

BETWEEN A PROTRACTED AND A CRISIS SITUATION: POLICY RESPONSES TO SOMALI REFUGEES IN KENYA

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Two decades since the Somali Republic collapsed, the Somali regions are still suffering from chronic political uncertainty, violence and high levels of displacement. Since 2006 protracted regional displacement situations initiated in the 1990s have been overlaid by new crises. This is particularly evident in Kenya, where the number of Somali refugees has nearly trebled since 2006 and the refugee regime is undergoing important institutional change. This article draws on interviews carried out in 2011 in Nairobi and Dadaab, exploring the dynamics of displacement and responses by both policy-makers and refugees, and offers some suggestions regarding emerging and potential policy approaches. The article calls for different broad-based political and humanitarian approaches to tackle the intolerable situations from which people flee in Somalia; improvements in the Kenyan Government's refugee protection capacity and independent monitoring to ensure refugees' basic rights and tackle abuses; new thinking on piecemeal, gradual, and developmental approaches to refugee integration; and the maintaining of resettlement as a vital protection tool in a complex crisis.

Keywords: durable solutions, protracted displacement, Somalia, Kenya

1. Introduction

Two decades since the Somali Republic collapsed, the Somali regions are still suffering from chronic political uncertainty, violence, and high levels of internal and external population displacement. Since 2006 protracted regional displacement situations initiated in the 1990s have been overlaid by new crises of displacement associated with the dramatic transformation of the political violence

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in Somalia, and recently exacerbated by acute environmental pressures.¹ Newly displaced people crowd into Ethiopia's Dollo Ado and Kenya's Dadaab camp complexes, congregate in the Somali enclaves of regional towns and cities, and attempt risky journeys onwards to other countries in search of better protection and livelihoods. The case study seeks to unpack Somali displacement dynamics and policy responses, guided by four research questions:

- What is the relationship between patterns of governance and conflict, and displacement from Somalia to the wider region?
- What are the current perceptions, interests and strategies of State institutions and other political actors in places of origin and refuge, as well as aid agencies and international State actors, in addressing displacement?
- How do the perceptions, interests and strategies of displaced people shape situations of displacement, taking into account social, economic, political, and protection/security issues?
- To what extent could better/more strategic use of resettlement, return, and local integration be pursued to address displacement, and are there innovative local, national, regional or international initiatives that offer alternative solutions?

This article focuses in particular on the refugee situation in Kenya, where the number of Somali refugees has nearly trebled since 2006, passing half a million in September 2011, meaning that Kenya now hosts more than half of Somalia's regional refugees. The research, carried out from April to June 2011, included a review of relevant research papers, policy documents, and media reports; interviews with some 27 policy actors (including State representatives, international organization officials, and non-governmental organization (NGO) workers); two visits to Dadaab and interviews with 10 camp refugees, as well as revisiting earlier interviews carried out with displaced Somalis in urban areas.²

Like the other case studies in the project, the research approach aimed as far as possible to link the “top-down” strategies of the State and international agencies that underpin policy responses to Somali displacement, with the “bottom-up” strategies of displaced people, which may align with, work against, or cross-cut official policy aims.

The second section of this article focuses on the causes and dynamics of displacement from south-central Somalia to Kenya, addressing the first research question outlined above. The third section outlines the evolving refugee situation in Kenya, highlighting the changing roles and interests of different policy actors.

¹ Protracted displacement situations are generally defined as situations where refugees remain in exile for long periods of time without access to durable solutions and with their basic rights and essential economic, social, and psychological needs unfulfilled. They are however not necessarily faced with direct risk or threat to life. See for example United Nations High Commissioner for Refugees (UNHCR), *Protracted Refugee Situations*, Standing Committee 30th meeting, UN Doc. EC/54/SC/CRP.14, Jun. 2004. This article focuses on displacement from south-central Somalia, the epicentre of the current crisis.

² This was not a representative sample, but aimed to shed light on specific issues identified by the desk research. For accounts of the earlier research, see A. Lindley, *The Early Morning Phone Call: Somali Refugees' Remittances*, Oxford, Berghahn Books, 2010; and A. Lindley, “Leaving Mogadishu: Towards a Sociology of Conflict-Related Mobility”, *Journal of Refugee Studies*, 23(1), 2010, 2–22.

The following sections explore five responses to displacement: prevention, protection, and the durable solutions of return, local integration, and resettlement. In doing so, the article explores displaced people's own informal efforts towards these goals as well as official policy efforts, finding official responses inadequate and refugees both active but limited in their informal strategies. The article concludes by summarising the key insights and implications for future policy approaches.

2. Understanding the origins: displacement from Somalia to Kenya

The current displacement crisis is part of longer trajectories of governance failure and conflict in the south-central Somalia. Three main phases may be highlighted. First, the early 1990s saw a major displacement crisis with the onset of civil war. In 1991, the post-Cold War ousting of Siyad Barre's authoritarian regime was followed by the collapse of the State into factional violence, accompanied by massive displacement from south-central Somalia into Kenya. Key strongmen established themselves as "warlords", mobilising clanspeople to contest control of key resources. Militarily strong clans invaded new areas to plunder assets and appropriate land, evicting weaker groups, particularly minority farming communities.³ A proliferation of armed gangs of youths exacerbated urban insecurity. Large-scale, high-profile international peacekeeping interventions between 1992 and 1995 failed to restore State institutions and security, and the international community largely withdrew politically from Somalia in 1995. The combination of conflict and drought during this period provoked a massive humanitarian crisis and large-scale internal and international displacement, with the registered Somali refugee population in Kenya peaking at some 285,000 in 1992.

This was followed by a quieter period from 1996 to 2006. A relative localisation and stabilisation of conflict dynamics in south-central Somalia entailed much less fresh movement.⁴ But it also allowed for only limited return, with many people becoming stuck in protracted displacement. Towards the end of this period, building on neighbourhood networks of sharia courts, and backed by Mogadishu's business community, the Islamic Courts Union (ICU) emerged as a major political force, winning a decisive victory against US-financed warlords in mid-2006. The ICU rapidly expanded its control throughout most areas of south-central Somalia, and won strong popular support for having restored relative peace and security as well as its programme of public improvements.⁵

³ The major clan families of nomadic pastoralist traditions are the Darod, Hawiye, Dir, Isaq. The Digil/Mirifle clans are traditionally agriculturalists. There are also many minority groups in the south, including amongst others the Bantu, Baijuni, and Bravanese.

⁴ K. Menkhaus, "State Collapse in Somalia: Second Thoughts", *Review of African Political Economy*, 30(97), 2003, 405–422.

⁵ Lindley, "Leaving Mogadishu"; K. Menkhaus, "The Crisis in Somalia: Tragedy in Five Acts", *African Affairs*, 106(204), 2007, 357–390.

Since 2006 the transformation of the Somali civil war in the context of the global war on terror, combined with environmental problems, produced a fresh displacement crisis. Hostility to the idea of a strong Islamist State in Somalia propelled foreign intervention.⁶ Ethiopian troops dislodged the ICU and installed the internationally-sponsored Transitional Federal Government (TFG) in Mogadishu, with the tacit support of the United States and European States. While the ICU fragmented politically, its hard-line militia wing Al-Shabaab⁷ mounted vigorous armed opposition against the TFG, Ethiopian, and African Union peacekeeping forces. There was a dramatic intensification of urban violence compared with earlier years.⁸ Despite the withdrawal of Ethiopian troops at the end of 2008, and the inauguration of the moderate Islamist Sheikh Sharif Sheikh Ahmed as President, the TFG has failed either to defeat or to negotiate effectively with Al-Shabaab, which controls large parts of south-central Somalia. While making efforts to re-establish State institutions, the TFG and its foreign military backers have been implicated in major human rights abuses, including “arbitrary arrest and detention, restrictions on free speech and assembly, and indiscriminate attacks harming civilians”.⁹ Since 2009 the TFG has been under increasing international pressure to protect the population in the territory it controls. Meanwhile, initially positive assessments by civilians of the situation in some Shabaab-held areas gave way to major concerns, as severe punishment, recruitment, political decrees affecting many aspects of social behaviour, and taxation rules were imposed which many people found oppressive and disruptive.¹⁰ Many people have been displaced by the political violence. Some have fled specific persecution by armed actors; others have fled the shifting frontlines where the TFG, Shabaab and other military actors clash.¹¹

Political violence and governance failure also prompt other problems, or let those problems develop unchecked. Most prominently, in 2011 the worst

⁶ The TFG was formed in Kenya in 2004, with Members of Parliament (MPs) selected along clan lines.

⁷ Al-Shabaab declared its allegiance to Al-Qaida in 2008.

⁸ Human Rights Watch (HRW), *Shell-Shocked: Civilians Under Siege in Mogadishu*, HRW Report, Washington D.C., HRW, 2007, available at: <http://www.hrw.org/reports/2007/08/12/shell-shocked> (last visited 6 Sep. 2011); Internal Displacement Monitoring Centre (IDMC), *Displacement and Worsening Humanitarian Situation as a Result of Ongoing Violence and Conflict: A Profile of the Internal Displacement Situation*, IDMC Report, Geneva, IDMC, 2010, available at: [http://www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/5C16BB05140EABDBC125777000353557/\\$file/Somalia+-+July+2010.pdf](http://www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/5C16BB05140EABDBC125777000353557/$file/Somalia+-+July+2010.pdf) (last visited 6 Sep. 2011).

⁹ HRW, *You Don't Know Who to Blame: War Crimes in Somalia*, HRW Report, Washington D.C., HRW, 2011, 2, available at: <http://www.hrw.org/sites/default/files/reports/somalia0811webwcover.pdf> (last visited 6 Sep. 2011).

¹⁰ *Ibid.*; Interview with an international non-governmental organization (INGO) (1); interview with Researcher (1). The impressions of Al-Shabaab among displaced people interviewed in 2008 were much more favourable than they are currently; see Lindley, “Leaving Mogadishu”.

¹¹ IDMC, Norwegian Refugee Council (NRC), *Internal Displacement: Global Overview of Trends and Development in 2010*, Geneva, IDMC/NRC Report, 2011, available at: [http://www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/F58CA5EF98ACEEB1C125785C00389FA8/\\$file/global-overview-2010-fact-sheet.pdf](http://www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/F58CA5EF98ACEEB1C125785C00389FA8/$file/global-overview-2010-fact-sheet.pdf) (last visited 6 Sep. 2011).

drought in more than 50 years has been allowed to wreak havoc with rural livelihoods. Both Al-Shabaab, which rejects Western influence, and Western donors, which consider Al-Shabaab a terrorist organization, have restricted international aid to Shabaab-held territories, allowing the humanitarian crisis to burgeon largely unregulated.¹² By September 2011, some four million people were in need of emergency aid and the situation in parts of south central Somalia had reached famine proportions.¹³ Hunger has forced people to move to places where they can access assistance, with many making arduous journeys to neighbouring countries. Large numbers of destitute agropastoralist and farming families from southern Somalia have been arriving in Kenya and Ethiopia – in areas also seriously affected by drought – in very poor physical shape.¹⁴ This may, retrospectively, come to be viewed as a fourth phase of accelerated displacement. Importantly, aid restrictions inside Somalia mean that the old maxim that most environment-related displacement is internal no longer holds.

These broad dynamics of Somali displacement are illustrated in Figures 1 and 2, which show that Somalia has not been in a situation of constant crisis and displacement over the last 20 years, but that there was a relative stabilisation of protracted displacement in the mid-1990s to the mid-2000s. There are effectively two refugee populations in Kenya: established, long-term refugees who fled the clan conflicts of the early 1990s, and recent refugees who fled the violence of the late 2000s.

While some people have moved by overland, sea, and air routes to the Arab Peninsula, Europe, southern Africa, and further afield, the majority of Somali refugees remain in eastern Africa. In recent years Kenya has been the primary regional destination for refugees from south-central Somalia. As of early October 2011, there were some 908,000 Somali refugees registered in neighbouring countries, with Kenya hosting some 511,000 – more than half.¹⁵ With the number of Somali refugees nearly treble what it was in 2006, dealing with

¹² M. Bradbury, "State-Building, Counter-Terrorism and Licensing Humanitarianism in Somalia", *Feinstein International Center Briefing Paper*, Boston, Tufts University, 2010; Interview with UNHCR (4), interview with Refugee (1 and 8) and informal discussions with refugees. The US was the world's biggest donor to Somalia until 2009 but its decision to halt providing humanitarian assistance in areas where there was deemed a risk that it might benefit proscribed groups such as Al-Shabaab dramatically reduced aid to south-central Somalia. See M. Pfanz, "Terrorism Law Blocking U.S. Aid to Somali 'Catastrophe'", *The Daily Telegraph*, 19 Jul. 2011, available at: <http://www.theprovince.com/technology/Terrorism+blocking+Somali+catastrophe/5126893/story.html> (last visited 6 Sep. 2011).

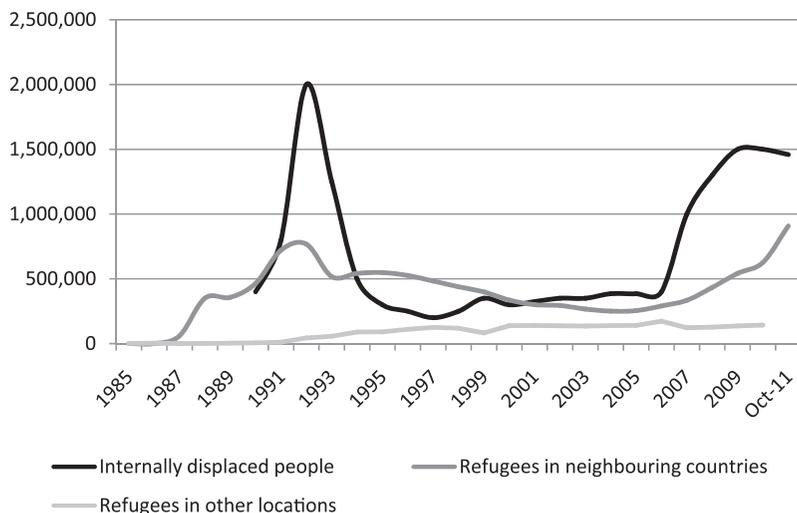
¹³ See K. Menkhaus, "A Diplomatic Surge to Stop Somalia's Famine", *Enough Policy Briefing*, Washington DC, Center for American Progress, 2011. The UN uses the term famine to describe situations where more than 30 per cent of children are acutely malnourished, more than two people in every 10,000 die each day and people have no food or other basic necessities.

¹⁴ Interview with UNHCR Kenya (4); discussions with aid workers, May 2011; UNHCR Dadaab, *Briefing Note on Dadaab Refugee Camp – 21st of July*, Briefing Note, Kenya, UNHCR Sub Office Dadaab, 21 Jul. 2011, available at: http://onpoint.wbur.org/files/2011/07/Briefing-Note_Dadaab-21-07-11.pdf (last visited 6 Sep. 2011).

¹⁵ UNHCR, *East and Horn of Africa*.

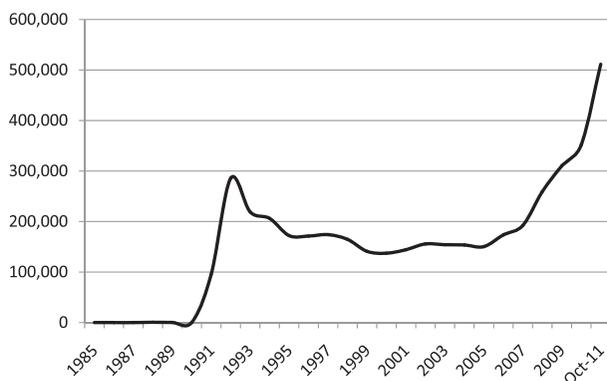
this situation will remain a key political issue in Kenya in the months and years to come. Analysis of the Kenyan response also crystallises many of the salient issues in relation to Somali displacement that also preoccupy policy-makers elsewhere in the region.

Figure 1. Somali displacement patterns 1985–2011.



Numbers of Internally Displaced Persons (IDPs) are estimates from NRC and IDMC sources. As IDPs are not officially registered, these are rough estimates based on alternative data collection techniques hindered by insecurity in many areas. Figures for “refugees and people in refugee-like situations” extracted from UNHCR Statistical Online Database, 23 Aug. 2011. 2011 figures from UNHCR, <http://data.unhcr.org/horn-of-africa/regional.php> (last visited 4 Oct. 2011).

Figure 2. Somali refugee population in Kenya 1985–2011.



Source: Figures for “refugees and people in refugee-like situations” originating from Somalia were extracted from UNHCR Statistical Online Database, 23 Aug. 2011. 2011 figure from UNHCR, available at: <http://data.unhcr.org/horn-of-africa/regional.php> (last visited 4 Oct. 2011). Figures for *prima facie* arrivals show a similar pattern of major increase in the early 1990s and late 2000s.

3. Understanding the destination: the Kenyan refugee regime

The refugee situation in Kenya has experienced important changes in the last 20 years. Faced with the refugee crisis of the early 1990s, there was a major shift away from a previously Government-led, open, and *laissez-faire* approach to refugees. The Government's emerging strategy was clear: offer temporary protection, delegate dealing with the refugees to UNHCR, and contain them in remote areas of the country.

Kenya is a signatory to the 1951 UN Convention Relating to the Status of Refugees, its 1967 Protocol,¹⁶ and also the 1969 Organization of African Unity (OAU) Convention Governing Specific Aspects of Refugee Problems in Africa.¹⁷ Until 2006, there was no national legislation for refugees, but Kenya has over the years registered hundreds of thousands of Somalis as *prima facie* refugees, on a group basis, offering temporary protection in camps.

At the Government's request, in the early 1990s UNHCR rapidly went from assisting a relatively small number of urban-based refugees to managing large camp operations. Initially large amounts of donor funding flooded in to deal with the high-profile humanitarian emergency. By 1993, this had helped to stabilise morbidity and mortality rates among the refugees, and there was a dramatic fall in new displacement, so that UNHCR declared that the emergency was over.¹⁸ The situation shifted into a phase of "care and maintenance" and as time went on acquired the character of a protracted refugee situation: large numbers of refugees in long-term exile with no access to durable solutions to their loss of citizenship. As donor fatigue set in, from the late 1990s there were dramatic and recurring shortfalls in refugee funding, with UNHCR still struggling to maintain minimum humanitarian standards a decade after it declared that the emergency was over.¹⁹

The Government policy was to try to contain the refugees in Dadaab camps (Ifo, Hagadera, and Dhagahaley) of the North Eastern Province (NEP) close to Somalia, and to a lesser extent in Kakuma camp in the north west. During the 1990s many refugees were relocated to these camps from other locations where they had initially settled. The decision to locate the major camps in Dadaab is significant: the NEP has a substantial indigenous Somali Kenyan population and a troubled history of marginalisation, repression, and violence under both colonial and independent rule. The province benefited from little development intervention and there is still a considerable economic gulf between the NEP and the rest of Kenya.

In this context, many refugees voted with their feet, gravitating towards urban areas, in order to avoid the harsh camp conditions (heat, scarce rations, recurrent sickness among children, insecurity); to access better educational

¹⁶ 189 UNTS 150, 28 Jul. 1951 (entry into force: 22 Apr. 1954).

¹⁷ 1001 UNTS 45, 10 Sep. 1969 (entry into force: 20 Jun. 1974).

¹⁸ J. Milner, *Refugees, the State and the Politics of Asylum in Africa*, Basingstoke, Palgrave Macmillan, 2009.

¹⁹ *Ibid.*

opportunities and health facilities; to find work and build a different future for oneself and one's family; to get in contact with relatives abroad with a view to arranging onward migration to other countries; or simply because they preferred city life.²⁰

In the last five years, there have been some important changes in the institutional framework set up in the 1990s. Greater Government involvement in refugee affairs began with the Refugees Act, which was finally passed in 2006, after an earlier bill was stalled by the first Somali refugee crisis in the early 1990s. Accompanying Refugee Regulations entered into force in 2009 and a Department of Refugee Affairs (DRA) was established within the Ministry of State for Immigration and Registration of Persons. As part of a three-year plan to assume from UNHCR the responsibility for key areas of refugee policy implementation, the DRA took over the reception and registration of refugees in March 2011. The DRA also chairs an active cross-governmental Refugee Affairs Committee, engaging officials from Foreign Affairs, Internal Security, Local Government, Public Health, and the National Registration bureau in regular discussions of refugee issues.

Key legal and policy frameworks are currently undergoing (re)development, posing both risks and opportunities for refugees, and with the outcomes still uncertain. A new Refugees Bill and Citizenship and Immigration Bill have been drafted as part of the review of all legislation prompted by the passing of a new Constitution in 2010. The Refugees Bill's proposed modifications to existing law appear to focus on addressing security concerns (explored further below) by tightening bureaucratic control of the refugee population, requiring immediate registration and increasing penalties for non-compliance, as well as elaborating offences and penalties relating to identification document fraud.²¹ Recent policy discussion between the Government, UNHCR and civil society stakeholders has reportedly also focused on ways to improve the protection of urban refugees and ease access to work permits.²²

Several lines of tension between policy actors exist both in the context of this significant institutional changes and in the longer term.²³ First, it is no secret that the DRA is dissatisfied with levels of support from donors. Yet donors and UNHCR are reluctant "to be party to the creation of an externally funded public refugee bureaucracy", with fears of unsustainability and corruption.²⁴ A single bilateral agreement exists between Kenya and Denmark, a 3.5-year capacity-

²⁰ Lindley, *The Early Morning Phone Call*.

²¹ Draft Refugee Bill 2011; see also KBC, "Kajwang' Receives Immigration Bills", *KBC News*, 15 Jul. 2011, <http://www.kbc.co.ke/news.asp?nid=71314> (last visited 6 Sep. 2011).

²² Interview with UNHCR Kenya (3); interview with DRA (2); A. Lime, "Improve Refugees' Lives, Urges Kajwang", *Daily Nation*, 20 Jun. 2011, available at: <http://allafrica.com/stories/201106220287.html> (last visited 6 Sep. 2011); S. Konzolo, W. Crompton & S. Cechvala, *An Overview of the Refugee Status Determination Processes and Right of Refugees in Kenya*, paper presented at the International Association for the Study of Forced Migration Conference, Kampala, 3–6 July 2011 (publicly unavailable).

²³ This paragraph draws on various interviews with the DRA, donors, UNHCR and NGOs.

²⁴ Internal UNHCR document.

building project, with USD 3.8 million from the Danish Government and USD 1.1 million from the Kenyan Government, including the secondment of a migration management specialist (DRA-DANIDA 2009). In this context, donor States' economic leverage to influence refugee issues, without a substantial additional investment of government-channelled funding seems limited. They are also seen as having little moral authority (given their own counter-terror policies and immigration restrictions) to pressure the Kenyan authorities on refugee issues.

Secondly, tensions have arisen between UNHCR and the DRA on the handover of responsibilities. UNHCR is concerned about protection and the establishment of reliable systems. This caution can also be interpreted – and often is by government actors – as a reluctance to relinquish control, rooted in the organization's institutional self-interest.

Thirdly, UNHCR has been criticised by refugees and a range of civil society actors and NGOs for emphasising “soft diplomacy” in the face of “hard” human rights concerns regarding border closure, *refoulement*, and the massive congestion of Dadaab, for fear of jeopardising relationships with the Government. As the organization took on the major operational responsibilities of running large refugee camps, the organization's ability to hold the Kenyan and donor Governments to account on protection issues was widely perceived as having diminished, as it depended on those same Governments for access and funding for the camp operations respectively.

Another key shift in the refugee situation in Kenya is the mass influx of displaced people from Somalia since 2007 caused by the transformations of political violence in the context of the “war on terror”. This accelerated in 2011 as political violence began to mix with acute environmental pressures. Some 142,000 people arrived in the first seven and a half months of 2011.²⁵ The Government is quick to point out to the international community that the scale of new arrivals, combined with domestic economic and political tensions in Kenya, make international support essential and should also focus greater international attention on addressing the causes of displacement inside Somalia.²⁶

State security concerns now represent a major driver of central Government policy in relation to refugees. Recent concerns about Al-Shabaab becoming a “pan-East African entity”, following its bombing of a World Cup celebration in neighbouring Uganda, meld with older tendencies to criminalise refugees and the long-standing securitisation of the NEP.²⁷ Specific perceived threats

²⁵ UNHCR, *East and Horn of Africa*.

²⁶ Government of Kenya, *Briefing on the Refugee and Drought Situation in the Country*, 21 Jul. 2011, available at: <http://reliefweb.int/node/435254> (last visited 6 Sep. 2011); W. Menya, “Raila in Plea to Donors for More Aid as He Releases Maize from Strategic Stocks”, *The Daily Nation*, 22 Jul. 2011, available at: <http://www.nation.co.ke/News/Raila+in+plea+to+donors+for+more+aid/-/1056/1205672/-/2p6vrwz/-/index.html> (last visited 6 Sep. 2011).

²⁷ E.A. Gimode, “An Anatomy of Violent Crime and Insecurity in Kenya: The Case of Nairobi, 1985 – 1999”, *Africa Development*, 26(1–2), 2001; E. Lochery, *Aliens in their Own Land: The Kenyan Government and its Somali Citizens*, draft paper, 2011; and C. Onyango-Obbo, “Al Shabaab Grows East Africa Wings as Security Chiefs Warn of New Threat”, *The East African*, 20 Jun. 2011, available at: <http://allafrica.com/stories/201106200539.html> (last visited 6 Sep. 2011).

include: the conflict spilling over the border; Shabaab's quiet presence and recruitment efforts and wider concerns about religious extremism in Kenya; the (apparently as yet unsubstantiated) fear of a potential marriage of grievances of Somali Kenyans in the NEP; and some specific incidents of social unrest among Muslim minorities.²⁸ These security concerns contributed to push for more active Government involvement in the reception and registration of refugees – to keep track of who enters Kenyan territory.²⁹ The growing food insecurity across Kenya adds another dimension to the Government's concerns about the arrival of large numbers of refugees.³⁰ Refugee issues are now a matter of high politics, with the Ministries of Interior and Foreign Affairs deeply involved.

However, these security concerns run in parallel to a still powerful public discourse of moral duty and pan-African hospitality – as one Kenyan NGO worker put it:

Well, I don't know whether it exists, but I invoke it all the time as an advocate! [...] Saying when our neighbor's house is on fire, it's un-african-like to chase him away [...] You play the racial card and say "you know we're black and we should help our black brothers [...] our colonial masters] closed the door for us [in drawing the borders]; let's not do it ourselves."³¹

This kind of thinking and the desire to uphold Kenya's international reputation also mediate developments in Kenya's refugee regime.

Thus the protracted Somali refugee situation in Kenya has seen important developments in recent years, in terms of the realities that policy-makers are dealing with, and the parameters within which they operate. Next, this article considers efforts to prevent displacement from occurring, and to encourage return – both "home-focused" goals. It then explores the "destination-focused" goals of protection, local integration and resettlement. In doing so, both official policy efforts and the efforts of displaced people themselves towards these goals are examined.

4. Prevention

The prevention of displacement is a common goal for both Somali citizens and policy-makers. Threatened by political violence and hunger, people have tried to cope in various ways in their original place of residence. Often a host of

²⁸ M. Bradbury & M. Kleinman, *Winning Hearts and Minds? Examining the Relationship between Aid and Security in Kenya*, Boston, Feinstein International Famine Center, Tufts University, 2010; UNHCR, *Dadaab Camp, Kenya, Briefing Notes – 5 May 2005*, Briefing Note, Kenya, 5 May 2011, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&cid=427b5a404&page=news> (last visited 7 Sep. 2011).

²⁹ Various interviews with DRA, UNHCR, foreign states and international NGOs.

³⁰ Menya, "Raila".

³¹ Interview with INGO (2a).

individual, family and community adaptations precede departure. Coping strategies include borrowing from family and other contacts, skipping meals, begging, and selling productive assets.³² Local mobility, or changing habitual mobility patterns, is also key, as people adjust daily routines to avoid fighting, stay at home, or relocate to a different part of the city, or to rural homelands, other urban centres and IDP camps. Often families do not depart together, but send out the more vulnerable or politically exposed members first, or leave behind a family member to look after property and land. It is often not fully recognized that ordinary citizens have often gone to great lengths, in the face of considerable risks, to avoid leaving the country.

While a source of suffering, displacement also represents a legitimate strategy for dealing with worse predicaments, and as such should not be “prevented”. Indeed those worse off are often people who are stuck, rendered involuntarily immobile³³ by poverty, disability, or sickness.³⁴ The dangers of journey itself – often crossing contested territory, exposed to political, criminal, and sexual violence – act as a disincentive for migration. A relatively recent development is Al-Shabaab’s efforts to stop people from leaving, forcefully turning them back and beheading the drivers of vehicles carrying them, in an attempt to hold onto population and power.³⁵

In such a context any policy efforts specifically aiming to prevent displacement in Somalia are beset with practical and moral difficulties. One way in which policy-makers try to prevent displacement is by delineating particular spaces within conflict-affected societies as safe havens. In 1993, in response to threats by newly re-elected President Moi that the Kenyan Government would return Somali refugees (forcibly where necessary) to Somalia, UNHCR mounted a “Cross Border Operation” aiming to stem refugee out-migration and facilitate repatriation.³⁶ This involved the designation of a “preventive zone” inside southern Somalia, with the establishment of four UNHCR outposts about 100 miles in from the Kenyan border. This encompassed an area that had been devastated by patterns of violent invasion, destruction of infrastructure in towns and villages and theft of assets, which still lacked any central or regional Government and was experiencing continuing conflict.³⁷ From these offices, more than 380 Quick Impact Projects (QIPs) aiming at rehabilitating physical and social infrastructure with a view to revitalising livelihoods, the wage economy and civic society were

³² C. Holleman, “Conflict, Economic Crisis and Drought”, *Humanitarian Exchange Magazine*, Oct. 2008.

³³ S.C. Lubkemann, “Involuntary Immobility: On a Theoretical Invisibility in Forced Migration Studies”, *Journal of Refugee Studies*, 21(4), 2008, 454–475.

³⁴ In the context of the recent drought, there are reports of people having to leave behind sick, elderly and even young family members because they would not be able to survive the journey.

³⁵ Discussions with refugees, Apr. and May 2011; interview with Refugee (8); interview with UNHCR Kenya (4); interview with Researcher (1).

³⁶ J. Hyndman, “Preventative, Palliative, or Punitive? Safe Spaces in Bosnia-Herzegovina, Somalia, and Sri Lanka”, *Journal of Refugee Studies*, 16(2), 2003, 167–185.

³⁷ Hyndman, “Preventative”.

negotiated and implemented with local communities, in the shadow of wider peacekeeping and humanitarian operations.³⁸

The number of *prima facie* refugee arrivals into Kenya did dramatically decrease in 1993 and 1994.³⁹ Some point to the correlation with the designation of the preventive zone, concluding that the QIPs and UNHCR's presence were effective in stemming out-migration.⁴⁰ But it is just as possible – perhaps more likely – that changes in migration patterns were more the result of a more general de-escalation of violence in the area. Certainly, any belief that might have existed in the “protection by presence” of international civilian staff was shattered in June 1993 when US peacekeepers were drawn into open conflict with the forces of warlord Mohammed Farah Aideed.⁴¹

However, with 2011 bringing a situation of even greater mass influx than 1993, the notion of a preventive zone is making a comeback. There is growing political support in Kenya for the creation of a more secure buffer zone within southern Somalia, where humanitarian aid could be provided under the aegis of the TFG, to prevent further dislocation in the area in question, absorb internally displaced people, prevent arrivals of refugees in Kenya, and facilitate repatriation.⁴² In the last couple of years, various Somali politicians have laid claim to “Jubaland”, encompassing Somalia's border districts of Gedo, Lower, and Middle Juba, envisaged as a semi-autonomous region under the TFG. Kenya has lent more than political support to this cause. It has increased military engagement on the Somali border and helped provide military training to troops recruited from among the refugees. These troops were reportedly put at the disposal of Mohammed Abdi Mohammed (nicknamed Gandhi), former TFG Minister of Defence, in the recent offensive against Al-Shabaab.⁴³

As a measure to mitigate displacement, Kenya's support of Jubaland is a major gamble – the offensive *produced* substantial numbers of refugees in early 2011.⁴⁴ Moreover, territorial control of Jubaland is incomplete, the modest area

³⁸ J. Kirby, T. Kleist, G. Frerks, W. Flikkkema, & P. O'Keefe, “UNHCR's Cross-border Operation in Somalia: The Value of Quick Impact Projects for Refugee Resettlement”, *Journal of Refugee Studies*, 10, 1997, 181–198. The 380 projects funded by May 1994 cost USD 7.9 million, each with funding ceilings of USD 50,000 and lasting typically less than 3 months.

³⁹ UNHCR Statistical Population Database, accessed 23 August 2011.

⁴⁰ J. Kirby, T. Kleist, G. Frerks, W. Flikkkema, & P. O'Keefe, “UNHCR”.

⁴¹ Hyndman, “Preventative”.

⁴² Interview with DRA Kenya (1); M. Karanja, “MPs Support Plans to Create a Buffer Zone”, *The Daily Nation*, 8 May 2011, available at: <http://www.nation.co.ke/News/politics/MPs+support+plans+to+create+a+buffer+zone+/-/1064/1158730/-/su0dxa/-/index.html> (last visited 7 Sep. 2011); F. Mukinda, “Kenya Wants Some Refugees Moved to a Third Country or Camps Opened in Somalia to Ease Congestion”, *The Daily Nation*, 22 Jul. 2011; HRW, *You Don't Know Who to Blame*.

⁴³ In fact several groups claim the area. Discussions with refugees Apr. and May 2011; Interview with UNHCR Kenya (4); UNHCR, *Dadaab Camp, Kenya, Briefing Notes*; Bradbury & Kleinman, “Winning Hearts and Minds?”; HRW, *You Don't Know Who to Blame*.

⁴⁴ HRW, *You Don't Know Who to Blame*.

controlled was only recently won from Al-Shabaab, and durable stability would appear to be a far-off prospect.⁴⁵ Claims about the potential of Jubaland to prevent displacement should therefore be treated with considerable caution.

This is particularly important in light of apparent efforts by Kenya to emphasise that people forming part of the recent influx are fleeing drought, rather than violence, implicitly undermining their claim to refugee status, suggesting that they may be more appropriately assisted inside Somalia.⁴⁶ It is important to recognize that recent drought-related displacement is political: the result of major governance failures in Somalia, and people will continue to be forced to resort to migration as long as this situation prevails. It is also important to recognize that violence and persecution are still *direct* causes of displacement – many of those recently arrived would qualify as 1951 Convention refugees if given the chance. Recent statements by Kenya may reflect the tendency of host countries to instrumentalise the notion of prevention of displacement “[to give] policy coverage to activities seeking to reduce access to asylum [...] and to put the financial and political costs of the response to forced displacement in the countries where it originated.”⁴⁷

The very spatial approaches of safe havens and preventive zones would appear to present particular moral hazards, tending to focus on interim containment rather than addressing the *root causes* of displacement.⁴⁸ But the term “causes” hides a great complexity of factors – ranging from underlying structural causes, to proximate events, and more immediate triggers.⁴⁹ Genuine attempts to address root causes of displacement involve thorough-going societal interventions beyond the scope of the migration-focused organizations like UNHCR which initiate the discussion, prompting much debate about how to operationalise such approaches.⁵⁰

Contemporary displacement from south-central Somalia can nevertheless be linked to recent intransigent strategies pursued by a range of domestic and international actors in relation to Somalia. In their pursuit of State control, south-central Somali politico-military actors have imposed great suffering on the civilian population in the last five years. Foreign States’ pursuits of narrow “counter-terror” agenda and regional political projects have contributed to the current political impasse. Different political approaches will be needed to address

⁴⁵ Amounting to an area of land in Gedo near the border with Ethiopia, and a strip of land 60 to 80 km wide along the Kenyan border in Aug. 2011 (HRW, *You Don't Know Who to Blame*).

⁴⁶ Government of Kenya, *Briefing on the Refugee and Drought Situation*; HRW, *You Don't Know Who to Blame*.

⁴⁷ J. Zapater, *The Prevention of Forced Displacement: Inconsistencies of a Concept*, New Issues in Refugee Research, Working Paper No. 186, Geneva, UNHCR, Apr. 2010, 16.

⁴⁸ Hyndman, “Preventive”; S. Castles & N. Van Hear, “Root Causes”, in A. Betts (ed.), *Global Migration Governance*, Oxford, Oxford University Press, 2011, 287–306.

⁴⁹ N. Van Hear, *New Diasporas*, London, University College London Press, 1998.

⁵⁰ Zapater, *Prevention of Forced Displacement*.

the conflict in south-central Somalia, which eventually may mitigate displacement.⁵¹

Against this background, it is true that many of the most recently displaced may not have moved at the point they did were it not for drought destroying their livelihoods and the absence of emergency assistance *in situ*. But having lost their livelihoods and left the country in a state of political flux, they are reluctant to return without signs of peace in their home area. In the short term, swift humanitarian aid could help those that wish to remain despite the crisis and prevent further drought-related destitution and dislocation, as occurred in previous droughts. However, this requires aid providers to engage in dialogue with Shabaab and other political actors, to establish localised access arrangements, and to work where appropriate in partnership with other local actors seeking to assist the vulnerable (including businesspeople, elders, and religious leaders, and the diaspora groups) – as some are already doing. It also requires donor States and domestic political actors to support this by lifting politically-motivated restrictions on humanitarian aid.⁵² These processes necessitate all actors engaging in renewed dialogue on humanitarian principles. Moreover it is important to recognize such humanitarian action as short-term measures – deeper-going political change is needed to make “staying put” sustainable in the medium to long-term.

In sum, it is important to emphasise that many Somalis are highly active in trying to avoid becoming refugees. Attempts to stem displacement through the designation of preventive zones within Somalia risk acting as interim containment measures; for these can play into the non-exit strategies of Somali political actors and the non-entry strategies of host countries, both trying to deny people the right to flee threats to their lives and seek international protection. Different and broader-based political and humanitarian approaches are needed to improve conditions in south-central Somalia and address the threats from which people flee.

5. Return

Voluntary repatriation is viewed as a durable solution to displacement because it involves the restoration of citizenship in the country of origin. It is often a popular goal both among refugees and the international community.⁵³ Between 1990 and 2005, it is estimated that there were over one million returnees to Somalia from the region, half of whom were assisted by UNHCR. Although the majority went back to Somaliland and Puntland, still some

⁵¹ This may involve the development of semi-autonomous regions such as Jubaland, but the experiences of Somaliland and Puntland suggest that less rather than more foreign involvement seems to give such entities a better chance of achieving long-term stability.

⁵² The extent to which recent promises by both Shabaab and the US Government to relax restrictions are realised and the impact of these actions should be monitored closely.

⁵³ UNHCR, *Handbook on Voluntary Repatriation: International Protection*, Geneva, UNHCR, 1996.

150 000 are thought to have returned to south-central Somalia, as the situation stabilised in some areas.⁵⁴

Much return by refugees was “spontaneous” individually or family-instigated return. As telephone contact and general circulation of businesspeople and family and educational visits between Kenya and Somalia increased, some people came to the conclusion that it was safe to return – or worthwhile, weighing opportunities against risks. Sometimes the decision to return was made after an initial visit by a family or clansperson. Sometimes returnees took with them a repatriation package of basic necessities from UNHCR but received little assistance reintegrating into a changed and still violent society.⁵⁵ Others registered for return primarily in order to obtain the UNHCR package, subsequently reappearing in the Kenyan camps.⁵⁶ Decisions to return were often highly individualised, because of the dynamic and localised nature of the conflict between the mid-1990s and the mid-2000s. Indeed, some refugees were returning even at times of mass influx to the camps.⁵⁷ Moreover in contrast to the taken-for-granted sedentary notions of “home” embedded in the prioritisation of return,⁵⁸ many Somalis did not return to their place of former residence, but rather made their way towards major urban centres or areas considered to be clan homelands.

Return did not always end in success, and many refugees can recall people who had gone back and were subsequently killed, or displaced again, pointing to the importance of monitoring the situation of returnees and their reintegration, rather than assuming that return automatically represents a durable solution.⁵⁹

Meanwhile, large numbers remained in protracted exile in Kenya. Barriers to voluntary return included fear of generalised insecurity and violence in home areas; inability to reclaim land and property or access social protection in the home area because of reconfigurations of the ethno-political map of south-central Somalia; and a lack of confidence in the durability of the stability achieved in pockets of south-central Somalia. In the last five years, the vast majority of refugees has been unwilling to contemplate return, due to the recent violence (followed through mobile phone contact with relatives in Somalia and conversations with newly arrived refugees, as well as radio, TV, and internet news); fear of association with the enemy if returning to Shabaab-held areas; and still dim hopes for peace in south-central Somalia. While very small numbers of Somali businesspeople, NGO workers, politicians

⁵⁴ UNHCR, *Framework Document for the Comprehensive Plan of Action (CPA) for Somali Refugees*, Geneva, UNHCR, 2005.

⁵⁵ Kirby, Kleist, Frerks, Flikkkema, & O’Keefe, “UNHCR”.

⁵⁶ Field notes, Nairobi Apr. 2011.

⁵⁷ Kirby, Kleist, Frerks, Flikkkema, & O’Keefe, “UNHCR”.

⁵⁸ L. Hammond, *This Place Will Become Home: Refugee Repatriation to Ethiopia*, New York, Cornell University Press, 2006.

⁵⁹ Such monitoring should be done until returnees no longer have outstanding needs caused by their displacement and in line with international standards developed for that purpose (i.e. UNHCR – Framework on Durable Solutions for IDPs).

and military recruits continue to return, visit or circulate, weighing the major risks against specific ambitions and opportunities, the vast majority of refugees have no interest in returning to any part of south-central Somalia.⁶⁰

Official efforts to support return during the 1990s met with limited success. The success of the “Cross Border Operation” of 1993 in attracting returnees is disputed. By June 1993, some 12,000 refugees had returned with UNHCR’s help to the preventive zone. The vast majority remained in Kenya, unconvinced – rightly as it turned out – that humanitarian agencies’ presence alone would be enough to protect them.⁶¹

This experience should inform current thinking regarding “Jubaland”. The Kenyan Government’s aspiration to return refugees to Jubaland should be tempered by awareness of the issues outlined in the previous section, and a clear understanding that refugees are unlikely to return voluntarily – and certainly should not be returned forcibly – without evidence of durable stability. As in other refugee settings, concerns have been voiced that the aspiration to return refugees too easily becomes a rationale for the Government to avoid implementing measures to improve the protection and integration of refugees inside Kenya. Specifically, hopes regarding return to Jubaland seem to have contributed to the Government’s caution regarding authorising extensions to Dadaab.

Meanwhile, it is worth noting that despite the repatriation-oriented stances of policy actors, there has been little or no investment in the capabilities of refugees specifically with a view to eventual return. Bearing in mind the obstacles to training in Somalia, a cadre of Kenyan-trained refugees could provide a valuable source of recruits for a future Somali civil service and public sector. A further, related step – apparently long-discussed but slow in materialising – could be to involve refugees more thoroughly in the administration and management of services in the camps, through the establishment of more municipal-style structures: “to run the camps more like cities”, as one official put it.⁶²

Finally, beyond physical return, refugees in Kenya and elsewhere have over the years contributed to shaping the situation in the Somali regions in a wide range of ways. Economically, some refugees are able to send money home to support relatives and community members in need or look after assets left behind; others engage in cross-border trade in livestock and goods.⁶³ Refugees can also contribute to political debate – the TFG was originally formed in Kenya, a Government-in-exile, and many political figures are based in Kenya due to insecurity in Mogadishu. Refugees can also contribute to clan-based compensation payments aimed at averting conflict, or raise funds to finance

⁶⁰ Interview with Refugee (1 and 5), interview with INGO (5a), interview with INGO (4b).

⁶¹ J. Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism*, Minneapolis, University of Minnesota Press, 2000.

⁶² Interview with UNHCR (4); Personal communication with researcher, 23 Jun. 2011.

⁶³ L. Hammond, M. Awad, L. Degane, P. Hansen, C. Horst, K. Menkhaus & L. Obare, *Cash and Compassion: The Role of the Somali Diaspora in Relief, Development and Peace-building*, Report of a Study commissioned by United Nations Development Programme (UNDP) Somalia, Nairobi, UNDP, 2011, available at: <http://www.hiiraan.com/2011/May/Cash-and-Compassion-Draft-for-comments.pdf> (last visited 7 Sep. 2011).

conflict and help recruit combatants. Efforts by policy-makers to engage with the Somali diaspora(s) have tended to focus on those elite segments of it with financial clout and political voice, particularly people living in the global North.⁶⁴ But some of the most constructive forms of transnational engagements by Somali refugees in Kenya might quite easily be facilitated – or at least not hindered – by policy makers. For example, the readier supply of movement passes would allow enthusiastic young educated camp residents to observe and participate in Somali political and peace meetings in Nairobi.⁶⁵ Encouraging open political debate in which many stakeholders are empowered to participate would seem to be particularly important in the light of evidence of fear, intimidation, and self-censorship among refugees in the latest phase of the conflict (see next section).

Thus, earlier voluntary return to Somalia was limited, often disaggregated and informal in nature; it has, unsurprisingly, all but ceased in the current context. Closely related to efforts to prevent displacement, efforts to secure “spaces for voluntary return” provoke difficult political and moral issues. There is, however, considerable potential to invest in refugees’ capabilities in a way that could lay foundations for eventual return and reintegration and to facilitate constructive transnationalism.

Having explored the country of origin-focused goals of the prevention of displacement and return of refugees, as they are pursued by refugees themselves and policy actors, the next sections turn to more destination-focused goals, addressing the protection of refugees and the durable solutions of local integration and resettlement.

6. Protection

Despite significant areas of progress over the years, the basic rights of many refugees in Kenya are still unfulfilled. This section discusses the situation relating to entry, recognition, and basic physical needs and security of the refugees.⁶⁶

First, while hundreds of thousands of refugees have entered Kenya over the years, the right to enter and seek asylum is far from guaranteed. The border has been officially closed since 2007, and the transit centre in the border town of Liboi was also subsequently closed, denying refugees a regulated entry point. There are many incidents of police harassing Somalis entering Kenya, subjecting them to arbitrary arrest and detention, with anecdotal evidence suggesting that police may be actively encouraged by superiors in Nairobi to do so.⁶⁷ Human

⁶⁴ A. Lindley, “Voices of the Dispossessed: Displacement and Peace-building in the Somali Regions”, in M. Bradbury & S. Healy (eds.), *Somali Peace Processes*, London, Accord, 2009, 102–103.

⁶⁵ Interview with Refugee (4, 5 and 6).

⁶⁶ These are the most basic of refugees’ rights that the international community has signed up to protect. Refugees’ rights are explored in more detail in the next section on integration.

⁶⁷ HRW, *Welcome to Kenya: Police Abuse of Somali Refugees*, Washington D.C., HRW, 2010, available at: <http://www.hrw.org/news/2010/06/09/kenya-police-abuse-somali-refugees> (last visited 7 Sep. 2011); HRW, *You Don't Know Who to Blame*.

rights monitors report that when Somalis are charged in court in nearby Garissa with unlawful entry or unlawful presence in Kenya, magistrates do not consistently protect their right to seek asylum and order release and transport to the camps.⁶⁸

So, to avoid interception by police, refugees routinely use smugglers to cross into Kenya, travelling by back routes through the arid and sparsely populated area between the border and Dadaab, where they instead fall prey to well-organized bandits.⁶⁹ As is so often the case, these border measures and police action do not prevent desperate people from entering Kenya, but just makes it more dangerous for them to do so. Despite reports that the Government would re-open the Liboi reception centre with support from a new US-funded Security Partnership Programme, this had not occurred by the time of writing.⁷⁰

Meanwhile, there have been numerous reports since 2006 of forced or pressured return of refugees found outside the camps, particularly of newly arrived refugees in the NEP border area.⁷¹ According to the Kenyan NGO Refugee Consortium of Kenya (RCK), police deported more than one hundred Somalis during a two-week period in April 2011, sometimes at night.⁷²

A controversial incident in Mandera in March 2011 is illustrative. Following fighting in Beled Hawa, some 13,000 people congregated in a temporary camp – but dispersed after Government intervention. There are different accounts of what went on.⁷³ Some sources say that the Government proposed to register the refugees, and that they dispersed because many were Somali Kenyans attracted by the assistance being provided in the temporary refugee camp set up by the Red Cross. According to Human Rights Watch, however, the District Commissioner ordered the police to forcibly return the refugees to Somalia and ordered the Kenyan Red Cross to stop providing assistance.⁷⁴ Most aid workers consulted were under the impression that a kind of “soft *refoulement*” took place: on the Kenyan side, the displaced people pressured to leave (through Government threats and statements about their area being safe following TFG takeover, and the withdrawal of assistance) and not given the opportunity to claim asylum. The general view is that many did indeed return, while others dispersed into the urban area or travelled to Dadaab.⁷⁵ A strange coalescing of political agendas ensued, as on the Somali side, after Shabaab regained Beled

⁶⁸ HRW, *You Don't Know Who to Blame*.

⁶⁹ HRW, *Welcome to Kenya*; UNHCR Dadaab, *Briefing Note*; UNHCR, *East and Horn of Africa*; HRW, *You Don't Know Who to Blame*.

⁷⁰ Interview with Foreign State (2); interview with DRA (1); interview with INGO (2a); HRW, *You Don't Know Who to Blame*.

⁷¹ HRW, *From Horror to Hopelessness: Kenya's Forgotten Somali Refugee Crises*, Washington D.C., HRW, 2009, available at: <http://www.hrw.org/sites/default/files/reports/kenya0309web.pdf> (last visited 7 Sep. 2011); HRW, *Welcome to Kenya*; UNHCR Dadaab, *Briefing Note*.

⁷² Reported in HRW, *You Don't Know Who to Blame*.

⁷³ Interview with DRA Kenya (1 and 2); interview with UNHCR Kenya (4); interview with Researcher (1); interview with Foreign States (1 and 2).

⁷⁴ HRW, *Stop Deporting Somalis Fleeing Conflict*, Press release, 31 Mar. 2011; HRW, *You Don't Know Who to Blame*.

⁷⁵ Discussions with refugees, Apr. and May 2011, interview with Refugee (8), interview with UNHCR Kenya (4), interview with Researcher (1).

Hawa it reportedly also began to pressure refugees to go back, through text messages and by sending envoys.⁷⁶

6.1. Recognition

Despite these obstacles, the majority of Somali asylum-seekers have not found it difficult to be recognized as refugees, but have easily obtained *prima facie* refugee status. Generally, the only Somali asylum-seekers to undergo individual RSD are those suspected of involvement in the conflict, and who could therefore be excluded from claiming refugee status. The current Refugees Act allows asylum-seekers 30 days to seek asylum, but the new Refugees Bill raises some concerns in requiring people to seek asylum immediately and in increasing the penalties for not doing so – it is not clear how this will be applied. Documentation of their status provides people with a formal basis for their stay in Kenya and protection against deportation. But long backlogs in processing applications pose problems for refugees outside the camps, who may be stopped and asked for identification.⁷⁷ The multiple forms of refugee documentation that exist have also presented a source of confusion to State authorities and the police and offered opportunities for corruption and fraud.⁷⁸

6.2. Basic physical needs

There have been numerous infringements of refugees' civil, political, social, and economic rights in Kenya.⁷⁹ Assistance to meet the most basic of physical needs (shelter, food, water, and medical care) is provided in refugee camps that are bursting at the seams, with UNHCR and partners struggling to cater for both the long-standing and newer population. By mid-August 2011, the Dadaab camps, originally established to host 90,000 people, had a registered Somali refugee population of 387,077.⁸⁰ Tens of thousands of people squat on the outskirts of the camp, on land belonging to the host community. In July, some 30,000 were awaiting registration, and there are emergency levels of malnutrition

⁷⁶ Interview with Researcher (1).

⁷⁷ E. Campbell, J. Crisp & E. Kiragu, *Navigating Nairobi: A Review of the Implementation of UNHCR's Urban Refugee Policy in Kenya's Capital City*, UNHCR Policy Development and Evaluation Service (PDES), PDES/2011/01, Geneva, UNHCR, 2011, available at: <http://www.unhcr.org/4d5511209.pdf> (last visited 7 Sep. 2011); Konzolo, Crompton & Cechvala, *An Overview*.

⁷⁸ Konzolo, Crompton & Cechvala, *An Overview*; S. Pavanello, S. Elhawary & S. Pantuliano, *Hidden and Exposed: Urban Refugees in Nairobi, Kenya*, Humanitarian Policy Group Working Paper, London, Overseas Development Institute, 2010, available at: http://www.rescue-uk.org/fileadmin/user_upload/Reports/Hidden__Exposed_Urban_Refugees_Report_FINAL.pdf (last visited 7 Sep. 2011).

⁷⁹ Milner, *Refugees*; B. Harrell-Bond & G. Verdirame, *Janus-Faced Humanitarianism*, Oxford, Berghahn Books, 2005. Note that as *prima facie* refugees, they should be entitled to refugee rights under 1951 Convention (according to B. Rutinwa, *Prima Facie Status and Refugee Protection*, New Issues in Refugee Research, Working Paper No. 69, Geneva, UNHCR, 2002).

⁸⁰ UNHCR, *East and Horn of Africa*.

and infant mortality.⁸¹ There have been disturbances at food distributions and there are fears of the possibility of more serious unrest.

In response to these challenges, since May 2011, UNHCR has introduced adjustments to standard reception systems to try to ensure that aid reaches recently arrived refugees sooner, preventative measures against the spread of disease, blanket supplementary feeding for all children under five, and specific initiatives to assist survivors of sexual and gender-based violence.⁸²

There have also been efforts to address the problem of overcrowding. An organized relocation of over 13,000 Somalis from Dadaab to Kakuma took place in 2009, followed by a spate of informal relocations to Kakuma and urban areas. An extension of Ifo camp has finally opened after long delays owing to local politics (with prominent local leaders seemingly disappointed at their cut of the business of developing the extension) and national politics (with security officials concerned that the extension, developed to modern camp standards, might act as a “pull factor”).⁸³ It is hoped that some 180,000 people will be relocated to the Ifo extension and a new site, Kambioos, by Hagadera camp.⁸⁴

Refugees have responded in various ways to the challenges in meeting material needs: their economic strategies – including mutual assistance among refugees, and informal employment and trade – are explored further below in relation to the discussion on integration.

6.3. Safety

Host States are also called on to ensure the physical safety of refugees and to minimise the threat of violence. Considerable progress was made in dealing with refugee security in Dadaab: for much of the 1990s, the Dadaab camps were rife with banditry, looting, robbery, rape, and assault. Many refugees interviewed who were living in the camps during this period recounted experiences of such violence. They also recounted various measures taken to protect themselves and their neighbours, staying home after dark, banging pots to warn each other when they heard bandits entering the blocks, avoiding leaving the camps or going out to collect firewood in groups. In response to the chronic insecurity in the camps, efforts were made by the Government and UNHCR to boost policing, improve access to justice with mobile and *Kaadi* courts, and provide projects to ease hardship in the host community and reduce conflict with the refugees. There was a 10-fold reduction in violent crime in and around Dadaab between 1998 and 2003.⁸⁵

⁸¹ Interview with UNHCR Kenya (4). UNHCR Dadaab, *Briefing Note*; UNHCR, “UNHCR Transfers Somalis to New Camp as Fresh Fighting Erupts in Mogadishu”, *UNHCR News*, 29 Jul. 2011, available at: <http://www.unhcr.org/4e32a87d34.html> (last visited 7 Sep. 2011).

⁸² Interview with UNHCR Kenya (4); UNHCR, *East and Horn of Africa*; UNHCR Dadaab, *Briefing Note*.

⁸³ Interview with UNHCR Kenya (4); UNHCR Dadaab, *Briefing Note*.

⁸⁴ UNHCR, *East and Horn of Africa*.

⁸⁵ Interview with UNHCR Kenya (1); Milner, *Refugees*.

However, serious protection problems persist among urban and camp refugees to this day. In the camps, NGO workers and refugees talk about sexual and gender-based violence, unresolved crime, child abuse, and discrimination and abuse of disabled people and minority groups.⁸⁶ There are still major concerns about access to legal remedies – with some cases ignored by over-stretched and under-paid police, resulting in “a certain culture of impunity”.⁸⁷

Moreover, there are also genuine concerns within Somali communities about the nature of Shabaab’s influence on the refugee population in Kenya.⁸⁸ Many refugees cited two unresolved murders in Ifo camp earlier in 2011. This comment was typical:

You can’t talk about those things in the market place. Ok maybe you can talk privately in a room [. . .] but you have to cross-check the person before you can talk. Before you open your mouth you must measure your words. They can cross the border [. . .] People fear that if you talk ill of them, they will take you to Somalia [. . .] their network is so strong.⁸⁹

Thus many refugees do not feel protected by the police, indeed, as already shown, the police/military can represent a threat, particularly to newly arrived asylum-seekers. This is exacerbated by a new securitisation of the Somali presence in Kenya. Some commentators point to a wider remilitarisation of the NEP, reversing an earlier shift since the mid-1990s from a militaristic and repressive mode of Government intervention to more collaborative approaches to dealing with security.⁹⁰ There have also been increased police raids on urban areas to locate Shabaab followers.⁹¹ Overall,

[i]n response to a variety of situations, some involving specific threats which require *specific* police action, other involving a need for non-violent political engagement, the Kenyan police have responded with clumsy, heavy-handed and militarised action against a wide section of the Somali population.⁹²

In this context, it is unsurprising that bribery of police is rampant. Paying a bribe appears to be a key strategy used by Somalis to escape arrest and detention – indeed it is expected practice by both refugees and police (although in theory

⁸⁶ Interview with UNHCR Kenya (1).

⁸⁷ Interview with UNHCR Kenya (1 and 4) and discussions with refugees, May 2010.

⁸⁸ Discussions with refugees and agencies in Dadaab, May 2011; interview with INGOs (2b and 5d); interview with researcher (1); M. Sipiui, “Support for Al Shabaab through the Diaspora”, *Forced Migration Review*, 37, 2011, 29.

⁸⁹ Interview with refugee (4).

⁹⁰ Discussions in Dadaab, May 2011; K. Menkhaus, “The Rise of a Mediated State in Northern Kenya: the Wajir Story and its Implications for State-building”, *Afrika Focus*, 21(2), 2008, 23–38; Lochery, *Aliens*.

⁹¹ Interview with UNHCR (3); Lochery, *Aliens*; H.A. Mahamoud, *Livestock Trade in the Kenyan, Somali and Ethiopian Borderlands*, Chatham House Briefing Paper, AFP BOP 2010/02, London, Chatham House, 2010, available at: <http://www.chathamhouse.org/publications/papers/view/109448> (last visited 7 Sep. 2011); UNHCR Dadaab, *Briefing Notes*.

⁹² Lochery, *Aliens*, 2.

Somali refugees could call on UNHCR for assistance, they rarely do so).⁹³ Some refugees carry an amount of money expressly in case they are stopped by a police officer, others use their mobile phone to rapidly set a network of family and friends in Kenya and abroad raising money to arrange their release.⁹⁴ Other strategies to avoid trouble in urban areas include keeping a low profile, avoiding leaving home, avoiding police, and avoiding leaving Eastleigh.⁹⁵

However, UNHCR and national NGOs report that their efforts to sensitise the police and the judiciary regarding refugee rights and documentation, within the context of wider police reform, are bearing some fruit.⁹⁶ Alongside this, convincing donor investments in the Department of Refugee Affairs' independent *refugee protection capacity* are needed in a context in which State security concerns too often overshadow protection concerns. This might take place through the secondment of national civil society protection specialists, and the training of specialised cadre of long-contract Government refugee protection officers. Alongside this, UNHCR should be supported by donors to engage in better protection monitoring, particularly in the border areas of the NEP, and to continue to fund legal support to refugees in urban areas, with a view to engaging in a more robust watchdog role on behalf of refugees in the future.

To sum up, despite informal individual and community self-protection strategies, analysis of the basic rights and safety from violence of Somali refugees in Kenya raises several concerns: the threats encountered by new arrivals, registration backlogs, forcible returns, the humanitarian situation in the refugee camps, and refugees' access to justice. It suggests a need for improved monitoring of the human rights situation, particularly in the border area, investments in DRA professional capacity, and better training and general engagement with the police and security forces on refugee issues.

7. Local integration

In the international refugee regime, integration describes the legal process by which a refugee becomes a full member of a new national community. More broadly, the term is used to describe the changing relationship between migrants and the host society, expressed through formal status and rights and through other forms of social, political and economic participation. In protracted refugee situations, where there is no access to the durable solutions of full legal integration, recent discussions have focused on notions of localised integration, *de facto*/informal processes of integration, integration in the

⁹³ Pavanello, Elhawary & Pantuliano, *Hidden and Exposed*; interview with UNHCR Kenya in Feb. 2005.

⁹⁴ C. Horst, *Transnational Nomads: How Somalis Cope with Life in the Dadaab Refugee Camps of Kenya*, Oxford, Berghahn, 2007; Lindley, *The Early Morning Phone Call*.

⁹⁵ Lindley, *The Early Morning Phone Call*; discussions with refugees Apr. and May 2011.

⁹⁶ UNHCR Kenya (3); Campbell, Crisp & Kiragu, *Navigating Nairobi*; Pavanello, Elhawary & Pantuliano, *Hidden and Exposed*.

intermediate term, and secure settlement or accommodation.⁹⁷ In light of these notions, this section investigates issues around legal status, place of residence, economic strategies and community relations, exploring both the spaces for societal participation opened up by official policy, and those informally created by refugees themselves.

7.1. *Legal status and documentation*

The chances of upgrading one's legal status from *prima facie* refugee to citizen are slim.⁹⁸ While obtaining citizenship through marriage is possible, legal specialists report that it is not an easy process. There are also constitutional provisions for people who have resided in Kenya for a number of years, can speak Kiswahili, and are economically self-reliant, to become a citizen. But a further condition is that the person must have entered Kenya legally, and this has been used as a reason to refuse refugees naturalisation. Although it is legally debatable, given that refugees have a right to seek asylum under international law, this position seems unlikely to change, given the large numbers of Somalis who would otherwise be eligible to become citizens and State and public resistance to that prospect.

Meanwhile, however, some refugees have informally "bought" legal status obtaining Kenyan national ID cards from corrupt officials. Others took up IDs offered by corrupt MPs who wanted their vote.⁹⁹ This allowed the refugee to move more freely within Kenya, to live where they preferred, and to start businesses and access education and health services more easily. However, drawbacks emerged for some refugees who were recently excluded from resettlement processing because they hold a Kenyan ID.¹⁰⁰

Offering citizenship or more secure resident status to large numbers of Somali refugees is politically unfeasible for the Kenyan Government, particularly in the current situation of mass influx. Integration is a politically sensitive term. However, many refugees have spent two decades in Kenya, are unlikely to return in the absence of durable stability in Somalia, if ever, and it would be advisable for Government actors to recognize this and formulate more proactive policy

⁹⁷ See S. Banki, *Refugee Integration in the Intermediate Term: A Study of Nepal, Pakistan, and Kenya*, New Issues in Refugee Research, Working Paper No. 108, Geneva, UNHCR, 2004; J. Crisp, *The Local Integration and Local Settlement of Refugees*, New Issues in Refugee Research, Working Paper No. 102, Geneva, UNHCR, 2004; K. Jacobsen, *The Forgotten Solution: Local Integration for Refugees in Developing Countries*, New Issues in Refugee Research, Working Paper No. 45, Geneva, UNHCR, 2011; D. Chatty & N. Mansour, *Unlocking Protracted Displacement: An Iraqi Case Study*, in this special issue; and Campbell, Crisp & Kiragu, *Navigating Nairobi*.

⁹⁸ Interview with DRA Kenya (1 and 2), interview with UNHCR Kenya (3), interview with INGO (2a).

⁹⁹ Although long known, the extent of this is being progressively uncovered. As new processes cross-check refugee fingerprints against the national ID database. The issue is complicated by the fact that some local people register in the camps to access food assistance. So it is hard to tell who is a refugee with a national ID and who is a local with a refugee ID, and it is reported to be difficult to delete the fingerprints once they are in the national database. Interview with Refugee Kenya (1 and 5), interview with UNHCR Kenya (4), interview with INGO (5d); Horst, *Transnational Nomads*.

¹⁰⁰ Interview with UNHCR (2).

responses. The choice regarding integration is too often presented as an all-or-nothing one. Options for piecemeal approaches (i.e. identifying eligible subgroups such as very long-term refugees/qualified professionals) or gradual approaches to integration (i.e. identifying progressive pathways to fuller legal status, contingent on the fulfilment of particular conditions) merit exploration. Civil society groups, NGOs and UNHCR should encourage the Government to keep integration on the agenda in policy discussions and engage in long-term thinking around policy options.

A rather modest example would be the easing of work permit requirements for refugees, reportedly under discussion in relation to the formulation of the national refugee policy.¹⁰¹ Under the Refugee Regulations, Somali refugees should be eligible for “Class M” work permits to allow them to work in formal employment, but few have managed to obtain these.¹⁰² Improved access to work permits could facilitate refugee labour mobility, say for refugees willing to work in particular locations or qualified in particular sectors where there are shortages.

7.2. *Place of residence*

Camps breed forms of separation and control that are inimical to the realisation of refugee rights and broader societal participation. Thus the progressive urbanisation of the refugee population, described in a recent UNHCR report as “unstoppable”, is a major vector of integration.¹⁰³ Kenya’s legislation allows for the designation of specific places as transit centres and refugee camps, and making it a punishable offence to be outside those areas. Although such areas have in fact never been formally designated, there has been a “working policy” of encampment since the early 1990s.¹⁰⁴ As a result of the combination of official regulations and economic and geographic obstacles, many people in Dadaab have not been able to leave since they arrived in the early 1990s.

Refugees wishing to leave are required to obtain movement passes which are issued by the DRA in Dadaab, which are authorised only for people travelling for specific reasons: higher education, medical treatment, resettlement, trade or business requirements, or to escape major security threats in the camp. But applications often take a long time to process and can be turned down apparently arbitrarily and subject to interference by provincial and district administration (particularly the Security Sub-Committee).¹⁰⁵ In 2009, some 6,000 passes were issued to residents of Dadaab – a mere 2 per cent of the camp population at the time.¹⁰⁶

¹⁰¹ Interview with UNHCR Kenya (3), interview with DRA (2); Lime, “Improve Refugees’ Lives”.

¹⁰² Interview with UNHCR Kenya (3); Konzolo, Crompton & Cechvala, *An Overview*.

¹⁰³ Campbell, Crisp & Kiragu, *Navigating Nairobi*, 7.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*; Personal Communication with refugee lawyer, 21 Jul. 2011; conversations with refugees Apr. and May 2011.

¹⁰⁶ HRW, *Welcome to Kenya*.

However, many leave without a pass. Refugees on the road from Garissa to Nairobi, and in the capital are routinely asked for documentation, and often turned back. But there has always been considerable permeability, facilitated by bribery, use of fake ID, and the sheer impracticality of complete enforcement.

The Somali population of the capital is uncertain, but Somalis represented nearly half the 46,000 registered refugees in 2010, with many more waiting for their registration to be processed or not having tried to register.¹⁰⁷ The Eastleigh district of Nairobi is a major hub for Somalis in Kenya and in the wider region: a place of deprivation, failing infrastructure and frequent crime, as well as vibrant informal trade and impressive entrepreneurial wealth. Many refugees also settled in the NEP's Garissa, Wajir, and Mandera and in Mombasa on the coast. Recently, there has been an increasing diversification of urban destinations within Kenya as more refugees moved out to Eldoret, Kisumu, and Nakuru.¹⁰⁸ Once in Nairobi, in practice, the presence of Somali refugees is tolerated by the authorities: they are not at risk of compulsory relocation to the camps.¹⁰⁹ But they are often harassed by police, as outlined in the previous section.

In recent years, there are signs of growing tacit acceptance by the authorities of the inevitability of the refugee presence in urban areas.¹¹⁰ For example, the DRA now registers refugees in its Nairobi office and is to embark on refugee registration in other urban centres.¹¹¹ The city health department and local councils are cooperating with UNHCR in efforts to improve refugees' access to education and health services on the same or similar terms as locals.¹¹² The Government guarantees universal public primary schooling to all, including refugees, and many Somali children attend school in Nairobi, regardless of their parents' status (although refugee parents may face general economic barriers relating to the cost of books and travel, or specific demands for additional fees / bribes when trying to register their children).¹¹³

UNHCR, like the Government, long ignored urban refugees, fearing that supporting them could provide a "pull factor", putting pressures on already overloaded local labour markets and infrastructures and inciting resentment.¹¹⁴ However, since the mid-2000s, UNHCR has taken a more proactive approach. Its urban refugee programme (the key elements of which are referred to above), although still accounting for only USD 3 million of its USD 90 million

¹⁰⁷ Pavanello, Elhawary & Pantuliano, *Hidden and Exposed*. Some estimates of the total refugee population in Nairobi are as high as 100,000.

¹⁰⁸ Campbell, Crisp & Kiragu, *Navigating Nairobi*. The DRA indicated plans for registration in Mombasa and other key towns (interview with DRA Kenya (1)).

¹⁰⁹ Personal Communication with refugee lawyer, 21 Jul. 2011; Campbell, Crisp & Kiragu, *Navigating Nairobi*.

¹¹⁰ Internal document, cited in Campbell, Crisp & Kiragu, *Navigating Nairobi*.

¹¹¹ Interview with DRA (1).

¹¹² Campbell, Crisp & Kiragu, *Navigating Nairobi*; Pavanello, Elhawary & Pantuliano, *Hidden and Exposed*.

¹¹³ Pavanello, Elhawary & Pantuliano, *Hidden and Exposed*.

¹¹⁴ Campbell, Crisp & Kiragu, *Navigating Nairobi*.

operation in Kenya, has been an innovative area of policy work, anticipating many aspects of UNHCR's global Urban Refugee Policy launched in 2009.¹¹⁵

7.3. Economic strategies

Somalis use a wide range of economic strategies to cope with life in exile. Some of these strategies are supported and made possible by official policies, but many are informal, refugee-driven, and occur beyond State regulation. Some reinforce the separateness of refugees, others facilitate their *de facto* integration into Kenyan society.

Camp refugees receive very basic material assistance in terms of food rations and access to water and shelter from the World Food Programme and UNHCR's implementing partners. Most people also engage in other economic activities to provide for their families.¹¹⁶ For example, some camp refugees are employed by aid agencies as "incentive" workers, by special agreement with the Government. The monthly incentives range from 3,500 KSh (about USD 40) for an entry-level cleaner to 8,800 KSh (about USD 100) for jobs like the secondary school head teacher – well below what a Kenyan would expect for such a job.¹¹⁷ As one incentive worker put it: "I don't say I'm employed I say I'm gaining experience."¹¹⁸ While these jobs help people to earn income, develop skills and interact with Kenyan national colleagues, the discriminatory government regulations under which they are employed simultaneously reinforce the separateness of refugees.

Another set of camp strategies relates to interactions with aid providers: as well-documented in other contexts, refugees may use various ration-card-related strategies to maximise the food aid that they receive or make efforts to cultivate good relationships with aid providers to secure assistance, preference or incentive work.¹¹⁹ There are a range of additional social support mechanisms used by Somali refugees in camps and urban areas: sharing homes and meals; contributing to collections for the needy and newly displaced; paying *zakat*; and engaging in community-based rotating savings-and-credit associations known as *ayuuto*.¹²⁰ These strategies, which involve leveraging the international assistance system, or relationships with compatriots in exile, can be key for refugee welfare. However, such strategies occur largely within the refugee "bubble", and tend not to further interactions with wider Kenyan society.

¹¹⁵ *Ibid.*

¹¹⁶ Extensively researched by Horst, see Horst, *Transnational Nomads*.

¹¹⁷ Harmonised Incentive Rates for 2011.

¹¹⁸ Interview with Refugee Kenya (1).

¹¹⁹ Horst, *Transnational Nomads*.

¹²⁰ *Ibid.*; G. Joselow, "Pushed to the Edge at Kenya's Dadaab Refugee Camps", *Voice of America News*, 15 Jul. 2011, available at: <http://www.voanews.com/english/news/africa/Pushed-to-the-Edge-at-Kenyas-Dadaab-Refugee-Camps-125662223.html> (last visited 1 Aug. 2011); discussions with refugees Apr. and May 2011; Interview with Refugee Kenya (1 and 10).

There is a transnational dimension to social support, as refugees also tap relatives overseas for remittances, to cover their costs of living, deal with crises, and invest in business and education.¹²¹ Estimates suggest that some 15 per cent of camp refugees and a third of urban refugees may receive regular remittances, primarily from the US, because of the high rates of resettlement there.¹²²

With formal economic opportunities so limited, many camp refugees engage in informal trade in goods and services, for example selling food aid; bringing in vegetables, clothes, consumer goods to sell; or offering telephone and money transfer services to facilitate family connections and remittances. Small traders sell goods sent to the camps by wholesalers in Garissa and split the profit, sending back funds via the bus driver or increasingly via the mobile phone banking service M-Pesa.¹²³ While many of these individuals remain stuck in the camps, their economic strategies contribute to integrating the camps into local, national, cross-border and transnational livelihood systems.¹²⁴

Somali refugees in urban areas are generally self-reliant, only receiving assistance with living costs from UNHCR in exceptional circumstances. A recent survey suggested that some 20 per cent of urban refugees are employed, with Somalis concentrated largely in compatriot-run businesses and domestic work, feeding the informal enclave economy.¹²⁵ Meanwhile, some 43 per cent of the refugees in Nairobi are estimated to be self-employed.¹²⁶ Apart from petty trade, Somalis have invested in import and export businesses, shops, and malls, real estate, hotels, the *miraa* (khat) trade, long-distance transport and trucking companies, livestock trade and money transfer operations. Businesses range in scale from street hawking to large multinational conglomerates. Some are officially registered, others operate within Kenya's large informal economy. Due to the absence of aid allocations in urban areas, urban-based refugees are a self-selected group and tend to be in a better economic position than camp refugees, although recent increases in food prices and the cost of living are reported to have hit urban refugees hard.¹²⁷

The economic strategies outlined above point to the need for more macro-level discussion of the interactions of the refugee population with the Kenyan economy how these can best be mediated. There are recurrent grievances and clashes with the host community in the Dadaab area regarding

¹²¹ Lindley, *The Early Morning Phone Call*.

¹²² Horst, *Transnational Nomads*; Refugee Consortium of Kenya, *Enhancing the Protection of Refugee Women in Nairobi: A Survey on Risks Protection Gaps and Coping Mechanisms of Refugee Women in Urban Areas*, Prepared by The Refugee Consortium of Kenya (RCK) with Support from The Primate's World Relief and Development Fund, Nairobi, RCK, 2008, available at: <http://www.rckkenya.org/rokdownloads/research/Enhancing%20Protection%20of%20Refugee%20Women.pdf> (last visited 7 Sep. 2011); interview with Somali Businessperson (1).

¹²³ Kenyan mobile banking service.

¹²⁴ P. Little, *Somalia: Economy without State*, Oxford, James Currey, 2003.

¹²⁵ Pavanello, Elhawary & Pantuliano, *Hidden and Exposed*.

¹²⁶ *Ibid.*; from Refugee Consortium Kenya survey of refugees (all nationalities).

¹²⁷ International Rescue Committee (IRC)-Kenya, *Urban Program*, draft concept note, 2011.

environmental issues, and the distribution of employment and contracts in the camps. Hence many refugee aid agencies also implement small projects (often similar to their camp-based activities) in the local community. The bigger picture, however, is that the camps provide a substantial economic stimulus in terms of food, infrastructure, employment and trade. A thorough socioeconomic survey in 2010 of the local impacts of the Dadaab refugee camps suggested that, while there are some negative environmental impacts in the immediate vicinity of the camps, the total economic benefits are some USD 14 m annually, equating to around 25 per cent of the average per capita income in the NEP – although clearly these benefits are unevenly socially distributed.¹²⁸ Given its size, population, and permanence, Dadaab might in some respects better be thought of as a city than a camp – indeed the population exceeds that of many Kenyan provincial cities, and puts it among the largest Somali-inhabited cities in the Horn of Africa.¹²⁹

Meanwhile, there has been no comprehensive assessment of the impact of Somali refugees on the urban economy. But clearly Somalis have made considerable inroads into trades formerly dominated by the Asian community, through their “high turnover, low margins” approaches. There is anecdotal evidence of Somali businesses’ employment-creating impact and higher wages. The almost viral success of Somali business in Kenya has also led to some resentment and overblown claims of links to piracy and criminality; more measured accounts suggest that the keys to success seem to lie largely in globalised clan and family networks, co-operative shareholding and Islamic financial arrangements, and the transfer of large business investments from Mogadishu to Nairobi in recent years.¹³⁰ An indication of the important role that Eastleigh has come to play in Nairobi’s economy is the growing interest from the tax authorities and the recent (legally sanctioned) refusal of many residents to pay taxes, pending much-needed local improvements.¹³¹

These economic pictures should inform policy approaches to refugee issues. Rather than trying to “compensate” host communities to prevent conflict, a better approach would be to adopt wider development approaches targeting refugee-hosting areas. For example, the raft of piecemeal “host community projects” in Dadaab carried out by refugee NGOs can risk inadvertently raising the

¹²⁸ M. Enghoff, B. Hansen, A. Umar, B. Gildestad, M. Owen & A. Obara, *In Search of Protection and Livelihoods: Socio-economic and Environmental Impacts of Dadaab Refugee Camps on Host Communities*, Report for the Royal Danish Embassy, the Republic of Kenya and the Norwegian Embassy, 2010, available at: <http://www.ambnairobi.um.dk/NR/rdonlyres/8E1CC5EB-6B25-4531-A7E0-CDC32A0961B7/0/FinalReport30092010.pdf> (last visited 8 Sep. 2011).

¹²⁹ Interview with UNHCR Kenya (4); M. Pérouse de Montclos & P. Kagwanja, “Refugee Camps or Cities? The Socio-Economic Dynamics of the Dadaab and Kakuma Camps in Northern Kenya”, *Journal of Refugee Studies*, 13(2), 2000, 205–222.

¹³⁰ A. Farah, *Somali Investment in Kenya*, Chatham House Briefing Paper, AFP BP 2011/02, London, Chatham House, 2011; Lochery, *Aliens*.

¹³¹ Interview with DRA (2); M. Harper, “‘Little Mogadishu’: Paradise for Shoppers or Pirates?”, *BBC News*, Nairobi, 10 Dec. 2010, available at: <http://www.bbc.co.uk/news/world-africa-11962254> (last visited 20 Jun. 2011).

stakes of interactions between host community members and the refugees. A more effective way to enhance acceptance of the refugee presence would be to adopt a comprehensive long-term area development approach, designed in a way that is sensitive to refugee-related issues. UNHCR's 12-month budget, refugee-focused mandate and particular expertise mean that it is not suited to implement broader development programmes. The DRA and UNHCR would need to engage other local and national state agencies and other UN agencies to push forward a wider developmental agenda embracing the Dadaab area.¹³² Some of the NGOs operating in Dadaab that also run wider development programmes in Kenya (e.g. Oxfam) and might be well-positioned to play a role in this innovative process. Local territorial, elite and population politics do pose challenges - as ever. But the new Kenyan constitution, approved in a referendum in 2010, envisages greater devolution of power to county governments, which may provide a more propitious context for the promotion of localised forms of economic development and integration.¹³³ Meanwhile, the impact of the drought in 2011 has put the spotlight on the NEP and highlighted the poor conditions and need for action across the province. Within this, a fresh and determined policy approach that recognises Dadaab as a major economic centre, combined with the development of more municipal-style institutions could yield substantial benefits to many locals - both refugees and Kenyans.

As in the NEP, in urban areas policy approaches which minimise conflict with the host community by embedding refugee support within wider programmes of support to the urban poor are likely to be most fruitful. For example, UNHCR's urban refugee programme is planning a survey of refugee livelihoods and is making connections with the Office for the Coordination of Humanitarian Affairs, UN HABITAT, and the Urban Vulnerability Forum with a view to more collaborative approaches.¹³⁴ One of the few refugee NGOs working in urban areas, International Rescue Committee's urban programme seeks to work on livelihoods and legal issues with both refugees and poor Kenyans in the community.¹³⁵

Thus, there may be considerable scope to support broader processes of economic and social integration as part of the wider development of urban and rural areas where refugees live, by way of partnership between city authorities, devolved county governments and other development actors.

7.4. *Socio-political relations*

Finally, beyond their legal status and economic networks, Somali refugees in Kenya are also embedded in a complex mesh of socio-political relations with the Kenyan public, each other, and with Somali Kenyans. On the positive side,

¹³² UNHCR internal documents; interview with UNHCR Kenya (4). UNHCR's efforts have so far been unsuccessful, including a joint UN Country Team (UNCT) mission to the refugee camps and special funding appeal for resulting project proposals.

¹³³ Interview with UNHCR Kenya (4).

¹³⁴ Interview with UNHCR Kenya (3).

¹³⁵ IRC-Kenya, *Urban Program*.

Kenyans generally express sympathy for the refugees and a sense of duty to offer refuge. Some admire Somalis' strong family networks, effective business practices, trustworthiness and the fact that they tend to pay higher wages.¹³⁶ However, hard economic times and processes of democratisation in Kenya have tended to reinforce foreigner / national identities, as in other African countries.¹³⁷ Somalis are seen by many Kenyans as a community apart, maintaining strongly distinctive sociocultural practices, and not wishing to become part of Kenyan society.¹³⁸ There is a knee-jerk tendency to associate the refugees with regional malaise, piracy, Shabaab and flows of weapons into Kenya. A recent UNHCR report suggested that if there were a terrorist incident in Kenya, there could be a terrible backlash on Somalis.¹³⁹

The Somali perspective on integration is also complex. The very protractedness of displacement acts as a force for informal integration, as the second generation grows up in Kenya, without ever having seen Somalia. There is a cohort of Somali refugees who have studied in Kenyan schools alongside nationals, speak fluent Swahili and have thrown themselves into the fast-paced "matatu culture" of Nairobi youth.¹⁴⁰ However, many refugees do not really see themselves as part of Kenyan society: it is impossible to answer how much this is due to local discrimination, or to Somali preference.¹⁴¹ Fear of *gaalonimo* (behaving like non-Muslims) can impede interactions. Some parents prefer their children to attend Somali-run private or Koranic schools rather than public schools, for religious, cultural and language reasons, or to keep a low profile.¹⁴² Somali nomadic practices – the tendency to seek out greener pastures, strong social networks, dispersal of investments to reduce risks – are often thought to foster an adaptable, "transit mentality".¹⁴³

Somali Kenyans have a somewhat ambivalent position in relation to Somali refugees. The Somali Kenyan presence has offered Somali refugees opportunities for a sort of "segmented assimilation" into a national minority, with its associated advantages and disadvantages. Cooperation with Somali Kenyans has been crucial for many refugees economically. However, there is also competition, with some complaining about losing business to Mogadishu money and their sharper business practices since 2006. The treatment of Somali Kenyans and Somali refugees is closely intertwined, with refugees entering a context in which Somali Kenyans were already subject to high levels of official suspicion and control, and with Somali Kenyans' situation further undermined by the arrival

¹³⁶ Pavanello, Elhawary & Pantuliano, *Hidden and Exposed*.

¹³⁷ Milner, *Refugees*.

¹³⁸ Pavanello, Elhawary & Pantuliano, *Hidden and Exposed*.

¹³⁹ Campbell, Crisp & Kiragu, *Navigating Nairobi*.

¹⁴⁰ A. Bainah, *A Dream Deferred: The Politics of Eastleigh, Nairobi*, Draft paper, 2011.

¹⁴¹ Pavanello, Elhawary & Pantuliano, *Hidden and Exposed*.

¹⁴² *Ibid.*

¹⁴³ For analysis of these issues, see Horst, *Transnational Nomads*; and Bainah, *A Dream Deferred*.

of hundreds of thousands of co-ethnics and associated “problems”.¹⁴⁴ The political and public alarm that accompanied the announcement of the 2009 Census result for the NEP – which was much higher than anticipated – is illustrative. However, at the same time, some Somali Kenyans have become prominent in Kenyan politics beyond the NEP, often viewed as neutral mediators. Both the winner and one of the front-running candidates in the recent Nairobi-Kamukunji MP by-election (which includes Eastleigh) were Somali Kenyans, prompting hopes among refugees for better representation and civic involvement.

In sum, legal integration in Kenya has been blocked by the Government, which offers temporary protection in refugee camps. But some refugees have obtained IDs through informal channels; many move to urban areas despite restrictions; and there are multiple forms of *de facto* economic integration thanks to a vibrant Somali business community. Meanwhile there are various forces for and against integration, in the relationships between Kenyan, Somali and Somali Kenyan communities. The informal processes described are important in offering some refugees opportunities for fuller social participation, but it is important to underline that not all refugees are able to obtain Kenyan IDs, move to Nairobi, set up a business, or further their education. As one interviewee put it, “[t]here may be some *de facto* integration, but there are also a whole lot of people sitting in a crap situation in Dadaab.”

8. Resettlement

Many refugees seek to move on from Kenya to improve their livelihoods and protection situation. In one study, some 40 per cent of urban Somali refugees interviewed said that they had not experienced significant improvement in their situation and envisaged eventually moving on.¹⁴⁵

Many refugees organize their own onward movement, whether as documented or undocumented migrants. An unknown number move on from Kenya each year through official family reunion, an occasionally through student migration and work visa channels. Relatively few are issued with Convention Travel Documents (some 110 in the last two years).¹⁴⁶ Smuggling is rife, with *mukhalis* (brokers) arranging documents and travel. On reaching the destination, the individual may claim asylum, negotiate some other form of immigration status, or live as a clandestine immigrant.¹⁴⁷ From Kenya most smuggling takes place via plane to the north (to Europe and the Middle East), or via overland and sea

¹⁴⁴ Lochery, *Aliens*.

¹⁴⁵ J. Moret, S. Baglioni & D. Efonyi-Mäder, *The Path of Somali Refugees into Exile: A Comparative Analysis of Secondary Movements and Policy Responses*, SFM Studies 46, Swiss Forum for Migration and Population Studies, 2006, available at: http://doc.rero.ch/lm.php?url=1000,44,4,20070216150929-NK/s_46.pdf (last visited 8 Sep. 2011).

¹⁴⁶ Personal email communication, UNHCR Kenya, 6 Jul. 2011.

¹⁴⁷ Horst, *Transnational Nomads*; Bainah, *A Dream Deferred*.

journeys to the south (with South Africa a major hub, but Botswana, Zambia, Mozambique, Zimbabwe all reported as destinations).¹⁴⁸ As resettlement cases often take many years to process and finally reach a conclusion, refugees are often exploring other options for migration while they wait.¹⁴⁹ Given the protracted and unresolved situation of refugees in Kenya, it is important that foreign States' entry systems allow these people opportunities to make their claims to international protection.

Meanwhile, the official resettlement process rests on a two-fold rationale. First, that some refugees' protection may be better secured in a third country, for example in the case of minority groups vulnerable to abuse by other refugees or locals. Secondly, that through resettlement, other countries share the international responsibility for protecting refugees and providing durable solutions. Refugees are selected on the basis of vulnerability, with periodic efforts to focus on particular categories of people *generally* deemed to be vulnerable – from women at risk, to the disabled, to members of particular discriminated social groups.¹⁵⁰ There is currently a focus on the resettlement of protracted refugees who arrived in 1991 and 1992 (the current system has stifled their life chances for many years and there is clearly an onus on policy-makers to resolve this in some way - although ironically many of these protracted refugees would be prime candidates for local integration in a piecemeal / gradualist framework as outlined in the previous section). Despite UNHCR's position that protection needs should be the only criteria that count in the selection of refugees for resettlement, the "integration potential" of candidates influences the decisions of most resettlement countries, whether as explicit or implicit policy.¹⁵¹

Having interviewed the refugee and put together a case for resettlement, UNHCR refers the case to the national immigration boards (or in the case of the US – the primary destination for Somali resettlements – UNHCR initially refers cases to JVA which do a pre-screening process). Once accepted – and there are high acceptance rates for the Somali cases put forward – International Organization for Migration (IOM) prepares the refugees and facilitates their travel.¹⁵²

¹⁴⁸ Interview with DRA Kenya (2); interview with Refugee (1). People going on *tabrib* – overland clandestine journeys north – generally travel direct from Somalia: an estimated 50,000 people were smuggled by boat to Yemen in 2008. See J. Crisp & C. Long, *A Long and Winding Road*, Background paper for Regional Conference on Refugee Protection and International Migration: Mixed Movements and Irregular Migration from the East and Horn of Africa and Great Lakes Region to Southern Africa, Dar Es Salaam, Tanzania, UNHCR and IOM, Sep. 2010, available at: <http://www.unhcr.org/4c7fa45b6.html> (last visited 8 Sep. 2011).

¹⁴⁹ Lindley, *The Early Morning Phone Call*.

¹⁵⁰ Interview with UNHCR Kenya (2).

¹⁵¹ Interview with UNHCR Kenya (4), interview with UNHCR Kenya (2), UNHCR, *Frequently Asked Questions about Resettlement*, UNHCR publication, undated, available at: <http://www.unhcr.org/4ac0873d6.html> (last visited 8 Sep. 2011).

¹⁵² Interview with UNHCR Kenya (2).

The account above belies the complexity of the social processes involved in resettlement. Because of the limited opportunities for local integration or return, and because refugee resettlement usually entails accessing secure legal status in a richer country, resettlement is hugely popular with the refugees, and is effectively the only durable solution on offer. Refugees often see resettlement as something that can actively be achieved – indeed *must be* actively achieved – by representing their identity and insecurity skilfully, and making opportunities to have their case heard.¹⁵³ Thus there is a cycle of distrust between refugees and UNHCR regarding resettlement:

The UNHCR, NGOs and governments are often very suspicious about the truth of a refugee story and, indeed, experiences are sometimes “adapted” to the criteria used to judge whether someone “deserves” resettlement or not. On the other hand, the refugees do not trust the UNHCR to decide on resettlement cases fairly, as they believe that those with money can buy approval of their case. Again, these assumptions are at least true in some cases [...].¹⁵⁴

This leaves both aid workers and refugees concerned that really vulnerable refugees less able to access the humanitarian structure will get overlooked, leading one aid worker interviewed to advocate for a really transparent lottery instead. However, in the face of a vicious conflict with a strong transnational element, and the flaws in protection experienced by many refugees in Kenya, most aid workers maintained that resettlement is a vital protection tool.

Yet, it is important to highlight that the numbers of people officially resettled (from both urban areas and the camps) remain extremely small relative to the total Somali refugee population, as Figure 3 indicates. As one UNHCR officer put it, “Resettlement has little strategic value. We resettle some 8,000 people per year, and Dadaab is receiving some 9,000 new refugees per month. It does not create space.”¹⁵⁵

The process does, however, have three important side effects.¹⁵⁶ First, the hope of resettlement provides the possibility of an alternative future for refugees living in highly constrained circumstances, defusing frustration. But hope can easily slip into what the Somalis term *buufis*, an over-weening preoccupation with resettlement, which is generally seen as damaging, because people affected can give up on working to improve their personal situation in Kenya through the informal processes described above.¹⁵⁷

¹⁵³ Discussions with refugees; Interview with UNHCR Kenya (2); B.J. Hansen, “Between Vulnerability and Assertiveness: Negotiating Resettlement in Kakuma Refugee Camp, Kenya”, *African Affairs*, 107(429), 2008, 569–587.

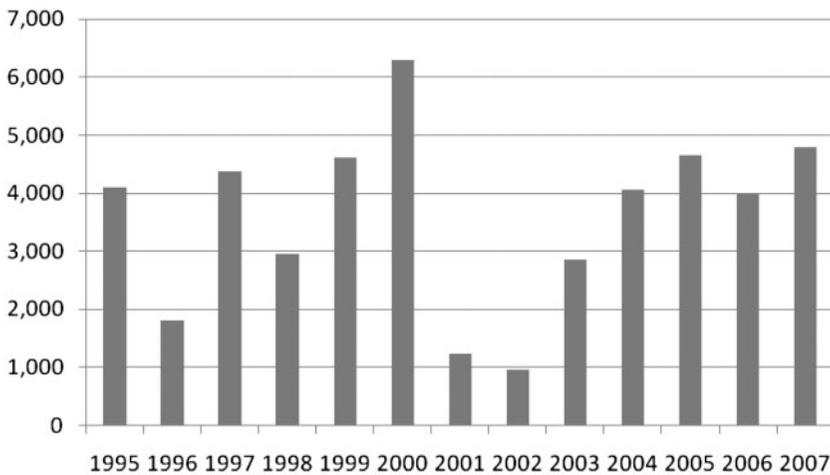
¹⁵⁴ Horst, *Transnational Nomads*, 183.

¹⁵⁵ Interview with UNHCR Kenya (2). Some 8,000 people are processed each year – fewer depart each year.

¹⁵⁶ Interview with UNHCR Kenya (2).

¹⁵⁷ Interview with Refuge (5); C. Horst, “Buufis amongst Somalis in Dadaab: The Transnational and Historical Logics Behind Resettlement Dreams”, *Journal of Refugee Studies*, 19(2), 2006, 143–157.

Figure 3. UNHCR-assisted Somali resettlement departures from Kenya, 1995–2007.



Source: UNHCR Statistical Population Database, accessed 10 Jun. 2011.

Second, resettlement can also be used to promote behavioural change among refugees. For example, UNHCR explains to refugees that resettlement countries look favourably on families where the girls are in school and makes it clear that it will not put forward for resettlement married minors still under the age of 18.¹⁵⁸

Third, as already mentioned, remittances from resettled refugees are a major component of many refugees' livelihoods. As many use the money to move to urban areas, this means that they no longer draw on international aid, demonstrating that international aid agencies certainly do not have a "monopoly on assistance".¹⁵⁹ Moreover, remittances can facilitate informal processes of integration – by allowing people to access documents, pay bribes, invest in businesses and education.

In sum, onward movement continues to be a key means of securing better protection and livelihood opportunities. Official resettlement of refugees proceeds at puny levels by comparison with the rapidly growing refugee population, and is shadowed by vigorous patterns of individually-instigated onward movement. The prospect of potential resettlement is big in the imaginations of refugees and has significant side effects. Resettlement remains an important way that refugees whose physical safety cannot be guaranteed in Kenya can obtain protection.

¹⁵⁸ Interview with UNHCR Kenya (2).

¹⁵⁹ C. Horst, "A Monopoly on Assistance? International Aid to Refugee Camps and the Role of the Diaspora", *Africa Spectrum*, 43(1), 2008, 121–131.

9. Conclusions and recommendations

This conclusion summarises the insights and implications of this study regarding prevention, protection and solutions for Somali refugees in Kenya.

First, the prevention of displacement is a common goal for both Somali citizens who often go to great lengths to avoid leaving their country, and policy-makers who have experimented with “preventive zones” to contain displacement. However, the causes of displacement lie in recent intransigent strategies pursued by a range of domestic and international actors in relation to Somalia, which have resulted in persecution, widespread civilian insecurity and suffering, governance failure and aid restrictions that have allowed drought to burgeon unchecked into a humanitarian disaster. To really address the intolerable situations in which many Somalis have found themselves, different, broad-based political, and humanitarian approaches are needed.

Second, despite some significant areas of progress over the years, there are many basic protection concerns regarding Somali refugees in Kenya that urgently need to be addressed. Efforts should focus on improving DRA’s refugee protection capacity by drawing on the expertise in Kenyan civil society; and UNHCR taking on a more robust watchdog role regarding refugees’ rights, alongside the on-going challenges of camp management.

Third, return of Somali refugees may be the preferred option for State actors, but it strikes fear into the hearts of the majority of refugees. Forcible returns to south-central Somalia in its current State of violence, political flux, persecution, and drought – whether from Puntland, Kenya, or Europe – are indefensible, and the all actors should take a firm stand on this. As the situation develops in Somalia, should it prove possible to support the voluntary return of some groups to particular locations, their situation should be carefully monitored. Meanwhile, there is considerable potential to invest in the refugee population with a view to eventual return and reintegration, as well as to support constructive transnational engagement in Somali society.

Fourth, with pathways to naturalisation in Kenya blocked, and a working policy of encampment since 1991, most integration of Somali refugees has been of the *de facto*, informal variety. Earlier refugees have spent many years or their whole lives in Kenya and are there to stay. Exploring gradual or piecemeal approaches to fuller legal membership, and embedding support to refugees within wider public services and urban and rural development efforts appear to be the most fruitful and conflict-mitigating way forward.

Fifth, resettlement is effectively the only durable solution – in terms of restoring citizenship – currently on offer to Somali refugees in Kenya. It also functions indirectly as a form of crowd control by means of hope, behavioural incentives and remittances. In light of the flaws in protection and risks faced by refugees in Kenya, and the pressures and constraints that this host country faces, it is vital that foreign states maintain and as necessary expand resettlement places and offer opportunities for “spontaneous arrivals” to seek asylum.

This article has sought to highlight the diverse ways that displaced people deal with their predicaments beyond the official institutional frameworks, including through informal return, community protection strategies, *de facto* integration and self-arranged onward migration. Individuals and families often deploy multiple, translocal/national strategies in seeking protection and livelihoods, cutting across the three classic settlement options that can lead to durable solutions. Wherever possible, policy actors should seek to work in harmony with, rather than against, refugees' efforts to become more productive and empowered members of society. But it is important to remember that the ability to use such informal strategies for self-betterment is highly differentiated by age, physical ability, gender, economic resources, and personal qualities. While the informal strategies of displaced people outlined can be effective in securing better protection and livelihoods for some individuals, refugees cannot themselves resolve their crisis of citizenship and access to rights – this remains the pressing responsibility of Somali political actors and the international community.

A final observation relates to the nature of the Somali refugee situation in Kenya – a protracted refugee situation, overlaid by a fresh crisis dwarfing the previous influx in scale – and the ways that this shapes policy debates. In the mid-1990s to the mid-2000s, the international response to the problems faced by Somali refugees stagnated, effectively dominated by strategies for containment which have stifled the life chances of hundreds of thousands of people. The current crisis of displacement seems to have reinforced this dominant policy approach, with the emphasis on emergency response and a growing interest in prevention and return. The overwhelming conception of the Somali situation in terms of an emergency¹⁶⁰ – even in the protracted period – has too often been misused as a justification for inaction on durable solutions. The costs of this status quo – in terms of wasted potential and human suffering – are phenomenal: this paper has laid out several alternative policy pathways worth exploring.

¹⁶⁰ E. Abild, *Creating Humanitarian Space: A Case Study of Somalia*, New Issues in Refugee Research, Working Paper No. 184, Geneva, UNHCR, 2009.