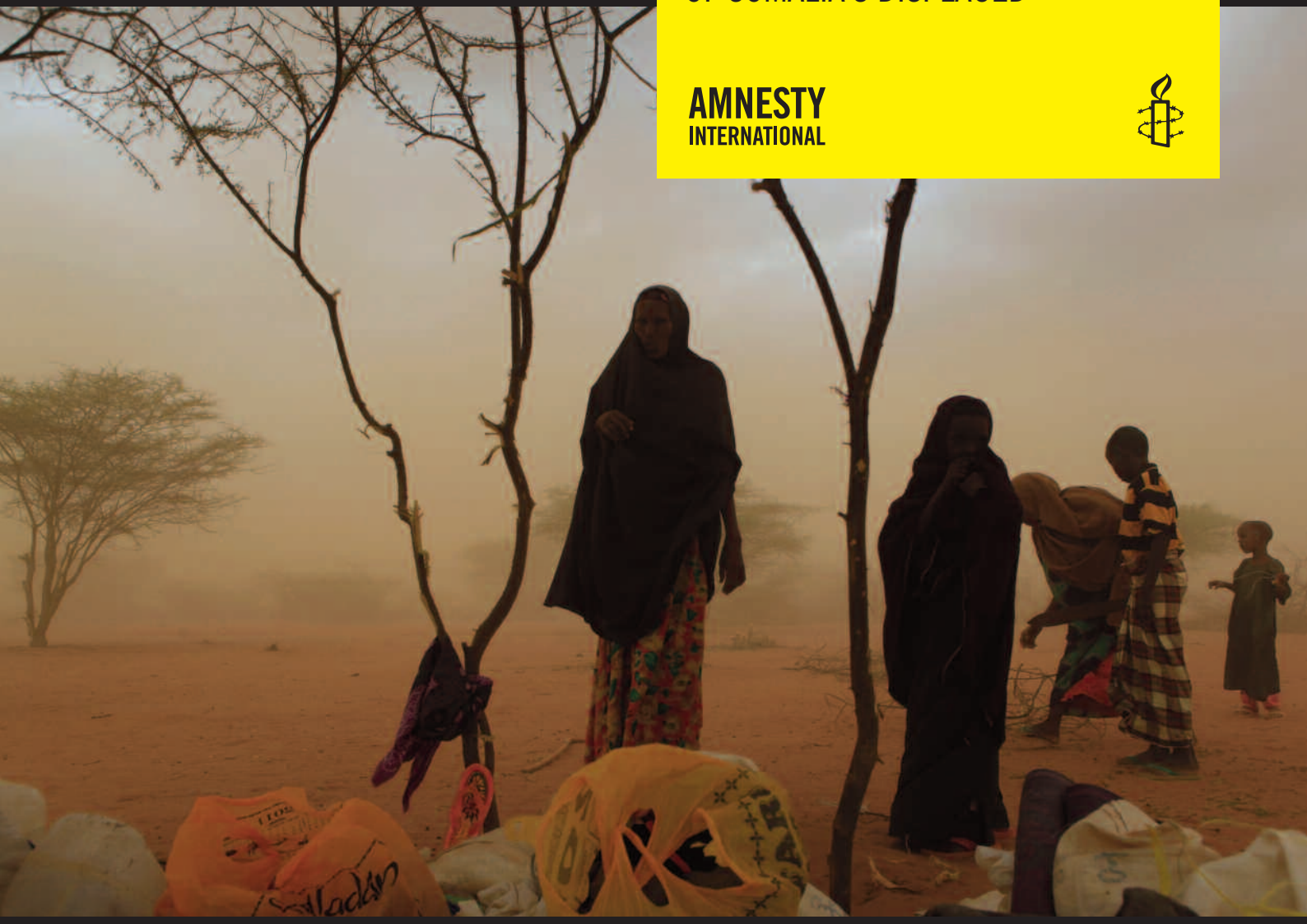
NO PLACE LIKE HOME

RETURNS AND RELOCATIONS OF SOMALIA'S DISPLACED

AMNESTY INTERNATIONAL



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Cover photo: A family build a makeshift shelter on the outskirts of Dagahaley Camp, outside Dadaab, Kenya, 10 July 2011.
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CONTENTS

UN maps 4

List of abbreviations 7

1. INTRODUCTION 8

Summary of key recommendations 11

About this report 12

2. BACKGROUND 14

History of displacement in Somalia 14

Refugees in Kenya 15

Obstacles to registration 16

Safety in south and central Somalia: ongoing human rights abuses 17

Generalized violence 17

Sexual violence 18

3. APPLICABLE INTERNATIONAL LEGAL STANDARDS 19

Legal framework for the protection of refugees 19

Legal framework for the protection of internally displaced persons in Somalia 20

Prohibition on forced evictions 21

The right to an adequate standard of living 22

Right to food 22

Right to water 22

Right to humanitarian assistance 23

4. SOMALIS IN KENYA 24

"Push" factors in Kenya 25

Arbitrary arrest and limitations on freedom of movement 26
Poor living conditions 29
Fear of returning to Somalia 31
Poor security 31
Recruitment to armed groups 33
Findings - Somalis in Kenya 35
5. INTERNALLY DISPLACED SOMALIS 36
Relocation of internally displaced people in Mogadishu 37
Forced evictions in Mogadishu 40
Lack of adequate alternatives 43
Limitations on humanitarian assistance 43
Livelihoods 45
Returns of Somalia's internally displaced people 47
'Voluntary' returns 47
Employment and livelihoods 50
Access to humanitarian assistance 51
Findings - internally displaced people in Somalia 52
6. CONCLUSION 54
Recommendations 56
Somali government 56
Kenyan government 57
International community 57
UNHCR 58
Humanitarian community 58
7. Endnotes 59

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December 2011

Department of Field Support
Cartographic Section

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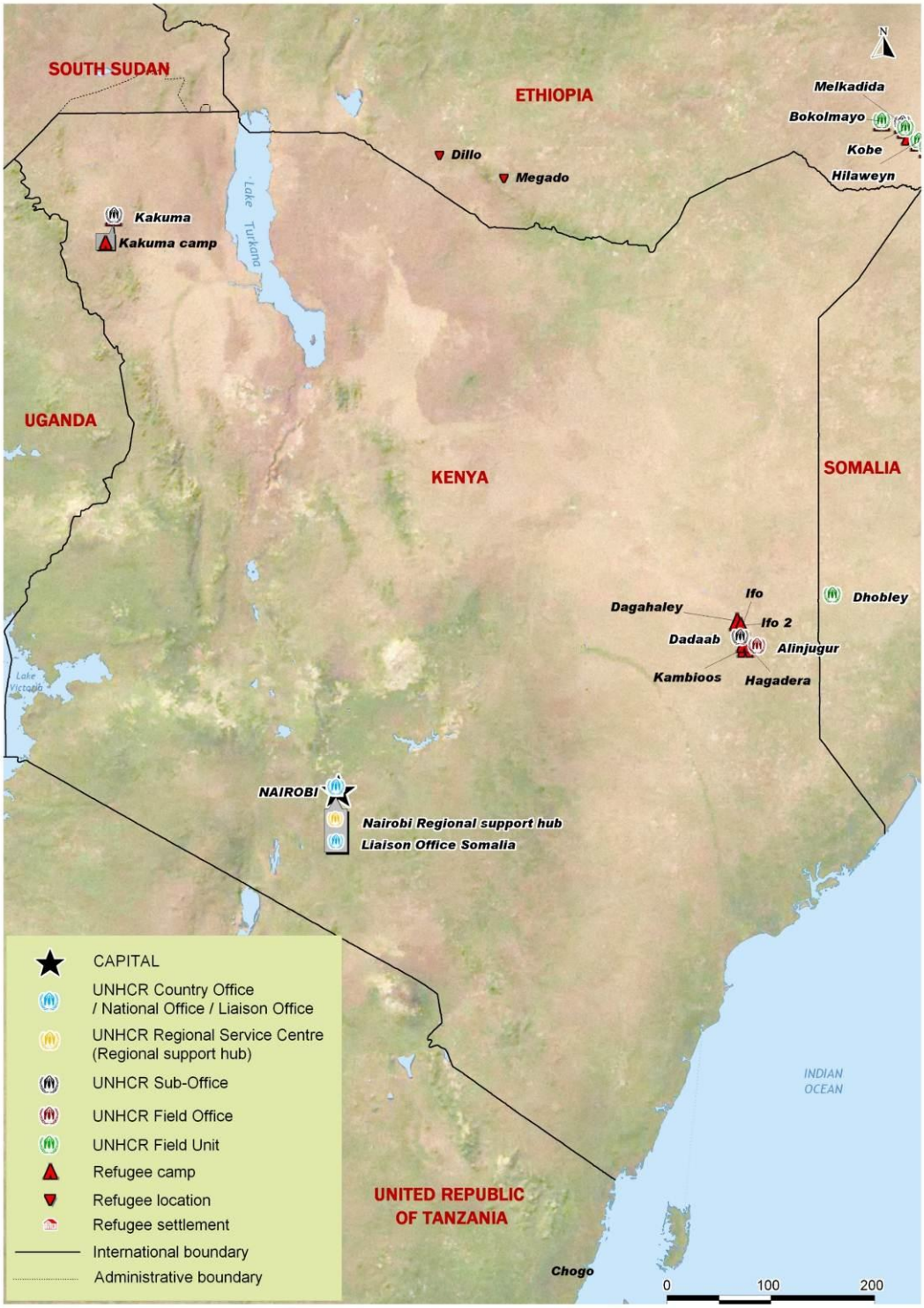
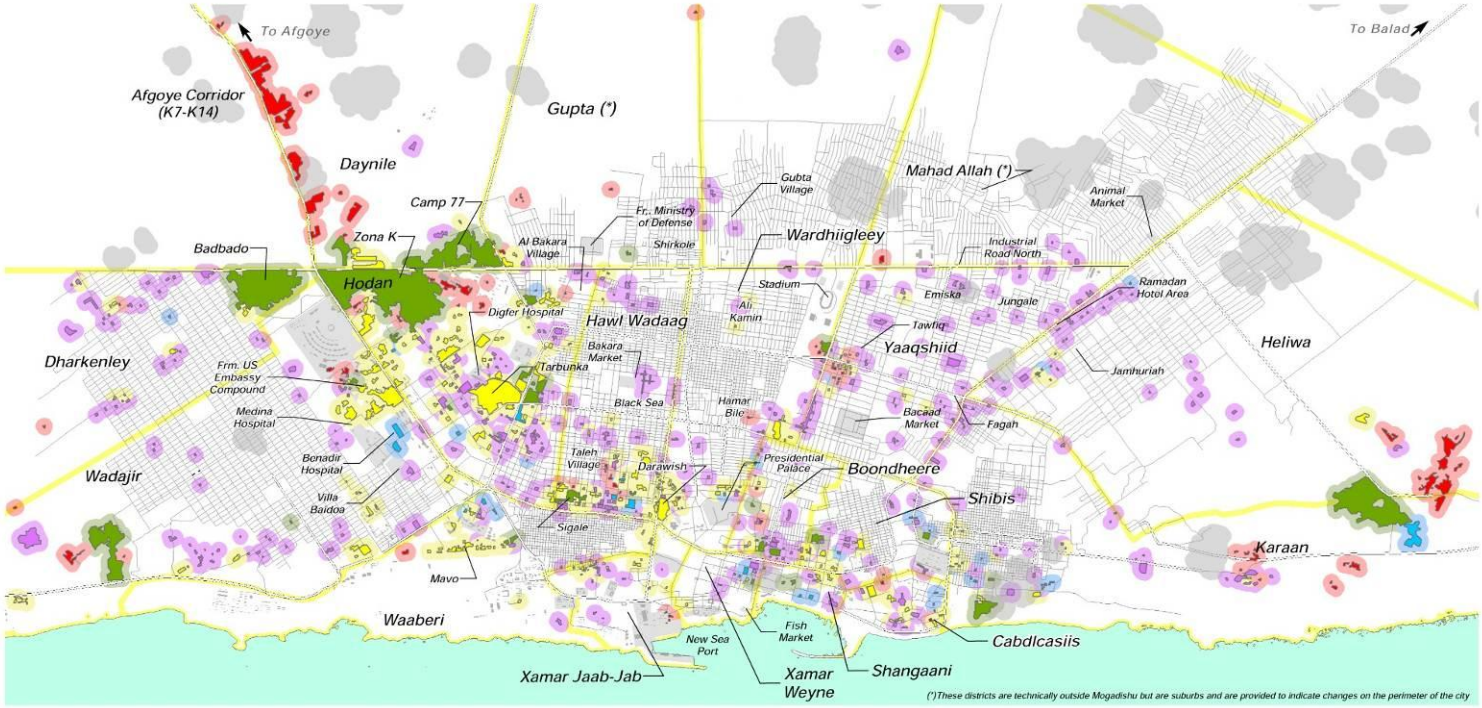

SOUTH SUDAN
ETHIOPIA
Melkadida
Bokolmayo
Kobe
Hilaweyn
Dillo
Megado
Lake Turkana
Kakuma
Kakuma camp
UGANDA
KENYA
SOMALIA
Dhobley
Ifo
Dagahaley
Ifo 2
Dadaab
Alinjugur
Kambioos
Hagadera
Lake Victoria
NAIROBI
Nairobi Regional support hub
Liaison Office Somalia
CAPITAL
UNHCR Country Office / National Office / Liaison Office
UNHCR Regional Service Centre (Regional support hub)
UNHCR Sub-Office
UNHCR Field Office
UNHCR Field Unit
Refugee camp
Refugee location
Refugee settlement
International boundary
Administrative boundary
INDIAN OCEAN
UNITED REPUBLIC OF TANZANIA
Chogo
0
100
200

© UNHCR map

IDP SHELTER CHANGES IN MOGADISHU, SOMALIA (BETWEEN 2 MAY 2012 - 3 JUNE 2013)

Complex Emergency

Production Date: 19/07/2013
Version 2.0
UNOSAT Activation: CE20130710SOM



(*)These districts are technically outside Mogadishu but are suburbs and are provided to indicate changes on the perimeter of the city

Data Frame rotated 27 degrees from North

Map Scale for A4: 1:65,000

1 0.5 0 1 Kilometers

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IDP Camp Status: (2 May 2012- 3 June 2013)

- Open - New
- Open - Expanded
- Open - Contracted
- Open - No Change
- Closed
- Cloud Area (not analyzed)
- Mogadishu Int. Airport
- Mogadishu District Boundary
- Primary Road
- Local / Urban Road

Satellite Data: QB / WV01 / WV02 / GE01
Dates: 30/03/11,15/4/11, 28/07/11, 21-22/08/11, 4,12/09/11, 7,15,18/10/11, 02/05/12, 3/06/2013
Resolution: 0.6 m/0.5 m
Copyright: DigitalGlobe 2012; GeoEye 2012

Sources: US Department of State, Humanitarian Information Unit, NextView License, EUSI, eGeos
IDP Camp Data: UNITAR / UNOSAT
Landcover: UNITAR / UNOSAT
Road Data: Google Map Maker
Admin Boundaries: OCHA

Other Data: USGS, NGA, SWALIM
Analysis: UNITAR / UNOSAT
Coordinate System: UTM Zone 38N
Datum: WGS 1984
Analysis conducted with ArcGIS v10.1

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UNOSAT

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LIST OF ABBREVIATIONS

African Charter	African Charter on Human and Peoples' Rights
AMISOM	African Union Mission in Somalia
Guiding Principles	UN Guiding Principles on Internal Displacement
ICU	Islamic Courts Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Internally Displaced Person
IED	Improvised Explosive Device
IHL	International Humanitarian Law
Kampala Convention	African Union Convention for the Protection and Assistance of Internally Displaced Persons
KDF	Kenya Defence Forces
NGO	Non Governmental Organizations
OAU	Organization of African Unity
SFG	Somali Federal Government
SNAF	Somali National Armed Forces
TFG	Transitional Federal Government
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs

1. INTRODUCTION

Somalia has one of the highest numbers of displaced people in the world.[1] The ongoing armed conflict in south and central Somalia continues to destroy lives. Yet Somalia's displaced are being driven out of the places they have sought refuge.

Kenya, Somalia and the United Nations High Commissioner for Refugees (UNHCR) signed an agreement on 10 November 2013 to repatriate hundreds of thousands of refugees in Kenya back to Somalia over the next three years. The government of Somalia also plans to relocate tens of thousands of displaced people to outside the centre of Mogadishu. Meanwhile thousands of people have been forcibly evicted from settlements for internally displaced people in the centre of the city. Tens of thousands of internally displaced people are expected to return from Mogadishu and other urban areas to their places of origin in 2014. Somalia's displaced people are still in need of protection. For many, the reasons they fled still remain. The time to act is now. Somalia's displaced people must not be pressured to return to areas where their lives and freedoms are at risk.

The repatriation agreement signed between Kenya, Somalia and UNHCR describes returns to Somalia as voluntary. Similarly, all assisted returns of internally displaced people that are taking place within Somalia from urban centres to the south are described as voluntary. However, Amnesty International has found that a significant number of displaced people are returning because of negative factors in the places they currently reside, and not because of an informed and genuine choice to return. The organisation heard accounts of people experiencing human rights abuses and other difficulties in the places they live, which have influenced their decision to return. Following evictions in Mogadishu, some displaced people described to Amnesty International how they were tired of being forced to move and may return to their areas of origin, while others cited insecurity and exploitation in displaced settlements as reasons to consider returning. Amnesty International has serious concerns about the voluntariness of some returns to areas of south Somalia.

Since the end of 2012, Somalis in Kenya have been facing an increasingly hostile environment. Following a string of attacks in the last months of 2012, a wave of human rights abuses unfolded, mainly against Somali refugees and asylum-seekers in a predominantly Somali area of Eastleigh in Kenya's capital Nairobi. In the months that followed, Somalis were subjected to arbitrary arrest, extortion, harassment and violence. In December 2012, Kenya's Department of Refugee Affairs issued a statement that all refugees in urban centres must go to the camps. In January 2013, a letter was issued from the Office of the President stating that 18,000 refugees should be rounded up, held in Thika football stadium near Nairobi, and then transferred to the camps, a first step towards repatriation.[2] Calls for closure of the refugee camps in Kenya have been growing throughout 2013, including from Members of Parliament and from the Cabinet Secretary for Interior and Coordination of National Government who stated that "*all the camps should be closed and the debate on whether or not it is appropriate has been passed by time.*"[3]

Some Somali refugees and asylum-seekers have returned from Kenya, and others say they are considering returning. Many say they live in fear of arrest, discrimination and abuse in Kenya. The rights of refugees and asylum-seekers are becoming increasingly restricted, in particular their ability to move freely, while many refugees and asylum-seekers report they are subject to abuses. Dadaab refugee camps[4] are unsafe, and services are declining due to lack of funding. For many, insecurity, ongoing human rights abuses and poor living conditions in Kenya have been key factors influencing people's consideration to return to their areas of origin in Somalia.

According to UNHCR, returns can only be considered voluntary if positive 'pull-factors in the country of origin' are the 'overriding element in the refugees' decision to return rather than possible push-factors.' Push factors include rights abuses, and when refugees are 'subjected to pressures and restrictions and confined to closed camps.' [5] The vast majority of cases Amnesty International came across regarding return to Somalia do not meet the criteria for voluntary return. When refugees feel they have no option but to return to their country of origin, this can amount to forced return.[6]

In January 2013, the Somali Federal Government (SFG) announced plans to relocate hundreds of thousands of displaced people from the centre of Mogadishu to locations outside the city where, at the time of writing, an estimated 369,000 displaced people reside. Initial plans indicated that this was seen as a temporary measure before returning all displaced people to their areas of origin, mostly to south and central Somalia where people are still subject to serious humanitarian and human rights abuses. The timeframe for returns was not contingent on people's ability to return voluntarily, in safety and dignity, nor did it consider that many of these people regard Mogadishu as their home.

In July 2013, the relocation plan was put on hold as a full-time police presence to offer security could not be established. However, plans to develop and secure the city centre continued. Since the beginning of 2013, forced evictions have gained pace. Tens of thousands of people have been driven out of their shelters,[7] often with no notice, with the threat or use of force, and with no appropriate alternative location provided. Many began moving to an area north-west of the city centre in the direction of the Afgooye corridor. In previous years, Afgooye corridor reportedly accommodated the densest concentration of displaced people worldwide,[8] where conditions were so dire they amounted to inhuman and degrading treatment.[9] Government control in the area is weak, and it has a reputation for lawlessness, insecurity and high levels of rape and other forms of sexual violence.[10] Al-Shabab, an Islamist armed opposition group, are also present in parts of the Afgooye corridor. [11]

Since 2012, UNHCR has been facilitating returns of internally displaced people to their areas of origin in south Somalia. This is being implemented by Non Governmental Organizations (NGO) operating inside the country. South and central Somalia still experience active armed conflict and conditions are not conducive for return. The Somali National Armed Forces (SNAF), relying heavily on the African

Union Mission in Somalia (AMISOM), now control central areas of some key towns, but in many other areas they have not gained full and effective control. Al-Shabab continues to control vast swathes of the countryside.[12]

People displaced within Somalia who are targeted for return are agro-pastoralists from mainly rural areas, many of which are under al-Shabab control. Al-Shabab are known to impose a strict interpretation of Shari'a law, handing out harsh "punishments" which are human rights abuses, such as public floggings and beheadings for those perceived to flout it. They also forcibly impose a "tax" from the people they control, a factor which further strains a population struggling to recover from the devastating famine of 2011 and ongoing crises.[13]

Some of the displaced returning to south Somalia end up in settlements of displaced people within urban centres under government control. Some cite fear of al-Shabab as the reason they don't return to their areas of origin, others say they have no land because they sold it during the famine. Others say they can no longer access their land, or that it is too difficult to continue to farm. This is a strong indicator that conditions are not conducive to return, and that returns are unlikely to be sustainable at this time.

Premature repatriation is not a durable solution for the individual refugee, and does not provide a comprehensive resolution to the large-scale refugee problem. If conditions in the home country have not changed sufficiently to pull refugees back and they are pushed out of their areas of asylum by threats, attacks and expulsion, then the fundamental right of individuals to protection is effectively denied and the foundations are laid for further flight and instability in the region.

The focus on repatriation can lead to involuntary and premature returns that violate internationally recognized principles of asylum and *non-refoulement,* and which in themselves may lead to further human rights abuses and renewed violence in Somalia.

Refugees in Kenya must be protected against forced return, which is contrary to international and regional law protecting the rights of refugees. Internally displaced people should not be forcibly displaced within Somalia and should have the right to resettle in any part of their country in line with Somalia's international obligations.

Somalia, Kenya and UNHCR have an obligation to ensure returns are voluntary, and take place in safety and dignity. Many people Amnesty International spoke to had not been able to return in safety and dignity because of several factors including the lack of access to land or livelihoods, inability to realize an adequate standard of living, risk of conflict and serious human rights abuses. UNHCR do not have direct access to many of the areas of return in south Somalia, particularly in the rural areas and transport routes. It is highly questionable how they can guarantee that people who return can do so in safety and dignity.

Immediate action is required by all stakeholders to ensure the continued protection of Somalia's refugees and internally displaced people, and to prevent the erosion of

fundamental refugee and internally displaced protection principles in the region. It is crucial that political priorities do not take primacy over the protection of Somalia's displaced.

Somalia's displaced people have spent years being driven from to place to place by conflict, drought and famine, facing untold hardships, mistreatment and abuse. They form a major proportion of Somalia's population, and could be part of the solution to the country's reconstruction. Instead their human rights continue to be violated and they are treated as a burden to be moved on, regardless of where they go, or even if they have nowhere to go.

SUMMARY OF KEY RECOMMENDATIONS

To the Somali government

- Avoid pressurizing Internally Displaced People to return to south and central Somalia, including through measures indirectly forcing them to return to their areas of origin where they face a real risk to their lives and human rights. Any returns must be truly voluntary, and conducted in safety and dignity.

- Ensure a national IDP policy framework is established as a priority in line with international standards in the UN Guiding Principles on Internal Displacement (Guiding Principles) and the Kampala Convention.

- Declare and enforce a moratorium on all forced evictions until the legal and procedural safeguards required under international human rights law are in place.

To the Kenya government

- Respect the prohibition on refoulement by ensuring that all returns to Somalia are truly voluntary, that refugees are not pressured to return, including through measures which indirectly force them to return to south and central Somalia where their rights are at risk.

- Explore all durable solutions, including local integration, to enable Kenya to adequately respond to the protracted nature of Somalia's displacement situation.

To UNHCR

- Ensure that all assisted refugee returns are truly voluntary in accordance with international law and standards, including as set out by UNHCR. Carry out effective monitoring of people that have returned to ensure these standards are met.

- Verify that all assisted returns of internally displaced persons (IDP) within Somalia are the result of a 'free and informed choice.'[14]

A complete list of recommendations appears at the end of this report.

ABOUT THIS REPORT

This report assesses the protection of refugees and internally displaced people in Kenya and within Somalia. In particular, it considers:

- the protection of refugees and asylum-seekers in Kenya, and internally displaced people in Somalia in the context of a repatriation agreement of Somali refugees from Kenya to Somalia;
- planned relocations of internally displaced people in Mogadishu; and
- returns of internally displaced people from urban centres of Somalia, mainly Mogadishu, to south Somalia.

This report is based on information obtained during three fact-finding missions between April and November 2013 to Kenya and Somalia, all of which were between three and five weeks in length. The missions were carried out in Nairobi, Kenya, in April 2013; in Nairobi, Kenya; Mogadishu and Baidoa, Somalia in July and August 2013; and in Eastleigh and Dadaab, Kenya in October and November 2013.

In Somalia, Amnesty International delegates interviewed over 90 internally displaced people, while in Kenya they spoke to 134 refugees and asylum-seekers. In addition, Amnesty International delegates interviewed or met with over 50 representatives of local and international NGOs, UN officials, and members of the donor and diplomatic community. Names and affiliations of all of these individuals have been withheld for security reasons, and quotes use pseudonyms. Amnesty International carried out a number of interviews with Kenyan and Somali government officials. Delegates have tried unsuccessfully to secure further meetings with government officials in Kenya.

Amnesty International visited internally displaced settlements in Mogadishu that had either received a notice of eviction, or had been recently evicted. These include settlements in Waaberi district, recently evicted areas in Hodan district near the former milk factory and the former military hospital, as well as Zona K and Tarabunka camps. Delegates visited some of the sites where the newly evicted people had relocated to in the area known as Km 7-13.

This report does not provide a comprehensive assessment of the conditions facing displaced people within Mogadishu and south and central Somalia, nor does it exhaustively document all human rights violations and abuses that these people face. Instead it provides an overview of key human rights concerns in the context of returns and relocations of displaced people in the areas visited and where they had come from. In particular, it focuses on Mogadishu, and in and around the town of

Baidoa, as reported to the organization by survivors and witnesses of human rights abuses. The report also gives insight into the human rights abuses experienced by, as well as the perspectives and fears of, Somali refugees and asylum-seekers living in Kenya.

The focus in this report is on the obligations of Somalia and Kenya under the specific international legal framework for the protection of refugees and internally displaced people. Human rights violations more generally continue against civilians, refugees and internally displaced people, but are not documented in detail in this report.

Amnesty International recognises that there is a long history between Somalis including Kenyan Somalis and the Kenya government which dates back to Kenya's independence and which has relevant connotations with the current situation.[15] However, this report only discusses the history of Somali refugees and asylum-seekers in Kenya in recent years, namely since the incursion of Kenyan forces into Somalia in 2011, and highlights some of the increased hostility and related human rights abuses towards Somali refugees and asylum seekers in Kenya since 2011.[16]

This report uses the term "internally displaced persons" to mean "*persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human made disasters, and who have not crossed an internationally recognized State border*."[17]

"Refugee" refers to a person who "*owing to [a] well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country.*"[18]

"Unregistered refugees" are those who fled Somalia to Kenya for the same reasons as refugees, but have been unable to register as refugees in Kenya.

This report at times refers to "camps" for displaced persons or refugees, and at other times refers to "settlements". A "camp" is used to denote a planned and organized area for displaced persons to seek protection and where they will be provided basic services such as food, water and health care. "Settlement" is used to describe areas where displaced people have settled themselves in groups. These areas have not been previously planned, and the provision of water, latrines and other services are provided after people have settled.

2. BACKGROUND

HISTORY OF DISPLACEMENT IN SOMALIA

August 2013 marked one year since the Somali Federal Government was sworn in, the first internationally recognized government in over 22 years of state collapse and conflict following the fall of Siad Barre in 1991. Since then, the lack of an accepted central government, ongoing armed conflict, clan-based rivalries, and power vacuums leading to lawlessness, have fuelled an ongoing severe humanitarian and human rights catastrophe in Somalia.[19]

Almost a third of Somalia's population are displaced both within Somalia and across borders in neighbouring countries.[20] Many have been displaced on multiple occasions throughout the country's long history of governance crises, conflicts, cyclical drought and famine.

Violence and conflict are key factors in Somalia's protracted episodes of displacement. In the early 1990s, Somalia's drought was compounded by clan-based violence which damaged harvests through looting of food and crops in Somalia's southern regions. The consequent humanitarian crisis and large-scale displacement resulted in the loss of hundreds of thousands of lives.[21]

In 2006, Ethiopia militarily intervened at the request of Somalia's Transitional Federal Government (TFG) and began an offensive that eventually ousted the Islamic Courts Union (ICU) who had gained control of Mogadishu and many parts of south Somalia. Tens of thousands of civilians were killed and injured, while hundreds of thousands were displaced.[22]

In January 2009, the UN-sponsored Djibouti peace process led to the withdrawal of Ethiopian troops, giving rise to hopes of peace and stability. These turned out to be short-lived. Just three months later, conflict resumed when al-Shabab, originally an offshoot of the ICU, and other armed opposition groups in Mogadishu launched an offensive against the TFG and AMISOM.

Mogadishu became the epicentre of the conflict, which spread further into south and central Somalia as TFG and AMISOM tried to gain territory from al-Shabab, who controlled vast areas of south and central Somalia. This again led to the displacement of tens of thousands of people.[23]

Since the onset of violence in the early 1990s, the obstruction of humanitarian assistance, and the targeting of humanitarian aid and personnel, has been an ongoing issue carried out by all parties to the conflict.[24] Although severe drought and increasing food prices were key reasons behind the devastating famine of 2011, this was exacerbated by the armed conflict.[25] Hundreds of thousands of people were displaced and tens of thousands lost their lives. Within Somalia four million people, over half its population, were affected. Three million of those were

in south and central Somalia.[26]

It has been difficult to give meaningful figures to displacement in Somalia, where two-thirds of the population have traditionally led a pastoralist or agro-pastoralist existence and are used to moving according to seasons.[27] Particularly in Bay and Bakool regions, seasonal movements have been a major pattern for livelihoods where rural farmers would move to urban centres to seek out alternative forms of income between harvests.[28] Seasonal movements continue for some of Somalia's displaced people, and are coping mechanisms that has been used throughout the years of protracted displacement in order to survive. Many of these movements are seasonal or temporary and are not permanent refugee returns.[29] They do not necessarily indicate a return to normality.[30]

The Somali Federal Government has gained control of large parts of Mogadishu and, with the support of AMISOM, has made gains in dislodging al-Shabab from key towns in south and central Somalia such as Afgooye, Baidoa and Kismaayo. This has led to some positive changes in the security situation in parts of south and central Somalia. However, any reduction in conflict is limited to specific towns which the government - with heavy reliance on AMISOM and aligned forces – hold, and rarely extends beyond the boundaries of towns. The reliance on AMISOM, combined with ongoing challenges with discipline and command control in the SNAF, means that the protection provided to civilians is extremely limited in areas they technically control. Often, they are known to be a key source of insecurity themselves. [31]

There are currently over one million displaced people within Somalia.[32] The phenomenon of displacement continues, albeit on a smaller scale compared to previous years. According to UNHCR, over 100,000 were displaced within Somalia between January and October 2013,[33] and an estimated 369,000 are displaced within Mogadishu from varying places in Somalia, including from within Mogadishu.[34]

REFUGEES IN KENYA

Kenya has a long history of hosting Somali refugees and asylum-seekers. Amnesty International recognizes that Kenya has disproportionately shouldered the responsibility for hundreds of thousands of refugees from Somalia for over 20 years. However, Somali refugees and asylum-seekers have also been subject to discrimination, abuses and the restriction of their rights within Kenya throughout that time.[35] In the last few years, this has again become a matter of profound concern. Discrimination, unlawfully restricted rights, diminishing access to services, and abuses by state security forces and non-state actors, have led some refugees and asylum-seekers to return, or to consider returning to Somalia.

In October 2011, Kenya Defence Forces (KDF), launched a military offensive in Somalia against al-Shabab. Al-Shabab promised retaliation, threatening attacks on Nairobi and to bring war to Kenya.[36] Since then, Kenya has experienced an increase

in security incidents including bombings and attacks using hand-grenades and improvised explosive devices. Many have taken place in north-eastern Kenya, including in the Dadaab refugee camps, as well as in Nairobi, particularly in Eastleigh, home to more than 100,000 Kenyan Somalis and Somali refugees and asylum-seekers. These attacks have resulted in dozens of deaths and hundreds injured. On 21 September 2013, al-Shabab claimed responsibility for an attack in Nairobi's Westgate shopping mall which lasted for four days, killing 67 people and injuring more than 200 others.

Between November and December 2012, Eastleigh experienced a string of attacks. On 18 November 2012 an improvised explosive device (IED) was thrown at a minibus killing seven people and injuring over 30. On the same day, youth gangs from nearby areas stormed Eastleigh and reportedly stabbed, stoned and raped some of the residents. These riots continued until 20 November. Kenyan security forces were deployed and a wave of police abuses began, including extortion, arbitrary arrest and violence, mainly against Kenyan Somalis and Somali refugees and asylum-seekers.[37]

On 13 December 2012, Kenya's Department of Refugee Affairs announced an intention to implement a forced encampment policy. All 55,000 urban refugees were to move to the refugee camps in the north of the country. It was stated that "due to this unbearable and uncontrollable threat to national security, the government has decided to put in place a structure encampment policy."[38] This was later cited by the government as a first step towards full repatriation.[39] In January 2013, the Kenyan legal aid organization *Kituo Cha Sheria* filed a petition with the High Court in Nairobi challenging the constitutionality of the government plan.

On 26 July 2013, the High Court quashed the plan on the basis that forcing all refugees to camps would violate their dignity as well as numerous other rights under Kenyan law, such as their freedom of movement. The Court stated that "the aggressive pursuit of such a policy may have the effect of constructively repatriating urban refugees back to the countries from which they had fled."[40] It further stated that "the implementation of the policy may well lead to a situation that forces some of the petitioners to leave the country for fear of proceeding to camps or being exposed to conditions that affect their welfare negatively."[41]

At the time of writing, the government of Kenya is reported to have expressed an intention to appeal the ruling, though a notice of appeal had not yet been served. Though the period the government had to file an appeal had passed, it is unclear whether they will seek an extension to the period and file their appeal.[42]

OBSTACLES TO REGISTRATION

Many Somalis have not registered as refugees in Kenya for a variety of reasons, including lack of awareness about their rights and the asylum procedures, or for fear of being arrested and deported. In recent years there have been increasingly restrictive measures on the ability of asylum-seekers to register as refugees, and today it is almost impossible.

There have been restrictions on the registration of refugees since January 2007 when the government of Kenya closed the country's 682km border with Somalia, and the main transit centre in Liboi.[43] In October 2011, Kenya's Department of Refugee Affairs stopped all registration of refugees in Dadaab.[44] Since that time registration has opened on only a few occasions and for short periods. The last registration was in August 2013, and was open for four days before it was again closed.[45] The Department of Refugee Affairs' announcement on 13 December 2012 ordered the suspension of all registration for asylum-seekers and refugees in urban centres.[46] Urban registration has since remained closed.

The only place in Kenya where there is ongoing registration is in Kakuma refugee camp, in the North-West of Kenya. Not being registered leaves Somalis at a high risk of arrest for unlawful presence, and at the time of writing it is extremely difficult for new arrivals to establish a lawful presence in Kenya.

SAFETY IN SOUTH AND CENTRAL SOMALIA: ONGOING HUMAN RIGHTS ABUSES

GENERALIZED VIOLENCE

Civilians in south and central Somalia persistently face insecurity and risk being targeted for grave human rights abuses, for instance indiscriminate and targeted violence, including rape and killings, as well as extortion. Although it is unclear who is responsible for attacks on civilians in all circumstances, it is widely believed that all parties to the conflict, including the SNAF and allied militia, as well as al-Shabab, carry out such attacks. AMISOM, Ethiopian and Kenyan forces have also been responsible for attacks that have killed and injured civilians, including as a result of violations of international humanitarian law (IHL).[47]

It is difficult to monitor the impact of the conflict on civilians given limited access to many parts of south and central Somalia, and the ongoing absence of a system to track civilian casualties.[48] The conflict is characterised by violations of IHL and human rights abuses by all sides, and civilians often fall victim. For example, the port town of Kismaayo saw intense clan-based fighting in June 2013 over a long-standing dispute as well as disagreements over the creation of a semi-autonomous state "Jubaland".[49] One incident alone resulted in the reported deaths of at least 70 civilians with hundreds more wounded.[50] At least 18 of those said to be killed were children.[51] On 17 November 2013, at least 25 people were killed when heavy fighting broke out between government forces and local armed militia in Lower Shabelle region in an area known as Km 50.[52] On 13 December 2013, further clan based fighting broke out across Lower Shabelle region killing at least 10 people and injuring dozens others.[53]

Schools and hospitals continue to be targeted, and while challenges in access make it difficult to determine the extent, the UN has identified 72 attacks on schools and 12 on hospitals in 2012, and verified seven attacks on schools between January and March 2013.[54] On 15 January 2013, six children were killed when AMISOM

accidentally fired at a *madrasa* (Islamic school) in Lego, Lower Shabelle.[55]

Unlawful killings continue to take place. Reportedly, killings by the SNAF are often as a result of weak command control and discipline, while al-Shabab continue to cause civilian harm through an indiscriminate use of weapons, as well as targeted killings.[56] Unlawful attacks on civilians are particularly common on main transport routes. Men, sometimes wearing government uniforms, have reportedly fired on transport vehicles, often killing or injuring civilian passengers.

SEXUAL VIOLENCE

Rape and other forms of sexual violence against women and girls is endemic in Somalia,[57] particularly in settlements and camps for displaced people. [58] Most perpetrators are reportedly armed, and many allegedly wear the uniforms of government security forces.[59] According to the UN, 800 cases of rape and other forms of sexual violence were reported in Mogadishu and surrounding areas between January and July 2013.[60]

Avenues for justice are extremely limited. Amnesty International spoke to survivors of rape in August 2013, most of whom had not reported their attacks to the police, often because they feared stigmatization, had little confidence in the ability or will of the authorities to either investigate or protect them from retaliation, or had no family support. Women who had gone to the police said that their complaints had not been investigated.

Police practices compound the stigma surrounding sexual violence within Somali society and discourage victims from reporting their cases. There are few female police officers or officers specially trained to deal with cases of sexual assault. Women and children who do report sexual violence say they are often subjected to insensitive and intrusive questioning by police.

3. APPLICABLE INTERNATIONAL LEGAL STANDARDS

Recent developments in Somalia and in Kenya have had an impact on many rights for internally displaced people within Somalia, and for refugees and asylum-seekers in Kenya. There is a high risk that returning refugees and asylum-seekers will become internally displaced people. This section discusses Kenya and Somalia's obligations under the international legal framework on the protection of refugees and internally displaced people. It also discusses some areas of international human rights law relevant to the issues in this report, such as the prohibition on forced evictions and the right to an adequate standard of living.[61]

LEGAL FRAMEWORK FOR THE PROTECTION OF REFUGEES

States have a responsibility under international law to protect people who have a well-founded fear of persecution. They are prohibited from forcibly returning people to a place where there is a risk that their life or freedom would be threatened, including to areas of active armed conflict. This is known as the principle of *non-refoulement*[62] and is considered part of customary international law – that is, it applies to all states regardless of whether they have signed relevant treaties such as the 1951 Refugee Convention, and is an essential component of international refugee protection.[63] UNHCR is the mandated UN agency to safeguard this convention and protect the rights of refugees.

International human rights law also establishes the right to return to one's own country,[64] providing the basis for voluntary repatriation. Returns to areas where people are at risk of serious human rights abuses can only be justified on the basis that they are truly voluntary. Furthermore, voluntary returns cannot be promoted until there is an objective change in the circumstances in the country of origin, where it is unlikely that the returnee would be subjected to human rights violations upon return.[65]

According to UNHCR:

> "*The principle of voluntariness is the cornerstone of international protection with respect to the return of refugees. While the issue of voluntary repatriation as such is not addressed in the 1951 Refugee Convention, it follows directly from the principle of non-refoulement: the involuntary return of refugees would in practice amount to refoulement.*"[66]

Voluntariness must result from "an absence of any physical, psychological or material pressure"[67] to return. The Organization of African Unity (OAU) Refugee Convention is the only legally binding instrument that explicitly covers the substance of voluntary repatriation. According to the convention, "the essentially voluntary character of repatriation shall be respected in all cases and no refugee

shall be repatriated against his will."[68] Kenya is a state party to both the Refugee Convention and the OAU Refugee Convention.

UNHCR's guidance in assessing whether people's decisions to return are truly voluntary states:

"*If... their [refugee] rights are not recognized, if they are subjected to pressures and restrictions and confined to closed camps, they may choose to return, but this is not an act of free will. As a general rule, UNHCR should be convinced that the positive pull-factors in the country of origin are an overriding element in the refugees' decision to return rather than possible push-factors in the host country or negative pull-factors, such as threats to property, in the home country."*[69]

In other words, if host country authorities fail to protect refugees' human rights, such that refugees feel they have no option but to return to their country of origin, this could violate the principle of *non-refoulement*.[70]

Voluntary repatriation operations must also guarantee that refugees are able to return home in safety and with dignity. This means that returning refugees should not fear persecution or punishment upon their return, and should be assured of their physical safety and material security. Any voluntary repatriation operations should ensure that returning refugees are not discriminated against, and that they are free from fear of armed attacks. In addition, returning refugees must have access to land or means of livelihoods. Returning refugees should be treated with respect and fully accepted by their national authorities, including through the full restoration of their rights.[71]

The sustainability of returns is also crucially important in repatriation operations.[72] Failure to effectively ensure the socioeconomic reintegration of returnees in fragile security situations incurs the risk of renewed conflict and further displacement. Indeed, the UNHCR has acknowledged that when facilitating voluntary returns, its obligations regarding reintegration mean that "*returnees and other persons of concern to UNHCR need to have access to reasonable resources, opportunities and basic services to establish a self-sustained livelihood in conditions of equal rights with those of other local residents and citizens. Their reintegration should take place under conditions of social, economic, cultural, regional and gender-based equity.*"[73]

LEGAL FRAMEWORK FOR THE PROTECTION OF INTERNALLY DISPLACED PERSONS IN SOMALIA

Under international law and standards, "*internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country.*"[74] However because of the particular situation of displaced people, Somalia has specific obligations under human rights and international humanitarian law to protect internally displaced persons and safeguard their rights.

Protections under international law for internally displaced persons are elaborated in the UN Guiding Principles on Internal Displacement[75] and the African Union Convention for the Protection and Assistance of Internally Displaced Persons (Kampala Convention). Somalia has a responsibility under the Kampala Convention to ensure its internally displaced people are "protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk."[76] In addition, it guarantees the choice of residence and freedom of movement except where restrictions are necessary, justified and proportionate, including the right to seek safety in another part of the country.[77] This is the first instrument which sets out legally binding protections for people displaced within their own countries, and has been signed and ratified by Somalia, although its ratification has not yet been deposited with the African Union.

Somalia is obliged "*to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country*."[78] This report uses the same understanding of the meaning of voluntary, safety and dignity for internally displaced people as it does for refugees, as set out in international instruments and as interpreted by UNHCR.

PROHIBITION ON FORCED EVICTIONS

The Government of Somalia is obliged under a range of international human rights laws to respect, protect and fulfil the right to adequate housing, notably the International Covenant on Economic, Social and Cultural Rights (ICESCR) which safeguards right to adequate housing in order to achieve an adequate standard of living.[79] Somalia is a state party to the ICESCR, the International Covenant on Civil and Political Rights (ICCPR), and the African Charter on Human and Peoples' Rights (African Charter), all of which have been found to prohibit forced evictions.

The UN Committee on Economic, Social and Cultural Rights, a body of experts that provides authoritative guidance on the implementation of the ICESCR, has clarified the obligations of states parties vis-à-vis the right to adequate housing, [80] which requires the government to respect the right to adequate housing by refraining from forced evictions, and to protect people from interferences with their rights, such as forced evictions, from third parties for instance landlords. The Committee also requires states parties to guarantee the right of people to participate in and be consulted over decisions that will affect them, and to provide an effective remedy if any of these rights are violated.[81] The UN Committee on ESCR, in General Comment 7, has emphasized that evictions, particularly those involving large groups, may only be carried out after all feasible alternatives to eviction have been explored in genuine consultation with the affected people.[82] General Comment 7 has also emphasized that affected people have the right to appeal against the eviction, and that adequate alternative housing should be provided (including access to essential services such as water and sanitation) for those who cannot provide for themselves. Everybody affected by a forced eviction has the right to an effective remedy for the loss and harm they have suffered. [83] Any eviction should always be a last resort and

nobody should be rendered homeless as a result.[84]

The ICCPR guarantees the right not to be subjected to arbitrary or unlawful interference with one's privacy or home.[85] The UN Human Rights Committee has held that forced evictions contravene Article 17 of the ICCPR.[86]

The African Commission on Human and Peoples' Rights, a body charged with overseeing the implementation of the African Charter, has affirmed that forced evictions contravene the African Charter, in particular Articles 14 and 16 on the right to property and the right to health, and Article 18(1) on the state's duty to protect the family.[87]

THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

The right to an adequate standard of living also incorporates rights to adequate food and clothing, and the continuous improvement of living conditions.[88] The UN Committee on ESCR has issued several General Comments which codify the components of this right and elaborate criteria for these rights to be met.[89]

RIGHT TO FOOD

The UN Human Rights Committee has stated that the right to adequate food is not achieved by the provision of a minimum amount of calories, but rather is *"*realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement*."*[90] The right entitles everyone to acceptable, available and accessible food, which ensures their food security. The right to food and the inherent dignity of the human person are inseparable and without food it is not possible to fulfil other rights. [91]

RIGHT TO WATER

The human right to water entitles everyone to sufficient, safe, acceptable, and affordable water for personal and domestic use.[92]

States have a special obligation to provide necessary water and water facilities to those who do not have sufficient means or are otherwise unable for reasons beyond their control to realize the right to water themselves.[93]

Sanitation is an integral part of various human rights, including the right to an adequate standard of living, the right to adequate housing, the right to health, and the right to water.[94] Sanitation has also been found to be intrinsically linked with the concept of human dignity.[95]

RIGHT TO HUMANITARIAN ASSISTANCE

Internally displaced people are entitled to assistance to ensure that their basic needs are met.[96] Under the Kampala Convention, Somalia holds the "primary duty and responsibility for providing protection of and humanitarian assistance to internally displaced persons",[97] an obligation which is also set out under the UN Guiding Principles on Internal Displacement.[98] Where the Somali authorities do not provide assistance, they should "respect the mandates of the African Union and the United Nations (UN), as well as the roles of international humanitarian organizations in providing protection and assistance to internally displaced persons, in accordance with international law."[99]

The UN Guiding Principles make clear that "at a minimum, regardless of the circumstances" they shall receive help to ensure safe access to essential food and potable water; basic shelter and housing; appropriate clothing; and essential medical services and sanitation.[100]

The UN Guiding Principles state that humanitarian assistance should not be diverted,[101] and Somalia has a responsibility to allow and facilitate "rapid and unimpeded access by humanitarian organizations and personnel."[102]

Lastly, international humanitarian organizations providing assistance to internally displaced people are expected to respect their human rights and protection needs, and to adhere to relevant international standards and codes of conduct.[103]

4. SOMALIS IN KENYA

"The only person who wants to go back to Somalia is doing so to go from the worst to the worst. If your motherland is that way, and here in Kenya we're chased all the time, what can we do? I left Dadaab because of insecurity. Now in Nairobi there are security problems here too. It is too bad to be a Somali. But my dream is nothing about Somalia."

(Ayaan, 31, from Gedo region)

The UN and international organizations operating in Somalia have recognized that conditions are not yet conducive for the return of Somali refugees[104] given the ongoing armed conflict in many parts of south and central Somalia, the fragility of improvements in the security situation in limited areas, and continued abuses of humanitarian and human rights law.

The question of repatriation of Somali refugees from Kenya has been raised intermittently by the Kenyan government for years. Since 2012, the case to move ahead with repatriation has been made partly because there is some improvement in the security situation in parts of Somalia following the establishment of the new administration, and because of the presence of AMISOM and Kenyan troops.

Discussions on repatriation have also taken place within a context of increased insecurity within Kenya, and gained particular prominence during campaigns ahead of Kenya's general elections in March 2013, and following the Westgate mall attack in Nairobi in September 2013. Links between the presence of refugees and security threats in Kenya continue to be made, contributing to hardening attitudes towards Somalis in Kenya, and increasing pressure for repatriation.[105] Following the Westgate mall attack, the Cabinet Secretary for Interior and Coordination of National Government, Joseph Ole Lenku, said: *"some of these refugees have abused our hospitality and kindness to plan and launch terror attacks from the safety of refugee camps. This cannot and shall not be allowed to continue anymore*."[106] One Member of Parliament described Kenya's refugee camps as "*a nursery for terrorists"*.[107]

On 10 November 2013, a tripartite agreement was signed between the governments of Somalia and Kenya and the UNHCR, following months of negotiations. The agreement establishes the framework governing the voluntary repatriation of Somali refugees over the next three years.[108] A pilot phase will take place from January to June 2014. During this time, an estimated 10,000 Somali refugees in Kenya will be supported to return to Luuq in Gedo region, Baidoa in Bay region, and Kismaayo in Lower Juba region.[109]

Refugees have been spontaneously returning to Somalia from neighbouring countries, mainly Kenya and Ethiopia, since 2012. UN figures state that 31,200

people have crossed from Kenya and Ethiopia to Somalia between January and October 2013.[110] A number of displaced people and their communities have apparently shown an interest in returning to their areas of origin: a study recently carried out in Kenya and Somalia found that 31% of refugees surveyed in the Dadaab refugee camps said that they would return to Somalia.[111]

Throughout 2013, property development in Somalia has gained pace. Somali diaspora have been returning to Somalia, particularly to Mogadishu, to reclaim land and seek business opportunities.[112] These have been taken as an indicator of the existence of positive pull factors in Somalia to warrant the negotiation of returns.

It is important to fully understand the motivations of those refugees and asylum-seekers showing an interest to return or of those who have returned by their own means. Amnesty International found that the majority of Somali refugees and asylum-seekers interviewed in Kenya were considering returning to Somalia not because of positive "pull" factors in Somalia but rather, because of negative "push" factors in Kenya. This raises serious concerns over the extent to which returns so far have been voluntary, and about how many of the refugees who have shown an interest in returning to Somalia meet UNHCR's standards of voluntary repatriation.

"PUSH" FACTORS IN KENYA

"If this situation continues the way it is, with this hatred, we may be forced to go to Somalia. Instead of being killed here, let us die there."

(Issac, 52, Eastleigh)

There was a significant increase in abuses against refugees and asylum-seekers in Eastleigh after a minibus was attacked on 18 November 2012[113] which continued until January 2013. At the same time, thousands of refugees and asylum-seekers fled back to Somalia. According to UNHCR, 7,900 people crossed from Kenya and Ethiopia into Somalia in January 2013, much higher than the average recorded monthly cross-border movements of between 2,000 and 4,000 people.[114] The Somali embassy in Nairobi reported that in the four months between October 2012 and January 2013, some 3,200 people were issued permits to allow them to return to Somalia. The monthly average is usually around 150.[115]

Somali refugees and asylum-seekers in Kenya told Amnesty International that police abuses, harassment and a climate of fear were the main reasons for people returning to Somalia at the beginning of 2013. One refugee community representative told Amnesty International: *"People went because of fear, because of attacks, harassment and violence. The international community just sat and watched. So people left in an exodus."*

Hassan, aged 30, said: *"In January my aunt and uncle went back to Somalia. It was the time the police were going house to house in Eastleigh. The reason they went back is they felt fear, that the girl might be raped, that they might be arrested. They*

were seven that went back. They went to Kismaayo by road. If they met a roadblock they would pay money and go on their way. The journey took a long time as they were scared and had to go carefully."

One woman, 52, who had returned in January 2013 from Dhagahaley camp in Dadaab, Kenya to Bay region in Somalia, explained that she returned because she was afraid of the growing insecurity in Dadaab, including violence and robbery. Luul aged 36, who also returned to Somalia from Dhagahaley camp in January 2013 said *"I came back because of insecurity there. If a bomb blast occurs, police in Kenya target and arrests refugees."* Both women are now internally displaced and live in settlements in south Somalia.

ARBITRARY ARREST AND LIMITATIONS ON FREEDOM OF MOVEMENT

"Life is very difficult here. When I came, I got given a room by my neighbour in Somalia. Many times I got arrested, and she always paid to release me. In January, the GSU [General Service Unit] came and broke my door by force. I escaped to the mosque. The mama had bad health, and the GSU threw her into the lorry like an animal. She fell over with shock. After that they took her off the lorry and told the rest of the people to get off too. Within five minutes she had died while she was being carried back to the room. The same lorry went around 15 times that day capturing people."

(Hussein, 32, Eastleigh)

Arrest is commonplace for Somali refugees and asylum-seekers, particularly for those who have not registered with UNHCR. Police arrests are often accompanied by extortion, and Somalis are reportedly perceived by Kenyan police as "cash cows" who will readily pay bribes because they are unaware of their rights, and because they fear the threat of prosecution.[116]

Amnesty International was told that those arrested after the string of attacks in Nairobi in late 2012 were often threatened with prosecution on terrorism charges. The threat of charges on the grounds of illegal presence became more commonplace in early 2013,[117]and later, arrests on the charge of being members of organized criminal gangs were used more frequently.[118]

Khadija, 27, told Amnesty International: *"My neighbour went back [to Somalia]. She had four children. In December, her two sons were arrested in Nairobi. One son went to court, and the court order was for repatriation for being illegally in the country. She said she was fed up, she couldn't stay any more in this country, that she should go back. She paid to get her other son out of jail and went back."* Khadija said that her neighbour was a registered refugee, though her papers may have expired.

Often the threat of prosecution is a means to extort money. Others such as the son of Khadija's neighbour, however, are prosecuted, regardless of the fact that it is

extremely difficult for asylum-seekers to register as refugees, and at times difficult to have refugee papers renewed.

International and Kenyan law prohibits arbitrary detention. Police officers can only arrest and detain a person if they have reasonable grounds for suspecting them of having committed an offence.[119] Anyone who is arrested shall be informed at the time of the arrest, of the reasons for arrest, and should be promptly informed of any charges against them and be brought before a judge.[120]

Marian, 36, lives in Eastleigh, Nairobi. She told Amnesty International: "*I know of someone who went back, she was a neighbour of ours, a mother with six children. They went back to Mogadishu on the day of the election in Kenya. It was the time the government started saying that refugees should go back to their country, she went because of fear. At that time, there were a lot of police in Eastleigh, going from home to home. Two of her children were captured by the police, and after the fifth day, she paid for their release. After that she sold everything and went back [to Mogadishu] 10 days later. When she got to Mogadishu the government captured another two of her children saying they didn't know them and they must be al-Shabab. They were jailed for 3 months."*

Young men in particular have been subjected to regular arrests, which often results in extortion. Mohamud, 24, living in Eastleigh, Nairobi, said: *"My friend went back in May this year (2013). He had stayed here for three years and got arrested so many times. He would usually have to pay to be released. I once paid 2,000 Kenyan shillings [USD 23] for him to be released. So in the end he decided to go back. He said 'I take my risk to die, but at least I can be more free, I can move around and not be arrested all of the time."*

Many Somali refugees in Kenya told Amnesty International that their registration papers or alien cards do not protect them. Muna, 18, said *"Here in Nairobi, I live in fear. I fear security because of the police. Two months ago [August 2013] I met the police. They asked me 'who are you, have you got ID [alien identification card]?' But when I showed them my ID, they threw it. I managed to grab it and escape."*

Amnesty International has been told that the police destroy refugee registration papers to intimidate refugees and to justify violence. Mahdi, 19, said: *"In January [2013], I was going to work. The police captured me asking for my ID [alien identification card]. I showed them my mandate [refugee registration] and they tore it in front of me. They started to beat me until I fell down. They were kicking and stamping on me. They took money from my pocket and left me there. Some people took me to hospital. I was bleeding a lot and had a broken hip."*

Freedom of movement for Somali refugees and asylum-seekers in Kenya has become increasingly restricted, particularly since the 13 December 2012 announcement of the forced encampment policy, and the attack in September 2013 on the Westgate shopping mall in Nairobi. One Somali community leader, 65, living in Eastleigh said: *"Now, there is no freedom of movement for us. We have to apply to move in the country, but the authorities don't give us papers."*

The Kenyan government is obliged under the Refugee Convention to guarantee refugees the right to move freely within their country.[121] However, in Kenya this obligation is subject to the 2006 Refugees Act, which gives power to the minister to designate camps and transit centres as places of residence,[122] and stipulates that refugees must apply for a movement pass to travel outside the camps.[123] These provisions give Kenyan authorities an amount of discretion in regulating the movement of refugees, which throughout 2013 has been used to further restrict movement.

Mohamed, a Somali refugee who fled Mogadishu in 2006, had recently arrived in Nairobi from Ifo camp in Dadaab. He said: *"I decided to come to Nairobi because of lack of security and all of my properties were looted. I was scared. I reported this to the police but they never do anything. Right now, I cannot go back to Somalia and I cannot stay here. I can't move inside Nairobi, I have no ID [alien identification card]. I can't even go back to Ifo as I will be arrested. So I don't know what to do."*

People report that even with movement passes, police arrest and at times detain them. Ibrahim, 27, living in Dadaab said: *"It was some months ago, a friend of mine went to Nairobi with a travel document. The police took him off the bus and said it was fake. They took him to Garissa where he was detained for two days. While he was there a relative paid money and he was released."*

Abdiaziz, 26, living in Dadaab relayed a similar experience: *"My friend is a student. It was in April and he got travel documents to go to Nairobi. He was stopped at a checkpoint just before Garissa. They didn't arrest him, but told him he couldn't go further unless he paid. They said if he didn't pay he would be taken to Garissa police station. Eventually he paid 500 Kenyan shillings [approx. USD 5], all the money he had, before being released."*

Restrictions on movement are another factor which lead people to consider returning to Somalia. Abdi, 28, living in Eastleigh, told Amnesty International: **"There are people who feel like going back to Somalia. Here, we are feeling like someone that's jailed – we can't move around. It's worse for people with no ID [alien identification card] but even UNHCR mandate [refugee registration] doesn't protect you. But in Somalia things are still very bad. There is a little bit of stability in some areas under government, but al-Shabab is still there."**

Refugees and asylum-seekers in Dadaab report similar experiences. Ahmed, 25, said: **"Here, in Kenya, it's like a prison. At night we can't leave the house, in the day we might be arrested. It is currently not safe in Somalia, we hear of killings and murders, but the situation here is very desperate…so instead of being here, let me go back. There is no freedom here, so let me join a military group, it is better than staying here."**

Omar, 28, who has been in Dadaab since 1992, said: *"Better we die in Somalia than in the prison of a country we live in here."*

POOR LIVING CONDITIONS

"Now we are refugee by name, but not by any means. We have no place to go back, al-Shabab is everywhere; and here we have nothing, and are helped with nothing."

(Hassan, 48, Kambioos camp, Dadaab. Arrived in Kenya June 2013)

Refugees face an ongoing humanitarian crisis in the Dadaab refugee camps. In 2008, numbers in the camps rose dramatically to reach 250,000. This significantly exceeded the intended capacity of 90,000, and funding since then has been unable to keep up with refugees' needs.[124]

The 2011 drought in the horn of Africa triggered a large humanitarian crisis. In the first seven months of the year, almost 100,000 people crossed the border from Somalia to Kenya, with average daily arrivals of around 1,300. [125] By the end of 2011 and throughout 2012, more than half a million refugees were estimated to be in the Dadaab refugee camps.[126]

The security situation in the camps began drastically deteriorating in 2011, when two international aid workers from *Médecins Sans Frontières* were abducted, and regular grenade and IED attacks were launched on both Kenyan security forces and refugees in and around the Dadaab camps. UNHCR considers the security situation in the camps as "high risk and dangerous". Further security measures were put in place by UNHCR and organizations working in the camps as a consequence, which "curtailed humanitarian access".[127] The immediate impact of the additional security measures was that only life-saving assistance such as food distribution and health services were provided, and refugees' access to other, much needed, assistance was severely limited. Since that time, ongoing insecurity has forced UNHCR and organizations working in Dadaab to limit their activities in the camps, and to find alternative ways of delivering assistance such as through refugees, the local community and local partners.[128]

In 2013, UNHCR projected that they would require USD 144 million to respond to the humanitarian needs in Dadaab's camps. Since 2012, the budget for Dadaab was almost halved. In December 2013, UNHCR was operating on USD 46.1 million, roughly 30% of its required budget. Funding from other sources provided another 40%, but there remained a 30% funding gap by the end of 2013. [129] The combination of insecurity and budget cuts has left many refugees without access to adequate levels of assistance or basic living standards.[130]

On 31 October 2013, the World Food Programme announced a 20% cut in the food rations for all refugees in the camps for at least November and December 2013, citing lack of funding.[131]

Refugees' lack of access to services further restricts their ability to enjoy an adequate standard of living in Kenya. Hawiya, 42, who lives in Kambioos camp, spoke to Amnesty International about the situation: *"When we came here, we didn't*

expect to be told to go to Somalia. We were welcomed. But now, some people have no shelter, some have no food, we don't know what is going on. Before life was good here. But now it is changing, we are being given nothing."

Access to services is even more restricted for unregistered refugees. Samira, 22, who lives in Hagadera camp in Dadaab, says: *"We ran away from lack of security, we thought we would find safety here, and services. But we fear we may get arrested by the government, we fear we can't get anything for our families as we can't get food, health care, nothing. The problem here is lack of access, and lack of registration means we can't move around freely."*

Lack of registration not only compounds the difficulties of refugees accessing services, it results in further discrimination against them within the camps. One woman from Kismaayo who arrived in Kenya in January 2013, told Amnesty International: *"We are even abused because of our status (unregistered). We cannot access services, neighbours taunt and say they'll report us to the police – they say we're the cause of all problems in Kenya. Our children can't go to school, we can't get most things because we are not registered, so there are a lot of problems for us."*

Limited access to services is another influencing factor in the considerations of refugees and asylum-seekers to return. One asylum-seeker, 31, said: *"this life is very hard. Instead of dying here of hunger, I can even take a gun and join whatever group. Instead of leading this life."*

Hawo, 42, lives in Hagadera camp. She told Amnesty International: *"I know of 12 families that went back. The reason they went was shortage of services and lack of employment. Some who couldn't get secondary education went back to Somalia. The information we hear of Somalia is two: you either die, or you get rich. In this place we are mistreated, and can't get work. There, there are no restrictions, you can move. So maybe it's better."*

Lack of registration is in itself a reason asylum-seekers consider returning to Somalia. Nimo, 32 yrs, from Kismaayo arrived in Dadaab in January 2013. She has been living in Hagadera camp and is unregistered. She said: "*Somalia is our homeland, only insecurity makes us not go back. If there is peace in Somalia, we can go back – but Somalia is not safe. We came to Kenya because of that. But here we're not registered, and it causes big problems for us, which might force us to go back. But I am not happy about it."*

The refugees and asylum-seekers Amnesty International spoke to said that it was usually a combination of factors that led them to return or consider returning to Somalia. Primary among these were the limited access to food, health care and other services.

Leyla, 43, is considering going back to Somalia. She told Amnesty International: *"I know there is no peace there in Somalia, but I cannot live with the situation here. There is a shortage of services in the camp, and our movement is restricted. So*

better we go back to our country, instead of deal (sic) with the problems here."

Abdi, 52, arrived in Kenya in July 2013. He says: "*The reason we came is we had nothing to eat, nothing to feed the family. Al-Shabab just took everything. Here, my family eat just once in a day. I beg in the market…if you have your basic needs met, you can get anything. But how can we live like this?"*

FEAR OF RETURNING TO SOMALIA

POOR SECURITY

"The problem is there is no security in Somalia. Mogadishu is not safe, even the government can't protect themselves. So the question is, can the Somali government protect the Somali people? No, it can't. Even in Kenya we are not protected. So how can the Somali government protect us?"

(Abdikarim, 43, Eastleigh)

While some refugees say they intend to return, all of the 134 refugees and asylum-seekers interviewed by Amnesty International in Kenya stated that improved security is a precondition for return. A survey of Somali refugees in camps in Kenya and Ethiopia found that long-lasting improvements in security were commonly identified as prerequisites for return.[132]

Amnesty International found that very few people consider that the security situation has improved sufficiently to allow them to return. As one 22-year-old man living in Kambioos refugee camp stated: "*If we get peace, we could go. If not, there is no talk of going back'* One woman, 38, stated *'We love our country, but it is not safe. The same situation is there that forced us to flee. We cannot go back."*

Perceptions of the security situation in Somalia did not significantly vary between refugees who had newly arrived from Somalia to Kenya, compared to those that had been in Kenya for a number of years. For people who left Somalia many years ago, their fear is based on previous experience and information they hear from others as to the current security situation in Somalia:

"Talk of return is a big worry for the Somali community. I have lived twenty years here in Kenya, my children were born here, I got my wife here. How will I live my life in Somalia? The war is still there, we hear that innocent people are killed, some children still die because of the explosions, there are few schools. There is nothing for us there. The problem we ran from is still there, in fact the current situation is more difficult than before. People are killed in mosques and schools. If you wake in the morning, you don't know if you will return to your house. So it gives us fear. How can I take my family back to that?"

(Issac, 52, Eastleigh)

Refugees continue to cross the border from Somalia to Kenya. In September and October 2013, there were reportedly more Somalis crossing into Kenya than those returning to Somalia.[133] Somali asylum-seekers who had arrived in recent months had very similar views and analysis of the security situation as Somalis who had arrived during the previous years. Ayaan, 31, from Gedo region, arrived in Kenya in June 2013. She said: "*we love our country, but there is no life there. What I realised of the Somali government is that with them there, no peace will come to Somalia. "*

One woman, Hawiya, who had arrived in Kenya in May 2013 from Kismaayo, was resolute: "*I won't go back to Somalia. There is no peace."*

Some of the recent arrivals from Somalia expressed higher levels of fear about insecurity. Amino, 27, from Kismaayo came to Kenya from Somalia in September 2013 following the clashes that had broken out in June in Kismaayo. She is unregistered, and like so many other unregistered asylum-seekers in Dadaab, she is unable to access food, medical care and other services. Despite this, she told Amnesty International "*instead of going back to Somalia, we will take our own lives. The place I came from, there is no peace, so where shall we go back to? "*

RAPE AND OTHER FORMS OF SEXUAL VIOLENCE

Women and girls travelling along main transport routes continue to experience sexual violence. Women who spoke to Amnesty International said that women and girls without money are at greater risk of being raped.

Amina, 20, was travelling from Kismaayo on her way to Dadaab in June 2013. She told Amnesty International: *"It was 8pm, our vehicle was stopped. They asked all the people to come down. They divided the males and females and put us in separate rooms. Men were getting beaten. Women that were carrying money paid money, others that didn't have money were raped. There were 15 of us women there, nine were raped. The other six had money, and were older women, so they were allowed to leave. There were nine men, and there were nine of us left. Every man was allowed to take his choice. One dragged me to the forest. I refused him, so he got a stick and he was beating me. I cried, I said 'I'm your sister why do you do this?' but he kept on, and eventually I no longer resisted. After he finished he said 'you know why I raped you? You're leaving your country, that is your reward."*

In another case, Fatima told Amnesty International, that she was travelling from Diinsoor to Kenya in December 2012. She said her vehicle was stopped between Dhoobley and Liboi, an area close to the Kenyan border: "*We saw lights on the road and our vehicle was made to stop by gunmen. They stopped the vehicle, and told us to come one by one. Some of the men begged for their wives. They were badly beaten and their wives were taken to the forest and raped. I don't have a husband, so I kept quiet and said nothing. One man made me follow him into the forest, I was carrying my baby, who was crying, so he started slapping my child. He then made me put the child down in the forest and leave him there. Then the man did*

what he wanted with me. In the morning, the men started arguing about whether to give our children water. They started fighting between themselves, so when they fought, we ran away. We ran all the way to Dadaab by foot."

RECRUITMENT TO ARMED GROUPS

Somali refugees and asylum-seekers are concerned about the risk of recruitment either voluntary or forced, to armed groups in Somalia should they and their families return.

Recruitment into armed groups within Somalia has been a long–standing issue throughout the conflict. It is a key concern for Somalia's youth. Young men and children, particularly between the ages of 12 and 18, have often been used in armed groups.[134] All parties to the conflict, including the former TFG and the SNAF, have been accused of using child soldiers. [135]

One woman, 39, who lives in Eastleigh, told Amnesty International: "*I have decided 100 times to go back to Somalia, because of the pressure here in Kenya. But then I look at my son. If I take my son back to Somalia, al-Shabab can force him and recruit him. I fear for that. It is for that I cannot go back."*

Although there is a history of forced recruitment into armed groups, men also join because they are encouraged, or believe they have no choice. Shire, 26, from Galgaduud said: "*Somalia is our country, but we're not ready to go back. Especially for youth, there are so many problems, we're expected to go back and fight, either for government, for al-Shabab, for anyone. So we can't go back."*

Some refugees who returned to Somalia from Kenya were recruited. Bihi, 36, spoke to Amnesty International from Kambioos camp in Dadaab: "*A relative of mine went back. He had two children with disabilities and was getting no support. He felt fed up that he had nothing, so he went back. He went to Bulo-Xawo district, and two of his boys joined the government soldiers. In April [2013] there was some fighting between the government soldiers and al-Shabab. One of his boys died immediately [21 yrs], the other is now injured [19yrs]. The young men from this camp, if they go back they will take guns. We are not ready for this repatriation issue."*

Refugees and asylum-seekers believe that the return of Somalis from Kenya to Somalia would be welcomed by al-Shabab as providing potential fresh recruits. Mohamed, 42, who lives in Eastleigh said: "*We are between two rocks. We fled because of al-Shabab. They followed us to Kenya, and now we are the victims. Kenya doesn't understand the difference between them and us. Now the government of Kenya are trying to force us to go back. Al-Shabab are very happy. They say 'it's going to rain soon' so that they can recruit our men that go back."*

Amnesty International heard similar concerns in Dadaab camps: "*Once refugees are repatriated, it is good news for al-Shabab, they have many people who can join them. There are many youths in these camps. You know the refugee life, if you are*

given a small handout they will work for you. So what is the future of our youth?" (Mohamud, 59, Ifo camp)

ROBBERY

Civilians regularly face robbery and extortion in areas controlled by government and aligned armed groups, and by al-Shabab. Informal checkpoints and roadblocks are used as a means to loot civilians in areas under the control of government or allied armed groups. On 26 January 2013, masked gunmen reportedly in SNAF military uniforms stopped two minibuses and robbed passengers.[136] On 3 February 2013 gunmen in military uniforms stopped two minibuses and robbed the passengers of money and possessions.[137]

On 6 September 2013 a vehicle travelling from Baidoa to Mogadishu was attacked by unknown gunmen before it reached Wanla Weyne. The driver, 26, said: *"As we travelled along the road, around five armed men in plain clothes appeared and tried to stop us by force. The two cars ahead of mine passed them by, but as we were slowing they started firing. Several bullets came into the vehicle. One woman was shot in the leg, I was caught on the head. They robbed us and took away all the passenger's belongings such as phones and money."* The driver added that another vehicle was also attacked on that road the same day and 10 passengers were killed.

Amnesty International was told numerous similar stories by people who had travelled to the Kenyan border from Kismaayo. Naima, 21, recounts her journey to Dadaab from Kismaayo in June 2013: *"It was a dark night, there was a vehicle stopped ahead of us. We arrived when the vehicle was still on ground. I saw four men myself, but there seemed to be very many. They frisked us and took all our belongings. We were lucky, the women in the vehicle ahead of us were raped. With us they seemed to be rushing, maybe they were fearing getting caught as the other vehicle had been there for some time, otherwise we may have been raped too. So they stole everything and ran away."*

Civilians living in some al-Shabab controlled areas continue to report being forced to pay "taxes" to factions of the armed group, particularly during harvesting seasons. As one woman, 45, who had recently returned to her village after participating in a returns programme said: *"When I go back to my village, I take my fate. They can create a problem for you, but even without that, they need money. At the time of cultivation, they take my money. At the time of planting seeds, they take my money. I am selling my goats one by one.[138] After they finish, I don't know what I'll do."*

Some people reported to Amnesty International that forced "taxation" has increased since al-Shabab lost control of the port of Kismaayo in September 2012 following the offensive of AMISOM and SNAF. This represented a significant loss of income for al-Shabab. One man, 55, who came to Kenya from Bu'ale in July 2013, said: *"Before, we weren't asked much from al-Shabab, just a donation. Since they were kicked from Kismaayo they became more desperate, so they take everything these days, your produce, your money."*

Ahmed, 49, said: "*Nowadays, they just come and take everything. When you go to plant fruits, when you take your cattle, they can just take everything. We sometimes couldn't go to the farm because we fear them."* Ahmed left his farm in June 2013 and now resides in Dadaab because he said al-Shabab were not leaving him with enough to feed his family.

"I have to pay tax every harvest. It used to depend on the amount of land you own. I own nothing, but when I cultivate, they still tax."

FINDINGS - SOMALIS IN KENYA

The tripartite agreement sets out the terms for voluntary repatriation and signals that conditions in south and central Somalia are conducive to a large-scale voluntary repatriation operation. However, as demonstrated, Amnesty International believes that it is negative push factors in Kenya, rather than positive pull factors in Somalia that are in the majority of cases influencing Somali refugees and asylum seekers decision to return or to consider return. Such returns do not meet international legal standards, and do not qualify as voluntary returns. And when returns are not voluntary, the principle of *non-refoulement* can be violated.[139]

Amnesty International is concerned whether the tripartite agreement can be adequately and effectively implemented. It is questionable whether UNHCR or the Somali government has the ability to ensure that returns to Somalia are carried out in safety and dignity. UNHCR has limited access to many areas of south and central Somalia, and no access to other areas. The Government of Somalia does not have effective control over many parts of the south and central Somalia.

While UNHCR may have been under increased political pressure from the Kenyan government to ensure that a repatriation agreement was reached, UNHCR must not allow this to lead to compromises in its mandate to protect refugees. It must ensure the primacy of the rights and protection of refugees in any repatriation agreements.

5. INTERNALLY DISPLACED SOMALIS

© Amnesty International - Women and children in IDP camps in Mogadishu

"The future is dark for us, no-one knows what will happen" (Halima, 45)

Within Somalia too, there are expectations that internally displaced people should return to their areas of origin. In January 2013, the Somali government announced a plan to relocate hundreds of thousands of displaced people from Mogadishu to proposed locations outside the city centre. This was initially envisioned as the first step towards returning displaced people to their areas of origin,[140] mostly in south and central Somalia. The relocation exercise was expected to take until 20 August 2013, exactly one year after the current administration had been sworn in.[141] Although the plan was postponed in July 2013, elements of it continued to be implemented.

Since the beginning of 2013, forced evictions have been taking place, and following the announcement of the relocation plan, people from some of the priority relocation sites began spontaneously moving out to areas outside the city centre. In

August 2013, after the plan was postponed, forced evictions none-the-less gained pace.

Some of Somalia's internally displaced people have been returning to south Somalia from locations such as Mogadishu. Since 2012, a UNHCR managed "returns consortium" has been assisting people to return, a process which will influence the repatriation programme from Kenya to Somalia.[142] However, even within Somalia, it is push factors such as forced evictions and human rights abuses in Mogadishu and other areas that have influenced some people's decision to return to south Somalia. This raises the question whether people have a genuine desire to return to their areas of origin and therefore whether the returns are truly voluntary.

RELOCATION OF INTERNALLY DISPLACED PEOPLE IN MOGADISHU

An inter-ministerial task force to plan the relocation was set up by the government comprising five ministries.[143] The task force identified three potential sites for the proposed relocation: Daynille, Qubadley and Jazeera. The inter-ministerial taskforce approached UN bodies and international NGOs for their assistance in planning the relocation, and to develop and provide services at the proposed sites. This resulted in the formation of the Mogadishu IDP Relocation Policy Committee, chaired by the Ministry of Interior and National Security, under which an IDP Relocation Task Force was set up in order to plan and coordinate the relocation. The Committee is chaired by the Ministry of Interior and National Security and co-chaired by the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA).[144]

The plan saw ongoing revisions. One of the proposed relocation sites in Daynille was settled on, while other proposed areas were later deemed unsuitable for various reasons including insecurity, distance from Mogadishu and feasibility of the sites. Five priority settlements to be relocated were identified: two in Waarberi District next to Mogadishu international airport – Majo and Al-Adala settlements; and three in Hodan district in central Mogadishu: Darwiish, Siigaale and Tarabunka camp. The numbers of people to be relocated were revised down. [145]

In July 2013, planning for Daynille and the relocation was put on hold. Although Daynille was considered to be the most suitable location, the government's control of the area was weak, while al-Shabab and clans sympathetic to it were known to be present. In addition, the site was littered with unexploded ordnances which first had to be cleared, a process which was delayed on more than one occasion because the government could not provide the police protection needed for the mine clearance staff to work. Meanwhile a full-time police presence could not be established, in part due to the police officers being afraid to stay in the area overnight.[146]

The government had proposed the camp to be in place for two to three years, and described it as a temporary solution before Mogadishu's many displaced people went back to their areas of origin.[147] The two to three year timeframe was arbitrary. It was not contingent on the ability of people to return voluntarily, in safety and

dignity. For some people, the reasons they fled are still valid. Their safety should be assured prior to any expectation to return. One factor in assessing voluntariness is where people consider their home to be. Many displaced people moved to Mogadishu because of the conflict in the early 1990s. One estimate considers that 30% of people considered as internally displaced in Mogadishu are either from the city originally, or moved to Mogadishu and its outskirts over a period of many years and throughout the conflict.[148] Many of these people consider Mogadishu their home.

Long-term planning regarding Somalia's displaced must consider that people may not want to return to their areas of origin, most of which are in rural areas, and that they have become used to an urban lifestyle. Others see that they simply have no alternative location. UNOCHA states that *'IDPs have become urbanised as the vast majority of IDPs gravitated to urban centres throughout the country in search of humanitarian aid and for livelihood purposes.'*[149] One study in two IDP settlements in Mogadishu found that 45% of displaced people surveyed planned to stay or relocate within Mogadishu.[150] To be effective, the relocation plan needs to be realistic, acknowledge these issues, and provide alternative solutions for people who cannot, or prefer not to, return to south and central Somalia, in line with their right to choose their place of residence anywhere in the country.[151]

Women and men displaced within Somalia must be genuinely consulted in any planning for their future, whether that is to be local integration, relocation or return. This is not only necessary for any relocation or return plans to be sustainable, but is required according to international and regional law and standards.[152] Very few of the displaced people Amnesty International spoke with in Mogadishu in August 2013 knew about the planned relocation. A study conducted around the same time also found that 64% of displaced people surveyed were not aware of the relocation plan.[153] None of the people Amnesty International spoke with who had heard of the relocation plan had been consulted about it.

THE MURKY SITUATION OF LAND

Land ownership in Daynille is unclear, with both the government and clans in the area claiming ownership. Determining land ownership in Somalia is not straightforward. There is no national legal framework governing land tenure and land management in Somalia, while there is weak technical capacity in land management. Land records are either unclear, incomplete or non-existent. Land appropriations are rampant and have led to a 'gatekeeper system', a lucrative business led by powerful individuals and groups, often with links to district commissioners and other local level authorities or militia, who present themselves to internally displaced people as legitimate landowners. Gatekeepers take on an informal role of camp managers for profit, in the absence of formal camp management throughout the years due to insecurity. Their access to land gives them the ability to exert power and control over displaced people, and to divert humanitarian aid. Government and private interest to develop Mogadishu, and the return of members of the diaspora, has resulted in increased pressure over land and disputes over land ownership.

Displaced women who return without male family members face specific challenges. Shari'a law is often strictly interpreted in line with restrictive Somali customary norms which limit women's ability to own, rent or inherit land or other property in their own names. The inability of these women to access land in their own right affects their ability to provide for themselves and their families upon their return, could lead to other rights violations, and is also discriminatory. Many Somali families have lost male family members because of the years of conflict and displacement, leaving displaced women as the head of their household with primary responsibility for children and other dependent family members. Without access to land, these women face extreme challenges in supporting their families.

Lack of security of tenure has led to forced evictions in Mogadishu, and allows gatekeepers to maintain control over internally displaced people. It is for this reason that the UN committee on ESCR have insisted that security of tenure must be guaranteed in order to fulfil the right to adequate housing. They say that states should *"take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups."*

Lack of formal and clear land agreements for sites allocated for the use of camps for internally displaced people, including on the ownership and use of the land, could be disastrous to any relocation and could perpetuate or exacerbate insecurity.

© Amnesty International - A female IDP dismantles her shelter, Mogadishu, Somalia, August 2013.

FORCED EVICTIONS IN MOGADISHU

"When I arrived, everything was destroyed…I sat on the ground, I didn't know what to do… I have no place I can go."

(Fatima, 60 years old)

The threat of eviction hangs over all internally displaced people in Mogadishu. In 2012, thousands were forcibly evicted from land and buildings by the Transitional Federal Government and private landlords, creating a homeless population.[154]

In 2013, evictions have been carried out by private landowners, government representatives, and gatekeepers. Since the beginning of 2013, gatekeepers have leased or otherwise acquired plots of land, and began moving displaced communities under their control to the area known as Km 7-13 along the Afgooye road. This was reportedly in order to maintain control over the displaced people and to reap the economic benefits they bring in the form of the expected humanitarian assistance that would follow. In August 2013, evictions gained pace despite the postponement of the relocation plan.[155] UNHCR estimates that more than 16,000 people have been displaced due to forced evictions between January and October 2013, roughly 15% of all displacement in the country during that period.[156]

Forced evictions have been taking place from both public and private land including from priority areas identified for relocation in the city centre. In April, all 350 households in Al-Adala camp were told by a private landlord to leave within three days.[157] By June 2013 it was reported that both Al-Adala and Majo camp in Waaberi district near the airport had significantly emptied.[158] Both of these camps were designated as priorities for relocation under the government's relocation plan. Amnesty International documented forced evictions from numerous locations, including Tarabunka and Zona K camps in Hodan district, and were told that forced evictions took place in other districts of Mogadishu such as Wadajir, Xamar Jab Jab, Shibis and Hawl-Wadaaq, including from government buildings and land. In mid-August 2013, Amnesty International spoke to scores of displaced people who had been evicted. They had been given very little notice, were not consulted prior to the eviction, no adequate alternative was given and the eviction was accompanied by the threat or use of force. Noor, aged 35, spoke to Amnesty International about his eviction from Al-Adala in April 2013: "*The owner came and asked us to leave the place. He came with gunmen but they didn't shoot. Instead they started demolishing the shelters and threw the iron sheets to the ground. We knew we could not stay after that. Many families left that day."*

Residents risk death or serious injury if they resist eviction. On 14 August 2013, a protest took place at a large settlement, home to thousands of internally displaced people in Hodan district, near the former military hospital and the former milk factory. An eight-year-old child and a mother of nine were killed and several others

injured.

Residents of the camp told Amnesty International that when members of the security forces arrived at the site and told them to vacate within three days, some residents protested and some threw stones, in response to which security forces opened fire.

Eight-year-old Hassan was killed. His father, Muuse, told Amnesty International: "*It was around 10 in the morning, the military came and told us that we had to move away within three days, that the government wanted their land back. People were angry, it was not enough time to move, so we started demonstrating. Some people threw stones, so the military started firing. It was chaos. Soon after I was called, I was told my son had been shot by a stray bullet while he was playing inside our shelter. I went immediately, but he had already died.*"

Muuse originally came to Mogadishu from central Somalia. His family fled after losing their land and livelihoods because of clan-related conflict in 1991. He has lived in Mogadishu ever since, moving from place to place as a result of the conflict. He says he cannot return to central Somalia because he is afraid of al-Shabab and because he has lost his land. He was working in a small shop near his shelter which was destroyed during the eviction. When Amnesty International interviewed him seven days later, he had not regained his livelihood.

Sharifa, a mother of nine children, was killed in the same incident. Her husband, Abukar, recalled the events to Amnesty International: "*After the military had come and told everyone to move [vacate the site], residents started to protest and my son joined them. My wife was worried about him, so she left our shelter and urged him to come away. He went back inside, but my wife was struck in the head by a stray bullet before she could get inside our shelter. She was rushed to hospital, but by the time I got there, she had died.*"

Three days later, on 17 August, security forces returned with a "technical", a vehicle fitted with anti-aircraft guns, and a bulldozer. Abdullah, 40, was working in Bakaara Market when he was called by his wife: "*My wife called to say a bulldozer had arrived and was destroying everything. I went back and found the bulldozer had hit my shelter and destroyed many things. I picked up my children and wife, while I was getting them out the gunmen came to me and said 'why did you delay in removing your shelter'? Then they hit me with the butt of the gun. After this I dismantled what remained of my shelter and took some plastic sheeting to cover my family from the sun. We are staying there because I don't know where else I can go."*

Abdullah was born in Mogadishu. His father was originally from Hiran region in central Somalia but he considers Mogadishu his home. He is one of the many urban poor who have been living among the displaced. He told Amnesty International: *"If they come again we will run away, somewhere we feel safe. I don't know where that is, maybe out towards Afgooye.*"

Amnesty International visited the former military hospital and former milk factory on 21 August and saw visible signs of the destruction that had taken place: the churned up earth was strewn with wood, cloth, plastic sheeting and other debris.

The use of bulldozers to clear sites has been documented elsewhere in Mogadishu. In June 2013 in Waarberi district, a bulldozer reportedly arrived at settlements near the airport and began destroying shelters. Amnesty International was told that during the operation, a three-year-old boy sleeping in one of the shelters was injured by the bulldozer and later died of his injuries.

On 13 August 2013, a written notice with a stamp stating it was from local government, was given to a limited group of people, namely camp leaders of a settlement in the district close to Mogadishu international airport. The notice required them to move out of the area within four days.[159] The camp residents were told to move to Badbaado IDP settlement in Dharkenley district, an overcrowded sprawling settlement known for its high levels of crime, including rape and other forms of sexual violence.[160] Camp residents told Amnesty International that in the following days, members of the security forces went to the camps, warning them that force would be used to evict them if necessary. On 21 August Amnesty International visited the area and spoke to residents who were dismantling their shelters, gathering their belongings and preparing to leave.

Some residents claimed they have title deeds to the land where they were living dating back to before 1990, during the time of the Siad Barre government. They filed a petition with the High Court and to the Attorney General requesting their intervention to stop the eviction on the grounds that they had secure tenure. The High Court reportedly stayed the evictions until the claims could be verified. The Attorney General also advised that it was unclear whether the eviction notice was valid as it was not officially stamped and signed, and that there should be no evictions until this issue was clarified. However, on 12 October 2013, Somali police, reportedly accompanied by an AMISOM vehicle, arrived with a "technical" and a bulldozer and began to move people out.

Yusuf, 27, told Amnesty International: "*A government official, accompanied with a heavy police force and a van with 'AU police' written on it arrived at 7am. They began destroying shelters with the bulldozer, and hit anyone who tried to resist. They threatened they would take us to the police cells. I begged them not to destroy my shelter, we just accepted to collect our belongings and move.*"

Further forced evictions in Waarberi district were reported during the first week of October as well as in Hodan and other districts. In Waarberi district, in the area of Majo camp, at least 2,000 households, including 200 orphaned children were reportedly forcibly evicted.[161]

In September 2013, UNHCR and the Office of the Special Rapporteur for the Human Rights of IDPs began working with the Ministry of Interior and National Security to establish guidelines on evictions.[162] While this is positive, the government must ensure that all forced evictions are stopped, and that the people

are protected from forced evictions. In addition, measures to safeguard against forced evictions must be institutionalised and implemented.

LACK OF ADEQUATE ALTERNATIVES

"In Sarcus I am a parasite, we are living with a family there, I have no home."

(Nasra, 65, from Bay region)

None of the people evicted who Amnesty International spoke to were provided with an appropriate alternative location. They also said they did not know of any other evictees being offered alternative accommodation.

Instead, displaced people began moving to a different location from the designated relocation site, mainly to the north-west outskirts of Mogadishu, to the area known as Km 7 - 13. Here, they began establishing settlements without government approval or assistance. Amnesty International spoke to some of the residents who said that they believed Km 7-13 was more secure than the proposed relocation site in Daynille. Since an AMISOM and TFG offensive in the Afgooye corridor in 2012, there are fewer armed groups operating in this area. However, the lucrative economic opportunities that come with the presence of large numbers of displaced people, especially the provision of humanitarian aid, and the lack of government control, could once again attract armed groups to the area. The presence of armed groups in settlements for internally displaced in Mogadishu have in the past given rise to insecurity leading to a number of human rights abuses, including extortion, diversion of humanitarian assistance and violence including sexual violence.

"Of course we will have some problems. Some thieves will come and some women will be raped. But Mogadishu is better, we have a hospital and the children may get schooling."

(Nurta, 57, Bay region).

Humanitarian agencies have limited access to the Km 7-13 area as they perceive it as a higher risk area due to its location outside the city centre and the lack of precise knowledge regarding the presence of armed groups. 30% of people residing in the newer settlements reportedly pay for their protection.[163] Additionally, perceptions among displaced people about acceptable levels of security threats are affected by the years of trauma they have suffered and by their sustained exposure to crisis situations. For example, Rahma, while recounting her experience of rape following her move to Km 7-13 earlier in the year after being evicted from Tarabunka camp, told Amnesty International that *"security is ok here apart from the rape."*[164]

LIMITATIONS ON HUMANITARIAN ASSISTANCE

Removing displaced people from the city without providing an alternative location

could further strengthen the power of the gatekeepers who, through their acquisition of land along Km 7-13 have the opportunity to continue to exploit displaced populations for profit. Amnesty International talked to some people who had recently moved to Km 7-13. They said that they were told to immediately report any assessments or provision of humanitarian assistance to the gatekeepers. One man told Amnesty International that should food distribution cards be allocated, a percentage of them had to be given to the gatekeeper.

Somalia has been plagued by diversion of humanitarian assistance for years. Lack of access due to insecurity has resulted in humanitarian agencies having less control of, and knowledge in the distribution of aid, allowing a system of aid diversion to arise which has now become a lucrative business in Somalia. Gatekeepers continue to control and divert aid while Somalia's displaced people remain vulnerable to an exploitative system, deprived of much of the humanitarian assistance they need.

"Diversion of aid in Somalia goes well beyond the theft of goods or resources destined to vulnerable populations. Indeed, one of the most pernicious forms of diversion continues to involve the phenomenon previously documented by the Monitoring Group (S/2012/544, annex 6.2). Individuals and groups, operating in networks organized to steal from and exploit vulnerable populations, including internally displaced persons, continue to act as 'gatekeepers' and ensure that local 'pie-cutting' remains an essential component of aid delivery. Consequently, a large proportion of resources do not reach the intended beneficiaries."[165]

Report of the UN Monitoring Group, July 2013

After people started moving out of Mogadishu to Km 7-13, the government was reluctant to allow services to be provided while planning was ongoing for the relocation programme. Amnesty International delegates observed makeshift shelters in the new settlements, around 80% of which are in such poor condition that people need urgent assistance.[166] While people had some access to latrines and water, for the most part provided by local organizations, most people reported having to pay for these services. A survey carried out around the same time in the area found that between 79 and 90% of people paid for their water.[167] Any further deterioration in the already dire living conditions for displaced people could have disastrous consequences, especially for the more vulnerable. Amnesty International visited one of the sites, Masla-ha. Residents showed the delegates two newly dug graves on the edge of the camp, among the shelters, where they said two four-year-old children who had died of diarrhoea some days earlier were buried. Residents said that several other children had died for the same reason in previous weeks.

The government of Somalia relies at all levels on international and national organizations to ensure that the basic needs of its internally displaced people are met. The government's failure to allow humanitarian assistance in the Km 7 – 13 areas is a clear obstruction of humanitarian assistance and a violation of Somalia's international legal obligations as well as a violation of displaced people's right to an adequate standard of living.

LIVELIHOODS

The evictions have had a negative impact on affected people's access to employment and livelihoods. Many displaced people have moved outside of the city centre pushing them further away from the Bakaara market and other areas within the city where they find informal work – often poorly paid casual labour such as loading, carrying or selling goods, washing clothes or cleaning houses.

Several displaced people who recently moved from settlements in the city centre to Km 7-13 told Amnesty International that they now spend a larger percentage of their meagre earnings on transport to and from work and that sometimes they cannot afford it and have to walk. Although this affects both women and men, women in particular reported to Amnesty International that they feel insecure, and vulnerable to attacks. Hawa told Amnesty International: "*Some days I earn so little that if I pay for the bus I don't have enough left for food, so I have to walk back home; it takes me about two hours. It is very tiring and insecure; I am always afraid that men may rob me or attack me, but I have no choice.*"

For some, these fears have become a reality. Idil, 27, recounted her experience to Amnesty International: "*I was with six women collecting firewood in the countryside near Musla-ha. Men came and threatened us with swords and sticks. I fell unconscious and managed to escape being abused, but the six other women were raped."*

At the time of writing, relocation planning had resumed, though without a clear implementation timeframe.[168] Relocation must only take place when the security and fundamental rights of those affected are guaranteed in line with international standards.[169] This includes ensuring that minimum essential levels of housing for everyone are provided with priority given to the most vulnerable groups. Any such steps must be undertaken with the genuine consultation and participation of those affected, including women and members of marginalized groups, with the provision of an effective remedy if any of these rights are violated.[170]

Issues of land ownership must be addressed and security of tenure guaranteed in order to protect against forced evictions. Consultation with those affected must take into account concerns regarding impacts on livelihoods or physical safety in more remote locations. The sites that forcibly evicted people have moved to are closer to the centre of Mogadishu than the site in Daynille. Given the problems they are already facing in their ability to work, there must be clear planning to allow displaced people to get to their work and to find work. Crucially, there must be guarantees that people will not be subjected to further human rights abuses such as they have experienced in former settlements for displaced persons.

UNLAWFUL ARREST

The government are chasing al-Shabab; and al-Shabab are chasing the government; al-Shabab is chasing people with a relationship with the government; and the government are chasing people with a relationship with al-Shabab. We people are caught in the middle. Suspicion is everywhere.
(Alio, male, 70, Bay region)

The SNAF regularly arrest people they suspect of being members of, or sympathetic to, al-Shabab. Mass arrests are common, particularly after attacks by al-Shabab.

Al-Shabab also capture and hold people. Leaders of displaced communities, or people with links to the UN or other international agencies are at increased risk of capture by al-Shabab. Osman, 58, told Amnesty International that he was captured by al-Shabab in August 2013, in Bay region. Osman was accused of acting as a go-between for displaced people and UN agencies and held for eight days. Al-Shabab told Osman when they released him, that they would kill him if he went to government areas or if he was in contact international organizations such as the UN and NGOs. Osman cannot go to his village of origin because he fears retaliation by al-Shabab. Amnesty International spoke to a leader of displaced communities who had recently returned to south Somalia but could not return to his village of origin. He said he could not go back to areas al-Shabab control for fear he would be captured following Osman's experience. People on transport routes report being interrogated and treated with suspicion by al-Shabab. Abdiraman, 38, had travelled from Dadaab to Middle Juba, Somalia, to bury his mother. He returned to Dadaab in July 2013, and recounted his experience to Amnesty International:

"We were coming back from Bu'ale. On the way we met with an al-Shabab checkpoint. We were all taken off the bus and told to sit on the ground. A man spoke to us. He said 'if you are found with tobacco, if you are found with miraa [khat, a stimulant], if you have documents, it is upon you. I was carrying my Kenya alien card, I put it in my sandal without being seen. They were checking everything and everybody. Then we were told to stand aside. After that they interviewed us one by one. They asked us who we were, where we were going. Some of the youths were beaten, because they were not happy with them going back to Dadaab. Al-Shabab were saying 'what are they saying there about us?

When one lady was checked, they found an American id…they put all her documents on the fire, and put her in a separate room. She was crying and crying. They kept us for around two hours, then all of us but her were allowed to go on our way. They said to the driver, 'if you look back, we will slaughter you.' they had started walking with her towards the forest. We never saw her again. Even if my father dies tonight in Somalia, I cannot go back."

RETURNS OF SOMALIA'S INTERNALLY DISPLACED PEOPLE

"There is no good place in the country for refugees."

(Hawo, 34)

'VOLUNTARY' RETURNS

In 2012, internally displaced people began spontaneously returning to their areas of origin. In response, UNHCR set up a Returns Consortium in August 2012. The consortium is a multi-agency initiative whose objective is to assist the voluntary, safe and sustainable returns of internally displaced people within Somalia,[171] as well as to set standardized procedures and return packages between organizations.[172] Quotas were set on the number of people to be assisted to return, and areas of refuge were identified to target people who could be supported to return. The numbers of people targeted for return in 2013 was revised down because the people finally willing to return to their areas of origin were less than initially expected, as well as changes in accessibility of some areas and funding constraints. UNHCR report that in 2012, they assisted 1,745 families to return, and by the end of September 2013, they assisted a further 1,734 families.[173] It is expected that these numbers will increase in the following years.

The returns consortium focuses on returning agro-pastoralists to Bay, Middle and Lower Shabelle regions of south Somalia. Returns have been carried out to coincide with planting seasons. Many rural areas where people lead an agro-pastoralist lifestyle are under the control of al-Shabab.

Some people within Somalia told Amnesty International that conditions in their areas of residence were a key factor when considering whether to return to their areas of origin. In Mogadishu, some said they are tired of being moved and might be prepared to return to their place of origin, despite the insecurity.

Rukiya, 42, who had been forcibly evicted and had moved to Sarkus camp in the Km 7-13 area, told Amnesty International: *'instead of again relocating us to another camp where we will face a similar situation to the one we've been suffering, where we could be told to move, and are given no assistance, we better get returned to where we came from. But I am afraid of al-Shabab. They are still there in my village.'* (From Bay region)

Fatima, 37, who recounted her cousin's recent killing by al-Shabab[174] said: *'Even though my cousin was killed, and security is not there, I prefer to go home. Here, I can be told to quit (evicted) any day'*. A survey carried out in two IDP settlements in Mogadishu found that there was an 18% increase in the interest of internally displaced people who knew about the relocation plan, to return to their areas of origin after the government announced the plan,. [175] This is a clear indication that negative conditions in the area where internally displaced people live influence their willingness to return to their area of origin.

Inadequate standards of living, exacerbated by the lack of humanitarian assistance, are another factor for people considering returning. Sareedo, a widow and mother of seven living in Badbaado settlement, told Amnesty International: *"Here I am suffering, I can't get food aid, life is hard. So I prefer to go back to my hometown. My greatest fear is that the same conflict is there that I ran away from, and I don't know if I can find food there. But maybe it is better."* Such push factors were also evident for people who had recently returned to their areas of origin from elsewhere in Somalia. Amnesty International spoke to some displaced people who had returned from Puntland to Bay region. One man, 70, spoke of why he returned: *"There, there were many problems. The women were being raped when they fetched water and no-one responds. We couldn't get jobs. Then we were evicted and told to move far from town to the forest. It was then that we were asked what we wanted to do. So we said we wanted to come home."*

Another woman, 45, who left Puntland with the same group, said: "*There, we were harassed by the people, and the police suspected us of carrying out crimes and blamed us for insecurity. Our homes were burnt down, life became so difficult. Later we were told by the police to move far out of the town, into the forest. It was after that we were approached and asked what we wanted to do. So we decided to go home."*

Some people Amnesty International spoke to said that they were actively encouraged to return by leaders of the displaced community who were promoting the package to support returns, and who in some cases would exaggerate the support returnees would receive. This led to increased expectations of some returnees. Hawo, who is 60 and originally from the Bay region, participated in a returns programme in March 2013, but came back to Mogadishu some months later: "*I was promised support to get food aid and other assistance, a permanent house and animals to promote my living. These ended up in empty promises. On our way we met an al-Shabab checkpoint. When they asked us our destination we told them we were only passengers. But when I reached my original home I got fear al-Shabab will entice and brainwash my children to join them, or even the government forces. So I came back to Mogadishu."*

Farhia fled back to Mogadishu shortly after she had participated in a returns programme in March. She also had raised expectations of the assistance available to allow her to establish an adequate standard of living in her area of origin. As with Hawo, she did not have a full understanding of the situation in her area of origin and was surprised to find that the insecurity she fled from was still there. She told Amnesty International *"I was promised food aid, shelter and animals. But this was empty promises. Because of this, and because I found the same situation there that I ran away from, I sold the little food aid I had in hand and returned to Mogadishu."*

Many people Amnesty International interviewed spoke of these empty promises. One woman, 42, who had participated in a returns programme and returned to Mogadishu said, "*I was promised I would get help with my life, but that is empty promises. There is no organization giving services there."*

A combination of factors raises Amnesty International's concerns about the sustainability of these returns, and whether people are able to live in safety and dignity upon return. Humanitarian and human rights abuses, limited access to services, and disrupted livelihoods remain major obstacles to the sustainability of return. Amnesty International were told by people who had recently participated in a returns programme and had later returned to Mogadishu that they had been told by the organizations facilitating their return that they should keep a low profile. This indicates that these organizations knew about the security risks to civilians, particularly those returning to areas where al-Shabab were still active.

Organizations have a responsibility to ensure that they are not involved in activities which perpetuate or subject people to human rights abuses. For all organizations involved in returns programmes, they must ensure they discharge their duty of care to Somalia's displaced people, and adhere to relevant international standards and codes of conduct.[176]

Monitoring of returns is a vital safeguard to ensure that people who have returned are living in safety and able to establish an adequate and sustainable standard of living. The returns consortium has installed a post-return monitoring system. However, Amnesty International was told that UNHCR have extremely limited access in south Somalia and are unable to directly monitor the majority of areas in the region. Given the difficulties in obtaining accurate information as to the true situation in south and central Somalia, this should also be treated with extreme caution, and questions whether it is possible for UNHCR to guarantee that returns can take place in safety and dignity at this time.

UNLAWFUL KILLINGS

"This thing happens frequently, the killings. I'm getting used to it"
(Fatima, 37, Bay region)

People continue to be unlawfully killed in south and central Somalia. Halimo described how she was assisted to return to Bay region in April 2013: *"It was around sunset, the driver was listening to music and didn't hear the gunmen on the road who started firing. The passengers started shouting for him to stop but the driver didn't hear, so the gunmen were shooting more. I was holding a four year old child. She got shot, her head exploded, she died instantly. The car was then stopped and we were all made to climb down from the bus. The gunmen took everything away with the driver. We didn't see him again. The next day people helped us to bury the girl. We went back to Mogadishu after that."*[177]

Al-shabab are reportedly suspicious of many people in the areas they control. People suspected of having links to the SNAF, AMISOM, or to some international agencies are at a high risk of being killed, mistreated or threatened. Al-Shabab operatives are particularly suspicious of people they don't know or those who have been outside their areas of control. Al-Shabab reportedly often execute individuals they accuse of spying for the government.[178]

Fatima, 37, from bay region recounted in August: "*My cousin polished shoes for a living in Mogadishu. He wanted to go back to get married. Yesterday (18 August 2013) he was murdered. Some of the men there snitched on him. They told al-Shabab he used to work for Burundian forces, and took deliveries to them. One night after he went back members of al-Shabab called him and said they wanted to ask him some questions. He called me and told me that if anything happened to him, it is al-Shabab. On the third morning my family told me his body was returned. He had been beheaded. He hadn't ever worked for the Burundians, but it's known people can talk about you like this. If you go from a government to an al-Shabab area, they can kill you."*

One woman, 35, who had recently returned to Lower Shabelle region and came back again to Mogadishu told Amnesty International: *"al-Shabab don't like us as our husbands are working in Mogadishu. They say they're working for the government. Al-Shabab suspects anyone that comes from Mogadishu."*

Al-Shabab sometimes carry out public executions. Fartuun, 25, told Amnesty International that she had recently heard news of her uncle's death. *"On the first day of August my uncle went home to our place in Lower Shabelle. He had been a soldier under Abdullahi Yusuf Ahmed and had recently returned from Yemen. His mother persuaded him to go home, she told him 'since you went away and left the forces there will be no problem, you are clear, let us go home'. He was captured the day he returned home. Al-Shabab soldiers took him away and held him captive. After five days they brought him in front of the stadium and beheaded him in front of people. After, they left him outside with his head on his stomach. He was there for one week."*

EMPLOYMENT AND LIVELIHOODS

A key challenge for some returnees is their inability to access land because of insecurity, and therefore to earn a living. Amnesty International spoke with numerous people who had recently returned to south Somalia, but who had not returned to their villages because they were afraid of al-Shabab. One woman, 37, said she had not gone back to the farm because *"I fear al-Shabab, they control the villages."* Instead she was living in a settlement for internally displaced people.

Even where the land is not under al-Shabab control, access between habited areas is still difficult because the routes cut through areas where al-Shabab is active. One woman, 47, who returned to Bay region in July 2013, explained to Amnesty International: *"I expected that the access between the villages and Baidoa are free. But I met with difficulties. Al-Shabab still control there [the route] so I cannot get to my land."* This is a key obstacle to the ability of returnees to return and establish an adequate and sustainable standard of living. Residents will only be able to establish a living if they are able to secure passage to their farms and to other areas such as key trading centres in order to access services and markets for trade.

One leader of an internally displaced community, 60, explained that he cannot go back to his place of origin. He explained that even in areas where al-Shabab is no longer in control, they are present, and surround the areas under government control: "*The problem to go back is still insecurity. Al-Shabab are still there. I have land still but cannot go, al-Shabab still control. But even outside [areas of their control], they move from place to place."*

It is not only insecurity and fear of al-Shabab which impedes access, but also land ownership. Some people sold their land in order to leave, most recently during the 2011 drought. Hassan, 54 from Diinsoor, said: "*The reason I fled [al-Shabab] is still there, and I sold everything. I have nothing to go back to."* Mohamed, 35, said "*I sold my land when I left. I don't have land."* He is one of numerous people Amnesty International spoke to who had sold their land prior to leaving. In one localised study of the internally displaced in Mogadishu, 25% of people surveyed owned land in their areas of origin,[179] a finding consistent with Somali refugees recently surveyed in Kenya and Ethiopia where according to the report, roughly 25% of people surveyed said they would have access to land.[180] This indicates that many displaced people would not have any land to return to, raising fundamental questions about the sustainability of such returns.

Another factor in assessing sustainability of returns is people's willingness to go back to the rural areas they originally came from. Many people have found alternative livelihoods in the urban areas they fled to, and have become used to earning a living that is not dependent on harvests.

Fardousa, 41, who spoke to Amnesty International in Mogadishu said "*we prefer a place where we can get our daily bread. If there is no support, life is not there at home. Here we are safer, and we can get our daily lives."*

Fatima, 30, told Amnesty International: "*It is not possible to go back; there is no way to get money. Here in Mogadishu I can work here and there".* A 40 year-old woman told Amnesty International "*I cannot go back there as there is nothing to go back to. Life is hard there."*

Some people who have returned to their districts of origin end up in urban centres rather than their place of origin. A few manage to establish a life there, while others end up in settlements for displaced people, in deplorable conditions and where human rights abuses are commonplace. Consequently, some displaced people have effectively been moved from one area of displacement to another, instead of being returned.

ACCESS TO HUMANITARIAN ASSISTANCE

"*In no sense at all is the Somali crisis over*"[181]

Report of the UN Secretary General on Somalia, September 2013

Access to humanitarian aid by populations in need of assistance remains extremely limited in south and central Somalia. In the past two years, al-Shabab have banned most international humanitarian agencies operating in areas under their control,[182] while imposing forced "taxation" on agencies able to remain in those areas. It is reported that all armed actors extort and "tax" humanitarian organizations.[183]

Somalia is one of the most dangerous countries for humanitarian organizations. The UN reports that in 2012, over 150 incidents involving both national and international aid workers were documented; al-Shabab continue to target and kill aid workers, while the government has failed to provide security and protection to agencies under its areas of control.[184] On 14 August 2013, the international medical humanitarian aid organization *Médecins Sans Frontières* (MSF) announced its immediate withdrawal from Somalia due to attacks on its staff, and "*an environment in which armed groups and civilian leaders increasingly support, tolerate or condone the killing, assaulting and abducting of aid workers.'* MSF assessed that *'there is no other country in the world where security risks are so high.* "[185] MSF had operated in Somalia for 22 years.

Water, sanitation and health facilities and other services are mostly limited to accessible urban centres. It remains extremely difficult for civilians to access essential services in other locations, particularly in rural areas. [186]

People from areas now under al-Shabab control to whom Amnesty International spoke, said that there were no services there. As one man, 60, explained: *"al-Shabab get very angry with displaced people who have been away, how do you think they see organizations?"*

In areas with large numbers of displaced people such as Mogadishu there is often a level of service provision like water, health facilities and food, mainly through humanitarian assistance. Lack of access to services and humanitarian assistance is a factor that compromises people's ability to reintegrate to rural areas, and impacts on the ability of highly fragile populations to recover from ongoing crises including for instance the drought and famine in 2011.

While today it is estimated that less than one million people are in a food security crisis, 2.3 million people, around a third of Somalia's population, are on the margin of food insecurity. [187] Critical levels of malnutrition persist in many parts of south-central Somalia, particularly among Somalia's internally displaced people. [188] Lack of humanitarian access contributed to an outbreak and *'to the rapid spread of polio'*[189] in August. Health indicators in Somalia remain some of the worst in the world.[190]

FINDINGS - INTERNALLY DISPLACED PEOPLE IN SOMALIA

Amnesty International has found that a number of returns of displaced people in Somalia are not voluntary. Many of those interviewed were returning because of human rights abuses in the area of residence including forced evictions and

displacement, the inability to establish an adequate standard of living, and other human rights abuses which led to '*physical, psychological or material pressure[s].*'[191] In these cases the negative push factors in the place of residence outweigh positive pull factors in areas of origin.

Returns that are encouraged to unsafe areas where people may face human rights abuses are contrary to international standards as well as UNHCR's criteria for voluntary returns. Although returns may have been promoted by gatekeepers and local representatives of internally displaced persons, it is the responsibility of UNHCR and the organizations facilitating returns to ensure that people have in no way been encouraged, including by being given misleading information about the support they would receive. As the Somali government become more involved in returns, they bear the ultimate responsibility to ensure that returns are carried out in accordance with international standards.

Amnesty International also has serious concerns as to whether all returns to south Somalia have been taking place in safety and dignity. Those who are internally displaced face a real risk of human rights abuses in returning to their areas of origin, particularly to areas where al-Shabab is active. Many do not have adequate access to land or work. The lack of access to basic services such as water, health, food and education brings into question whether people will be able to establish an adequate standard of living. All of these factors contribute to the ability of returnees to reintegrate free of human rights abuses and are a strong indicator in assessing the sustainability of returns.

Amnesty International is gravely concerned that refugees may become internally displaced. This is not a durable solution to Somalia's protracted displacement situation, and only shifts displacement from one location to another. This must be a lesson as repatriation of refugees from Kenya begins, and measures must be in place to ensure the protection of internally displaced people in a context where it is probable that many returning refugees will end up displaced within Somalia.

6. CONCLUSION

Amnesty International has found that in many cases, it is the negative push factors in Kenya, such as shrinking space for asylum-seekers and refugees and the human rights abuses they face, that are influencing their considerations to return to Somalia. In this context, the organization has serious concerns about the feasibility of a voluntary returns programme according to international standards.

The decision of refugees to return to Somalia from Kenya should not be influenced by any deliberate or unintentional pressure. Restrictions on movement, arbitrary arrest, an ongoing inability of refugees to register, and diminishing access to services are forcing Somali refugees and asylum-seekers into making decisions to return. Public statements by Kenya government representatives that refugees should return and that camps should close places additional pressure on refugees and asylum-seekers. When people feel they have no option but to return, this is not a voluntary choice, and can amount to forced return. Amnesty International is concerned that the implementation of the tripartite agreement could lead to a spike in refoulement. .

The Kenyan government must ensure that Somali refugees continue to receive protection while their rights are at risk in Somalia. Both the Somali and Kenyan governments are responsible for ensuring that returns of refugees take place in safety and dignity. In Somalia, where serious human rights abuses occur daily, civilians struggle to claim their rights, and the government does not have full and effective control of vast areas of south and central Somalia, it seems almost impossible for this to be realised at the moment. UNHCR and international agencies must only assist a process of returns when the safety and dignity of returnees can be guaranteed.

Assisted returns taking place within Somalia will influence the repatriation process from Kenya.[192] The Somali government bears the primary responsibility for protecting Somalia's internally displaced people. Forced evictions, the threat of forced relocations, an inability to achieve an adequate standard of living and lack of security have influenced the decision of some internally displaced people to return. Returns due to such influences are not voluntary. UNHCR and organizations involved in returns must ensure they are not facilitating a process of further displacement.

Ensuring that people return in dignity requires that those returning have their full rights restored. Amnesty International considers that it is not possible for people to return in dignity at this time with the prevailing circumstances. Human rights abuses continue to devastate untold numbers of civilian lives in south and central Somalia. Difficulties in accessing land, establishing livelihoods and employment, as well as accessing humanitarian services raises concerns about the ability of returning people to establish an adequate standard of living. Indeed, some who are unable to return to their place of origin end up swapping one displaced people's camp for another.

When organizations become involved in supporting the relocation or returns of displaced people, whether through direct or indirect means, they have a duty of care towards those they assist. Organizations must take responsibility for any involvement in initiatives which may put people at risk.

The plight of Somalia's displaced people can only improve if both governments and the international community prioritize human rights and assure their protection in line with international standards.

There have been some positive developments within Somalia, including the government's adoption of a human rights roadmap in August 2013 and the decision in March 2013 to develop a national policy on internal displacement. This must translate into a meaningful commitment to improve the rights of Somalia's displaced people.

The international community has in recent years been primarily focused on supporting and facilitating Somalia's political transition, which has at times overlooked ongoing human rights abuses in Somalia. Donor countries must ensure that political objectives such as state-building, counter-terrorism and the focus on piracy are not driven without due regard to the human rights situation in south and central Somalia. Political interests in Somalia should not be used as an over-riding reason for donor states to support returns to conflict-affected areas by down-playing the level of humanitarian and human rights abuses that take place. Promoting respect for human rights is key to ensuring that political, developmental and economic gains are sustainable.

UNHCR's Voluntary Repatriation Handbook insists that a truly voluntary decision requires refugees to make "an informed decision" and "a free choice" as to their repatriation. But when international actors have a political interest in supporting the return of a refugee population, the grey area between consent, persuasion and coercion means that refugees may be potentially manipulated into return.

The protracted conflict and displacement in Somalia requires carefully considered long-term and sustainable solutions for Somalia's displaced. Meaningful consultation with Somalia's internally displaced people and refugees about their future has so far been almost non-existent, and their voices continue to go largely unheard. The Governments of Kenya and Somalia need to remedy this gap. The international community, including donors and international organizations working with displaced Somalis, must ensure that none of their activities perpetuate or result in human rights abuses. Nor should they agree to compromises in the protection of displaced people and refugees according to international standards on the basis that such standards have been so sorely lacking throughout Somalia's long history of displacement.

RECOMMENDATIONS

SOMALI GOVERNMENT

Displaced people

- Avoid pressurizing Internally Displaced People to return to south and central Somalia, including through measures indirectly forcing them to return to their areas of origin where they face a real risk to their lives and human rights. Any returns must be truly voluntary, and conducted in safety and dignity.

- Ensure a national IDP policy framework is established as a priority in line with international standards in the Guiding Principles on Internal Displacement and the Kampala Convention.

- Ensure meaningful, inclusive and participatory consultation is carried out with internally displaced people, on all plans involving them, including development plans, stabilization initiatives and durable solution planning, as envisaged by the Kampala Convention.

- Consider and plan for alternative durable solutions such as local integration or resettlement as well as return to places of origin.

- If relocation takes place, the government must guarantee: levels of security adequate to protect against human rights abuses; non-discriminatory land tenure agreements including for women that are sufficient to protect against forced eviction; adequacy of housing in line with international legal requirements; and protection mechanisms as prerequisites for any relocation.

Evictions

- Declare and enforce a moratorium on all forced evictions until the legal and procedural safeguards required under international human rights law are in place.

- Adopt and implement the Compact on Protection Against Forced Evictions of Internally Displaced Persons in Mogadishu.

- Ensure that independent and impartial investigations are carried out into cases where forced evictions have been accompanied by excessive use of force and have resulted in internally displaced people being killed or subjected to other violations of their human rights, including rape or other forms of sexual violence. Where investigations reveal sufficient admissible evidence of criminal wrongdoing, ensure that those responsible are brought to justice in fair trials and without

recourse to the death penalty, and that remedy is provided to the victims and/or their families.

KENYAN GOVERNMENT

- Respect the prohibition on refoulement by ensuring that all returns to Somalia are truly voluntary, that refugees are not pressured to return, including through measures which indirectly force them to return to south and central Somalia where their rights are at risk.

- Explore all durable solutions, including local integration, to enable Kenya to adequately respond to the protracted nature of Somalia's displacement situation.

- Urgently resume registration of refugees in all camps and urban centres.

- Continue to grant asylum to individuals fleeing from persecution or other serious human rights violations, in line with its obligations under national and international law.

- Allow UNHCR and NGOs to continue working with refugees in Kenya until it is safe for them to return to Somalia.

- Investigate all reports of abuses by the security forces against asylum-seekers and refugees, including along ethnic and religious lines Investigate and, if there is sufficient admissible evidence, prosecute any member of the security forces reasonably suspected of committing a criminal offence. Provide full reparation for human rights violations to survivors.

- Respect the right of recognized refugees to freedom of movement throughout Kenya.

INTERNATIONAL COMMUNITY

- Establish robust mechanisms to monitor funding to the Somali government to ensure that it does not lead to human rights abuses.

- Ensure that voluntary returns initiatives abide by international standards and are carried out within the international legal framework.

- Ensure that technical assistance, including gender sensitization training is offered to Somali authorities in health, justice and policing to enable appropriate responses to sexual and gender-based violence and other human rights abuses.

- Provide funding for continued services and protection for refugees,

including in Dadaab refugee camps, in association with UNHCR and humanitarian organizations, and ensure refugees are not pressured to return to Somalia due to inadequate security or services in the camps.

- Continue to support resettlement programmes for Somali refugees in Kenya in line with the international obligation of sharing the responsibility for refugees.

UNHCR

- Ensure that all assisted refugee returns are truly voluntary and verify that they are carried out in safety and dignity, in accordance with international law and standards, including as set out by UNHCR. Carry out effective monitoring of people that have returned to ensure these standards are met, as envisioned by the tripartite agreement.

- Verify that all assisted returns of internally displaced persons within Somalia are the result of a 'free and informed choice.'[193]

- Ensure that organizations working with displaced people do not perpetuate or cause human rights abuses, including discrimination on any ground whatsoever.

HUMANITARIAN COMMUNITY

- Ensure that programmes affecting displaced people, such as relocation, return and repatriation are carried out in line with international law and standards, including that they are truly voluntary, that displaced people are genuinely consulted and that all measures are taken to ensure the safety and dignity of returnees. Monitor all returns to ensure these standards are met.

- Ensure that organizations working with displaced people do not perpetuate or cause human rights abuses, including discrimination on any ground whatsoever.

7. ENDNOTES

[1] According to UNHCR, in 2012 Somalia generated the second highest refugee populations worldwide, and it generates the sixth highest refugee and internally displaced population in the world. For more information see UNHCR, Displacement, the new 21st century challenge: Global Trends 2012, 19 June 2012.
[2] Office of the President, Relocation of Urban Refugees to Officially Designated Camps, 16 January 2013.
[3] UNHCR Refugees Daily, Lenku now orders all refugee camps closed, 24.11.13, http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=463ef21123&id=5292f28d5
[4] Dadaab refugee camps were originally established in the early 1990s. The initial three camps: Ifo, Dagahaley and Hagadera were designed to accommodate 90,000 refugees. In mid-2011, the Kenyan authorities opened a fourth camp, Ifo 2. Around July 2011, refugees began informally settling in a fifth camp, Kambioos. UNHCR and INGOs urged the Kenyan authorities to officially open the camp, particularly as the Horn of Africa drought meant many refugees were informally settling there, without protection and with access to only very basic services. On 11 January 2013, the authorities for the first time gave UNHCR permission to allow refugees to settle there.
[5] UNHCR, Handbook: Voluntary Repatriation, International Protection, 1996, 2.3.
[6] Hathaway, James C., The Rights of Refugees under International Law (2005), p. 464.
[7] UNOCHA, Somalia Humanitarian Bulletin, November 2013.
[8] Internal Displacement Monitoring Centre, Political and security crises, access limits and donor cuts increasing IDP vulnerability, 10 December 2009.
[9] European Court of Human Rights, Sufi and Elmi v The United Kingdom, Applications nos. 8319/07 and 11449/07, 28 June 2011.
[10] UN Security Council, Report of the Secretary-General on Somalia, 3 September 2013, para 42; Report of the Secretary-General on Somalia, 31 January 2013, para 12.
[11] Al-Shabab (full name: Harakat al-Shabab al-Mujahideen), is an off-shoot of the Islamic Courts Union (ICU), which controlled most of south Somalia until 2006. Al-Shabab currently exercises varying degrees of control or influence over large rural areas in south Somalia and continues to launch attacks against the Somali Federal Government, the African Union Mission to Somalia (AMISOM), and other targets. They are responsible for a wide range of human rights abuses. For more information please see Amnesty International, Somalia: Somalia's children under attack, July 2011 (Index: AFR 52/002/2011); Amnesty International, Somalia: In the line of fire: Somalia's children under attack, July 2011 (Index: AFR 52/001/2011); Amnesty International, Somalia: Violations of human rights and international humanitarian law in Central and Southern Somalia: Amnesty International submission to the UN Universal Periodic Review, May 2011 (Index: AFR 52/014/2010).
[12] UN, Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2060 (2012): Somalia, 12 July 2013, S/2013/413, p 7.
[13] For more information see Amnesty International, In the Line of Fire: Somalia's Children Under Attack, 20 July, AFR 52/009/2008, p 44. Gathering information on these abuses is extremely dangerous, however Amnesty International have continued to document these abuses, some of which are described in this report.
[14] See African Union Convention on for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), Arts. 9(2)(e) and 11(2) [Somalia has signed and ratified, the Kampala Convention though has not deposited its ratification with the African Union]; see also the UN Guiding Principles on Internal Displacement, Principles 15(d) and 28.
[15] During independence, many of the residents of NEP favoured secession from Kenya to

unify with Somalia. An armed secession movement started in the region, which led to a series of confrontations known as the 'shifta wars'. In 1963, Kenya imposed emergency rule in NEP which lasted until 1991.[15] The conflict continued throughout the 1960s until the brutal suppression of the uprising by Kenya's security forces. This marked the beginning of decades of human rights violations against ethnic Somalis which saw thousands killed. For more information see: USAID (Ken Menkhaus), Kenya-Somalia Border Conflict Analysis, 31 August 2005, p 10. See also Human Rights Watch, Criminal Reprisals: Kenyan Police and Military Abuses Against Ethnic Somalis, May 2012, p 14.

[16] This report also focuses on civilian hostility and violence towards ethnic Somalis in Kenya in the context of increased insecurity in Kenya. However hostility towards the Somali community is also a result of other factors such as the growth of a largely informal Somali business community in Kenya; the success of which has led to widespread and reportedly over-stated accusations of links to piracy and criminal activity. For more information see Chatham House Briefing Paper (Farah Abdulsamed), Somali Investment in Kenya, Africa Programme, March 2011, AFP BP 2011/02.

[17] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), Art 1(k).

[18] Convention related to the Status of Refugees, Art 2.

[19] UNDP, Somalia Human Development Report 2012 – Empowering Youth for Peace and Development, 28 September 2012.

[20] UNHCR, Somali Refugees in the Region, 10 Sept 2013, can be accessed at https://data.unhcr.org/horn-of-africa/country.php?id=197 [accessed 27.09.13].

[21] Human Rights Watch, Hostages of the Gatekeepers, 28 March 2013, p 15.

[22] For more information see Amnesty International, Somalia's Children Under Attack, 20 July 2011, AFR52/001/2011, Routinely targeted: Attacks on civilians in Somalia, 1 June 2008, AFR 52/009/2008

[23] For more information see Amnesty International, In the Line of Fire: Somalia's Children Under Attack, 20 July 2011, AFR52/001/2011.

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[27] Global IDP Database, Profile of Internal Displacement: Somalia, 9 May 2004, p 7.

[28] UNOCHA, Internally Displaced Persons: Combined Report on Somalia 1, 2002, p 4.

[29] UNOCHA, Somalia Humanitarian Bulletin, August 2013.

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[31] UN, Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2060 (2012): Somalia, 12 July 2013, S/2013/413, para 139.

[32] UNHCR, Somali Refugees in the Region, 10 Sept 2013, can be accessed at https://data.unhcr.org/horn-of-africa/country.php?id=197 [accessed 27.09.13].

[33] UNHCR, Refugees in the Horn of Africa: Somali Displacement Crisis, http://data.unhcr.org/horn-of-africa/country.php?id=197, [accessed 29.11.13].

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[39] Letter from the Office of the President – Provincial Administration and Internal Security, Relocation of urban refugees to officially designated camps, 16 January 2013, on file with Amnesty International.
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[41] Kenya High Court Judgement, Constitutional and Human Rights Division, Petition No 19 of 2013 consolidated with Petition No 115 of 2013, para 73.
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[52] See http://allafrica.com/stories/201311170308.html for further details [accessed 18 December 2013].
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[54] UN, Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2060 (2012): Somalia, 12 July 2013, S/2013/413, Annex 8.1, para 14 and 17.
[55] UN, Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2060 (2012): Somalia, 12 July 2013, S/2013/413, para 139. See also UNSC, Report of the Secretary General on Somalia, 3 September 2013.
[56] UN, Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2060 (2012): Somalia, 12 July 2013, S/2013/413, para 139. See also UNSC, Report of the Secretary General on Somalia, 3 September 2013, para 133.
[57] UN, Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2060 (2012): Somalia, 12 July 2013, S/2013/413, para 139. See also UNSC, Report of the Secretary General on Somalia, 3 September 2013, para 42.
[58] For more information see: Amnesty International, Rape and Sexual Violence in Somalia: an ongoing epidemic, 30 August 2013.
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International, Rape and Sexual Violence in Somalia: an ongoing epidemic, 30 August 2013.
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[78] UN Guiding Principles on Internal Displacement, Principle 28(a).
[79] International Covenant of Economic, Social and Cultural Rights (ICESR), Art 11.
[80] UN Committee on Economic, Social and Cultural Rights, The right to adequate housing, General Comments No. 4 and 7.
[81] Committee on Economic, Social and Cultural Rights, General Comment 4, paragraph 9 and General Comment 7, paragraph 13.
[82] Committee on Economic, Social and Cultural Rights, General Comment No. 7, paragraph 13.
[83] See OHCHR, General Comment 7, The right to adequate housing: forced evictions, Art 15.
[84] Human Rights Council, General Comment 7, The right to adequate housing: forced evictions, Art 16.
[85] International Covenant of Civil and Political Rights (ICCPR), Art 17.
[86] See Concluding Observations of the Human Rights Committee: Kenya, UN Human Rights

Committee, CCPR/CO/83/KEN 29 April 2005, paragraph 22.
[87] Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights (CESR) v. Nigeria, Communication No.155/96, paragraph 60.
[88] See International Covenant on Economic, Social and Cultural Rights, art. 11.
[89] The UN Committee on CESCR comments expand on the interpretation on the right to an adequate standard of living as can be found in General Comment 12 on the right to adequate food and General Comment 15 on the right to water. General Comment 4 expands the right to adequate housing; while General Comment 7 is specific to forced evictions.
[90] Committee on Economic, Social and Cultural Rights,, General Comment 12, 6.
[91] Committee on Economic, Social and Cultural Rights,, General Comment 12,7.
[92] Committee on Economic, Social and Cultural Rights, General Comment 15, 3.
[93] See Committee on Economic, Social and Cultural Rights, General Comment 15, 25, 15.
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[95] Report of the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, 55.
[96] Kampala Convention, Art 3 (1) (j).
[97] Kampala Convention, Art 5 (1).
[98] UN Guiding Principles, Principle 25(1).
[99] Kampala Convention, Art 5 (3).
[100] UN Guiding Principles, Principle 18(2).
[101] UN Guiding Principles, Principle 24 (2).
[102] Kampala Convention, Art 3(1) (j).
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[104] UNOCHA, Somalia Humanitarian Bulletin, September 2013.
[105] Amnesty International, Kenya must not return Somali Refugees, 1 October 2013.
[106] Official: Some refugees plan attacks from Kenya, http://news.yahoo.com/official-refugees-plan-attacks-kenya-125845448.html [accessed 19.12.13]
[107] See MP calls for closure of Dadaab Refugee Camp, 30 September 2013, http://www.standardmedia.co.ke/?articleID=2000094572.
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[112] Refugees International, When Push Comes to Shove: Displaced Somalis Under Threat, 07.11.13.
[113] Amnesty International, Kenya's decision to confine refugees and asylum-seekers in camps unlawful, 20 December 2012.
[114] UNHCR, Information Portal, Somalia Population Movement Trends, http://data.unhcr.org/horn-of-africa/country.php?id=197 [accessed 23 Oct 2013].
[115] Interview, Deputy Ambassador of Somalia in Nairobi, 01.11.13.
[116] See Amnesty International, From Life Without Peace, to Peace Without Life, 8 December 2010; See also Human Rights Watch, You are all Terrorists: Kenyan Police Abuse of

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[127] UNHCR, 2013 Country Operations Profile – Kenya, http://www.unhcr.org/pages/49e483a16.html [accessed 22.11.13].
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[130] For more information see http://www.unhcr.org/pages/49e483a16.html [accessed 25.11.13].
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[154] UN Human Rights Council, Report of the Secretary-General on the United Nations support to end human rights abuses and combat impunity in Somalia, September 2012, para 22.
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[156] UNHCR, Refugees in the Horn of Africa: Somali Displacement Crisis: Information sharing portal, http://data.unhcr.org/horn-of-africa/country.php?id=197 [accessed 23 Oct 2013].
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[158] Interview, UNHCR Delegate, 28 August 2013.
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[160] Human Rights Watch, Hostages of the Gatekeepers, 29 March 2013, p 30.
[161] UNOCHA, Somalia Humanitarian Bulletin, October 2013.
[162] Ministry of Interior and National Security / UNHCR, Compact on Protection Against Forced Evictions of Internally Displaced Persons in Mogadishu, September 2013.
[163] REACH, Somalia Intercluster Assessment Fact Sheet: Mogadishu, Daynille, C-Control – K13, August 2013.
[164] Amnesty International Interview with newly displaced woman, 18 August 2013.
[165] UN, Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2060 (2012): Somalia
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[169] ICESCR, Art 11. Details of the content of this right can be found in General Comment 4 (8), (18); General Comment 7
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[171] Internal Displacement Monitoring Centre, Solutions for IDPs revealed as key for future peace and stability in Somalia, 1 October 2013, p 10.
[172] Return Consortium, Standard Operating Procedures for Voluntary Return in Somalia.
[173] UNHCR, Somalia Fact Sheet, September 2013.
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[184] UN, Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2060 (2012): Somalia, 12 July 2013, S/2013/413, IV, para 120.
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NO PLACE LIKE HOME
RETURNS AND RELOCATIONS OF SOMALIA'S DISPLACED

Somalia has one of the highest populations of displaced people in the world. The ongoing armed conflict in south and central Somalia continues to destroy lives. Yet Somalia's displaced are being driven out of their places of refuge.

Kenya expects all Somali refugees to return to Somalia. Although returns are described as voluntary, life as a refugee or asylum-seeker in Kenya is one where arbitrary arrests, lack of freedom of movement, violence and abysmal living conditions are widespread. These conditions are pushing people to return.

In Somalia, the government intends to relocate hundreds of thousands of internally displaced people from Mogadishu to an insecure area outside the city. In the meantime they continue to live under a constant threat of forced eviction.

Thousands of internally displaced people have been assisted to return to south Somalia, facing dangers along the way such as extortion, violence and sexual violence. Some end up in camps for the displaced. Others risk returning to rural locations, where al-Shabab, an armed Islamist opposition group, continue to hand out harsh punishments for those perceived to disobey their strict interpretation of Shari'a law.

This report calls on the Somali and Kenyan authorities to ensure refugees and internally displaced people are not pressured to return to dangerous areas, and that they continue to receive protection and have their rights upheld, in line with international standards.

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