

Hasty Repatriation

Kenya's attempt to send Somali refugees home



February 2013

Published in 2013 by the Heritage Institute for Policy Studies
Amira Hotel Road, KM5 Junction, Mogadishu, Somalia

The Heritage Institute for Policy Studies

The Heritage Institute for Policy Studies is an independent, non-partisan, non-profit policy research and analysis institute based in Mogadishu, Somalia. As Somalia's first think tank, it aims to inform and influence public policy through empirically based, evidence-informed analytical research, and to promote a culture of learning and research.

Cover: Somali refugees stand in line at a food distribution centre at Dadaab.
Photograph by Sarah Elliott

Rights: Copyright © The Heritage Institute for Policy Studies

Cover image © Sarah Elliott

Text published under Creative Commons Licence

Attribution-Noncommercial-No Derivative

www.creativecommons.org/licences/by/nc-nd/3.0.

Available for free download at www.heritageinstitute.org



Contents

Preface	1
Acronyms	2
Executive Summary	3
Methodology	5
Background	6
Legal Framework	14
Findings	19
Official Positions	22
Conclusions	25
Recommendations	26

Preface

As part of its mission to inform and influence public policy, the Heritage Institute for Policy Studies (HIPS) will produce a number reports each year focusing on major public policy issues. These reports are aimed at enhancing public understanding of the issues and making policy-relevant recommendations.

Our reports will vary in scope and depth given our wide area of expertise. From security and justice sector reform to federalism, state-building and the constitution, our highly qualified staff and experts will tackle various issues.

We will use these reports to generate a public discourse on policy matters. And while we will make recommendations based on our findings, we will engage relevant actors to enhance better understanding of the subjects we cover on a regular basis.

Finally, our reports are attempting to offer a Somali narrative to public policy issues. As a national research institution, we firmly believe that solutions to some of the toughest issues facing Somalia can only come from within.

Acronyms

AU	African Union
AMISOM	African Union Mission in Somalia
DRA	Department of Refugee Affairs
HIPS	Heritage Institute for Policy Studies
IDP	Internally Displaced Person
IED	Improvised Explosive Devices
JCC	Joint Cooperation Committee
MSF	Médecins Sans Frontières
NEP	North Eastern Province
NGO	Non-Governmental Organization
OAU	Organization of African Union
RCK	Refugee Consortium of Kenya
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

1

Executive Summary

Kenya is attempting to repatriate more than half a million Somali refugees despite continued instability in Somalia, and in defiance of national and international legal obligations. The calls for repatriation gained momentum after a wave of attacks targeting churches, nightclubs and public service vehicles in Nairobi and the Somali-dominated North Eastern Province (NEP).

This reactionary and impetuous shift in policy has serious security and economic implications for both Kenya and Somalia. Violence and harassment against Somali refugees and Kenyan-Somalis have been on the rise since calls for repatriation started at the end of 2012. Mistrust between Kenyan security forces and the Somali community in the Eastleigh neighbourhood of Nairobi - commonly referred to as 'Little Mogadishu' - has also increased, depriving police of cooperation and information sharing.

According to Somali government and UN officials, almost 20,000 Somali refugees have voluntarily left Kenya since repatriation calls started. Vacancy rates of houses and apartments in Eastleigh have rocketed and, subsequently, rent rates have plummeted. Schools in the area have reported considerably reduced student numbers.

This comes just weeks before Kenya is due to hold national elections. Somali refugees have become prey for politicians as the campaigns gather momentum, and are increasingly framed as a national burden. The Kenyan government lacks a coherent national policy for Somali refugees. While politicians publicly contradict one another on the matter, the High Court of Kenya recently granted an injunction halting the government's directive to relocate all urban refugees to camps.

The Somali government is not ready to accommodate almost 600,000 refugees. Leaders say refugees will be welcomed home and considered an asset but admit to being woefully unprepared to resettle them. Still, the Somali government is devising an ambitious plan to establish large camps inside Somalia, near the Kenyan border. It hopes to move hundreds of thousands of refugees to the new camps before the end of 2013. Not only is the implementation of this plan unrealistic, but it could also expose vulnerable refugees to dangerous conditions.

Many refugees indicate that they're willing to return home if security conditions

improve, but most lack the financial means to do so voluntarily. There is concern regarding the impact repatriation would have on already overcrowded Internally Displaced People's (IDP) camps in southern Somalia, potentially compromising the fragile gains made in recent months.

The Somali and Kenyan governments must work closely through the recently re-established Joint Cooperation Committee (JCC) to find a satisfactory solution. Reactionary and hasty decisions will exacerbate an already tense situation. Kenya must realize that removing over half a million people may prove to be a logistical nightmare with unforeseeable security implications

The Somali government must capitalize on recent security gains by establishing state institutions that can absorb the influx of refugees. Key to this is addressing the emotive issue of land in Somalia. Unresolved land disputes will likely lead to a re-eruption of violence in southern Somalia. An orderly, well-timed return of refugees would, however, solidify recent gains made and lay the foundations for a stable Somalia.

The UNHCR must play a vital role in assisting the two governments to find common ground. More urgently, it must assist those choosing to return now with information and equip them with practical tools necessary to reintegrate into society.

2

Methodology

This report draws on more than 40 interviews and focus groups conducted by three researchers with the Heritage Institute for Policy Studies (HIPS). Interviews were held in Nairobi, Dadaab and Mogadishu between 10 December 2012 and 10 February 2013 and were conducted in Somali and English. Interviewees included Somali refugees, senior Somali and Kenyan government officials, civil society leaders and representatives from NGOs and UN agencies. A variety of methodologies were used during the design phase, including desk and field-based research, a literature review, key informant interviews, and empirical analyses of existing data. The researchers also drew on international, Kenyan, and Somali legal documents and legislative acts on refugees and displaced people. Media reports were also consulted.

3

Background

Following the collapse of the Somali government and the outbreak of civil war in 1991, many Somalis were forced to flee in search of safety. Sharing a common border with Somalia, Kenya has received wave after wave of refugees throughout the prolonged internal conflict in southern Somalia.

A year after the collapse of the Somali government, in 1992, Kenya had received approximately 285,000 Somali refugees.¹ By 2006 this number had almost tripled.² In 2011 alone, as the Horn of Africa suffered the worst famine in sixty years, an estimated 150,000 Somali refugees crossed the border into Kenya.³

The majority of Somali refugees found their way to the Dadaab refugee camps established by the UNHCR in 1991. Currently home to 425,938 registered Somali refugees, Dadaab is now, unofficially, Kenya's third largest city.⁴

A further 50,783 Somali refugees are registered in Kakuma camp in northwestern Kenya near the borders of Uganda and South Sudan. Finally 33,537 Somali refugees are registered in Nairobi with the majority thought to be residing in the Somali dominated Eastleigh neighbourhood. There is little doubt that there are many more undocumented Somali refugees living in Kenya.

Persistent conflict and the re-occurrence of drought and famine in southern Somalia brought instability to the entire Horn of Africa region. Following a string of kidnappings of tourists and foreign aid workers Kenya launched Operation Linda Nchi ('protect the nation' in Kiswahili) in October 2011. Kenya justified its military intervention by citing al-Shabaab attacks on Kenyan soil, including the killing of a British man and the abduction of his wife from a resort on Kiwayu Island, the abduction of a French woman from her home on Manda Island, and the abduction of two Spanish Médecins Sans Frontières (MSF) staff working in Dadaab.

.....
1 Lindley A., (2011) 'Between a Protracted and a Crisis Situation: Policy Responses to Somali Refugees in Kenya', Refugee Survey Quarterly, page 3

2 ibid

3 Refugee Consortium of Kenya, (2012) 'Asylum Under Threat – Assessing the protection of Somali refugees in Dadaab refugee camps and along the migration corridor', Refugee Consortium of Kenya with the support of Danish Refugee Council, page 13

4 Kenya Department of Refugee Affairs

Since the start of Operation Linda Nchi, Kenya has suffered from growing insecurity with a series of low-level attacks in Nairobi, Mombasa and throughout North Eastern Province (NEP). Attacks are largely blamed on groups connected to or sympathising with al-Shabaab. Al-Shabaab itself has claimed direct responsibility for very few of these attacks.

The attacks have led to reprisals against Somali populations living in Kenya including Kenyan-Somalis. The Kenyan military and police have been blamed for some of these attacks.⁵ Xenophobic attacks carried out by members of the public have further contributed to the rising sense of insecurity among the Somali community.

Between 18 November and 19 December 2012, there were five separate grenade attacks in Eastleigh, killing 16 people and injuring 42, including Kenyan-Somali MP Yusuf Hassan. The attack on 18 November, targeting a public service vehicle, led to widespread rioting and violent reprisals against civilians of Somali origin.⁶

On December 18 the Commissioner of the Department of Refugee Affairs, Badu Katelo, ordered all refugees and asylum seekers to leave urban areas and return to allocated camps. Following outrage by the UNHCR and human rights advocacy groups, the Kenyan government reluctantly agreed not to enforce the order and, on 22 January 2013, the High Court of Kenya issued an injunction temporarily halting the relocation of refugees to the camps pending a full inquiry.⁷

The forthcoming elections have contributed to repatriation rhetoric among Kenyan politicians. As early as May 2012, President Mwai Kibaki requested the assistance of the international community to assist in the relocation of Somali refugees to recovered areas in southern Somalia.⁸ President Kibaki added that the Dadaab camps were unsustainable and that they were draining national resources.

This was further cemented by a recent joint communiqué issued by Presidents Mwai Kibaki and Hassan Sheikh Mohamud noting the plight of Somali refugees residing in north-eastern Kenya and pledging to “work together and with the international community to come up with modalities for their orderly return to Somalia to rebuild their lives and participate in the development of their motherland.”⁹

There have been heated debates within the Kenyan government on the issue of

5 Aljazeera, ‘Kenya send troops to attack al-Shabaab’, Aljazeera – October 2012 <http://www.aljazeera.com/news/africa/2011/10/20111016115410991692.html>

6 Aljazeera, ‘Kenyan riot against ethnic Somalis’, Aljazeera – November 2012 <http://www.aljazeera.com/news/africa/2012/11/2012112021333440883.html>

7 UNHCR, ‘UNHCR on the Directive by the Kenyan Government on the Relocation of Refugees from the Urban Centres to the Refugee Camps,’ UNHCR – January 2013 <http://www.unhcr.org/510275a09.html>.

8 Sabahi online, ‘Kibaki requests aid for refugee repatriation’ Sabahi online - May 2012 http://sabahionline.com/en_GB/articles/hoa/articles/newsbriefs/2012/05/03/newsbrief-04

9 Abdi, M., ‘Presidents of Kenya and Somalia Joint Communiqué’, Network Alshahid – December 2012 http://english.alshahid.net/archives/34032?utm_source=Alshahid&utm_medium=twitter&utm_campaign=Fees%3A+AlshahidNetwork+%28Alshahid+Network%29

Somali refugees and, according to a spokesperson, the UNHCR has now held discussions with the government about how best to relocate urban refugees to the camps as a first step towards repatriation.¹⁰

The debate surrounding the opening of Ifo II camp in Dadaab provides further evidence of disagreement within the Kenyan government - President Kibaki swiftly vetoed Prime Minister Raila Odinga's announcement that Ifo II would be opened in July 2011 during the height of the famine.¹¹ There now, however, appears to be growing consensus within the Kenyan government regarding the fate of Somali refugees.

Insecurity, whether directly related to the invasion of Somalia or not, is a growing reality for Kenya. It is costing lives and has major implications for Kenya's economy, not least the tourism industry. Kenya has legitimate grievances. It has been a willing host to Somali refugees for a prolonged period and kept its borders open to allow refugees to seek safety.

Kenya now finds itself increasingly vulnerable to terrorist attacks, prompting an understandable reaction among its people. An irrational, ill-conceived and inhumane response to such attacks, however, threatens to alienate the Kenyan-Somali population and breed a dangerous and lasting resentment among the victims of forced repatriation.

Dadaab

"We have problems here that we did not have before. We are very scared at night. Everyday we hear new stories. It has never been this bad or unsafe before. There are people who are trying very hard to make our lives much worse than it is. I don't know if this is their way of making us leave the camp, but we have nowhere to go."

Hassan, resident at Ifo camp for 14 years

Five camps combined give Dadaab the unenviable title of the world's largest refugee complex. According to the UNHCR, there are more than half a million refugees—mostly Somalis—in Dadaab.¹² The complex is based in Garissa district of Kenya, approximately 100 km from the border between Somalia and Kenya.

Three of the camps are operating well beyond their intended capacity. Ifo I (opened in 1991), Dagahley and Hagader (both opened in 1992) were intended for a total of 90,000 inhabitants but are currently hosting approximately 450,000 refugees.

In 2011, two additional camps were established within the complex - Ifo II (also known as Ifo West) and Kambioos - hosting much smaller populations. Ifo II was opened following international pressure on the Kenyan government and is now hosting the most recent arrivals.

.....
10 Interviews with spokesperson for UNHCR and the Department of Refugee Affairs – Nairobi December 2012

11 Ilyas.com, 'Horn of Africa drought: Kenya to open Ifo II camp', Ilyas.com – July 2011 <http://www.ilays.com/2011/07/horn-of-africa-drought-kenya-to-open-ifo-ii-camp/>

12 Interview with UNHCR official in Dadaab, December 2012

According to the UNHCR, the Kenyan government has not yet officially agreed to the opening of Kambioos camp. Given the current level of overcrowding in Dadaab, if the government insists on relocating urban refugees to camps it will have little option but to open the doors to Kambioos.

According to inhabitants of the camps insecurity is a growing problem. Ifo II is widely considered the most dangerous of the camps with disturbing levels of abuse being reported on a daily basis. The Kenya police – there to protect the inhabitants – stand accused of being among the perpetrators of such abuse.¹³

Following the kidnapping of two MSF staff in October 2011, the DRA suspended the registration of newly arriving refugees.¹⁴ While the suspension officially remains in place, the UNHCR recently confirmed that the DRA has allowed registrations to take place on at least two occasions.¹⁵ The UNHCR continues to push for the re-opening of registration.

In the wake of the kidnappings, most agencies operating inside the camps ceased all ‘non-life saving activities’ leaving the inhabitants yet more vulnerable to the growing insecurity.

Kenyan police officers operating in the camps were targeted in December 2011 in three separate explosions - two in Ifo and one in Hagadera. Subsequent events are well documented in a recent Human Rights Watch report.¹⁶

Most refugees interviewed said security has deteriorated in the camps over the past few months. Many reported sporadic cases of rape, night-time raids by Kenyan security services and occasional killings. An atmosphere of fear is spreading through the camps as international aid agencies limit their activities significantly.

Most refugees claimed that they don’t trust the Kenyan security forces alleging that they are the main culprits of insecurity in the camps. The Kenyan police in the camp deny these allegations and blame “al-Shabaab sleeper cells and sympathizers” for the growing insecurity.¹⁷

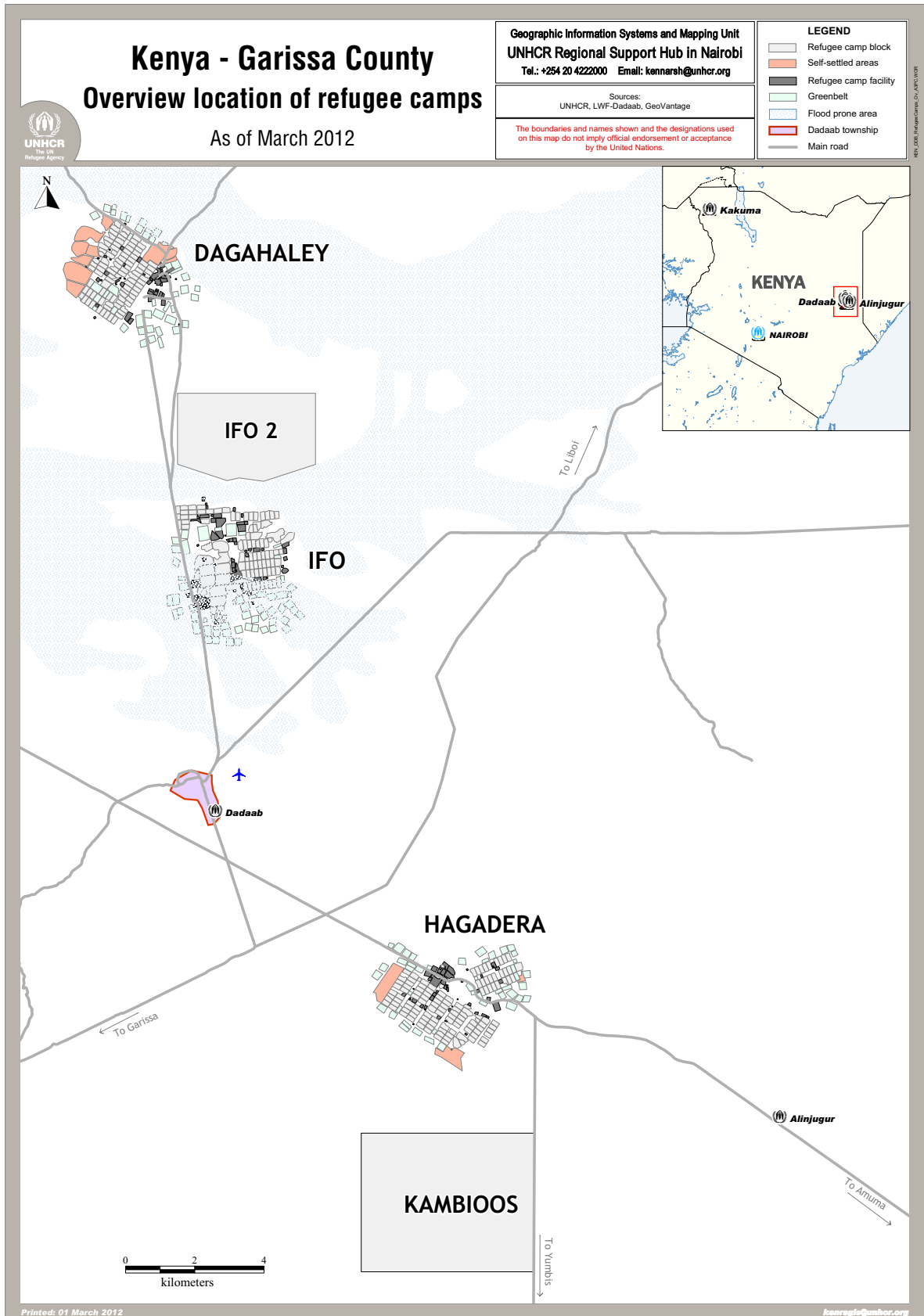
.....
 13 Interviews with Somali refugees & international agencies – Dadaab, December 2012

14 Human Rights Watch, (2012) ‘Criminal Reprisals Kenyan Police and Military Abuses against Ethnic Somalis’, Human Rights Watch

15 Interview with UNHCR representative – Dadaab, December 2012

16 For fuller treatment see “*Criminal Reprisal: Kenyan Police and Military Abuses Against Ethnic Somalis*”

17 Interview with Kenya police officials – Dadaab, December 2012



Eastleigh

Though only 33,537 Somalia refugees are officially registered in Nairobi, the total number is estimated to be significantly higher, according to the UNHCR, and Kenyan and Somali government officials.¹⁸ While it's almost impossible to ascertain the exact figures, Somali refugees dominate an entire neighbourhood of Eastleigh in Kamakuji district of Nairobi.

Known as "Little Mogadishu", Eastleigh is home to as many as 100,000 Somali refugees by some estimates.¹⁹ Most are thought to be undocumented immigrants who are supported by their family members in the diaspora.²⁰ Others are business owners. This often makes them more affluent than their peers in Dadaab.

Despite recent reprisal attacks, Eastleigh refugees feel considerably safer than those in Dadaab camps. They also enjoy significantly more mobility as they have access to a large cosmopolitan city.

'It was very difficult for me to stay in Dadaab. I found Eastleigh to be 100% better for me. I have my family to support and the rations in Dadaab were not enough for me to survive on. I am a very hard worker and since coming to Eastleigh, I have been able to work to support myself and my family. Dadaab is not safe or secure. There are a lot of things that happen there and many bandits take advantage of the refugees. In Eastleigh, I have found the police to be a big problem. When they see that you are Somali, it doesn't matter what your legal status is, they will threaten to arrest you and detain you unless you pay a bribe.' Mohamed, a 47 year old living in Eastleigh

Still, thousands of Somali refugees are leaving Eastleigh and are voluntarily returning to Somalia. Since November 2012, the Somali embassy in Nairobi has recorded a significant increase in the number of refugees seeking travel documents to self-repatriate.²¹ Many were large families whose children were born and raised in Kenya, according to the embassy. Interviews with some of these refugees and embassy officials point to three main factors motivating the refugees to return to Somalia at this particular time:

- a) Fear of more reprisal attacks against them and an overall sense of insecurity.
- b) Uncertainty over the stability of Kenya during and after the March elections.
- c) Improving security and increasing optimism in Somalia as regions are recovered from al-Shabaab fighters.

.....
18 Interviews with Somali embassy, DRA & UNHCR – Nairobi 2012

19 Jones, T., 'Little Mogadishu', AfricanLens http://www.africanlens.com/stories/photo_story/little_mogadishu

20 Voiced Over, 'Eastleigh Must Be Handled With Care' – December 2012 <http://oguda.com/2012/12/14/eastleigh-must-be-handled-with-care/>

21 Interview with Somali embassy official - Nairobi, 2012

Economic impact

The self-repatriation of thousands of Somali refugees over the last few months is having a deleterious impact on the localized economy of Somalis in Kenya.²² Vacancy rates at apartments have rocketed and, consequently, rent rates have plummeted.²³ Dozens of shops have closed in the Eastleigh Somali market. Schools have reported some of the lowest enrolment levels in years.²⁴ One teacher in Eastleigh told the BBC Somali Service that approximately half of his students have recently returned to Somalia with their parents.²⁵

Eastleigh is a major trade point for Somalis in the Horn of Africa. Many businesses rely on the informal market to make deals far beyond Kenya. Dubai or China-based Somali businessmen often have representatives in Eastleigh who act as a liaison for their activity across the region.

Multinational remittance companies have major branches in Eastleigh and thousands of diaspora Somalis come to Kenya every year to meet their relatives in Eastleigh. “The repatriation calls and the increasing insecurity are wrecking havoc on the vibrancy of our organic economy,” said a prominent businessman in Nairobi.²⁶

Security impact

Attacks following the Kenyan military intervention in Somalia have rendered Eastleigh one of the most dangerous neighbourhoods in Nairobi. A slew of grenade attacks against churches, police stations and even mosques have jolted the once vibrant community. There had been several riots in the area following the attacks. Angry Kenyan mobs have stormed Somali shops, looting and ransacking properties.²⁷

In response to these attacks, Kenya has increased police presence and patrols in the area. A number of high profile sweeps by the police has netted several hundred undocumented Somali immigrants.²⁸ Human rights groups have condemned the increasing occurrence of indiscriminate security raids.²⁹

Many refugees in Eastleigh say they no longer leave their houses after dusk due to the heavy police presence. “We’re the victims of both al-Shabaab, who are probably behind the attacks, and police brutality” said one refugee.³⁰ The conduct of the Kenyan police services is widely documented. Armed police often arrest Somali refugees and openly ask for money. Many Somali refugees say they are forced to carry “ransom” cash with them at all times as they have no other

22 Reinl, J., ‘Kenya tensions spark Somali refugee flight’ Aljazeera – February 2013 <http://www.aljazeera.com/indepth/features/2013/02/2013251139463500.html>

23 BBC Somali interview with Eastleigh businessman – Jan. 19, 2013

24 ibid

25 ibid

26 Interview with a prominent businessman in Nairobi – December 2012

27 Patinkin, J., ‘Kenya: Ethnic and Economic Grievances Underlie Violence in Eastleigh’ Think Africa Press – November 2012 <http://thinkafricapress.com/kenya/somali-migrants-suffer-bomb-blast-reprisals-nairobi>

28 BBC, ‘Kenya grenade attack: Somalis attacked in Nairobi’, BBC news – November 2012 <http://www.bbc.co.uk/news/world-africa-20393013>

29 See HRW report: “*Criminal Reprisal: Kenyan Police and Military Abuses Against Ethnic Somalis*”

30 Interview with A.E., Eastleigh – January 2013

means to seek recourse.³¹

The unintended consequence of Kenyan police brutality is the deepening mistrust between them and Somali refugees. The majority of refugees interviewed for this study said they would not cooperate with Kenyan police to identify suspects because they fear that the police will ask for “ransom” money. This attitude deprives the Kenyan security service a crucial source of information and cooperation. It also increases the risk of al-Shabaab sleeper cells finding a safe haven among Somali refugees.

.....
31 *ibid*; See HRW report for specific cases of police corruption

4

Legal Framework

Kenya has both international and legal obligations to protect Somali refugees. Kenyan and international refugee law is based on the 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees. The Convention defines a refugee as someone who:

‘owing to 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.’

Kenya is a signatory to the Convention Relating to the Status of Refugees having acceded on 16 May 1966 without reservation. Kenya also acceded the Protocol Relating to the Status of Refugees on 13 November 1981, again without reservation. As a state party to the Convention, Kenya has legal obligations to offer protection to those recognised as refugees.

The 1951 Convention accords refugees certain fundamental rights such as the right to work - Articles 17-19 - and the right of refugees to choose their place of residence and the freedom of movement within the territories of that country - Article 26. The right not to be repatriated to conditions that might render the individual vulnerable to persecution or insecurity underpins refugee law. Article 33 states:

‘No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened’.

As a signatory, Kenya is also bound to the 1969 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa. The OAU definition of a refugee was extended to encompass those fleeing from war in the 1969 Convention:

‘the term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality,

is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.’³²

Article 5 of the 1969 OAU Convention deals with the issue of voluntary repatriation. It emphasizes that ‘no refugee shall be repatriated against his will’ - Article 5(1). It goes on to state:

‘(2) The country of asylum, in collaboration with the country of origin shall make adequate arrangements for the safe return of refugees who request repatriation.

(3) The country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of that country, and subject them to the same obligations.

(5) Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organisations, to facilitate their return’.

Kenya introduced its own legislation to deal with refugees through the enactment of the Refugee Act 2006, which sets out the provisions ‘for recognition, protection and management of refugees.’ This incorporated the definition of a refugee from the 1951 Convention and the 1969 OAU Convention. It established the Department of Refugee Affairs (DRA) which is ‘responsible for all administrative matters concerning refugees in Kenya, and shall, in that capacity, co-ordinate activities and programmes relating to refugees.’

Given the precedents set by international, regional and national legislations, the Kenyan government is not legally in a position to forcefully repatriate Somali refugees. To do so would mean that Kenya would be in direct violation of the international treaties it is a signatory to, as well as its own domestic legislation.

.....
 32 Article 1 (2) of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

**Repatriation:
actors and
acts**

‘Everyone has the right to leave any country, including his own, and to return to his country.’ Article 13(2) of the Universal Declaration of Human Rights 1948

The definition of repatriation is the act of returning to the country of one’s origin. The right to repatriation is one that is recognised in international law by virtue of the Universal Declaration of Human Rights.

Durable solutions for refugees are broadly considered to be limited to voluntary repatriation to their country of origin, local integration into the country of asylum, or resettlement into a third country.

In 2003, the UNHCR published its Framework for Durable Solutions for Refugees and Persons of Concern which set out what is known as the 4Rs approach: repatriation, reintegration, rehabilitation, and reconstruction.

The role of the UNHCR is ‘to provide, in collaboration with other actors, international protection to refugees and to assist them in finding permanent solutions through voluntary repatriation, local integration or resettlement.’

The UNHCR Handbook on Repatriation and Reintegration Activities goes on to state:

‘Voluntary repatriation (the free and voluntary return to one’s country of origin in safety and dignity) is the solution of choice for a vast majority of refugees. In a returnee situation, this implies the restoration of national protection (to obviate the need for international protection) and, through the reintegration process, the ability to maintain sustainable livelihoods, access basic services and fully reintegrate into communities and countries of origin. In post-conflict situations, UNHCR should situate its repatriation and reintegration work within a broader context of transition from conflict to peace and try to build peace and bridge the gap between relief and development so as to avoid creating a dependence of returnees on humanitarian assistance and to ensure returnees’ early and sustainable reintegration’.

A summary of the UNHCR’s mandate for voluntary repatriation is as follows:

- Verify the voluntary character of refugee repatriation;
- Promote the creation of conditions that are conducive to voluntary return in safety and with dignity;
- Promote the voluntary repatriation of refugees once conditions are conducive to return;
- Facilitate the voluntary return of refugees when it is taking place spontaneously, even if conditions are not conducive to return;
- Organize, in cooperation with NGOs and other agencies, the transportation and reception of returnees, provided that such arrangements are necessary to protect their interests and well-being;

- Monitor the status of returnees in their country of origin and intervene on their behalf if necessary;
- Undertake activities in support of national legal and judicial capacity-building to help states address causes of refugee movements;
- Raise funds from the donor community in order to assist governments by providing active support to repatriation and reintegration programmes;
- Act as a catalyst for medium and long-term rehabilitation assistance provided by NGOs, specialised development agencies and bilateral donors.

The UNHCR's role is derived from the 1951 Convention Relating to the Status of Refugees. As such, it cannot participate in the repatriation of refugees. Its role is to provide protection for refugees and to work towards a durable solution - voluntary repatriation, local integration or third country resettlement.

In the case of Somali refugees in Kenya, legal local integration is not currently considered an option. Kenya's policy towards Somali refugees has always been one of encampment with an expectation that refugees would eventually return to Somalia. Third country resettlement is out of reach to the majority of Somali refugees in Dadaab.

The long-term solution for most Somali refugees living in Kenya is voluntary repatriation. In 2011, approximately 13,700 Somalis benefited from UNHCR-facilitated resettlement. According to a survey carried out by the Refugee Consortium of Kenya (RCK), 86% of interviewees stated that they would like to be resettled if the improved situation continues in Somalia.³³

As noted in the RCK report, resettlement is:

'a politicized process, all the more so in the current context, with so many security concerns around the Somali population in general. The security constraints have meant that there are huge delays in resettlement submissions, interview and departure process. This further exposes vulnerable refugees to protracted periods of uncertainty, insecurity and sometimes violence.'³⁴

With the establishment of a new internationally recognized government of Somalia in September 2012, hopes have been raised for the promotion of solutions. However, before promotion of repatriation can commence, the UNHCR must be satisfied that the following criteria have been met:

- There must be an overall, general improvement in the situation in the country of origin so that return in safety and with dignity becomes possible for the

.....
 33 Survey carried out by the Refugee Consortium to assess the application of protection provisions for refugees in Dadaab camps. Refugee Consortium of Kenya, (2012) 'Asylum Under Threat – Assessing the protection of Somali refugees in Dadaab refugee camps and along the migration corridor', Refugee Consortium of Kenya with the support of Danish Refugee Council, page 85

34 ibid

large majority of refugees;

- All parties must be committed to fully respect its voluntary character;
- The country of origin must have provided a formal guarantee, or adequate assurances for the safety of repatriating refugees, as appropriate;
- UNHCR must have free and unhindered access to refugees and returnees;
- The basic terms and conditions of return must be incorporated in a formal repatriation agreement between UNHCR and the authorities concerned.

Part two of this report considers the extent to which these conditions have been met. It provides an alternative perspective on why people are returning to Somalia - fleeing greater insecurity in the country of asylum rather than improving conditions in Somalia - and the provisions that will need to be in place before voluntary and safe return becomes a viable option.

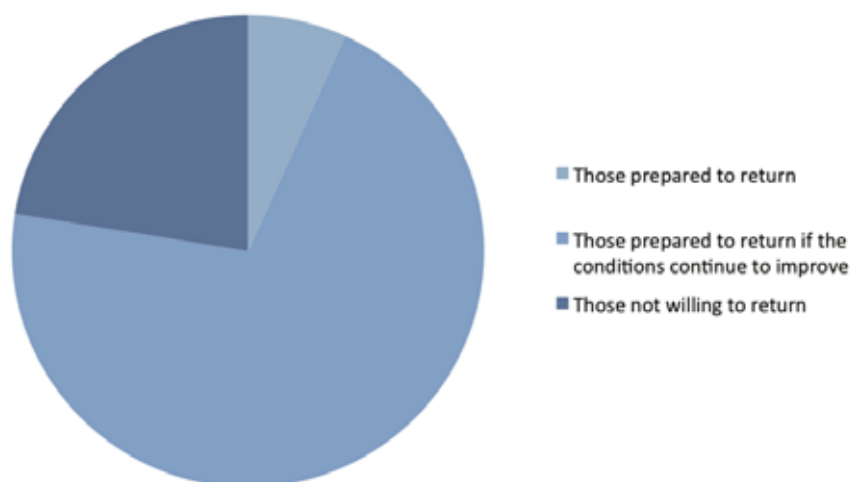
5

Findings

Security in Mogadishu and surrounding cities has been improving considerably since al-Shabaab fighters were dislodged from these regions. Somalia's capital city hasn't seen running battles for months. Business vibrancy is slowly but steadily returning.³⁵ The prevailing sense of optimism has prompted thousands of refugees in Kenya and diaspora Somalis to return home.

Still, normalcy is an elusive prospect. Suicide bombings, targeted assassinations and sporadic clashes between al-Shabaab fighters and Somali government security forces remain common. Despite significant losses, al-Shabaab fighters still control a large swathe of land in southern Somalia.³⁶

That makes most refugees nervous and uncertain about returning to Somalia. Only 6% of those interviewed in Kenya said they're prepared to return home immediately. 63% said they considered Somalia their 'home' and are willing to return if conditions continue to improve, and more regions are recovered from al-Shabaab fighters. 20% said they were not willing to return to Somalia because the conditions under which they fled remain.



35 Ali, L., "Mogadishu is like Manhattan': Somalis return home to accelerate progress", Guardian – January 2013 <http://www.guardian.co.uk/global-development/2013/jan/11/mogadishu-manhattan-somalis-return-progress>

36 As early February, al-Shabaab controls much of Middle Shabelle, parts of Lower Shabelle, almost all of Galgaduud, Bakool, Gedo and Middle Jubba regions.

Uncertainty awaits the refugees who decide to self-repatriate to Somalia. IDP camps in and around Mogadishu are overcrowded and insecure. Human rights agencies have been reporting rising cases of rape, robbery and other incidents.³⁷ The Somali government claim al-Shabaab sleeper cells hide within IDP camps. A senior Somali official said: “terrorist cells found IDP camps easily penetrable and not the target of security operations, and so they’re taking advantage of these vulnerable communities”.³⁸

Nowhere to return

We have nowhere to return. I don’t want to leave a refugee camp and move to an IDP camp in Somalia. I can only think about return to Somalia—to my region of origin—if conditions improve. And right now, they have not.
Abdillahi A., 48, Dadaab.

Somali refugees in Kenya have fled from many regions across Somalia, especially in the south. A significant number of those interviewed for this study were from Mogadishu and the Lower Jubba region.

72% of interviewees said they are only willing to return to the regions they originally fled because that’s where they have land, farms and a clan network for support and reintegration. In many cases, their town or village of origin is still under the control of al-Shabaab fighters.

We can’t absorb them

The Somali government is currently drafting a plan to relocate many of the refugees in Dadaab across the border to Somalia. Senior officials in the Interior Ministry have started discussing plans to set-up large camps near Beled Hawo on the volatile border between Somalia and Kenya. As of early February, these discussions were in the early stages.³⁹ According to an official, the Kenyan government is collaborating with the Somali government on this plan. The UNHCR didn’t seem to know about this as of early February.

Despite these plans, senior government officials in Somalia have said they are simply unprepared to absorb over half a million refugees coming from Kenya. “While we view our returning people as an asset, not a liability, the fact is that my government does not have the capacity to provide housing and other needs for such a large number of people,” said Somali prime minister, Abdi Farah Shirdon.⁴⁰

It is not clear whether the discussions to set-up large IDP camps inside Somalia near the border with Kenya started before the prime minister was interviewed or after. What is evident is that his government lacks a coherent national agenda to cope with a possible influx of returning refugees.

.....
37 Ahmed, M., ‘Heightened concern over rape in Somali camps’, Sabahi online – November 2012 http://sabahionline.com/en_GB/articles/hoa/articles/features/2012/11/29/feature-02

38 Interview with senior Somali government official – Mogadishu, January 2013

39 Interview with an official at Interior Ministry – Mogadishu, February 2013

40 Interview with Somali PM – Mogadishu, January

Land disputes

Land ownership is one of the most emotive and complex issues in Somalia today, particularly in Mogadishu. This has direct implications for the thousands of people returning to Somalia. The return of a modicum of stability in Mogadishu prompted a rush to grab land across the city. This has sparked a wave of disputes.⁴¹ Much of the premium land in the capital is contested.

A significant portion of that land was appropriated during the 1991 civil war. Some of the previous owners have returned to Mogadishu and are reclaiming their land. In many cases, new occupants have been resisting vacating captured properties on various grounds.

With so many other priorities, the Somali government hasn't created a legal body to handle this sensitive issue. Local courts in Mogadishu say they're simply overwhelmed by the sheer size and complexity of the cases.⁴² The situation is compounded by the lack of reliable documentation that courts can use.

Currently, the courts and landowners use three mechanisms to verify and adjudicate rightful ownership of land in Somalia.

- a) **Witnesses:** as a Muslim and oral society, giving out verbal verification of land by neighbours, relatives and former land commission officials still passes as a powerful tool for determining ownership.
- b) **Land registry:** a former land commission official, who apparently has custody of the national land registry, has been selling verifications to owners and prospective owners.
- c) **Land design:** another former official living in Mogadishu who has custody of the national land design scheme, has also been selling verifications.

These ad hoc mechanisms have become the alternative to an official government body dealing with this issue. The Somali government must take steps to reclaim national documents and establish a credible body to oversee land disputes to avoid a re-eruption of intra-communal violence. This will also help facilitate the smooth return of refugees and diaspora to their properties.

.....
 41 Hussein, A., "Returning diaspora triggers wave of land disputes in Mogadishu" Sabahi Online – January 2013 http://sabahionline.com/en_GB/articles/hoa/articles/features/2013/01/17/feature-02

42 ibid

6

Official Positions

The Kenyan government is aware of the large numbers of Somali refugees returning to Somalia. The Somali embassy confirmed that in the months of November and December 2012, hundreds of Somali refugees were returning to Somalia each day. The Kenyan government attributes this to increasing stability in Somalia. Somali refugees, the UNHCR and NGOs, however, attribute increasing voluntary return to Somalia to growing insecurity in Kenya.

UNHCR

The official view of UNHCR⁴³ is that Somali refugees should not be returned to Somalia at this point in time for the following reasons:

- It is currently not logistically feasible to return Somali refugees from Dadaab to Somalia;
- Though there have been positive developments in Somalia recently, it is too early to guarantee durable stability in the country;
- Al-Shabaab have been weakened but remain present in Somalia;
- Access for international organisations in southern Somalia, including the UNHCR, remains extremely limited due to insecurity. As such, the UNHCR is unable to assist or guarantee the safety of returning refugees.
- There is a lack of clarity regarding the existence and nature of support available for returning refugees in southern Somalia;
- Many returning refugees would become Internally Displaced Persons (IDPs) in Somalia losing UNCHR support in Kenya;
- Agreements between the Kenyan and Somali government must be implemented before refugees can be returned.

The UNHCR is in close communication with the Kenyan government and reiterating the importance of ensuring that refugees are not forcibly returned to Somalia. They continue to emphasise the voluntary aspect of returns.⁴⁴

.....
43 Interview with UNHCR official – Dadaab, December 2012

44 ibid

The UNHCR currently does not have a self-repatriation programme as it is not promoting return to Somalia. The initiation of such a programme involves two stages - both the promotion and facilitation of repatriation. A self-repatriation programme would depend upon an agreement between the UNHCR, the Kenyan government and the Somali government. The UNHCR is, however, establishing Returns Information Desks in the Dadaab camps to provide information to refugees.⁴⁵

Kenyan Government

The Kenyan government is keen to accelerate the process and have Somali refugees returned to Somalia. It has established a task force and allocated resources to expedite this process.

According to the Commissioner of the Department of Refugee Affairs, Mr Badu Katelo, a joint commission has recently been established between the Kenyan government, the Somali government and the UNHCR. Katelo further indicated that the department acknowledged that preparation was needed and that many socio-economic issues would need to be resolved before repatriation can start. The department estimates that the process will likely take three years to be fully implemented.⁴⁶

Somali Government

The Somali government has not yet developed any policies regarding the return of Somali refugees due to the numerous other challenges currently being faced. Prime Minister Abdi Farah Shirdon said, “these are our citizens and the problem or the challenge is a Somali problem. We cannot say these people should not return,” adding “we look at these possible returnees as a potential opportunity, (a) new resource, new manpower and new talents”.⁴⁷

The Somali Ambassador to Kenya, Mr Mohamed Ali Nur, says the Somali government would accept and receive any refugees who return to Somalia and that it has requested assistance from the international community to do so.⁴⁸

.....
45 ibid

46 Interview with Badu Katelo, Nairobi, December 2012

47 Interview with Somali PM – Mogadishu, January 2013

48 Interview with Somali ambassador in Kenya – Nairobi, December 2012

**Somalia
NGO
Consortium**

The Somali NGO Consortium warns that Somali refugees should not be returned to Somalia at the present time, expressing concern about the current conditions in Somalia and noting the following:

- There remains a large presence of local and national militias contributing to local insecurity;
- There is not sufficient protection for returnees;
- There has been a surge of human rights violations including gender-based sexual violence;
- A large influx of refugees being returned will likely destabilise the situation in Somalia and undermine the fragile authority of the government;
- The new government does not have the capacity to provide assistance to returning refugees;
- The situation in Somalia remains fluid – there are many unknowns such as whether AMISOM's mandate will be renewed and if so, for how long;
- While the situation has stabilized in Mogadishu, it remains extremely difficult for NGOs and international agencies to operate in southern Somalia;
- Corruption remains rampant.

7

Conclusions

Kenya is determined to repatriate its Somali refugee population despite lack of conditions conducive for lawful repatriation. The existence of more than a million IDPs demonstrates the lack of the capacity within Somalia to absorb returnees.

The presence of Somali refugees in Kenya has little connection with increasing insecurity in Kenya. Indeed many suspects involved in the attacks are Kenyan citizens. With elections approaching, Somalis have become an easy target for aspiring politicians.

The UNHCR, the Supreme Court of Kenya and other human rights organizations have openly opposed the Kenyan government's insistence on repatriation as a clear contravention of the rights of the refugees and a breach of its obligations under international law.

In recent months Somali refugees have begun to return home in large numbers due to deteriorating security conditions in the Dadaab camps and police harassment in Eastleigh.

Implementing an orderly, full-scale repatriation programme requires careful planning and partnership among the actors concerned – the Somali government, the Kenyan government, and relevant UN agencies and international donors. Kenya's attempt to expedite the process risks undermining such a partnership.

Many Somali refugees in Kenya have spent more than 20 years in a situation of extreme upheaval - first being forced to leave their homes due to widespread conflict and then spending years as refugees living in a state of limbo in a foreign country.

Given recent positive developments in Somalia refugees are able to contemplate, albeit to a limited degree, the possibility of return. However, facilitating the return of more than half a million refugees requires careful consideration. Currently the safety of returning refugees cannot be guaranteed. Calls for repatriation will cause panic among the refugee community.

Kenya must recognize its legal responsibilities and refrain from forcing refugees to return to Somalia.

8

Recommendations

To the Kenyan Government

- Suspend plans to repatriate Somali refugees and abide by international, regional and domestic obligations.
- Take responsibility for growing insecurity in the Dadaab camps and ensure safety and security to refugees residing there. More protection strategies need to be implemented to create a safer environment for Somali refugees.
- Open Kambioos camp in Dadaab to ease over-crowding.
- Publicly disassociate Somali refugees from the terrorist attacks and abductions that have occurred in Kenya. Kenyan Police should investigate such cases properly and focus on bringing the perpetrators to justice.
- Hold police and military accountable for abuses committed against Somali refugees and repair relations with the Somali community.
- Encourage and facilitate effective partnership with the Somali government, international organisations and NGOs, working towards an orderly and considered repatriation programme that guarantees the safe return of Somali refugees.

To the Somali Government

- Work closely with the UNHCR and the Kenyan government through the Joint Cooperation Commission to establish coherent plans for repatriation.
- Address the problems facing IDPs in Somalia, including rape and robbery.
- Address the issue of land and property rights in a just and efficient manner in order to allow refugees with legitimate claims to land to regain their property.
- Consolidate security in southern Somalia in order to guarantee full access to humanitarian assistance providers.
- Improve your human rights records by becoming a signatory to all major international and regional treaties.

To the UNHCR

- Work closely with the Kenyan government to provide safety and security for the refugees in Dadaab and Eastleigh.
- Lobby for the opening of Kambioos camp in Dadaab to ease overcrowding.
- Continue to publicly condemn the Kenyan government's directive to return Somali refugees and remind the Kenyan government of its obligations under international, regional and domestic refugee laws.
- Continue urging the Kenyan government to reconsider its plan to relocate urban refugees to Dadaab.
- Work closely with the Kenyan and Somali government to carefully design a programme to facilitate the return of Somali refugees and provide support upon arrival in Somalia. This should include community-based rehabilitation and development support in areas of return.

To the Somali Refugees

- Prepare for the prospect that you may be expected to return to Somalia in the near future.
- Inform relevant authorities (Kenyan government, Somali government and the UNHCR) of your plans to return to Somalia if you decide to do so voluntarily.
- Report all acts of violence and abuses and cooperate with police.
- Acknowledge the generosity of the Kenyan government, its people and security services for hosting and protecting you for more than 20 years.



