplomatic official, April 4, 2012.



The message of the police raid was clear. Ayaan I., who was kicked in the forehead and the kidneys by a police officer while others searched her house, reported, “They told us to go back to Somalia.”<sup>118</sup>

## Further Arrests and Extortion of Somali Refugees

Media reports on police behavior in Dadaab, along with private high-level UNHCR demarches toward the Kenyan government, provided a sobering reminder to the Kenyan authorities that brutality toward refugees had not gone unnoticed. However, Human Rights Watch is unaware of any public statements from the international community condemning the assaults.<sup>119</sup>

Reports of police brutality diminished after the December assaults were exposed. However, abuses toward the refugees continued. On February 29, after police found an explosive in the camps, dozens of refugees were rounded up and arbitrarily detained solely on the basis of their presence in the area. Several refugees told Human Rights Watch that those detained were forced to pay bribes in exchange for their release.<sup>120</sup> Eventually, all were released without charge. In March Human Rights Watch received reports of police extorting money from butchers and looting pharmacies in Hagadera camp.<sup>121</sup>

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<sup>118</sup> Human Rights Watch interview with Ayaan I., Hagadera camp, Dadaab, January 2012.

<sup>119</sup> See “Refugees injured in Dadaab crackdown,” *IRIN*, December 22, 2011, <http://reliefweb.int/node/466733>. William Garvelink and Farha Tahir noted in a recent briefing paper that the international community “has remained noticeably silent on the deteriorating conditions in Dadaab and the abuse of Somali refugees.” Garvelink and Tahir, “The Dadaab Refugee Complex: A Powder Keg and It’s Giving Off Sparks,” Center for Strategic and International Studies, March 2, 2012, <http://reliefweb.int/node/480280> (accessed March 14, 2012). According to a UNHCR official, the agency approached government officials privately to raise concerns; Human Rights Watch interview with a UNHCR official, Nairobi, January 4, 2012.

<sup>120</sup> Human Rights Watch telephone interviews with refugees in Dadaab, March 1 and March 5, 2012.

<sup>121</sup> Human Rights Watch telephone interviews with refugees in Dadaab, March 3 and March 13, 2012.

## IV. Response of the Kenyan Authorities to Abuses by the Security Forces

To date, the response of the Kenyan authorities to human rights violations in North Eastern province has been inadequate. The military has taken some encouraging steps, establishing an ad hoc “board of inquiry” to look into allegations of abuses; thus far the board has interacted effectively and respectfully with civil society organizations and victims, according to the latter. For their part, police officials told Human Rights Watch that the police were looking into allegations of rights abuses, but did not provide further detail, and victims contacted by Human Rights Watch had had no interactions with police investigators seeking information about the alleged crimes.

As of March 2012, more than four months after the first abuses, no security officer has been charged. The police’s reluctance to investigate the violence follows the government’s ongoing failure to publish what it says was an independent October 2010 investigation into Human Rights Watch reporting on widespread police abuses against Somali refugees in and around the camps.

### Police Response

Police have repeatedly pledged to look into the abuses and to hold accountable those responsible. In November Human Rights Watch contacted North Eastern Provincial Police Officer Leo Nyongesa concerning police involvement in abuses at Mandera. Nyongesa assured Human Rights Watch that the abuses would be investigated and he repeated these assurances in January.<sup>122</sup> As of April, no one had been charged, and no formal police inquiry into the abuses had been initiated.<sup>123</sup> A senior official at the Ministry of State for Internal Security told Human Rights Watch in April that he would commit to ensuring that an inquiry took place, and suggested it might be carried out by administrative officials.<sup>124</sup>

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<sup>122</sup> Human Rights Watch interviews with Leo Nyongesa, by telephone, November 26, 2011, and in Garissa, January 12, 2012. Nyongesa told Human Rights Watch in January, “I’ve instructed officers to uphold discipline, work within the law, and not use excessive force. If officers are behaving like this, we will deal with the officer concerned. That officer will carry their own cross.”

<sup>123</sup> Human Rights Watch interviews with deputy police spokesperson Charles Owino, Nairobi, March 13, 2012, and with Shadrack Mwadime, Senior Deputy Secretary at the Ministry of State for Internal Security, Nairobi, April 13, 2012.

<sup>124</sup> Human Rights Watch interview with Shadrack Mwadime, Senior Deputy Secretary at the Ministry of State for Internal Security, Nairobi, April 13, 2012.

It is not the first time that police have pledged to address allegations of mistreatment. In 2010, in response to Human Rights Watch's report *Welcome to Kenya*, the Ministry of State for Internal Security established a team consisting of a representative of the Supreme Council of Kenya Muslims, two women representatives (one from the Dadaab area and one from a national women's organization), a youth representative from Dadaab, and a representative of the Refugee Consortium of Kenya, which it tasked with investigating allegations of abuse.<sup>125</sup> In September and October 2010 the team conducted an investigation and drafted a report which was submitted to the Ministry of State for Internal Security, but never made public.<sup>126</sup> The ministry did not respond to repeated requests from Human Rights Watch in 2011 for a copy of the report.<sup>127</sup> A member of the team told Human Rights Watch that the team found significant evidence of human rights abuses by members of the security forces, but that the ministry did not take any action to hold perpetrators accountable.<sup>128</sup>

### *Broader Police Reform Issues*

Kenya is currently undergoing a series of police reforms, in line with both the August 2010 constitution and the National Accord and Reconciliation Act of February 2008, which put an end to the 2007-2008 post-election violence. One outcome is the National Police Service Bill, passed in August 2011 but not yet published. When implemented, the bill, known as the Police Act, will merge the Kenya Police and the Administration Police, two units that previously responded to separate administrative hierarchies. It will also replace the current Commissioner of Police and the Administration Police Commander with an Inspector General of Police, with authority over both branches, and will impose new restrictions on the use of force.<sup>129</sup> Civil society organizations have recently expressed concerns that the government's inexplicable delay in publishing the bill means the new structures may not be in place before the next general elections, scheduled for March 2013.<sup>130</sup>

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<sup>125</sup> Human Rights Watch, *Welcome to Kenya*, p. 7.

<sup>126</sup> Bernard Momanyi, "Police act on rape claims by refugees," *Capital FM* (Nairobi), January 18, 2011, <http://www.capitalfm.co.ke/news/2011/01/police-act-on-rape-claims-by-refugees/> (accessed March 12, 2012); Human Rights Watch interview with Abdullahi Salat, Garissa, January 12, 2012.

<sup>127</sup> Human Rights Watch letter to Minister of State for Internal Security George Saitoti, May 20, 2011; Human Rights Watch meeting with then-Secretary for Internal Security Mutea Iringo and Senior Deputy Secretary Shadrack Mwadime, Ministry of State for Internal Security, August 1, 2012.

<sup>128</sup> Human Rights Watch interview with Abdullahi Salat, Garissa, January 12, 2012.

<sup>129</sup> National Police Service Act, 2010. Art. 41 sets forth that "a Police officer may use force and firearms, if and to such extent only as is necessary."

<sup>130</sup> Human Rights Watch discussions with civil society representatives, Nairobi, April 18-19, 2012.

A second bill, the National Police Service Commission Bill, passed in September 2011, creates a civilian board to oversee appointments, promotions, transfers, and dismissals from the police force. The commission will be empowered to receive complaints from the public and to recommend remedies or to refer such complaints to the proposed Independent Policing Oversight Authority, the Kenya National Human Rights and Equality Commission, the Director of Public Prosecutions, or the Ethics and Anti-Corruption Commission.<sup>131</sup> However, members of the commission have not yet been selected due to internal squabbles within the panel designated to name commissioners, raising concern from donors over Kenya's commitment to police reform.<sup>132</sup>

Police vetting is also planned. Vetting of senior officers was initiated in May 2011. The process was intended to evaluate professionalism, integrity, track record, and psychological fitness in order to inform decisions on promotion, demotion, redeployment, or dismissal of senior police officers.<sup>133</sup> However the process was suspended after strong objections from civil society that stakeholders in the police reform process were not consulted and that the vetting, carried out by the police themselves, lacked transparency.<sup>134</sup> Police vetting is to resume once the National Police Service Commission is operational.<sup>135</sup> Human Rights Watch has recommended that the vetting process be conducted in a manner that allows for input from citizens, with the opportunity for individuals and civil society organizations to bring forward complaints concerning the behavior of individual officers.

Most critical to accountability may be the Independent Policing Oversight Authority, established by law in November 2011, but not yet operational. The IPOA is mandated to

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<sup>131</sup> "Civilian team to promote or dismiss police officers," *Daily Nation* (Nairobi), June 25, 2011, <http://www.nation.co.ke/News/Civilian+team+to+promote+or+dismiss+police+officers+/-/1056/1189004/-/uvscyoz/-/> (accessed June 27, 2011).

<sup>132</sup> Catherine Karongo, "Nominees to Police Service Commission faulted," *Capital FM* (Nairobi) February 23, 2012, <http://www.capitalfm.co.ke/news/2012/02/nominees-to-police-service-commission-faulted/> (accessed February 27, 2012); Fred Mukinda, "UK: Delay in Kenya Police reforms a concern," *Daily Nation* (Nairobi), April 3, 2012, <http://www.nation.co.ke/News/Kenya+Police+reforms+delay+a+concern++says+UK/-/1056/1379240/-/1ond1kxz/-/index.html> (accessed April 16, 2012).

<sup>133</sup> Angira Zaddock, "Saitoti allays fears on police vetting," *Daily Nation* (Nairobi), June 20, 2011, <http://www.nation.co.ke/News/politics/-/1064/1178652/-/7sr7vj/-/index.html> (accessed June 27, 2011)

<sup>134</sup> KNCHR, "KNCHR Statement on Ongoing Police Vetting," June 10, 2011, on record with Human Rights Watch.

<sup>135</sup> Bernard Momanyi, "Anxiety over Police Vetting," *The Standard* (Nairobi), September 7, 2011, <http://www.standardmedia.co.ke/InsidePage.php?id=2000042298&cid=658&story=Anxiety%20over%20police%20vetting> (accessed September 14, 2011).

hold the police accountable to the public and to ensure independent oversight of complaints. According to the law establishing the IPOA, it will “investigate any complaints related to disciplinary or criminal offences committed by any member of the Service, whether on its own motion or on receipt of a complaint, and make recommendations to the relevant authorities, including recommendations for prosecution, compensation, internal disciplinary action or any other appropriate relief, and shall make public the response received to these recommendations.” It is also to “monitor and investigate police operations affecting the public.”<sup>136</sup> At this writing, a selection panel had put forward names of candidates to serve on the IPOA; they were awaiting approval by parliament, President Kibaki and Prime Minister Raila Odinga.<sup>137</sup> The United Nations Office on Drugs and Crime (UNODC), which provides funding and technical support for a number of security and justice initiatives in Kenya, has undertaken initiatives aimed at ensuring the IPOA is independent and effective.

Several residents of North Eastern province interviewed by Human Rights Watch called for the need for greater investment in community policing, including making an effort to ensure that some police officers who are from the region are placed there. According to Abdullahi Salat, the Garissa chair of SUPKEM, “There’s a lack of collaboration between police and the community. The [police chief] won’t go to the community and talk to people. There are no Somali CID [criminal investigation] officers here. All locals [police from North Eastern province] were transferred [to other regions of Kenya] two or three years ago. People want them transferred back.”<sup>138</sup> A senior police official confirmed to Human Rights Watch that Kenyan Somali police were transferred out of the region several years ago, saying the move took place “because of fears of government that they might collude.”<sup>139</sup> However, a Ministry of State for Internal Security official told Human Rights Watch the transfers were part of a broader policy, following the county’s 2007-2008 post-election violence, to move police out of their areas of origin in an attempt to decrease tribalism among the police.<sup>140</sup>

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<sup>136</sup> The Independent Policing Oversight Authority Act, Laws of Kenya, No. 35 of 2011, on file with Human Rights Watch.

<sup>137</sup> Cyrus Ombati, “Three shortlisted for IPOA chair,” *The Standard* (Nairobi), February 20, 2012, <http://www.standardmedia.co.ke/sports/InsidePage.php?id=2000052532&cid=159> (accessed February 27, 2012).

<sup>138</sup> Human Rights Watch interview, Garissa, January 11, 2012.

<sup>139</sup> Human Rights Watch interview with a police official, Mombasa, March 16, 2011.

<sup>140</sup> Human Rights Watch interview with Shadrack Mwadime, Nairobi, April 13, 2012. During Kenya’s 2007-2008 post-election violence, at least 1,133 people were killed and over 650,000 displaced as a result of ethnic clashes and police violence following a disputed election result. See Human Rights Watch, *Ballots to Bullets: Organized Political Violence and Kenya’s Crisis of Governance*, March 17, 2008, <http://www.hrw.org/reports/2008/03/16/ballots-bullets>.

Kenya does have a community policing program, established in 2005 and supported by several bilateral donors and NGOs. The program identifies community members from the village to the district level who liaise directly with the police, providing information on crime and meeting regularly to discuss local crime-prevention strategies. Its implementation has varied from district to district; there are no recent or large-scale studies on its effectiveness, but supporters of the program argue that, where both police and community members are committed to the concept, it has reduced crime and improved information-sharing.<sup>141</sup> According to UNHCR, the police planned to initiate the program in Dadaab in 2011, but it was suspended due to security concerns related to Operation Linda Nchi and the attacks on police targets in Dadaab; it may be piloted in Dadaab in 2012.<sup>142</sup> Other areas of North Eastern province should also be prioritized for enhanced community policing efforts.

## Military Response

In November 2011 Human Rights Watch addressed a letter to Minister of State for Defence Yusuf Haji raising concern about three incidents implicating the Kenyan Defence Forces: the attack on a fishing boat at Kiunga; the mistreatment of civilians in Garissa in mid-November; and an attack on a displaced persons camp in Jilib, Somalia.<sup>143</sup> Haji did not respond to the letter. However, after Human Rights Watch issued a press release in January detailing further abuses, military officials contacted Human Rights Watch and said that, in response to allegations put forward by Human Rights Watch and a Mombasa-based organization, Muslims for Human Rights, the Ministry of State for Defence had decided to establish a “board of inquiry” to look into the abuses.

The board, whose members also described their role as that of a “fact-finding tribunal,” is conducting an internal inquiry. At this writing, it has interviewed victims and civil society organizations in Garissa, Wajir, and Mandera. (It also contacted Human Rights Watch in Nairobi for further information on abuses.) However, members stressed the purely internal nature of their mission: they will report back to the Ministry of State for Defence, rather than

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<sup>141</sup> Human Rights Watch interview with a police official, Malindi, March 14, 2012; see also Saferworld, *Implementing Community-Based Policing in Kenya*, February 2008, <http://www.saferworld.org.uk/downloads/pubdocs/Report.pdf> (accessed April 18, 2012).

<sup>142</sup> Human Rights Watch interview with a UNHCR official, Nairobi, March 7, 2012.

<sup>143</sup> Human Rights Watch letter to Minister of State for Defence Yusuf Haji, November 18, 2011, <http://www.hrw.org/node/103030>.

publish their findings. The ministry has not responded to a query from Human Rights Watch as to what action it will take if evidence of abuses is corroborated.<sup>144</sup> In April the chair of the board told Human Rights Watch that he had been transferred to another position, and his replacement had not yet been appointed, stalling the board's investigations.<sup>145</sup>

The military has taken several other actions that indicate it recognizes rights abuses have taken place. For instance, the Garissa military camp commander was transferred to another location at the end of December 2011 in response to complaints, though he received no disciplinary sanctions, and his departure did not put an end to abuses in Garissa.<sup>146</sup> In Wajir, a local activist told Human Rights Watch that the military apologized in a media briefing for the December 11 beatings, stating that the reaction of military personnel was excessive.<sup>147</sup> But when another report of a military apology circulated in the Kenyan media in March, the military denied that it had apologized, stating that it was still investigating the incidents.<sup>148</sup>

Even though the military has demonstrated some willingness to respond to criticism in the wake of serious human rights violations, no military officers have yet been charged. This is, in part, the fault of Kenyan police procedures. According to police, when civilians file a police statement accusing a military officer of a crime, local police may begin investigations into the alleged incident. However, they may not directly summon a military official for interrogation, as they would with a civilian suspect. Rather, a file must be submitted to the Criminal Investigation Department headquarters in Nairobi, which must then request authorization from the Ministry of State for Defence to interrogate the suspect. If it is determined that the alleged crime was committed in the officer's official capacity as a KDF member, the ministry refers the case to the military police for further investigations; if the alleged crime was committed in the officer's personal capacity, the case continues through civilian channels, involving further investigation by the police, and prosecution by police prosecutors (for most crimes) or State Counsel (for murder and a few other serious

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<sup>144</sup> See Appendix II: Human Rights Watch Letter to Minister of State for Defence, March 13, 2012.

<sup>145</sup> Human Rights Watch telephone interview with Brig. John Wainana, April 13, 2012.

<sup>146</sup> Human Rights Watch interview with Dubow Barre Duale, victim of military abuses and Garissa chair of the Kenya Chamber of Commerce and Industry, Garissa, January 13, 2012.

<sup>147</sup> Human Rights Watch interview with a representative of Kenya National Commission on Human Rights, Wajir, January 16, 2012.

<sup>148</sup> Human Rights Watch telephone interview with Ministry of State for Defence spokesperson Bogita Onger, March 5, 2012.

charges).<sup>149</sup> The lengthy, unwieldy procedure may deter complaints and means they can be held up by inaction from either the police or the military.

However, most victims are unlikely to even take the initial step of filing a police report against a military officer. Kenyans see the military as “above” the police and therefore untouchable. As one victim said, “You can’t make a report against soldiers at the police [station]. The police fear the soldiers, and no action can be taken against them.”<sup>150</sup>

Unfortunately, the experiences of a few bold victims who have filed such complaints, as in Wajir, where victims were initially turned away by police, would suggest that this perception of military-police relations is justified.<sup>151</sup> Further reforms may be needed, such as the establishment of a military oversight authority, to facilitate the filing of charges against military personnel.

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<sup>149</sup> Human Rights Watch interviews with a police official, Wajir, January 15, 2012, and with deputy police spokesperson Charles Owino, Nairobi, March 13, 2012.

<sup>150</sup> Human Rights Watch interview with Faisal A., Garissa, January 11, 2012.

<sup>151</sup> Human Rights Watch interviews, Wajir, January 2012.



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## Appendix I: Attacks on Kenyan Security Forces and Civilian Targets in North Eastern Province, October 2011-February 2012

The following list includes all attacks in North Eastern province between October 2011 and February 2012 that appear to be related to Operation Linda Nchi. The list has been compiled based on media reports and Human Rights Watch interviews with witnesses and Kenyan security personnel; it is not an exhaustive list.<sup>152</sup>

**October 23:** Suspected al-Shabaab members shot and killed Jamaludin Hajj Abbas, a chief (Kenyan local administrative official) in Mandera.<sup>153</sup>

**October 28:** A vehicle belonging to Kenya's General Service Unit (GSU), the paramilitary police, exploded after striking a landmine or other explosive device near Garissa. Three officers were injured.<sup>154</sup>

**November 5:** A police vehicle escorting a UN convoy struck a landmine in Dadaab. The mine did not detonate.<sup>155</sup>

**November 5:** Unknown assailants killed at least two civilians and injured at least two others in a grenade attack on a house located within a church compound in Garissa. A second unexploded grenade was found nearby.<sup>156</sup>

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<sup>152</sup> For instance, IRIN reported on an IED attack in Mandera in December 26, but Human Rights Watch found no further details: "KENYA-SOMALIA: Paying high price for military incursion," *IRIN*, <http://www.irinnews.org/report.aspx?ReportId=94641>. Other attacks are described in a more exhaustive list provided by the website Critical Threats; Human Rights Watch has not verified all the cases included on that list. Critical Threats, <http://www.criticalthreats.org/somalia/timeline-operation-linda-nchi-october-24-2011> (accessed February 9, 2012).

<sup>153</sup> Email communication from a journalist to Human Rights Watch, February 9, 2012; letter from Mohamed A. Khalif, chair of Mandera Town Council, and other Mandera leaders to Minister of State for Internal Security George Saitoti and Minister of State for Defence Yusuf Haji, November 26, 2011, on file with Human Rights Watch. The letter puts forth that Abbas was killed by al-Shabaab members.

<sup>154</sup> Human Rights Watch interview with a Garissa-based journalist, Garissa, January 10, 2012; Noor Ali, "Security forces vehicle hit in northern Kenya," Reuters, October 28, 2011, <http://ca.reuters.com/article/topNews/idCATRE79R36120111028> (accessed February 8, 2012).

<sup>155</sup> Noor Ali and Daud Yussuf, "UN convoy hits landmine in Kenya's Dadaab camp," Reuters, <http://af.reuters.com/article/topNews/idAFJ0E7A404C20111105>.

<sup>156</sup> "Kenyan Grenade Attack Kills 2," *VOA News*, November 6, 2011, <http://www.voanews.com/english/news/africa/Kenyan-Grenade-Attack-Kills-2-133319223.html> (accessed February 8, 2012); Human Rights Watch interview with a Garissa-based journalist, Garissa, January 10, 2012.

**November 8:** Gunmen attacked a police-escorted vehicle ferrying Kenya Certificate of Primary Education exam papers near Liboi. No casualties were reported.<sup>157</sup>

**November 8:** Gunmen attacked an Administration Police security base near El Wak in Mandera. No casualties were reported.<sup>158</sup>

**November 15:** A remote-controlled bomb hit a police vehicle escorting a UN convoy in Dadaab. Two police officers and two private security guards were injured.<sup>159</sup>

**November 24:** A landmine or IED explosion in Mandera's Mlima Fisi area killed one KDF soldier and injured four others.<sup>160</sup>

**November 24:** Unknown assailants killed at least three civilians and injured more than 27 in two grenade attacks in Garissa. One of the attacks, which killed two, took place at "Kwa Chege," a local bar. The other, which killed the third civilian, took place at Ngamia Road, where laborers had gathered near a tea stall.<sup>161</sup>

**December 5:** An explosion struck a police convoy escorting UN officials in Ifo 2 West camp, Dadaab. The attack killed at least one Administration Police officer and injured three others.<sup>162</sup>

**December 11:** An explosive device hit a convoy of KDF soldiers in Wajir, injuring at least one soldier.<sup>163</sup>

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<sup>157</sup> Boniface Ongeru and Abdisalan Ahmed, "KCPE vehicle, security base come under attack," *The Standard* (Nairobi), November 8, 2011, <http://www.standardmedia.co.ke/InsidePage.php?id=2000046384&cid=159> (accessed April 18, 2012); Steven Astariko, "Al Shabaab Repulsed in Mandera," *The Star* (Nairobi), November 9, 2011, <http://allafrica.com/stories/20111100076.html> (accessed February 8, 2012).

<sup>158</sup> Steven Astariko, "Al Shabaab Repulsed in Mandera," <http://allafrica.com/stories/20111100076.html>.

<sup>159</sup> Daud Yussuf and Noor Ali, "Bomb destroys Kenya Police car in refugee camp," Reuters, <http://af.reuters.com/article/topNews/idAFJ0E7AEoH920111115>.

<sup>160</sup> "Kenyan soldier dies in Mandera Landmine Explosion," *Daily Nation* (Nairobi), November 24, 2011, <http://allafrica.com/stories/printable/201111251339.html>.

<sup>161</sup> "Kenya: deadly grenade attacks near Somalia border," *BBC News Online*, November 25, 2011, <http://www.bbc.co.uk/news/world-15883256> (accessed April 18, 2012); Cyrus Ombati, "Four injured in Garissa grenade attacks," *The Standard* (Nairobi), December 16, 2011, <http://m.standardmedia.co.ke/headlines.php?id=2000048427> (accessed April 18, 2012).

<sup>162</sup> "Explosion kills Kenyan policeman in Dadaab camp," Reuters, <http://af.reuters.com/article/topNews/idAFJ0E7B402K20111205>.

**December 11:** An explosion at Mandera's Border Point Three killed an Administration Police officer and injured three others.<sup>164</sup>

**December 12:** An IED explosion in Wajir injured a National Security Intelligence Service (NSIS) official and two women activists from the Wajir Peace Committee. The IED hit the car in which they were traveling, which belonged to the NSIS Wajir office. The attack took place just outside Wajir Stadium, following Jamhuri Day celebrations.<sup>165</sup>

**December 15:** Unknown assailants attacked two locations in Garissa, the Florida Hotel and the prison officers' mess, with grenades, injuring four civilians.<sup>166</sup>

**December 19:** An explosion in Hagadera camp, Dadaab, killed one police officer and injured two others.<sup>167</sup>

**December 19:** Unknown assailants shot at close range two barbers in Garissa town. One died as a result of his injuries.<sup>168</sup>

**December 20:** An IED exploded near a police vehicle in Ifo camp, Dadaab. No injuries were reported.<sup>169</sup>

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<sup>163</sup> "Kenyan official: 9 troops wounded by land mine," *AP*, <http://www.guardian.co.uk/world/feedarticle/9990253/print>; Cyrus Ombati, "AP killed in Al Shabaab-linked explosions," <http://www.standardmedia.co.ke/InsidePage.php?id=2000048208&cid=4&story=AP%20killed%20in%20Al%20Shabaab-linked%20explosions>; Human Rights Watch interviews, Wajir, January 2012.

<sup>164</sup> Abdisalan Ahmed, Boniface Onger and Cyrus Ombati, "Al Shabaab attacks Kenya's security forces," *The Standard* (Nairobi), December 13, 2011, <http://www.standardmedia.co.ke/sports/InsidePage.php?id=2000048250&cid=4> (accessed February 8, 2012).

<sup>165</sup> *Ibid.*

<sup>166</sup> Human Rights Watch interviews with a victim and the manager of the Florida Hotel, Garissa, January 12, 2012.

<sup>167</sup> Cyrus Ombati, "Explosion in Dadaab, two shot in Garissa," *The Standard* (Nairobi), December 20, 2011, <http://www.standardmedia.co.ke/agriculture/InsidePage.php?id=2000048640&cid=4&> (accessed April 16, 2012).

<sup>168</sup> *Ibid.*, and "Garissa gunshot victim succumbs to injuries," *The Standard* (Nairobi), December 21, 2012, <http://www.standardmedia.co.ke/InsidePage.php?id=2000048712&cid=4&story=Garissa%20gunshot%20victim%20succumbs%20to%20injuries> (accessed April 16, 2012). One journalist who reported on the crime said the victims seemed to have been targeted because they were non-Muslims, but another said the crime may have been motivated by theft. Human Rights Watch interviews, January 2012.

<sup>169</sup> Cyrus Ombati, "Explosion in Dadaab, two shot in Garissa," <http://www.standardmedia.co.ke/agriculture/InsidePage.php?id=2000048640&cid=4&>; "KENYA-SOMALIA: Paying high price for military incursion," *IRIN*, <http://www.irinnews.org/report.aspx?ReportId=94641>.

**December 24:** Unknown assailants threw grenades at the Ngamia Bar in Wajir injuring six civilians.<sup>170</sup>

**December 29:** Unknown assailants shot and killed refugee leader Ahamed Mahmoud Mohamed in Hagadera camp, Dadaab.<sup>171</sup>

**December 31:** Unknown assailants attacked the Locas Pub in Garissa with grenades and guns. They killed five people and injured 26 others.<sup>172</sup>

**January 1:** Unknown assailants shot and killed a refugee leader in Ifo camp, Dadaab.<sup>173</sup>

**January 3:** An explosive went off just after the passage of a Kenya Revenue Authority (KRA) vehicle in Mandera. No casualties were reported.<sup>174</sup>

**January 11:** Al-Shabaab attacked the Administration Police camp and government dispensary in Gerille, near Wajir, killing three police officers, a police reservist, and two civilians. The attackers seriously injured two other police officers. They also abducted a district officer, a district registration official, and a driver whom they took to Somalia. They subsequently released the driver.<sup>175</sup>

**February 3:** Unknown assailants shot and killed three Somali citizens and injured a fourth in in Garissa.<sup>176</sup>

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<sup>170</sup> "Grenade attack wounds six near Kenyan-Somali border," Agence France Presse, December 25, 2011, <http://www.capitalfm.co.ke/news/2011/12/grenade-attack-wounds-six-near-kenyan-somali-border/> (accessed April 18, 2012).

<sup>171</sup> LWF, "Refugee Community Leaders Shot Dead at Dadaab Camp," January 2, 2012, <http://www.lutheranworld.org/lwf/index.php/dadaab-cpst-shootings.html> (accessed April 18, 2012).

<sup>172</sup> Cyrus Ombati, "Five killed in Garissa attack," *The Standard* (Nairobi), January 1, 2012, <http://www.standardmedia.co.ke/letters/InsidePage.php?id=2000049263&cid=4&> (accessed April 18, 2012).

<sup>173</sup> Adow Jubat, "Gangsters shoot man in Ifo refugee camp," *The Standard* (Nairobi), January 2, 2012, <http://www.standardmedia.co.ke/sports/InsidePage.php?id=2000049307&cid=4> (accessed April 18, 2012); LWF, "Refugee Community Leaders Shot Dead at Dadaab Camp," <http://www.lutheranworld.org/lwf/index.php/dadaab-cpst-shootings.html>.

<sup>174</sup> Adow Jubat, "Two revenue officials escape terror attack," *The Standard* (Nairobi), January 3, 2012, <http://www.standardmedia.co.ke/InsidePage.php?id=2000049384&cid=159&> (accessed April 18, 2012).

<sup>175</sup> Human Rights Watch interviews, Wajir, January 12, 2012; Cyrus Ombati, "Abducted Kenyan found in Wajir," <http://www.standardmedia.co.ke/InsidePage.php?id=2000050331&cid=4&ttitle=Abducted%20Kenyan%20found%20in%20Wajir>.

<sup>176</sup> Email communication to Human Rights Watch from a Garissa-based journalist, February 6, 2012. The victims were Abdinoor Hussein, Maulid Ali Dagane, and Mohammed Maalim Omar.

# Appendix II: Human Rights Watch Letter to the Minister of State for Defence

## HUMAN RIGHTS WATCH

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Frances Sinha, *Human Resources Director*  
James F. Hoge, Jr., *Chair*

March 13, 2012

Honorable Yusuf Haji  
Minister of State for Defence  
Ulinzi House, Lenana Road  
Nairobi, Kenya

*Delivered by hand, by fax to +254 02737322, and by email to info@mod.go.ke*

**Re: Operation “Linda Nchi” and Forthcoming HRW Report**

Dear Hon. Haji,

On behalf of Human Rights Watch, I am writing to express our appreciation of the initiative undertaken by the Ministry of State for Defense to establish a board of inquiry into human rights violations committed by Kenya Defence Forces personnel in the context of Operation Linda Nchi. I understand that this board met with our researcher in Nairobi, Neela Ghoshal, on January 26, 2012, to discuss concerns raised in a letter from Human Rights Watch’s Africa Director Daniel Bekele on November 18, 2011, and in a Human Rights Watch press release published on January 12, 2012; and that the board has also traveled to locations in North Eastern province to interview victims and local civil society organizations about abuses. We welcome this initiative to investigate the allegations and look forward to further cooperation on these important issues.

I am writing to follow up on the activities of the board of inquiry, as well as to seek further information on steps taken to ensure accountability for human rights violations committed by the Kenyan military. We understand the board is conducting a purely internal inquiry. We are eager to know what steps the Ministry of State for Defence will take if the inquiry finds evidence of human rights violations committed by military personnel. Further, have any military personnel thus far been disciplined in relation to infractions committed in the course of Operation Linda Nchi, either in Kenya or in Somalia?

I would also like to request further information pursuant to our letter of November 18. That letter raised concerns about possible violations of international humanitarian and human rights law by Kenyan armed forces

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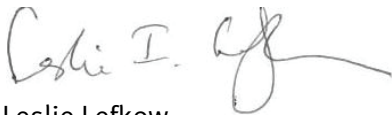
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during three incidents connected to Operation Linda Nchi. We inquired what steps the Kenyan government is taking to investigate the incidents and its response in the event of any finding of wrongdoing. We understand that the establishment of the board of inquiry is one concrete action taken; however, other unanswered questions remain. We therefore enclose those questions, once again, in annex to this letter, in the hope that you may be able to provide specific responses to each question.

Finally, Human Rights Watch is in the process of drafting a detailed report about abuses by both the Kenyan security forces and by al-Shabaab and its sympathizers in the context of Operation Linda Nchi. Several dozen victims spoke to us about serious abuses by the military, including being beaten, being forced to roll in a gravel road, and being forced to lie in the sun for hours, and we will include a number of their statements in the upcoming report. In the spirit of constructive collaboration, we would be pleased to submit to you those statements in advance of publication, at your request. The number of cases and the severity of the abuses—which in some cases resulted in lasting physical harm—require an urgent and serious response. Our findings suggest that military personnel may have committed crimes under Kenyan law, most notably assault. We would welcome further details about what steps are being taken, beyond the establishment of a board of inquiry, to ensure that perpetrators are held accountable.

We would greatly appreciate your response, which may be sent to our researcher in Nairobi, Ms. Neela Ghoshal at K-rep Building, 2<sup>nd</sup> Floor, Wood Avenue, Nairobi, Kenya. **Please respond by March 27, 2012**, so that we can ensure our upcoming report accurately reflects steps being taken by the Ministry of State for Defence to ensure accountability and an end to abuses. Ms. Ghoshal is also available to meet with you or with relevant Ministry of Defence officials to discuss our concerns in greater detail.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Leslie I. Lefkow". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Leslie Lefkow  
Deputy Director, Africa Division

**ANNEX : QUESTIONS ADDRESSED TO MIN. YUSUF HAJI BY HUMAN RIGHTS WATCH IN LETTER DATED NOVEMBER 18, 2011**

**I. Possible Unlawful Attack in Jilib, Somalia**

On October 30, 2011, the Kenyan air force carried out an attack with aerial bombardment that struck an Internally Displaced Persons (IDP) camp on the outskirts of the town of Jilib in Somalia. The international humanitarian organization Médecins Sans Frontières reported treating 45 wounded people, including 31 children, and confirmed five civilian deaths following the aerial bombardment.

On November 1, Kenyan Armed Forces spokesperson Maj. Emmanuel Chirchir stated that the Kenyan air force attack at Jilib had only killed members of the Islamist militant group al-Shabaab. A Department of Defence statement claimed that any civilian casualties might be due to the fact that “[u]pon the aerial attack an Al Shabaab driver drove off a technical battle wagon ... [that] exploded while at the camp causing the reported deaths and injuries.” However, a civilian wounded in the attack told Human Rights Watch that she had seen a dark green plane drop one bomb on the camp. She said the plane then turned around, came back and dropped another bomb on the camp that wounded her, and started firing machinegun rounds.

International humanitarian law requires all parties to an armed conflict to only target combatants and never civilians. Attacks that do not distinguish between combatants and civilians are indiscriminate, and are a serious violation of the laws of war. Civilians have reported that al-Shabaab members were expected at the IDP camp. But a camp resident told Human Rights Watch that al-Shabaab members were not present at the time of the bombing as they were praying at a mosque in Jilib town, along with many of the town's male residents. Al Shabaab unlawfully places civilians at risk whenever they place their fighters inside the IDP camp. However, under the laws of war this would not justify indiscriminate bombing of the camp by Kenyan forces.

On November 2, Prime Minister Raila Odinga publicly promised that there would be investigations into any civilian deaths that occurred as a result of the military operation. Governments have a responsibility to investigate credible reports of violations of international humanitarian law and appropriately prosecute those responsible.

- 1. What investigations have the Kenyan armed forces undertaken thus far into possible violations of the laws of war that occurred in the Jilib IDP camp as a result of the military operation?***
- 2. What steps have been taken to hold accountable any military personnel found to be responsible for serious violations of the laws of war and to prevent such violations in the future?***



3. *What compensation is the Kenyan government planning on offering to civilians for loss of life, injury, and property damage if investigations determine Kenyan responsibility for unlawful attacks?*
4. *More generally, what precautions are the Kenyan forces taking during their military operations to ensure compliance with international humanitarian law? What training in international humanitarian law have the Kenyan forces engaged in Somalia received?*

## **II. Possible Unlawful Attack near Kiunga, Kenya**

On the night of November 3 the Kenyan navy intercepted a fishing boat near Kiunga, on the Kenyan coast near the Somalia border. According to research conducted by the Muslim Human Rights Forum (MHRF) and shared with Human Rights Watch, the fishing boat voluntarily came to shore. Navy personnel searched and interrogated the persons on the fishing boat. The passengers, all of whom were Kenyans from Ngomeni, explained that they were returning from two months at sea, and had been carried by the tides toward Somalia, but were trying to make their way back to Ngomeni, near Malindi. The navy instructed the fishing boat to remain anchored for the night and promised to escort it to Ngomeni the next morning. At approximately 1 a.m. on November 4, the navy ship approached and fired on the fishing boat, which remained anchored off the shore of Kiunga.

According to MHRF, four civilians were killed, all of them elderly Kenyans: Mohamed Masuo, 85, Haji Omar Mote, 73, Isa Yusuf, 61, and Salim Chechemoyo, 60. The remaining fishermen swam to shore and were detained by the Kenyan armed forces at Ishakani. At least two of them had gunshot wounds. At the army base, they were allegedly severely beaten by Kenyan military personnel before being transferred to police custody and eventually released.

This account calls into question the version of events put forward by the Ministry of Defence. According to a statement by Major Chirchir on November 4, the fishing boat was fired upon after it refused an order from the navy ship to stop for identification.

International humanitarian law applies at sea and prohibits deliberate attacks on civilians. It requires that warring parties take all feasible precautions to ensure that objects attacked are valid military targets. International human rights law, which was also applicable, permits the use of lethal force outside of zones of armed conflict only when it is strictly and directly necessary to save human life.

1. *What investigations, if any, have been undertaken into the conduct of navy personnel on the navy ship that fired on the fishing boat near Kiunga? Have any navy personnel been disciplined or otherwise held accountable?*
2. *What investigations have been undertaken into allegations of mistreatment of fishermen detained at Ishakani?*
3. *What compensation is the Kenyan government planning on offering to civilians for civilian loss of life, injury, and property damage for unlawful attacks or use of force?*

### **III. Possible Arbitrary Detention and Mistreatment in Garissa, Kenya**

Human Rights Watch has received reports that Kenyan military personnel have been engaged in arbitrary detention and ill-treatment of civilians in Garissa, near the Somali border. A witness told Human Rights Watch that on November 11, military personnel detained individuals solely on the basis of their Somali appearance. The witness saw military personnel picking up suspects at pubs around Garissa, including DRC Pub and Locus; he later drove to Town Club and saw military personnel detaining additional suspects there, as well as pulling drivers out of taxis. The witness stated that those picked up by military personnel were forced to sit in mud and dirty water outside these locations. According to the witness, a number of them were beaten by military personnel while being interrogated. Most were then released after interrogation, but some were detained. The witness also heard reports that people were detained and beaten in Village Takwa.

Both international humanitarian and human rights law prohibits discrimination on the basis of ethnicity and national origin. Detention on such a basis is a violation of international law, as is all mistreatment of persons in custody.

- 1. On what legal basis did the military detain and interrogate civilians at Garissa?*
- 2. What investigations have been undertaken into allegations of mistreatment of detained persons in Garissa?*
- 3. What compensation is the Kenyan government planning on offering to civilians for injury from mistreatment?*

## HUMAN RIGHTS WATCH

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# Appendix III: Human Rights Watch Letter to the Minister of State for Internal Security

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Jamie Vernaede, *Associate*  
Matthew Wells, *Researcher*

March 13, 2012

Honorable George Saitoti  
Minister of Internal Security and Provincial Administration  
Office of the President  
Harambee House, Harambee Avenue  
Nairobi, Kenya

*Delivered by hand and by email to Permanent Secretary Mutea Iringo,  
emuteairingo@yahoo.com*

**Re: Operation “Linda Nchi” and Forthcoming HRW Report**

### ADVISORY COMMITTEE

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L. Muthoni Wanyeki  
Michela Wrong

Dear Hon. Saitoti,

Human Rights Watch has been investigating allegations of abuses by the Kenyan security forces and by al-Shabaab and its sympathizers in North Eastern Province in the context of Operation Linda Nchi, and we aim to publish a report of our findings. We would like to share our preliminary findings with you before publication of the report. We would also like to engage in a constructive dialogue with the Ministry of Internal Security, in advance of publication, in order to ensure that our recommendations are relevant and that our conclusions reflect the perspectives of the Kenyan security forces.

### HUMAN RIGHTS WATCH

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Michele Alexander, *Deputy Executive Director, Development and Global Initiatives*  
Carroll Bogert, *Deputy Executive Director, External Relations*  
Jan Egeland, *Europe Director and Deputy Executive Director*  
Iain Levine, *Deputy Executive Director, Program*  
Chuck Lustig, *Deputy Executive Director, Operations*

Human Rights Watch has noted with great concern the deterioration of the security situation in North Eastern Province over the past year, and the increasing number of incidents targeting the police and government officials as well as civilians. We have attempted to compile a list of relevant incidents (annexed to this letter). We recognize that these issues present significant challenges for the Kenyan police and we would welcome any information or analysis of specific incidents that can be shared with us. Specifically, we would be interested in any reports of the investigations conducted into the killings of police officers in Dadaab refugee camp on December 5 and 19 or the attacks on two refugee

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Barbara Guglielmo, *Finance and Administration Director*  
Peggy Hicks, *Global Advocacy Director*  
Babatunde Olugboji, *Deputy Program Director*  
Dinah PoKempner, *General Counsel*  
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James Ross, *Legal & Policy Director*  
Joe Saunders, *Deputy Program Director*  
Frances Sinha, *Human Resources Director*  
James F. Hoge, Jr., *Chair*

community leaders on December 29 and January 1. We would also welcome the opportunity to learn more about the police strategy to respond to increasing insecurity in Dadaab in future.

Human Rights Watch is also concerned about human rights violations committed by Kenyan police officers in the Dadaab refugee camps following the attacks on police in late 2011. As you are aware, following improvised explosive device (IED) explosions in Dadaab on December 5, December 19, and December 20—condemnable attacks, in which police officers were killed and injured—the police in Hagadera and Ifo camps carried out a retaliatory raid targeting refugees. Dozens were reportedly beaten and subjected to other abuses by police. In January 2012 we interviewed 20 Somali refugees who were victims of police abuse between December 21 and 24, 2011. Their statements suggest that police in Dadaab may be responsible for a number of crimes under Kenyan law, including rape, attempted sexual assault, assault, theft, and extortion. Of the seven women, eleven men, and two minors (both boys) whom we interviewed—nine from Hagadera camp and eleven from Ifo camp—we found that one had been raped by police; three were victims of attempted sexual assault; nineteen were beaten, including a mentally disabled child; nine were victims of theft; and three had household or business goods destroyed by the police.

We have received assurances from police officials to the effect that there is or will be an internal inquiry into these abuses, as well as into police abuses of ethnic Somalis in other locations in North Eastern Province, including Mandera, where residents reported being mistreated by the police in November 2011.

However, we are unaware of any cases in which police officers have been held accountable, either through criminal proceedings or disciplinary measures, for misconduct in relation to policing operations in Dadaab or elsewhere in North Eastern Province.

We would greatly appreciate your responses to the following questions.

- 1. Have any individuals been arrested or charged with the attacks on police officers in Dadaab on December 5, December 19, and December 20?**
- 2. What measures does the Ministry of Internal Security plan to take to respond to the increasing insecurity in the Dadaab refugee camps?**
- 3. Have any police officers alleged to have committed rape or other attacks on refugees in Dadaab been formally charged with crimes or subjected to disciplinary measures? If so, we would be grateful for any details you are able to provide.**
- 4. What steps has the Ministry taken to investigate the allegations of violations by police officers and to identify the officers who are most responsible?**

On the basis of our research, Human Rights Watch intends to issue a report in which we will make recommendations to the government of Kenya about the most effective way to prevent and ensure accountability for such abuses.

We would greatly appreciate your responses to the above questions for inclusion in our report. Responses may be sent to our researcher in Nairobi, Ms. Neela Ghoshal, at K-rep Building, 2<sup>nd</sup> Floor, Wood Avenue, Nairobi, Kenya. **Please respond by March 27, 2012**, so that we can ensure our upcoming report accurately reflects steps being taken by the Ministry to ensure accountability and an end to abuses.

Ms. Ghoshal is also available to meet with you or with relevant Ministry officials to discuss our concerns in greater detail, and would be happy to use the opportunity of such a meeting to share with you the full testimonies we have collected from victims in Dadaab.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Leslie Lefkow". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Leslie Lefkow  
Deputy Director, Africa Division

# CRIMINAL REPRISALS

## Kenyan Police and Military Abuses against Ethnic Somalis

Between November 2011 and January 2012, the Kenyan police and army subjected hundreds of Kenyan citizens in North Eastern province, as well as over 100 Somali refugees, to beatings and other abuses. The abuses were in apparent response to attacks carried out by militants suspected of links to the Islamist Somali armed group, al-Shabaab, in the wake of Kenya's military intervention in Somalia. In Garissa, Wajir, Mandera, and the refugee camps in Dadaab, police and soldiers were implicated in serious human rights violations including rape; attempted sexual assault; beatings; arbitrary detention; extortion; the looting and destruction of property; and various forms of physical mistreatment and deliberate humiliation. The Kenyan military detained scores of civilians despite the fact that it has no legal authority to do so.

Six months after the abuses came to light no one has been held accountable. Residents of the province told Human Rights Watch that the impact of the abuses and the accompanying impunity is a loss of trust between the local communities and the security forces, at a time when that trust is most needed to prevent further attacks by militants.

Human Rights Watch calls on the Kenyan authorities to end the abuses, prosecute the military and police officers responsible, and compensate victims. International donor governments should condition support to the Kenyan security forces on accountability for human rights abuses, including those documented in this report.



*Maash Hussein Abikar shows scars left by Kenyan soldiers when he was beaten with a gun butt during a round-up of ethnic Somalis in Wajir in December 2011. He also lost two teeth and now has blurry vision in one eye as a result of the beating.*

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